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FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AC72

Organization; Mergers, Consolidations, and Charter Amendments of Banks or Associations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, we, or our) amends existing regulations related to mergers and consolidations of Farm Credit System (FCS or System) banks and associations to clarify the merger review and approval process and incorporate existing practices in the regulations. The final rule identifies when the FCA statutory 60-day review period begins, requires that only independent parties validate ballots and tabulate stockholder votes on mergers or consolidations, requires institutions to hold informational meetings on proposed mergers when circumstances warrant, explains the reconsideration petition process, and identifies the voting record date list. The final rule updates cross-references in the existing regulations, incorporates cross-references to stockholder voting rules contained elsewhere in part 611, and clarifies and updates terminology.

DATES: This regulation shall become effective no earlier than 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. The FCA will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Shirley Hixson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4318, TTY (703) 883–4056, or Laura McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of the final rule are to:

- Clarify the FCA's review and approval process related to proposed plans of merger in order to facilitate an efficient and timely response;
- Enhance the efficiency and effectiveness of the reconsideration petition process for stockholders and provide clarity to System banks and associations on providing a stockholder list in the reconsideration process;
- Improve security and confidentiality in the voting process on mergers through the use of independent third-party tabulators; and
- Enhance existing regulations by updating terminology and making other grammatical changes.

II. Background

The Farm Credit Act of 1971, as amended (Act),[1] identifies the FCA as the safety and soundness regulator of the Farm Credit System and authorizes the FCA to issue regulations to implement the provisions of the Act.[2] The Act also gives the FCA several other authorities, including, but not limited to, approving System institution mergers.[3] FCA regulations in subparts F and G of part 611 address the procedures and stockholder disclosure requirements for Farm Credit banks and associations proposed plans of merger or consolidation (collectively, merger(s)), and charter amendments. We issued a proposed rule to amend our merger and charter amendment regulations on January 20, 2015 (80 FR 2614). The comment period for the proposed rule closed on April 20, 2015.

III. Comments and Our Responses

We received 3 comment letters on the proposed rule, one each from: The Independent Community Bankers of America (ICBA), the Farm Credit Council (FCC) on behalf of its membership, and AgriBank, FCB. All commenters expressed general support for the rule but offered specific comments on mergers and territorial adjustments. No comments were made on the definitions or charter amendment rules.

All provisions of the rule are finalized as proposed, except as discussed in our response to comments below.

A. General Comments Received

1. FCA Role in Mergers

AgriBank made a general comment on the role of FCA in determining the structure of System institutions, stating that FCA should limit itself to a safety and soundness review of mergers and leave all other considerations to the judgment of shareholders. We decline the commenter's suggestion that we limit our role in mergers to that of a safety and soundness reviewer. The Act requires the FCA to approve all System mergers and our merger approval authority comes with responsibilities beyond a safety and soundness review. Beyond approving the merger itself, we must also ensure that disclosure documents provided to stockholders comply with our regulations, voting procedures comply with the Act, and reconsideration petitions are properly addressed. We also have responsibility under the Act to issue and amend the charters of System institutions, which are often affected in mergers.[4]

2. Merger Rules Versus Termination Rules

The ICBA made a general remark that it would like our merger and consolidation regulations to mirror those existing for institutions seeking termination from the System. The ICBA gave specific examples of where our merger rules could be changed to resemble our termination rules. The ICBA explained that it believes mergers are similar to terminations as a merger results in one or more institutions terminating its existence.

It is not appropriate to change our merger rules to have them substantially resemble our termination rules. Mergers and terminations are different events that require different rules. Institutions that seek to leave the System are relinquishing their Government-sponsored enterprise (GSE) status to enter the private banking sector. Upon termination from the System, these institutions are no longer subject to FCA regulation and oversight. Further, that institution's business model may also

[1] Public Law 92–181, 85 Stat. 583.

[2] 12 U.S.C. 2252.

[3] 12 U.S.C. 2289a through 2279g.

[4] 12 U.S.C. 2002(a) and 2252.

change from a cooperative structure, meaning its members may no longer be member-borrowers in their institution. Conversely, System institutions seeking to merge are changing from two or more FCS institutions to one institution, which are still subject to FCA regulation and oversight. By merging, these institutions do not surrender their GSE status or cooperative business model.

3. Limiting Mergers

The ICBA requested a moratorium on future mergers within the System, arguing that allowing more mergers will only increase the size of institutions and reduce their effectiveness as ''locally oriented lenders serving farmers and ranchers.'' In the alternative, the ICBA asked that we limit the number of mergers that may occur within a close timeframe. The ICBA explained that multiple mergers occurring at the same time could have ''dramatic impact on the makeup and structure'' of the System, particularly in regards to expanded territories.

We decline the request to place a moratorium on mergers within the System. Each institution decides, independent of FCA, whether to pursue a merger. Voting shareholders in these institutions then must approve the merger through a vote. If the majority of the votes on the merger from voting shareholders in any of the merging institutions are against the merger, the merger may not proceed. Therefore, the voting shareholders of the System decide whether larger institutions reduce the System's effectiveness. Notwithstanding this, we do consider the impact a merger may have on the overall safety and soundness of the System during our review.

The ICBA also remarked that multiple mergers, and large ones at that, lead to potential conflicts among the merging institutions' management as the managers often obtain financial gain or further personal agendas from the mergers rather than give priority consideration to the stockholders' best interest. As discussed previously, voting shareholders of the merging institutions decide whether the merger is in their best interest. To ensure the stockholders are fully informed before casting their votes, FCA is required by section 7.11 of the Act to review the disclosures made to voting stockholders by the management of the merging institutions. As part of our review of disclosure information, we ensure specific disclosures are made regarding changes in staffing and compensation benefits resulting from the planned merger.

Finally, the ICBA asked FCA to consider the impact to Other Financial Institutions (OFIs) during a merger and whether a merger will disadvantage the OFIs. We agree with the ICBA's point that continuing service to authorized borrowers, including OFIs, must be considered as part of a merger of Farm Credit banks. A merger plan that could disadvantage any borrowers authorized to receive funding from a Farm Credit bank would be scrutinized and questioned through FCA's merger review process.

4. Public Involvement in Mergers

The ICBA asked that we require institutions to post merger documents in the public, non-private, section of the merging institutions' Web sites, similar to what our termination rules require. We have not made this change. In a termination action, an institution is leaving the System, changing regulators, and giving up its GSE status to become a commercial bank, savings association, or similar type of financial lender. It is because a termination action has a direct impact on both the shareholders of the terminating institution and the general public that we require public disclosures in termination actions. A merger of System institutions does not have a direct impact on the general public, so detailed public disclosures are considered unnecessary. However, we do require in § 611.1122(e) that merging institutions provide extensive disclosure of merger documents to their stockholders.

5. Regulatory Flexibility Act

The FCC questioned our Regulatory Flexibility Act (RFA) [5] certification. In the proposed rule, we certified that the rule would not have a significant economic impact on a large number of small entities. Our certification considered each Farm Credit bank together with ''its affiliated associations.'' The FCC objected to our combining associations with Farm Credit banks, stating that because each institution has to comply with the regulatory requirements each should be considered individually for purposes of identifying economic impact.

The RFA definition of a small entity incorporates the Small Business Administration (SBA) definition of a ''small business concern,'' including its size standards. A small business concern is one independently owned and operated, and not dominant in its field of operation. For purposes of the RFA, the interrelated ownership, supervisory control, and contractual relationship between associations and their funding banks are the basis for FCA's conclusion to treat them as a single entity. Therefore, System institutions do not satisfy the RFA definition of ''small entities.''

B. Comments on Merger and Consolidation Procedures [Subparts F and G]

1. FCA Authorities in Mergers [§§ 611.1000(c) and 611.1120(c)]

The FCC agreed with the technical updates to recognize changes in System institution formations and the use of the term ''FCA'' instead of ''Chairman.'' However, the FCC asked that the rule at § 611.1120(c), which discusses the authority of FCA to amend association and service corporation charters, more closely resemble the related provision for Farm Credit banks in § 611.1000(c). Specifically, the FCC asked that § 611.1120(c) include the phrase ''in accordance with the provisions of the Act.''

In updating the provision in § 611.1120(c) on FCA-initiated charter amendments for associations, we relied upon section 5.17(a)(2) of the Act, which provides that FCA may ''where necessary or appropriate to carry out the policy and objectives of this Act'' amend the charters of all System institutions. As the FCC noted, the language in § 611.1000(c) regarding FCA-initiated charter amendments for Farm Credit banks contains the phrase ''in accordance with the Act'' but this same phrase is missing from § 611.1120(c). As explained in the 1988 rulemaking (53 FR 50381, Dec. 15, 1988), the phrase ''in accordance with the Act'' was added to § 611.1000(c)—even though considered at the time unnecessary—to respond to comments requesting the rule retain specific language that had been deleted from the statute by the Agricultural Credit Technical Corrections Act of 1988 (Pub. L. 100–399). As more than 25 years has passed since that language was removed from the Act, we do not believe it necessary to keep it in our rules any longer. However, the lack of this language in our rules does not mean the FCA is not required to exercise its functions and powers in a manner that is consistent with the Act. That is an implicit requirement in every provision governing FCA actions. For these reasons, and to avoid potential confusion, we are removing the language from § 611.1000(c) and replacing it with the language used in § 611.1120(c).

[5] 5 U.S.C. 601 *et seq.*

2. Board of Director Actions in Mergers [§ 611.1122(a)]

The ICBA asked that we require an institution's board of directors to hold three votes on every merger, similar to our termination rules. As previously stated, we decline to change our merger rules in a manner that would have them substantially resemble our termination rule. Terminations and mergers are different events that require different rules. Our termination rules require a board of directors to vote on a commencement resolution to terminate (§ 611.1210), a plan of termination resolution (§ 611.1220), and a resolution reaffirming support for the termination (§ 611.1235). Our merger rule at § 611.1122(a)(3)(i) currently provides for the boards of directors of the merging institutions to vote on a merger resolution. After the boards approve the merger resolution, the associations jointly submit a request to the funding bank(s). Once the plan of merger is reviewed and approved by the funding bank(s), the request is submitted to the FCA for review. When the proposed merger is between two or more Farm Credit banks, the banks' boards approve the resolution and the request is submitted to the FCA.

3. Merger Analysis and Studies [§ 611.1122(c)]

The ICBA asked that we require independent analysis and other studies on proposed mergers. The ICBA explained that as this is a requirement in our termination rules, an infrequent event, its importance is greater in the more frequent mergers and consolidations. We appreciate the suggestion and note that we had proposed a similar requirement in this rulemaking at § 611.1122(c). The rule as final provides that at any time during the review process the FCA may require merging institutions to submit any supplemental information we deem appropriate. This allows us to request additional documents, studies, analyses, or opinions that would provide information specific to the unique complexities of each proposed merger.

4. Informational Meetings [§ 611.1122(d)]

The FCC agreed that informational meetings identified in § 611.1122(d) may be useful, but expressed concern that FCA may use its authority in this area to make informational meetings mandatory in all cases. The FCC instead urged that FCA make the decision on a case-by-case basis and then only after considering all views on the necessity for any such meetings. We agree and did not intend for the proposed rule provision to automatically lead to the standardization of informational meetings. We have clarified the rule at § 611.1122(d) to explain that this authority will be exercised when considered appropriate for the merger under review.

AgriBank supported the § 611.1122(d) provision regarding FCA requiring informational meetings, but asked that each institution be left to determine how those meetings are conducted. Specifically, the bank commented that whether an informational meeting was held in-person or electronically should be left to the judgment of the institution. We do not believe that a regulation change is necessary. However in those instances when we require an informational meeting, we will work with the merging institutions to identify the most appropriate meeting format for the subject merger.

The ICBA also supported informational meetings, asking that they be timed to occur at least 60 days before the merger vote. The FCA declines to adopt the suggested 60-day timeframe. Merger requests include planned effective dates and those dates vary. As such, the effective date of a planned merger will likely influence the date of any required informational meeting, since those meetings would occur before both the merger vote and the effective date. As a result, setting a regulatory timeframe in which to hold informational meetings could create unnecessary compliance problems.

5. Stockholder Votes [§ 611.1122(d)(2) and (d)(3)]

The ICBA agreed with the requirement in § 611.1122(d)(2) that merger votes only be validated and tabulated by an independent third party. However, the ICBA asked that we copy our termination rule by expanding the quorum requirement in § 611.1122(d)(3) to specify that merger votes require at least 30 percent of voting stockholders be present (in person or by proxy) in order to hold a merger vote. Our merger rule at § 611.1122(d)(3) requires that a quorum be present before a merger vote is taken and each institution's bylaws determine what constitutes the quorum. We did not propose changes to the quorum requirements for merger votes as part of this rulemaking and believe such a consideration needs to be specifically open for comment before changing our regulations in this area. Thus, while we appreciate the ICBA's suggestion, we decline to make the suggested change to § 611.1122(d)(3) in this final rulemaking, but may consider it in future rulemakings.

6. Territorial Adjustments [§ 611.1124]

AgriBank commented on the existing provisions regarding territorial adjustments, specifically discussing those provisions in the existing rule dealing with how loans in a territory are transferred. The bank commented that it might not be necessary or desirable in every transfer of territory to include all loans and asked FCA to change the rule to permit either result. We did not propose changes to the loan transfer requirements for territorial adjustments as part of this rulemaking and believe the subject to have great impact on our territorial transfer regulations, capital requirements, and other safety and soundness concerns. We further believe the transfer of loans and the associated impact to shareholders merits specific solicitation of comment before considering a change in our current rules. Thus, we decline to make the suggested change to § 611.1124 in this final rulemaking, but may consider it in future rulemakings.

7. Stockholder Reconsiderations [§ 611.1126]

Commenters generally agreed with the reconsideration procedures identified in the rule. The ICBA expressed specific agreement with the requirement in § 611.1126(b) that shareholders pursuing the reconsideration of a merger vote be provided the voting record date list rather than the more expansive list of voting and nonvoting stockholders. The FCC generally supported the requirements of § 611.1126, but asked that institutions be given copies of reconsideration petitions. We do not believe it is appropriate to provide System institutions with copies of reconsideration petitions. We clarified in new § 611.1126(d) that institutions have no expectation of receiving a copy of the petition. As explained in the proposed rule, we do not believe Congress intended the institutions to have this information since the Act does not require that the petition be filed with the merging institutions. We also continue to believe that providing the names of stockholders signing a petition to their respective institutions may allow the institutions to infer how those stockholders voted on the proposed plan of merger, a result that would be contrary to the statutory right to confidential voting.[6]

The FCC also commented that it expected the FCA to ''take appropriate steps to ensure the authenticity of'' reconsideration petitions. The Act requires reconsideration petitions to be

[6] *See* 12 U.S.C. 2208.

filed with the FCA. The FCA must determine if a filed petition satisfies statutory requirements, including determining if the petition was signed by the appropriate number of authorized stockholders. Since the primary concern of a petition is that it be signed by only those eligible to vote in the merger action, our accuracy in validating this aspect will be substantially dependent on the record date lists maintained by the merging institutions.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

For the reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 611—ORGANIZATION

■ 1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.2, 1.3, 1.4, 1.5, 1.12, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 3.21, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.21, 4.25, 4.26, 4.27, 4.28A, 5.9, 5.17, 5.25, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2142, 2154a, 2183, 2184, 2203, 2208, 2209, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a-2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; sec. 414 of Pub. L. 100–399, 102 Stat. 989, 1004.

■ 2. Section 611.100 is amended by:
■ a. Redesignating paragraphs (b) through (g) as paragraphs (c) through (h); and
■ b. Adding new paragraphs (b), (i) and (j) to read as follows:

§ 611.100 Definitions.

* * * * *

(b) *FCA* means the Farm Credit Administration.

* * * * *

(i) *Voting record date* or *record date* means the official date set by a Farm Credit institution whereby a stockholder must own voting stock in that institution in order to cast a vote.

(j) *Voting record date list* or *record date list* means the list of names, addresses, and classes of stock held by stockholders in the Farm Credit institution who are eligible to vote as of a specific voting record date.

■ 3. Section 611.1000 is revised to read as follows:

§ 611.1000 General authority.

(a) An amendment to a Farm Credit bank charter may relate to any provision that is properly the subject of a charter, including, but not limited to, the name of the bank, the location of its offices, or the territory served.

(b) The FCA may make changes in the charter of a Farm Credit bank as may be requested by that bank and approved by the FCA pursuant to § 611.1010 of this part.

(c) The FCA may, on its own initiative, make changes in the charter of a Farm Credit bank, and any chartered service corporation thereof, where the FCA determines that the change is necessary to accomplish the purposes of the Act.

■ 4. Section 611.1010 is revised to read as follows:

§ 611.1010 Farm Credit bank charter amendment procedures.

(a) A Farm Credit bank may recommend a charter amendment to accomplish any of the following actions:

(1) A merger or consolidation with any other Farm Credit bank or banks operating under title I or III of the Act;

(2) A transfer of territory with any other Farm Credit bank operating under the same title of the Act;

(3) A change to its name or location;

(4) Any other change that is properly the subject of a Farm Credit bank charter;

(b) Upon approval of an appropriate resolution by the Farm Credit bank board, the certified resolution, together with supporting documentation, must be submitted to the FCA for preliminary or final approval, as the case may be.

(c) The FCA will review the material submitted and either approve or disapprove the request. The FCA may require submission of any supplemental information and analysis it deems appropriate. If the request is for merger, consolidation, or transfer of territory, the approval of the FCA will be preliminary only, with final approval subject to a vote of the Farm Credit bank's stockholders.

(d) Following receipt of the FCA's written preliminary approval, the proposal must be submitted for approval to the voting stockholders of the Farm Credit bank. A proposal will be considered approved if agreed to by a majority of the voting stockholders of each Farm Credit bank voting, in person or by proxy, at a duly authorized stockholder meeting with each stockholder-association entitled to cast a number of votes equal to the number of the association's voting shareholders, unless another voting scheme has been approved by the FCA.

(e) Upon approval by the stockholders of the Farm Credit bank, the request for final approval and issuance of the appropriate charter or amendments to charter for the Farm Credit banks involved must be submitted to the FCA.

■ 5. Section 611.1020 is revised to read as follows:

§ 611.1020 Requirements for mergers or consolidations of Farm Credit banks.

(a) As authorized under sections 7.0 and 7.12 of the Act, a Farm Credit bank may merge or consolidate with one or more Farm Credit banks operating under the same or different titles of the Act.

(b) The plan to merge or consolidate two or more Farm Credit banks is subject to the requirements of §§ 611.1122, 611.1123, and 611.1126 of this part, unless otherwise instructed by the FCA. In interpreting those sections, the phrase ''Farm Credit bank(s)'' will be read for the word ''association(s)'' and references to ''funding bank'' are to be ignored.

§ 611.1040 [Amended]

■ 6. Section 611.1040 is amended by removing the word ''shall'' and adding in its place, the word ''must'' each place it appears.

■ 7. Section 611.1120 is amended by:
■ a. Removing the words ''Farm Credit Administration'' and adding in their place, the acronym ''FCA'' each place they appear in paragraph (b); and
■ b. Revising paragraph (c).

The revision reads as follows:

§ 611.1120 General authority.

* * * * *

(c) The FCA may, on its own initiative, make changes in the charter of an agricultural credit association, Federal land bank association, or a production credit association, and any chartered service corporation thereof, where the FCA determines that the change is necessary to accomplish the purposes of the Act.

■ 8. Section 611.1121 is revised to read as follows:

§ 611.1121 Association charter amendment procedures.

(a) An association that proposes to amend its charter must submit a request

to its funding bank containing the following information:

(1) A statement of the provision(s) of the charter that the association proposes to amend and the proposed amendment(s);

(2) A statement of the reasons for the proposed amendment(s), the impact of the amendment(s) on the association and its stockholders, and the requested effective date of the amendment(s);

(3) A certified copy of the resolution of the board of directors of the association approving the amendment(s);

(4) Any additional information or documents that the association wishes to submit in support of the request or that may be requested by the funding bank.

(b) Upon receipt of a proposed amendment from an association, the funding bank must review the materials submitted and provide the association with its analysis of the proposal within a reasonable period of time. Concurrently, the funding bank must communicate its recommendation on the proposal to the FCA, including the reasons for the recommendation, and any analysis the bank believes appropriate. Following review by the bank, the association must transmit the proposed amendment with attachments to the FCA.

(c) Upon receipt of an association's request for a charter amendment, the FCA will review the materials submitted and either approve or disapprove the request. The FCA may require submission of any supplemental information and analysis it deems appropriate.

(d) The FCA will notify the association of its approval or disapproval of the amendment request, including a copy of the amended charter with the approval notification, and provide a copy of such communication to the funding bank.

■ 9. Section 611.1122 is revised to read as follows:

§ 611.1122 Requirements for association mergers or consolidations.

(a) Where two or more associations plan to merge or consolidate, or where the funding bank board has adopted a reorganization plan for the associations in the district, the associations involved must jointly submit a request to the funding bank containing the following:

(1) In the case of a merger, a copy of the charter of the continuing association reflecting any proposed amendments. In the case of consolidation, a copy of the proposed charter of the new association;

(2) A statement of the reasons for the proposed merger or consolidation, the impact of the proposed transaction on the associations and their stockholders, and the planned effective date of the merger or consolidation;

(3)(i) A certified copy of the resolution of the board of directors of each association recommending approval of the merger or consolidation; or

(ii) In the case of a district reorganization plan, a certified copy of the resolution of the board of directors of each association recommending either approval or disapproval of the proposal.

(4) A copy of the agreement of merger or consolidation;

(5) Two signed copies of the continuing or proposed Articles of Association;

(6) All of the information specified in paragraph (e) of this section;

(7) Any additional information or documents each association wishes to submit in support of the request; and

(8) All additional information and documentation that the funding bank or the FCA requests.

(b) Upon receipt of a request for approval of an association merger or consolidation, the funding bank must review the materials submitted to determine whether they comply with the requirements of these regulations and must communicate with the associations concerning any deficiency. When the bank approves the request to merge or consolidate it must notify the associations. The bank must also notify the FCA of its approval together with the reasons for its approval and any supporting analysis. The associations must jointly submit the proposal together with required documentation to the FCA for preliminary approval.

(c) Upon receipt of a complete association merger or consolidation request, the FCA will review the request and either deny or give its written preliminary approval to the request within 60 days. The FCA will notify the requesting associations when the 60-day preliminary approval review period begins. The FCA may require submission of any supplemental information and analysis it deems appropriate for its consideration of the merger or consolidation request.

(1) When a request is denied, written notice stating the reasons for the denial will be transmitted to the associations and a copy provided to the funding bank(s).

(2) When a request is preliminarily approved, written notice of the preliminary approval will be given to the associations and a copy provided to the funding bank(s). Preliminary approval by the FCA does not constitute approval of the merger or consolidation. Approval of a merger or consolidation is only issued pursuant to this subpart. In connection with granting preliminary approval, the FCA may impose conditions in writing.

(d) Upon receipt of preliminary approval by the FCA of a merger or consolidation request, each constituent association must call a meeting of its voting stockholders. The FCA may also require, when considered appropriate to the merger or consolidation request under review, the associations to hold informational meetings before a stockholder vote. The stockholder meeting to vote on a merger or consolidation must:

(1) Be called on written notice to each stockholder entitled to vote on the transaction as of the record date and be held in accordance with the terms of each association's bylaws.

(2) Follow the voting procedures of § 611.340, except associations may not use tellers committees to validate ballots and tabulate votes on the merger or consolidation.

(3) Require the affirmative vote of a majority of the voting stockholders of each association present and voting, either in person or by written proxy, at a meeting at which a quorum is present to constitute stockholder approval of a merger or consolidation proposal.

(e) Notice of the stockholder meeting to consider and act upon a proposed merger or consolidation must be accompanied by the information required under this paragraph. The notice and accompanying information must not be sent to stockholders until preliminary approval of the merger or consolidation has been given by the FCA.

(1) A statement either on the first page of the materials or on the notice of the stockholders' meeting, in capital letters and bold face type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(2) A description of the material provisions of the agreement of merger or consolidation and the effect of the proposed merger or consolidation on the associations, their stockholders, the new or continuing board of directors, and the territory to be served. In addition, a copy of the agreement must be

furnished with the notice to stockholders.

(3) A summary of the provisions of the charter and bylaws of the continuing or new association that differ materially from the existing charter or bylaw provisions of the constituent associations.

(4) A brief statement by the boards of directors of the constituent associations setting forth the basis for the boards' recommendation on the merger or consolidation.

(5) A description of any agreement or arrangement between a constituent association and any of its officers relating to employment or termination of employment and arising from the merger or consolidation.

(6) A presentation of the following financial data:

(i) A balance sheet and income statement for each constituent association for each of the 2 preceding fiscal years.

(ii) A balance sheet for each constituent association as of a date within 90 days of the date the request for preliminary approval is forwarded to the FCA presented on a comparative basis with the corresponding period of the prior fiscal year.

(iii) An income statement for the interim period between the end of the last fiscal year and the date of the required balance sheet presented on a comparative basis with the corresponding period of the preceding fiscal year. The balance sheet and income statement format must be that contained in the association's annual report to stockholders; must contain any significant changes in accounting policies that differ from those in the latest association annual report to stockholders; and must contain appropriate footnote disclosures, including data relating to high-risk assets and other property owned, and allowance for loan losses, including net chargeoffs as required in paragraph (e)(10) of this section.

(7) The financial statements (balance sheet and income statement) must be in sufficient detail to show separately all significant categories of interest-earning assets and interest-bearing liabilities and the income or expense accrued thereon.

(8) Attached to the financial statements for each constituent association, either:

(i) A statement signed by the chief executive officer and each member of the board of directors of the association that the various financial statements are unaudited, but have been prepared in all material respects in accordance with generally accepted accounting principles (except as otherwise disclosed therein) and are, to the best of the knowledge of the board, a fair and accurate presentation of the financial condition of the association; or

(ii) A signed opinion by an independent certified public accountant that the various financial statements have been examined in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances, and, as of the date of the statements, present fairly the financial position of the association in conformity with generally accepted accounting principles applied on a consistent basis, except as otherwise noted thereon.

(9) A presentation for each constituent association regarding its policy on accounting for loan performance, together with the number and dollar amount of loans in all performance categories, including those categorized as high-risk assets.

(10) Information of each constituent association concerning the amount of loans charged off in each of the 2 fiscal years preceding the date of the balance sheet, the current year-to-date net chargeoff amount, and the balance in the allowance for loan losses account and a statement regarding whether, in the opinion of management, the allowance for loan losses is adequate to absorb the risk currently existing in the loan portfolio. This information may be appropriately included in the footnotes to the financial statements.

(11) A management discussion and analysis of the financial condition and results of operation for the past 2 fiscal years for each constituent institution. This requirement can be satisfied by including the materials contained in the management discussion and analysis of each institution's most recent annual report.

(12) A discussion of any material changes in financial condition of each constituent institution from the end of the last fiscal year to the date of the interim balance sheet provided.

(13) A discussion of any material changes in the results of operations of each constituent institution with respect to the most recent fiscal-year-to-date period for which an income statement is provided.

(14) A discussion of any change in the tax status of the new institution from those of the constituent institutions as a result of merger or consolidation. A statement on any adverse tax consequences to the stockholders of the institution as a result of the change in tax status.

(15) A statement on the proposed institution's relationship with an independent public accountant, including any change that may occur as a result of the merger or consolidation.

(16) A pro forma balance sheet of the continuing or consolidated association presented as if the merger or consolidation had occurred as of the date on the balance sheets required in paragraph (e)(6) of this section, as recommended to the stockholders. A pro forma summary of earnings for the continuing or consolidated association presented as if the merger or consolidation had been effective at the beginning of the interim period between the end of the last fiscal year and the date of the balance sheets.

(17) A description of the type and dollar amount of any financial assistance that has been provided during the past year or will be provided by the funding bank or other party to assist the constituent or the continuing or new association(s), the conditions on which financial assistance has been or will be extended, the terms of repayment or retirement, if any, and the impact of the assistance on the subject association(s) or the stockholders.

(18) A presentation for each constituent association of interest rate comparisons for the last 2 fiscal years preceding the date of the balance sheet, together with a statement of the continuing or new association's proposed interest rate and fee programs, interest collection policies, capitalization rates, dividends or patronage refunds, and other factors that would affect a borrower's cost of doing business with the continuing or new association. Where agreement has not been reached on such matters, current related information must be presented for each constituent association.

(19) A description for each constituent association of any event subsequent to the date of the financial statements, but prior to the merger or consolidation vote, that would have a material impact on the financial condition of the constituent or continuing or new association(s).

(20) A statement of any other material fact or circumstance that a stockholder would need in order to make an informed decision on the merger or consolidation proposal, or that is necessary to make the required disclosures not misleading.

(21) Where proxies are to be solicited, a form of written proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholder.

(f) Where a proposed merger or consolidation will involve more than

three associations, the FCA may require the supplementation, or allow the condensation or omission of any information required under paragraph (e) of this section in furtherance of meaningful disclosure to stockholders. Any waiver sought under this paragraph must be obtained before preparation of the financial statements and accompanying schedules required under paragraph (e) of this section.

(g) The effective date of a merger or consolidation may not be less than 35 days after the date of mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the FCA of all required documents for the FCA's consideration of final approval, whichever occurs later.

(1) The constituent institutions must agree on a second effective date to be used in the event the merger or consolidation is approved on reconsideration. The second effective date may not be less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

(2) If no reconsideration petition is filed with the FCA, upon final approval by the FCA, the merger or consolidation will be effective on the date specified in the merger agreement or at such later date as may be required by the FCA.

(h) Each constituent association must notify its stockholders not later than 30 days after the stockholder vote of the final results of the vote. Upon approval of a proposed merger or consolidation by the stockholders of the constituent associations, each association must submit to the FCA a certified copy of the stockholders' resolution on which the stockholders cast their votes and a certification of the stockholder vote from the independent third party(s) used to tally the vote. After the time for submitting reconsideration petitions has expired, and if no petition is filed, the FCA will make a final approval decision on the merger or consolidation, imposing conditions as appropriate. The FCA will send written notice of the final FCA approval decision to the associations and provide a copy to the affiliated funding bank(s).

(i) No Farm Credit institution, or any director, officer, employee, agent, or other person participating in the conduct of the affairs thereof, may make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of any association in connection with an association merger or consolidation.

(1) No Farm Credit institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of a Farm Credit institution may make an oral or written representation to any person that a preliminary or final approval by the FCA of a merger or consolidation constitutes, directly or indirectly, either a recommendation on the merits of the transaction or an assurance concerning the adequacy or accuracy of any information provided to any association's stockholders in connection therewith.

(2) When a Farm Credit institution, or any of its employees, officers, directors, agents, or other person participating in the conduct of the affairs thereof, make disclosures or representations in connection with an association merger or consolidation that, in the judgment of the FCA, are incomplete, inaccurate, or misleading, whether or not such disclosure or representation is made in disclosure statements required by this subpart, such institution must make such additional or corrective disclosure as directed by the FCA and as is necessary to provide stockholders and the general public with full and fair disclosure.

■ 10. Section 611.1123 is amended by:

■ a. Revising the section heading and paragraph (a) introductory text;

■ b. Removing the word ''shall'' and adding in its place, the word ''must'' in the last sentence of paragraph (a)(3);

■ c. Removing the word ''shall'' and adding in its place, the word ''may'' in paragraph (a)(4);

■ d. Removing the words ''supervising bank'' and ''Farm Credit Administration'' and adding in their place the words ''funding bank'' and the acronym ''FCA'', respectively, in paragraph (a)(5);

■ e. Removing the words ''Farm Credit Administration'' and adding in their place the acronym ''FCA'' in paragraph (a)(7) introductory text;

■ f. Removing the word ''institution'' and adding in its place the words ''or consolidated association'' in paragraph (a)(7)(iv);

■ g. Removing the words ''new institution'' and ''shall'' and adding in their place the words ''continuing or consolidated association'' and ''must'', respectively, in paragraph (a)(9);

■ h. Removing the words ''proposed institution'' and adding in its place the words ''continuing or consolidated association'' in paragraph (a)(10);

■ i. Revising paragraph (b); and

■ j. Removing paragraph (c).

The revisions read as follows:

§ 611.1123 Association merger or consolidation agreements.

(a) Associations operating under the same title of the Act may merge or consolidate voluntarily, but only pursuant to a written agreement. The agreement must set forth all of the terms of the transaction, including, but not limited to, the following:

* * * * *

(b) As an attachment to the agreement, the constituent associations must set forth those provisions of the charter and bylaws of the continuing or consolidated association which differ from the existing charter or bylaw provisions of the constituent associations.

■ 11. Section 611.1124 is revised to read as follows:

§ 611.1124 Territorial adjustments.

This section applies to any request submitted to the FCA to modify association charters for the purpose of transferring territory from one association to another.

(a) Territorial adjustments, except as specified in paragraph (m) of this section, require approval of a majority of the voting stockholders of each association present and voting or voting by written proxy at a duly authorized meeting at which a quorum is present.

(b) When two or more associations agree to transfer territory, each association must submit a proposal to the funding bank containing the following:

(1) A statement of the reasons for the proposed transfer and the impact the transfer will have on its stockholders and holders of participation certificates;

(2) A certified copy of the resolution of the board of directors of each association approving the proposed territory transfer;

(3) A copy of the agreement to transfer territory that contains the following information:

(i) A description of the territory to be transferred;

(ii) Transferor association's plan to transfer loans and the types of loans to be transferred;

(iii) Transferor association's plan to retire and transferee association's plan to issue equities held by holders of stock, participation certificates, and allocated equities, if any, and a statement by each association that the book value of its equities is at least equal to par;

(iv) An inventory of the assets to be sold by the transferor association and purchased by the transferee association;

(v) An inventory of the liabilities to be assumed from the transferor association by the transferee association;

(vi) A statement that the holders of stock and participation certificates whose loans are subject to transfer have 60 days from the effective date of the territory transfer to inform the transferor association of their decision to remain with the transferor association for normal servicing until the current loan is paid;

(vii) A statement that the transfer is conditioned upon the approval of the stockholders of each constituent association; and

(viii) The effective date of the proposed territory transfer.

(4) A copy of the stockholder disclosure statement provided for in paragraph (f) of this section; and

(5) Any additional relevant information or documents that the association wishes to submit in support of its request or that may be required by the FCA.

(c) Upon receipt of documents supporting a proposed territory transfer, the funding bank must review the materials submitted and provide the associations with its analysis of the proposal within a reasonable period of time. The funding bank must concurrently advise the FCA of its recommendation regarding the proposed territory transfer. Following review by the bank, the associations must transmit the proposal to the FCA together with all required documents.

(d) Upon receipt of an association's request to transfer territory, the FCA will review the request and either deny or grant preliminary approval to the request. The FCA may require submission of any supplemental information and analysis it deems appropriate for its consideration of the request to transfer territory.

(1) When a request is denied, written notice stating the reasons for the denial will be transmitted to the associations, and a copy provided to the funding bank.

(2) When a request is preliminarily approved, written notice of the preliminary approval will be transmitted to the associations, and a copy provided to the funding bank. Preliminary approval by the FCA does not constitute approval of the territory transfer. Final approval is granted only in accordance with paragraph (h) of this section. In connection with granting preliminary approval, the FCA may impose conditions in writing.

(e) Upon receipt of preliminary approval by the FCA, each constituent association must, by written notice, and in accordance with its bylaws, call a meeting of its voting stockholders. The affirmative vote of a majority of the voting stockholders of each association present and voting or voting by written proxy at a meeting at which a quorum is present is required for stockholder approval of a territory transfer.

(f) Notice of the meeting to consider and act upon a proposed territory transfer must be accompanied by the following information covering each constituent association:

(1) A statement either on the first page of the materials or on the notice of the stockholders' meeting, in capital letters and bold face type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(2) A copy of the Agreement to Transfer Territory and a summary of the major provisions of the Agreement;

(3) The reason the territory transfer is proposed;

(4) A map of the association's territory as it would look after the transfer;

(5) A summary of the differences, if any, between the transferor and transferee associations' interest rates, interest rate policies, collection policies, service fees, bylaws, and any other items of interest that would impact a borrower's lending relationship with the institution;

(6) A statement that all loans of the transferor association that finance operations located in the transferred territory will be transferred to the transferee association except as otherwise provided for in this section or in accordance with agreements between the associations as provided for in § 614.4070;

(7) Where proxies are to be solicited, a form of written proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholders; and

(8) A statement that the associations' bylaws, financial statements for the previous 3 years, and any financial information prepared by the associations concerning the proposed transfer of territory are available on request to the stockholders of any association involved in the transaction.

(g) No Farm Credit institution, or director, officer, employee, agent, or other person participating in the conduct of the affairs thereof, may make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of any Farm Credit institution in connection with a territory transfer.

(h) Upon approval of a proposed territory transfer by the stockholders of the constituent associations, a certified copy of the stockholders' resolution for each constituent association and one executed Agreement to Transfer Territory must be forwarded to the FCA. The territory transfer will be effective when thereafter finally approved and on the date as specified by the FCA. Notice of final approval will be transmitted to the associations and a copy provided to the bank.

(i) No director, officer, employee, agent, or other person participating in the conduct of the affairs of a Farm Credit institution may make an oral or written representation to any person that a preliminary or final approval by the FCA of a territory transfer constitutes, directly or indirectly, a recommendation on the merits of the transaction or an assurance concerning the adequacy or accuracy of any information provided to any association's stockholders in connection therewith.

(j) When a Farm Credit institution, or any of its employees, officers, directors, agents, or other persons participating in the conduct of the affairs thereof, make disclosures or representations that, in the judgment of the FCA, are incomplete, inaccurate, or misleading in connection with a territory transfer, whether or not such disclosure or representation is made in disclosure statements required by this subpart, such institution must make such additional or corrective disclosure as directed by the FCA and as is necessary to provide stockholders and the general public with full and fair disclosure.

(k) The notice and accompanying information required under paragraph (f) of this section may not be sent to stockholders until preliminary approval of the territory transfer has been granted by the FCA.

(l) Where a territory transfer is proposed simultaneously with a merger or consolidation, both transactions may be voted on by stockholders at the same meeting. Only stockholders of a transferee or transferor association may vote on a territory transfer.

(m) Each borrower whose real estate or operations is located in a territory that will be transferred must be provided with a written Notice of Territory Transfer immediately after the FCA has granted final approval of the territory transfer. The Notice must inform the borrower of the transfer of the borrower's loan to the transferee

association and the exchange of related equities for equities of like kinds and amounts in the transferee association. If a like kind of equity is not available in the transferee association, similar equities must be offered that will not adversely affect the interest of the owner. The Notice must give the borrower 60 days from the effective date of the territory transfer to notify the transferor association in writing if the borrower decides to stay with the transferor association for normal servicing until the current loan is paid. Any application by the borrower for renewal or for additional credit must be made to the transferee association, except as otherwise provided for by an agreement between associations in accordance with § 614.4070.

(n) This section does not apply to territory transfers initiated by order of the FCA or to territory transfers due to the liquidation of the transferor association.

(o) Where a proposed action involves the transfer of a portion of an association's territory to an association operating in a different district, such proposal must comply with the provisions of this section and section 5.17(a) of the Act.

§ 611.1125 [Amended]

■ 12. Section 611.1125 is amended by:
■ a. Removing the words ''Farm Credit Administration'' and adding in their place the acronym ''FCA'' in paragraph (a);
■ b. Removing the word ''shall'' and adding in its place, the word ''must'' in paragraph (b) introductory text.
■ c. Removing the words ''district bank'' and adding in their place, the word ''funding bank'' in paragraphs (b) introductory text and (b)(1) through (4) wherever they appear; and
■ d. Removing the words ''district bank'' and adding in their place, the word ''funding bank'' in paragraph (c) wherever they appear.
■ 13. Add a new § 611.1126 to subpart G to read as follows:

§ 611.1126 Reconsiderations of mergers and consolidations.

(a) Voting stockholders have the right to reconsider their approval of a merger or consolidation, provided that a petition is filed with the FCA. The petition must be signed by 15 percent of the stockholders (who were eligible to vote on the merger or consolidation proposal) of one or more of the constituent associations. The reconsideration petition must be filed with the FCA within 35 days after the date when the association mailed the notification of the final results of the stockholder vote pursuant to § 611.1122(h).

(b) Voting stockholders that intend to file a reconsideration petition have a right to obtain from the association of which they are a voting stockholder the voting record date list used by that association for the merger or consolidation vote. The association must provide the voting record date list as soon as possible, but not later than 7 days after receipt of the request. The list must be provided pursuant to the provisions of § 618.8310(b) of this chapter.

(c) A reconsideration petition must be addressed to the Secretary of the FCA Board and filed with the FCA on or before the deadline described in paragraph (a) of this section. Reconsideration petitions must identify a contact person and provide contact information for that person.

(1) Filing of a reconsideration petition may only be accomplished through in-person delivery during normal business hours to any FCA employee in official duty status or by sending the petition by mail, facsimile, electronic transmission, carrier delivery, or other similar means to an FCA office.

(2) The FCA will use the postmark, ship date, electronic stamp, or similar evidence as the date of filing the reconsideration petition.

(d) The FCA will notify the named contact on the reconsideration petition whether the petition was filed on time. On the timely receipt of a reconsideration petition, the FCA will review the petition to determine whether it complies with the requirements of section 7.9 of the Act. Following a determination that the petition was timely filed and complies with applicable requirements, the FCA will give notice to the associations involved in the merger or consolidation for which the reconsideration petition was filed. The associations are not entitled to either a copy of the petition or the names of the petitioners.

(e) Following FCA notification that a reconsideration petition has been properly filed, a special stockholders meeting must be called by the association(s) to reconsider the merger or consolidation vote. The reconsideration vote must be conducted according to the merger and consolidation voting requirements of § 611.1122(d). If a majority of the stockholders voting, in person or by proxy, at a duly authorized stockholders' meeting from any one of the constituent associations vote against the merger or consolidation under the reconsideration vote, the merger or consolidation will not take place. In the event that the merger or consolidation is approved on reconsideration, the constituent associations must use the second effective date developed under § 611.1122(g)(1).

Dated: August 19, 2015.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2015–20896 Filed 8–21–15; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–1070; Airspace Docket No. 14–ANM–9]

Establishment of Class D and Class E Airspace; Aurora, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace, Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface at Aurora State Airport, Aurora, OR, to accommodate standard instrument approach procedures for the new air traffic control tower. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, October 15, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/airtraffic/publications/.* The Order is also available for inspection at the National Archives and Records Administration (NARA). For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783. For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is

published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Steve Haga, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4563.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Aurora, OR.

History

On March 13, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class D airspace, Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface at Aurora State Airport, Aurora, OR, (80 FR 13288). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Fourteen comments were received on the proposal. One comment was received from Zachary McTee supporting the proposal. Two commenters requested a larger shelf area for operations at Lenhart Airpark. After a working group meeting to review the comments received, the FAA agreed with the two commenters and is increasing the shelf area at Lenhart Airpark however, the FAA is unable to increase the shelf to the dimensions requested due to airspace required to protect instrument flight procedures into Aurora State Airport. The FAA also determined that the shelf altitude should be confined to that airspace below 1,200 feet versus the 1,300 feet indicated in the proposal. This allows the users at Lenhart Airport, and also McGee Airport, 1,000 feet of airspace to conduct their operations. One comment was received from Randy Prakken requesting a larger cutout for Workman Airpark, and ten comments were received from owners and operators at Dietz Airpark, expressing concern over having the Class D airspace area interfere with aircraft operations west of their respective airports. To mitigate the concerns for Dietz and Workman Airparks, the FAA has reduced the radius of Class D airspace from 5 miles to 4.2 miles from the northeast to the southeast.

Class D and Class E airspace designations are published in paragraph 5000, 6002, and 6005, respectively, of FAA Order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Y, airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014. FAA Order 7400.9Y is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order 7400.9Y lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class D airspace, Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface at Aurora State Airport, Aurora, OR. Construction of a new air traffic control tower made this action necessary for the safety and management of standard instrument approach procedures for IFR operations at the airport. Class D airspace extends upward from the surface to and including 2,700 feet within a 4.2-mile radius of Aurora State Airport, extending to 5 miles from the southeast to the northeast, excluding segments below 1,200 feet beyond 3.3 miles southeast and west of the airport. Class E surface area airspace extends upward from the surface within a 4.2-mile radius of Aurora State Airport extending to 5 miles from the southeast to the northeast, excluding segments beyond 3.3 miles southeast and west of the airport. Class E airspace extending upward from 700 feet above the surface is established to within a 7-mile radius of Aurora State Airport, with segments extending from the 7-mile radius to 20 miles northeast and 10.9 miles northwest of the airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ANM OR D Aurora, OR [New]

Aurora, Aurora State Airport, OR
(Lat. 45°14′50″ N., long. 122°46′12″ W.)

That airspace extending upward from the surface to and including 2,700 feet within a 4.2-mile radius of Aurora State Airport from the 64° bearing from the airport clockwise to the 142° bearing, extending to a 5-mile radius from the 142° bearing clockwise to the 64° bearing from the airport, excluding that airspace below 1,200 feet beyond 3.3 miles from the airport from the 142° bearing clockwise to the 174° bearing, and that airspace below 1,200 feet beyond 3.3 miles from the airport from the 250° bearing clockwise to the 266° bearing from the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ANM OR E2 Aurora, OR [New]

Aurora, Aurora State Airport, OR
(Lat. 45°14′50″ N., long. 122°46′12″ W.)

That airspace extending upward from the surface within a 4.2-mile radius of Aurora State Airport from the 64° bearing from the airport clockwise to the 142° bearing, extending to a 5-mile radius from the 142° bearing clockwise to the 64° bearing from the airport, excluding that airspace below 1,200 feet beyond 3.3 miles from the airport from the 142° bearing clockwise to the 174° bearing, and that airspace below 1,200 feet beyond 3.3 miles from the airport from the 250° bearing clockwise to the 266° bearing from the airport.

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

* * * * *

ANM OR E5 Aurora, OR [New]

Aurora, Aurora State Airport, OR
(Lat. 45°14′50″ N., long. 122°46′12″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Aurora State Airport, and that airspace 1.6 miles either side of the 007° bearing from airport extending from the 7-mile radius to 20 miles northeast of the airport, and that airspace 1.2 miles either side of the 306° bearing from airport extending from the 7-mile radius to 10.9 miles northwest of the airport.

Issued in Seattle, Washington, on August 17, 2015.

Christopher Ramirez,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2015–20757 Filed 8–21–15; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–9874; 34–75586; 39–2505; IC–31735]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual and related rules to reflect updates to the EDGAR system. The updates are being made primarily to add new NRSRO submission form types for Nationally Recognized Statistical Rating Organization filers; add new applicant types for filers to select when completing the process to apply for EDGAR access (New) on the EDGAR Filer Management Web site; make a documentation only change to Chapter 3, ''Index to Forms,'' of the ''EDGAR Filer Manual, Volume II: EDGAR Filing,'' to update submission form types SF–1 and SF–3; and make documentation only changes to ''EDGAR Filer Manual, Volume I: General Information'' for compliance with Section 508 of the U.S. Rehabilitation Act. The EDGAR system is scheduled to be upgraded to support this functionality on August 3, 2015. The Filer Manual is also being revised to address software changes made previously in EDGAR. On June 18, 2015, the Regulation A submission form types DOS, DOS/A, 1–A, 1–A/A, 1–A POS, 1–K, 1–K/A, 1–Z, and 1–Z/A in the EDGAR system were modified to display OMB information. On June 29, 2015, the Regulation A submission form types DOS, DOS/A, 1–A, 1–A/A and 1–A POS in the EDGAR system were updated to allow filers to optionally enter values in the ''Name of Class (if any),'' ''CUSIP (if any)'' and ''Name of Trading Center or Quotation Medium (if any)'' field if a value of zero was provided in the ''Units Outstanding'' field for the Common Equity, Preferred Equity, and Debt Securities; and Item 6(e) was updated to Item 6(d) on ''Item 6: Unregistered Securities Issued or Sold Within One Year'' for Regulation A submission form types DOS, DOS/A, 1–A, 1–A/A, and 1–A POS. Additionally, Item 6(d) was updated to optionally allow a response if ''None'' is selected on ''Item 6: Unregistered Securities Issues or Sold Within One Year.''

DATES: Effective August 24, 2015. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of August 24, 2015

FOR FURTHER INFORMATION CONTACT: In the Division of Trading and Markets, for questions concerning Form NRSRO, contact Kathy Bateman at (202) 551–4345, in the Division of Corporation Finance, for questions concerning Regulation A submission form types, contact Heather Mackintosh at (202) 551–8111, and in the Office of Information Technology, contact Tammy Borkowski at (202) 551–7208.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume I and Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink Online and the Online Forms/XML Web site.

The revisions to the Filer Manual reflect changes within Volume I entitled EDGAR Filer Manual, Volume I: ''General Information,'' Version 22 (August 2015), and Volume II entitled EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 33 (August 2015). The updated manual will be incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers may consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[3]

The EDGAR system will be upgraded to Release 15.2.2 on August 3, 2015 and will introduce the following changes:

Form NRSRO filers must now use the following new submission form types available on EDGARLink Online to electronically submit their filings via EDGAR:

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on June 15, 2015. *See* Release No. 33–9849 (June 29, 2015) [80 FR 36913].

[2] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[3] *See* Release No. 33–9849 in which we implemented EDGAR Release 15.2. For additional history of Filer Manual rules, please see the cites therein.

- NRSRO–UPD—Update of Registration
- NRSRO–CE—Annual Certification
- NRSRO–CE/A—Amendment to Annual Certification
- NRSRO–FR—Annual Financial Reports (Rule 17g–3)
- NRSRO–FR/A—Amendment to Annual Financial Reports (Rule 17g–3)
- NRSRO–WCLS—Withdrawal from Credit Rating Class
- NRSRO–WREG—Withdrawal from Registration

These submission form types can be accessed by selecting the 'EDGARLink Online Form Submission' link on the EDGAR Filing Web site. Additionally, filers may construct XML submissions for these submission form types by following the ''EDGARLink Online XML Technical Specification'' document available on the SEC's Public Web site (*http://www.sec.gov/info/edgar.shtml*).

Filers will now be able to select the following new Applicant Types, when completing the process to apply for EDGAR access (New) on the EDGAR Filer Management Web site:

- Nationally Recognized Statistical Rating Organization
- Security-Based Swap Data Repository
- Security-Based Swap Dealer and Major Security-Based Swap Participant
- Security-Based Swap Execution Facility

A documentation only change was made to Chapter 3, ''Index to Forms,'' of the ''EDGAR Filer Manual, Volume II: EDGAR Filing,'' to update submission form types SF–1 and SF–3 in Table 3–1, ''Securities Act Submission Types Accepted by EDGAR.''

Documentation only changes were made to ''EDGAR Filer Manual, Volume I: General Information'' for compliance with Section 508 of the U.S. Rehabilitation Act.

The Filer Manual is also being revised to address software changes made previously in EDGAR. On June 18, 2015, EDGAR Release 15.2.0.1 introduced the following changes:

Regulation A submission form types DOS, DOS/A, 1–A, 1–A/A, 1–A POS, 1–K, 1–K/A 1–Z, and 1–Z/A were modified to display updated OMB Information. The Regulation A screens in Chapter 9 of ''EDGAR Filer Manual Volume II: EDGAR Filing'' were updated with OMB Information.

On June 29, 2015, EDGAR Release 15.2.e.3 introduced the following changes:

Regulation A submission form types DOS, DOS/A, 1–A, 1–A/A, and 1–A POS were updated to allow filers to optionally enter values in the following fields if a value of zero was provided in the ''Units Outstanding'' field for the three types of securities: Common Equity, Preferred Equity, and Debt Securities:

- Name of Class (if any)
- CUSIP (if any)
- Name of Trading Center or Quotation Medium (if any)

Item 6(e) was updated to Item 6(d) on ''Item 6: Unregistered Securities Issued or Sold Within One Year'' for Regulation A submission form types DOS, DOS/A, 1–A, 1–A/A, and 1–A POS. Additionally, Item 6(d) was updated to optionally allow a response if ''None'' is selected on ''Item 6: Unregistered Securities Issued or Sold Within One Year.''

Along with the adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual will be available for Web site viewing and printing; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You may also obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Since the Filer Manual and the corresponding rule changes relate solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[4] It follows that the requirements of the Regulatory Flexibility Act [5] do not apply.

The effective date for the updated Filer Manual and the rule amendments is August 24, 2015. In accordance with the APA,[6] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 15.2.2 is scheduled to become available on August 3, 2015. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the system upgrade.

[4] 5 U.S.C. 553(b).

[5] 5 U.S.C. 601—612.

[6] 5 U.S.C. 553(d)(3).

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[7] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[8] Section 319 of the Trust Indenture Act of 1939,[9] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[10]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: ''General Information,'' Version 22 (August 2015). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 33 (August 2015). Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: ''N–SAR Supplement,'' Version 4 (October 2014). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in

[7] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[8] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78o, 78w, and 78*ll.*

[9] 15 U.S.C. 77sss.

[10] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

order for documents to be timely received and accepted. The EDGAR Filer Manual is available for Web site viewing and printing; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

By the Commission.

Dated: August 3, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–20720 Filed 8–21–15; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2015–0731]

RIN 1625–AA87

Security Zone; Martha's Vineyard, Massachusetts

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two 1000-yard temporary security zones in support of U.S. Secret Service (USSS) security operations in the navigable waters of the U.S. in portions of the coastal areas of Martha's Vineyard, Massachusetts. These security zones are needed to support USSS security operations and will be effective as directed by the USSS within 1000 yards of the navigable waters of the U.S. in portions of the coastal areas of Martha's Vineyard, Massachusetts. Vessel and people are prohibited from entering this security zone unless specifically authorized by the Captain of the Port (COTP) or the COTP's designated on-scene representative.

DATES: This rule is effective without actual notice from 6:30 a.m. on August 24, 2015 until 5 p.m. on August 24, 2015. For the purposes of enforcement, actual notice will be used from 8 a.m. on August 7, 2015, until this rule is effective without actual notice.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2015–0731 and are available online by going to *http://www.regulations.gov,* inserting USCG–2015–0731 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Mr. Edward G. LeBlanc at Sector Southeastern New England; telephone (401) 435–2351, email *Edward.G.LeBlanc@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

APA Administrative Procedure Act
CFR Code of Federal Register
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
U.S.C. United States Code
USCG United States Coast Guard
USSS United States Secret Service

A. Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because of the sensitive security issues related to USSS security operations. Providing a public notice and comment period is contrary to national security concerns and the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this temporary rule's effective date would be contrary to the public interest given the immediate need to support USSS security operations in portions of the coastal areas of Martha's Vineyard, Massachusetts, from August 7, 2015 through August 24, 2015.

B. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish security zones.

The USSS will conduct security operations on property that borders U.S. navigable waters within the Captain of the Port, Southeastern New England zone. The USSS has requested that the Coast Guard provide 1000-yard waterside security zones from portions of the coastal areas of Martha's Vineyard, Massachusetts. These security zones are necessary to provide security by preventing vessels and persons from approaching the area(s) of USSS security operations without prior authorization from the COTP.

C. Discussion of Rule

For the reasons discussed above, the Captain of the Port, Sector Southeastern New England, is establishing a temporary security zone. The temporary security zone will be enforced from 8:00 a.m. on Friday, August 7, 2015 through 5:00 p.m. on Monday, August 24, 2015.

This action is intended to temporarily prohibit vessels or people from approaching within 1000 yards of USSS security operations in portions of the coastal areas of Martha's Vineyard, Massachusetts.

The Captain of the Port, Southeastern New England, anticipates negligible negative impact on vessel traffic from these temporary security zones, as they will be in effect for only eighteen days, and will only be enforced during USSS security operations in portions of the coastal areas of Martha's Vineyard, Massachusetts. It has been determined that the necessary security enhancements provided by this rule greatly outweigh any potential negative impacts.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not

require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this rule will not be significant as the duration of the security zones is for only eighteen days, and will only be in effect during USSS security operations from portions of the coastal areas of Martha's Vineyard, Massachusetts.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit in the vicinity of Martha's Vineyard, Massachusetts from 8:00 a.m. on Friday, August 7, 2015 until 5:00 p.m. on Monday, August 24, 2015. These temporary security zones will not have a significant impact on a substantial number of small entities for all of the reasons discussed in the ''Regulatory Planning and Review'' section above.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If you think your small business or organization would be affected by this rule and you have any questions concerning its provisions or options for compliance, please call Mr. Edward G. LeBlanc at (401) 435–2351.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction. This rule fits the category selected from paragraph (34)(g), as it establishes temporary security zones for a limited period of time. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0731 to read as follows:

§ 165.T01–0731 Security Zone; Martha's Vineyard, Massachusetts.

(a) *Location.* The following areas are security zones: All navigable waters, from surface to bottom, within 1000 yards of U.S. Secret Service security operations in the navigable waters of the U.S. in the coastal areas of Martha's Vineyard, Massachusetts.

(b) *Notification.* Coast Guard Sector Southeastern New England will give actual notice to mariners for the purpose of enforcement of these temporary security zones.

(c) *Effective and Enforcement Period.* This section will be enforced from 8:00 a.m. on Friday, August 7, 2015 until 5:00 p.m. on Monday, August 24, 2015.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.33 apply.

(2) In accordance with the general regulations in § 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port or his designated representatives.

(3) The ''designated representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative may be on a Coast Guard vessel, or onboard a federal, state, or local agency vessel that is authorized to act in support of the Coast Guard.

(4) Upon being hailed by a U.S. Coast Guard vessel or his designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) Vessel operators desiring to enter or operate within these security zones shall contact the Captain of the Port or his designated representative via VHF channel 16 to obtain permission to do so.

Dated: August 4, 2015.

J.T. Kondratowicz,

Captain, U.S. Coast Guard, Captain of the Port, Southeastern New England.

[FR Doc. 2015–20865 Filed 8–21–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0408; EPA–R05–OAR–2015–0409; FRL–9932–63–Region 5]

Air Plan Approval; IL; MN; Determinations of Attainment of the 2008 Lead Standard for Chicago and Eagan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making determinations under the Clean Air Act (CAA) that the Chicago, Illinois and Eagan, Minnesota nonattainment areas (hereafter also referred to, respectively, as the ''Chicago area,'' ''Eagan area,'' or ''areas'') have attained the 2008 lead (Pb) national ambient air quality standard (NAAQS or standard). These determinations of attainment are based upon complete, quality-assured, and certified ambient air monitoring data for the 2012–2014 design period showing that the areas have achieved attainment of the 2008 Pb NAAQS. Additionally, as a result of these determinations, EPA is suspending the requirements for the areas to submit attainment demonstrations, and associated reasonably available control measures (RACM), reasonable further progress (RFP) plans, contingency measures for failure to meet RFP, and attainment deadlines, for as long as the areas continue to attain the 2008 Pb NAAQS. This action does not constitute a redesignation of the areas to attainment of the 2008 Pb NAAQS; the areas remain designated nonattainment until such time as EPA determines that the areas meet the CAA requirements for redesignation to attainment and takes action to redesignate the areas.

DATES: This direct final rule will be effective October 23, 2015, unless EPA receives adverse comments by September 23, 2015. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0408 (Chicago area) or EPA–R05–OAR–2015–0409 (Eagan area), by one of the following methods:

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

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2015–0408 (Chicago area) or EPA–R05–OAR–2015–0409 (Eagan area). EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Eric Svingen, Environmental Engineer, at

(312) 353–4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.*

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

I. What action is EPA taking?
II. What is the background for this action?
III. Application of EPA's Clean Data Policy to the 2008 Pb NAAQS
IV. Do the Chicago and Eagan areas meet the 2008 Pb NAAQS?
V. What is the effect of this action?
VI. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is taking final action to determine that the Chicago area and Eagan area have attained the 2008 Pb NAAQS. This is based upon complete, quality-assured, and certified ambient air monitoring data for the 2012–2014 monitoring period showing that the areas have achieved attainment of the 2008 Pb NAAQS.

Further, with these determinations of attainment, the requirements for the areas to submit attainment demonstrations, and associated RACM, RFP plans, and contingency measures for failure to meet RFP and attainment deadlines, are suspended for as long as the area continues to attain the 2008 Pb NAAQS. As discussed below, this action is consistent with EPA's regulations and with its longstanding interpretation of subpart 1 of part D of the CAA.

If either the Chicago area or the Eagan area violates the 2008 Pb NAAQS after this action, the basis for the suspension of these attainment planning requirements would no longer exist for that area, and the area would thereafter have to address applicable requirements.

II. What is the background for this action?

On November 12, 2008 (73 FR 66964), EPA established a 2008 primary and secondary Pb NAAQS at 0.15 micrograms per cubic meter (μg/m^3) based on a maximum arithmetic three-month mean concentration for a three-year period. *See* 40 CFR Section 50.16. This is the ''2008 Pb NAAQS.'' On November 22, 2010 (75 FR 71033), EPA published its initial air quality designations for the 2008 Pb NAAQS based upon air quality monitoring data for calendar years 2007–2009. The Eagan area was designated nonattainment for the 2008 Pb NAAQS as part of this initial round. On November 22, 2011 (76 FR 72097), EPA published a second and final round of designations for the 2008 Pb NAAQS based upon air quality monitoring data for calendar years 2008–2010. The Chicago area was designated nonattainment for the 2008 Pb NAAQS as part of this second round.

The Illinois Environmental Protection Agency (Illinois EPA) and Minnesota Pollution Control Agency (MPCA) have submitted to EPA complete, quality-assured, and certified monitoring data covering the period from 2012 to 2014. For the reasons set forth in this document, EPA finds that the areas have reached attainment of the 2008 Pb NAAQS for this time period.

III. Application of EPA's Clean Data Policy to the 2008 Pb NAAQS

Following enactment of the CAA Amendments of 1990, EPA promulgated its interpretation of the requirements for implementing the NAAQS in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (General Preamble) 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretation of CAA sections 171 and 172, and section 182 in the General Preamble, EPA set forth what has become known as its ''Clean Data Policy'' for the 1-hour ozone NAAQS. *See* Memorandum from John S. Seitz, Director, EPA Office of Air Quality Planning and Standards, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' (May 10, 1995). In 2004, EPA indicated its intention to extend the Clean Data Policy to the fine particulates ($PM_{2.5}$) NAAQS. *See* Memorandum from Steve Page, Director, EPA Office of Air Quality Planning and Standards, ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards'' (December 14, 2004).

Since 1995, EPA has applied its interpretation under the Clean Data Policy in many rulemakings, suspending certain attainment-related planning requirements for individual areas, based on a determination of attainment. For a full discussion on EPA's application of this policy, see section III of the Bristol, Tennessee Determination of Attainment for the 2008 Pb Standards (77 FR 35652, 35653, June 14, 2012).

IV. Do the Chicago and Eagan areas meet the 2008 Pb NAAQS?

A. Criteria

Today's rulemaking assesses whether the Chicago and Eagan areas have attained the 2008 Pb NAAQS, based on the most recent three years of quality-assured data. The Chicago area is comprised of the portions of Cook County that are bounded by Damen Ave. on the west, Roosevelt Rd. on the north, the Dan Ryan Expressway on the east, and the Stevenson Expressway on the south. These boundaries surround the H. Kramer & Co. (H. Kramer) facility, which according to Illinois EPA analysis was found to be the source responsible for elevated lead levels in the Chicago nonattainment area.[1] The Eagan area is comprised of the portions of Dakota County that are bounded by Lone Oak Rd. (County Rd. 26) to the north, County Rd. 63 to the east, Wescott Rd. to the south, and Lexington Ave. (County Rd. 43) to the west. These boundaries surround the Gopher Resource facility, which according to National Emissions Inventory data was found to account for 66.7% of all lead emissions in Dakota County.[2]

Under EPA regulations at 40 CFR 50.16, the 2008 primary and secondary Pb standards are met when the maximum arithmetic three-month mean concentration for a three-year period, as determined in accordance with 40 CFR part 50, appendix R, is less than or equal to 0.15 μg/m^3 at all relevant monitoring sites in the subject area. EPA refers to this maximum rolling three-month average over a three-year period as the ''design value.''

40 CFR part 58, appendix A outlines the quality assurance requirements necessary for providing ''sufficient information to assess the quality of the monitoring data.'' 40 CFR part 58, appendix D provides network design criteria requirements which describe ''specific requirements for the number and location of . . . [monitoring] sites for specific pollutants. . . .'' Within this appendix, Section 4.5 states that ''[a]t a minimum, there must be one source-oriented SLAMS (State and Local Air Monitoring Station) site located to measure the maximum Pb concentration in ambient air resulting from each non-

[1] *See* the technical support document ''Region 5 Final Ionia County, Chicago, Illinois Lead Technical Support Document (TSD)'' [sic] attached to EPA's air quality designations published November 22, 2011 (76 FR 72097).

[2] *See* the technical support document ''Region 5—Final Eagan, Minnesota Technical Support Document For 1st Round of Lead Designations'' attached to EPA's air quality designations published November 22, 2010 (75 FR 71033).

airport Pb source which emits 0.50 or more tons per year. . . . ''

EPA has reviewed the ambient air monitoring data for the Chicago and Eagan areas in accordance with the provisions of 40 CFR part 50, appendix R, and 40 CFR part 58, appendix A and appendix D. All data considered are complete, quality-assured, certified, and recorded in EPA's Air Quality System (AQS) database. This review addresses air quality data collected in the 2012–2014 period which are the most recent quality-assured data available.

B. Chicago Area Air Quality

The Cook County Department of Environmental Control in conjunction with Illinois EPA operates the 17–031–0110 monitoring site, which is a Federal reference method (FRM) source-oriented SLAMS monitor in the Chicago area. This monitoring site is located at 1241 19th St. in Chicago, Illinois.

In 2013, the United States and the State of Illinois entered into a consent decree with H. Kramer. The consent decree required H. Kramer to, among other things, replace the existing pollution control equipment serving two rotary furnaces at its facility located at 1345 West 21st St. in Chicago with new pollution control technology before September 1, 2013, and to conduct monitoring and stack testing of the new equipment. The consent decree also required H. Kramer to reduce rotary furnace production of two lead alloys until H. Kramer began operation of the new pollution control equipment. H. Kramer has installed and is operating the new pollution control equipment. After the H. Kramer facility implemented the controls required by the consent decree, the Pb values have been well below the standard.

Table 1 shows the 2012–2014 three-month rolling averages for the 17–031–0110 monitoring site, in units of μg/m³.

Location	AQS site ID	3-month period	2012	2013	2014
1241 19th St., Chicago, IL	17–031–0110 #1	Nov–Jan [3]	0.03	0.04	0.01
		Dec–Feb	0.02	0.03	0.01
		Jan–Mar	0.02	0.02	0.02
		Feb–Apr	0.02	0.02	0.02
		Mar–May	0.03	0.02	0.02
		Apr–Jun	0.02	0.02	0.02
		May–July	0.02	0.02	0.02
		Jun–Aug	0.03	0.02	0.02
		July–Sept	0.04	0.03	0.02
		Aug–Oct	0.05	0.03	0.02
		Sept–Nov	0.04	0.03	0.04
		Oct–Dec	0.04	0.02	0.03

The datashown in Table 1 are complete, quality-assured, and certified and show 0.05 μg/m³ as the highest three-month rolling average.[4]

With the combination of emissions limits, controls for fugitive emissions, and implementation of additional testing and monitoring requirements, the design value at the monitor is now about a third of the standard.

EPA's review of these data indicates that the Chicago area has attained and continues to attain the 2008 Pb NAAQS, with a design value of 0.05 μg/m³ for the period of 2012–2014.

C. Eagan Area Air Quality

MPCA operates the 27–037–0465 monitoring site, which is a FRM source-oriented SLAMS monitor in the Eagan area. This monitoring site is located at 149 & Yankee Doodle Rd. in Eagan, Minnesota. After the Gopher Resource facility implemented emissions limits, controlled fugitive emissions, and implemented general operating and maintenance requirements, the Pb values have been below the standard.

Table 2 shows the 2012–2014 three-month rolling averages for the 27–037–0465 monitoring site, in units of μg/m³.

Location	AQS site ID	3-month period	2012	2013	2014
149 & Yankee Doodle Rd., Eagan, MN	27–037–0465 #1	Nov–Jan [5]	0.07	0.09	0.08
		Dec–Feb	0.09	0.08	0.12
		Jan–Mar	0.10	0.09	0.11
		Feb–Apr	0.09	0.08	0.08
		Mar–May	0.06	0.07	0.04
		Apr–Jun	0.05	0.05	0.03
		May–July	0.08	0.09	0.03
		Jun–Aug	0.09	0.10	0.03
		July–Sept	0.11	0.11	0.04
		Aug–Oct	0.08	0.07	0.06
		Sept–Nov	0.10	0.08	0.08
		Oct–Dec	0.07	0.09	0.06

Table 3 shows the 2012–2014 three-month rolling averages for the co-located 27–037–0465 monitoring site, in units of μg/m³.

[3] When calculating a three-month rolling average, the first two data points, November through January for 2012 and December through February of 2012, would additionally use data from November and December of 2011.

[4] A co-located monitor with AQS site ID 17–031–0110 #9 has been operating since April 2013. Because this monitor has not produced three complete years of data, EPA is not considering its data in this action. Nevertheless, the co-located monitor has not shown any exceedances of the standard.

[5] The 2012 data set includes data from November and December of 2011.

Location	AQS site ID	3-month period	2012	2013	2014
149 & Yankee Doodle Rd., Eagan, MN	27–037–0465 #2	Nov–Jan [6]	0.07	0.09	0.08
		Dec–Feb	0.08	0.08	0.12
		Jan–Mar	0.10	0.10	0.11
		Feb–Apr	0.07	0.09	0.08
		Mar–May	0.05	0.08	0.04
		Apr–Jun	0.05	0.06	0.03
		May–July	0.10	0.12	0.04
		Jun–Aug	0.11	0.12	0.03
		July–Sept	0.13	0.12	0.05
		Aug–Oct	0.10	0.07	0.07
		Sept–Nov	0.11	0.08	0.08
		Oct–Dec	0.08	0.09	0.06

The data shown in Tables 2 and 3 are complete, quality-assured, and certified and show 0.13 μg/m^3 as the highest three-month rolling average.

With the combination of emissions limits, controls for fugitive emissions, and implementation of general operating and maintenance requirements, the design value at the monitor is now about thirteen-fifteenths of the standard.

EPA's review of these data indicates that the Eagan area has attained and continues to attain the 2008 Pb NAAQS, with a design value of 0.13 μg/m^3 for the period of 2012–2014.

V. What is the effect of this action?

Based on complete, quality-assured, and certified data for 2012–2014, EPA is determining that the Chicago and Eagan areas have attained the 2008 Pb NAAQS. The requirements for Illinois EPA and MPCA to submit attainment demonstrations, and associated RACM, RFP plans, contingency measures, and any other planning SIPs related to attainment of the 2008 Pb NAAQS for the Chicago and Eagan areas, are suspended for as long as the areas continue to attain the 2008 Pb NAAQS. This rulemaking is consistent and in keeping with EPA's long-held interpretation of CAA requirements, as well as with EPA's regulations for similar determinations for ozone (*see* 40 CFR Section 51.918) and $PM_{2.5}$ (*see* 40 CFR Section 51.1004(c)).

This action does not constitute a redesignation of the areas to attainment of the 2008 Pb NAAQS under section 107(d)(3) of the CAA. This action does not involve approving maintenance plans for the areas as required under section 175A of the CAA, nor does it find that the areas have met all other requirements for redesignation. The Chicago and Eagan areas remain designated nonattainment for the 2008 Pb NAAQS until such time as EPA determines that the areas meet the CAA requirements for redesignation to attainment and takes action to redesignate the areas.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective October 23, 2015 without further notice unless we receive relevant adverse written comments by September 23, 2015. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective October 23, 2015.

VI. Statutory and Executive Order Reviews.

This action makes attainment determinations for the Chicago and Eagan areas for the 2008 lead NAAQS based on air quality data and results in the suspension of certain Federal requirements and does not impose any additional requirements. For that reason, this action:

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small

[6] The 2012 data set includes data from November and December of 2011.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 23, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: August 10, 2015.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Add § 52.746 to subpart O to read as follows:

§ 52.746 Control strategy: Lead (Pb).

(a) Based upon EPA's review of the air quality data for the 3-year period 2012 to 2014, EPA determined that the Chicago, Illinois lead nonattainment area attained the 2008 Lead National Ambient Air Quality Standard (NAAQS). This clean data determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2008 lead NAAQS.

(b) [Reserved]

■ 3. Add § 52.1238 to subpart Y to read as follows:

§ 52.1238 Control strategy: Lead (Pb).

(a) Based upon EPA's review of the air quality data for the 3-year period 2012 to 2014, EPA determined that the Eagan, Minnesota lead nonattainment area attained the 2008 Lead National Ambient Air Quality Standard (NAAQS). This clean data determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2008 lead NAAQS.

(b) [Reserved]

[FR Doc. 2015–20775 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2015–0556; FRL–9932–95–Region 7]

Approval and Promulgation of Air Quality Implementation Plans; State of Missouri; Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State Implementation Plan (SIP) submitted by the State of Missouri in a letter dated March 30, 2015. This SIP revision provides Missouri's state-determined allowance allocations for existing electric generating units (EGUs) in the state for the 2016 control periods and replaces certain allowance allocations for the 2016 control periods established by EPA under the Cross-State Air Pollution Rule (CSAPR). The CSAPR addresses the ''good neighbor'' provision of the Clean Air Act (CAA or Act) that requires states to reduce the transport of pollution that significantly affects downwind air quality. In this final action EPA is approving Missouri's SIP revision, incorporating the state-determined allocations for the 2016 control periods into the SIP, and amending the regulatory text of the CSAPR Federal Implementation Plan (FIP) to reflect this approval and inclusion of the state-determined allocations. EPA is taking direct final action to approve Missouri's SIP revision because it meets the requirements of the CAA and the CSAPR requirements to replace EPA's allowance allocations for the 2016 control periods. This action is being taken pursuant to the CAA and its implementing regulations. EPA's allocations of CSAPR trading program allowances for Missouri for control periods in 2017 and beyond remain in place until the State submits and EPA approves state-determined allocations for those control periods through another SIP revision. The CSAPR FIPs for Missouri remain in place until such time as the State decides to replace the FIPs with a SIP revision.

DATES: This direct final rule will be effective October 5, 2015, without further notice, unless EPA receives adverse comment by September 23, 2015. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0556, by one of the following methods:

1. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: Kemp.lachala@epa.gov*

3. *Mail or Hand Delivery:* Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2015–0556. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.* The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7214 or by email at *Kemp.lachalasa@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. 2016 CSAPR SIPs
III. What is EPA's analysis of Missouri's submission?
IV. Final Action

I. What is being addressed in this document?

EPA is taking direct final action to approve revisions to the SIP submitted by the State of Missouri in a letter dated March 30, 2015, that modifies the allocations of annual and ozone season NO_X allowances established by EPA under the CSAPR FIPs for existing EGUs for the 2016 control periods.[1] The CSAPR allows a subject state, instead of EPA, to allocate allowances under the SO_2 annual, NO_X annual, and NO_X ozone season trading programs to existing EGUs in the State for the 2016 control periods provided that the state meets certain regulatory requirements.[2] EPA issued the CSAPR on August 8, 2011, to address CAA section 110(a)(2)(D)(i)(I) requirements concerning the interstate transport of air pollution and to replace the Clean Air Interstate Rule[3] (CAIR), which the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded to EPA for replacement.[4] EPA found that emissions of SO_2 and NO_X in 28 eastern, midwestern, and southern states[5] contribute significantly to nonattainment or interfere with maintenance in one or more downwind states with respect to one or more of three air quality standards—the annual $PM_{2.5}$ NAAQS promulgated in 1997[6] (15 micrograms per cubic meter (μg/m³)), the 24-hour $PM_{2.5}$ NAAQS promulgated in 2006[7] (35 μg/m³), and the 8-hour ozone NAAQS promulgated in 1997[8] (0.08 parts per million). The CSAPR identified emission reduction responsibilities of upwind states, and also promulgated enforceable FIPs to achieve the required emission reductions in each of these states through cost effective and flexible requirements for power plants.

Missouri is subject to the FIPs that implement the CSAPR and require certain EGUs to participate in the EPA-administered federal SO_2 annual, NO_X annual, and NO_X ozone season cap-and trade programs.[9] Missouri's March 30, 2015, SIP revision allocates allowances under the CSAPR to existing EGUs in the State for the 2016 control periods only. Missouri's SIP revision includes state-determined allocations for the CSAPR NO_X annual and NO_X ozone season trading programs, and complies with the 2016 NO_X allowance allocation SIP requirements set forth at 40 CFR 52.38. Pursuant to these regulations, a state may replace EPA's CSAPR NO_X allowance allocations for existing EGUs for the 2016 control periods provided that the state submits a timely SIP revision containing those allocations to EPA that meets the requirements in 40 CFR 52.38.

Through this action, EPA is approving Missouri's March 30, 2015 SIP revision, incorporating the allocations into the SIP, and amending the CSAPR FIP's regulatory text for Missouri at 40 CFR 52.1326 to reflect this approval and inclusion of the state-determined allowance allocations for the 2016 control periods. EPA's allocations of CSAPR trading program allowances for Missouri for control periods in 2017 and beyond remain in place until the State submits and EPA approves state-determined allocations for those control periods through another SIP revision. EPA is not making any other changes to the CSAPR FIPs for Missouri in this action. The CSAPR FIPs for Missouri

[1] Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals; August 8, 2011 (76 FR 48208).

[2] The CSAPR is implemented in two Phases (I and II) with Phase I referring to 2015 and 2016 control periods, and Phase II consisting of 2017 and beyond control periods.

[3] Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; May 12, 2005 (70 FR 25162).

[4] *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g,* 550 F.3d 1176 (D.C. Cir. 2008).

[5] The CSAPR obligations related to ozone-season NO_X emissions for five states, including Missouri, were established in a separate rule referred to here as the Supplemental Rule. Federal Implementation Plans for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin and Determination for Kansas Regarding Interstate Transport of Ozone; December 27, 2011 (76 FR 80760).

[6] National Ambient Air Quality Standards for Particulate Matter; July 18, 1997 (62 FR 36852).

[7] National Ambient Air Quality Standards for Particulate Matter; October 17, 2006 (71 FR 61144).

[8] National Ambient Air Quality Standards for Ozone; July 18, 1997 (62 FR 38856).

[9] On July 28, 2015, the DC Circuit, issued an opinion upholding CSAPR, but remanding without vacatur certain state emissions budgets to EPA for reconsideration. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302, slip op. CSAPR implementation at this time remains unaffected by the court decision, and EPA will address the remanded emissions budgets in a separate rulemaking. Moreover, Missouri's emissions budgets were not among those remanded to EPA for reconsideration.

remain in place until such time the State decides to replace the FIPs with a SIP revision. EPA is taking direct final action to approve Missouri's March 30, 2015, SIP submission because it complies with the CAA and the CSAPR regulations. Below is a summary of the provisions allowing a state to submit SIP revisions to EPA to modify the 2016 allowance allocations. For more detailed information on the CSAPR, refer to the August 8, 2011, preamble and other subsequent related rulemakings referenced throughout this rulemaking.

II. 2016 CSAPR SIPs

The CSAPR allows states to determine allowance allocations for 2016 control periods through submittal of a complete SIP revision that is narrower in scope than an abbreviated or full SIP submission that states may use to replace the FIPs and/or to determine allocations for control periods in 2017 and beyond. Pursuant to the CSAPR, a state may adopt and include in a SIP revision for the 2016 control period a list of units and the amount of allowances allocated to each unit on the list, provided the list of units and the allocations meet specific requirements set forth in 40 CFR 52.38(a)(3) and (b)(3) for NO_X and 52.39(d) and (g) for SO_2. If these requirements are met, the Administrator will approve the SIP allowance allocation provisions as replacing the comparable provisions in 40 CFR part 97 for the State. SIP revisions under this expedited process may only allocate the amount of each state budget minus the new unit set-aside and the Indian country new unit set-aside. For states subject to multiple trading programs, options are available to submit 2016 state-determined allocations for one or more of the applicable trading programs while leaving unchanged the EPA-determined allocations for 2016 in the remaining applicable trading programs.[10]

In developing this procedure, EPA set deadlines for submitting the SIP revisions for 2016 allocations and for recordation of the allocations that balanced the need to record allowances sufficiently ahead of the control periods with the desire to allow state flexibility for 2016 control periods. These deadlines allow sufficient time for EPA to review and approve these SIP revisions, taking into account that EPA approval must be final and effective before the 2016 allocations can be recorded and the allowances are available for trading. The CSAPR, as revised, set a deadline of October 17, 2011 or March 6, 2015, (in the case of allocations of ozone season NO_X allowances for states covered by the Supplemental Rule) for states to notify EPA of their intent to submit these SIP revisions.[11] *See* 40 CFR 52.38 and 52.39.

Twelve states, including Missouri, notified EPA by the applicable deadlines of their intentions to submit SIP revisions affecting 2016 allocations.[12] Pursuant to EPA's December 3, 2014, Interim Final Rule,[13] the deadlines to submit these SIPs were delayed by three years, making the deadline for these twelve states to submit a 2016 allocation SIP revision April 1, 2015, or October 1, 2015 (in the case of allocations of ozone season NO_X allowances for states covered by the Supplemental Rule). Each state may submit a SIP to allocate allowances for the 2016 control periods provided it meets the following requirements pursuant to 40 CFR 52.38 and 52.39:

- Notify the EPA Administrator by October 17, 2011, or March 6, 2015, (in the case of allocations of ozone season NO_X allowances for states covered by the Supplemental Rule) of intent to submit state allocations for the 2016 control periods in a format specified by the Administrator. *See* 40 CFR 52.38(a)(3)(v)(A), 52.38(b)(3)(v)(A), 52.39(d)(5)(i), and 52.39(g)(5)(i).
- Submit to EPA the SIP revision modifying allowance allocations for the 2016 control periods no later than April 1, 2015, or October 1, 2015 (in the case of allocations of ozone season NO_X allowances for states covered by the Supplemental Rule). *See* 40 CFR 52.38(a)(3)(v)(B), 52.38(b)(3)(v)(B), 52.39(d)(5)(ii), and 52.39(g)(5)(ii).
- Provide 2016 state-determined allocations only for units within the State that commenced commercial operation before January 1, 2010. *See* 40 CFR 52.38(a)(3)(i), 52.38(b)(3)(i), 52.39(d)(1), and 52.39(g)(1).
- Ensure that the sum of the state-determined allocations is equal to or less than the amount of the total state budget for 2016 minus the sum of the new unit set-aside and the Indian country new unit set-aside. *See* 40 CFR 52.38(a)(3)(ii), 52.38(b)(3)(ii), 52.39(d)(2), and 52.39(g)(2).
- Submit the list of units and the 2016 state-determined allowance allocations as a SIP revision electronically to EPA in the format specified by the Administrator. *See* 40 CFR 52.38(a)(3)(iii), 52.38(b)(3)(iii), 52.39(d)(3), and 52.39(g)(3).
- Confirm that the SIP revision does not provide for any changes to the listed units or allocations after approval of the SIP revision by EPA and does not provide for any change to any allocation determined and recorded by the Administrator under subpart AAAAA, BBBBB, CCCCC, or DDDDD of 40 CFR part 97. *See* 40 CFR 52.38(a)(3)(iv), 52.38(b)(3)(iv), 52.39(d)(4), and 52.39(g)(4).

Additionally, these limited SIP revisions for the 2016 state-determined allocations are required to comply with SIP completeness elements set forth in 40 CFR part 51, appendix V (*i.e.,* conduct adequate public notice of the submission, provide evidence of legal authority to adopt SIP revisions, and ensure that the SIP is submitted to EPA by the State's Governor or his/her designee). If a state submits to EPA a 2016 CSAPR SIP revision meeting all the above-described requirements, including compliance with the applicable notification and submission deadlines, and EPA approves the SIP submission by October 1, 2015 (or April 1, 2016, in the case of allocations of ozone season NO_X allowances for states covered by the Supplemental Rule), EPA will record state-determined allocations for 2016 by October 1, 2015 (or April 1, 2016) into the Allowance Management System (AMS). Missouri's March 30, 2015 SIP submission addresses the aforementioned requirements allowing a state to allocate 2016 CSAPR allowances for the annual and ozone season NO_X trading programs. EPA's analysis of Missouri's SIP submission is explained below in section III.

III. What is EPA's analysis of Missouri's SIP submission?

On March 30, 2015, Missouri submitted a SIP revision intended to replace the CSAPR FIP allocations of the CSAPR NO_X annual and ozone season allowances for the 2016 control periods. For approval, this SIP revision must meet the applicable requirements found in 40 CFR 52.38(a)(3) and (b)(3) described above. The following is a list of criteria under 40 CFR 52.38(a)(3) and

[10] States can also submit SIP revisions to replace EPA-determined, existing-unit allocations with state-determined allocations for control periods after 2016 via a separate process described at 40 CFR 52.38(a)(4), (a)(5), (b)(4), and (b)(5) and 52.39(e), (f), (h), and (i).

[11] For the five states (Iowa, Michigan, Missouri, Oklahoma, and Wisconsin) covered in the Supplemental Rule in the case of ozone season NO_X, March 6, 2012, was originally the date by which notifications of intentions to submit state allocations were due to the Administrator, but that date was later delayed to March 6, 2015. *See* 76 FR 80760 and 79 FR 71671.

[12] The docket for today's action contains Missouri's October 17, 2011 letter notifying EPA of its intention to submit a SIP revision with respect to allocations of both annual and ozone-season NO_X allowances.

[13] Rulemaking To Amend Dates in Federal Implementation Plans Addressing Interstate Transport of Ozone and Fine Particulate Matter; December 3, 2014 (79 FR 71663).

(b)(3) and 52.39(d) and (g), described in section II of this document, and the results of EPA's analysis of Missouri's SIP revision:

A. Notification from a State to EPA must be received by October 17, 2011, or March 6, 2015 (in the case of allocations of ozone season NO_X allowances for states covered by the Supplemental Rule), of its intent to submit a complete SIP revision for 2016 existing unit allocations (40 CFR 52.38(a)(3)(v)(A), 52.38(b)(3)(v)(A), 52.39(d)(5)(i), and 52.39(g)(5)(i)).

On October 17, 2011, Missouri notified EPA via a letter of the State's intent to submit complete SIP revisions for allocating TR NO_X Annual and TR NO_X Ozone Season allowances [14] to existing units (*i.e.,* units that commenced commercial operation before January 1, 2010) for the second implementation year of the CSAPR trading programs.[15]

B. A complete SIP revision must be submitted to EPA no later than April 1, 2015, or October 1, 2015, in the case of ozone season NO_X SIP revisions for states covered by the December 27, 2011 Supplemental Rule (76 FR 80760) (40 CFR 52.38(a)(3)(v)(B), 52.38(b)(3)(v)(B), 52.39(d)(5)(ii), and 52.39(g)(5)(ii)).

EPA has reviewed the March 30, 2015 submittal from Missouri and found it to be complete. This submittal addressed the allocations of both NO_X annual allowances and NO_X ozone season allowances (even though Missouri's submittal deadline with respect to NO_X ozone season allowances was October 1, 2015, rather than April 1, 2015). This submittal satisfies the applicable elements of SIP completeness set forth in appendix V to 40 CFR part 51.

C. The SIP revision should include a list of TR NO_X Annual, TR NO_X Ozone Season, TR SO_2 Group 1 or Group 2 units, whichever is applicable, that are in the State and commenced commercial operation before January 1, 2010 (40 CFR 52.38(a)(3)(i), 52.38(b)(3)(i), 52.39(d)(1), and 52.39(g)(1)).

As part of Missouri's SIP revision, the State submitted a list of units to be allocated TR NO_X Annual and TR NO^X Ozone Season allowances for the 2016 control periods. The list identifies the same units as were identified in the notice of data availability (NODA) published by EPA on December 3, 2014 (79 FR 71674). Hence, EPA has determined that each unit on the list submitted by Missouri as part of the SIP revision is located in the State of Missouri and had commenced commercial operation before January 1, 2010.

D. The total amount of TR NO_X Annual, TR NO_X Ozone Season, or TR SO_2 Group 1 or Group 2 allowance allocations, whichever is applicable, must not exceed the amount, under 40 CFR 97.410(a), 97.510(a), 97.610(a), or 97.710(a), whichever is applicable, for the State and the control periods in 2016, of the TR NO_X Annual, TR NO_X Ozone Season, TR SO_2 Group 1 or Group 2 trading budget minus the sum of the new unit set-aside and Indian country new unit set-aside (40 CFR 52.38(a)(3)(ii), 52.38(b)(3)(ii), 52.39(d)(2), and 52.39(g)(2)).

As amended, the CSAPR established the NO_X annual budget and new unit set-aside for Missouri for the 2016 control periods as 52,400 tons and 3,144 tons, respectively, and established the NO_X ozone season budget and new unit set-aside for Missouri for the 2016 control periods as 22,788 tons and 1,367 tons, respectively. Missouri's SIP revision, for approval in this action, does not affect these budgets, which are total amounts of allowances available for allocation for the 2016 control periods under the EPA-administered cap-and-trade programs under the CSAPR FIPs. In short, the abbreviated SIP revision only affects allocations of allowances under the established state budgets.

The Missouri SIP revision allocating TR NO_X Annual allowances for the 2016 control period does not establish allocations exceeding the amount of the budget under § 97.410(a) minus the new unit set-aside (52,400 tons—3,144 tons = 49,256 tons).[16] The Missouri SIP revision allocates 49,251 TR NO_X Annual allowances to existing units in the State. EPA will place the five unallocated allowances from the Missouri CSAPR 2016 budget for existing units into the TR NO_X Annual new unit set-aside for the 2016 control period.

The Missouri SIP revision allocating TR NO_X Ozone Season allowances for the 2016 control period does not establish allocations exceeding the amount of the budget under § 97.510(a) minus the new unit set-aside (22,788 tons—1,367 tons = 21,421 tons).[17] The Missouri SIP revision allocates 21,418 TR NO_X Ozone Season allowances to existing units in the State. EPA will place the three unallocated allowances from the Missouri CSAPR 2016 budget into the TR NO_X Ozone Season new unit set-aside for the 2016 control period.

E. The list should be submitted electronically in the format specified by the EPA (40 CFR 52.38(a)(3)(iii), 52.38(b)(3)(iii), 52.39(d)(3), and 52.39(g)(3)).

On March 30, 2015, EPA received an email submittal from Missouri in the EPA-approved format.

F. The SIP revision should not provide for any changes to the listed units or allocations after approval of the SIP revision and should not provide for any change to any allocation determined and recorded by the Administrator under subpart AAAAA, BBBBB, CCCCC, or DDDDD of 40 CFR part 97 (40 CFR 52.38(a)(3)(iv), 52.38(b)(3)(iv), 52.39(d)(4), and 52.39(g)(4)).

The Missouri SIP revision does not provide for any changes to the listed units or allocations after approval of the SIP revision and does not provide for any change to any allocation determined and recorded by the Administrator under subpart AAAAA, BBBBB, CCCCC, or DDDDD of 40 CFR part 97.

For the reasons discussed above, Missouri's SIP revision complies with the 2016 allowance allocation SIP requirements established in the CSAPR FIPs as codified at 40 CFR 52.38. Through this action, EPA is approving Missouri's March 30, 2015, SIP revision, incorporating the allocations into the SIP, and amending the CSAPR FIPs' regulatory text for Missouri at 40 CFR 52.1326 to reflect this approval and inclusion of the state-determined allowance allocations for the 2016 control periods. EPA is not making any other changes to the CSAPR FIPs for Missouri in this action. EPA is taking final action to approve Missouri's March 30, 2015 SIP revision because it is in accordance with the CAA and its implementing regulations.

IV. Final Action

EPA is taking final action to approve Missouri's March 30, 2015, CSAPR SIP revisions that provide Missouri's state-determined allowance allocations for existing EGUs in the State for the 2016 control periods to replace certain allowance allocations for the 2016 control periods established by EPA under the CSAPR. Consistent with the

[14] The abbreviation ''TR'' in certain legal terms used in the CSAPR trading programs, including the legal terms for the trading program allowances, stands for ''Transport Rule,'' an earlier name for the CSAPR.

[15] The October 17, 2011, letter submitted to EPA by Missouri also indicates that the State intended to submit a SIP revision for allocating TR SO_2 Group 1 allowances. After that letter was submitted the State decided not to submit a SIP revision for the TR SO_2 Group 1 allocations for the 2016 control period.

[16] The CSAPR does not establish Indian country new unit set-asides of TR NO_X Annual allowances for Missouri.

[17] The CSAPR does not establish Indian country new unit set-asides of TR NO_X Ozone Season allowances for Missouri.

flexibility given to states in the CSAPR FIPs at 40 CFR 52.38, Missouri's SIP revision allocates allowances to existing EGUs in the State under the CSAPR's NO_X annual and NO_X ozone season trading programs. Missouri's SIP revision meets the applicable requirements in 40 CFR 52.38 for NO_X annual and NO_X ozone season allowance allocations for the 2016 control periods. EPA is approving Missouri's SIP revision because it is in accordance with the CAA and its implementing regulations.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 5, 2015 without further notice unless the Agency receives adverse comments by September 23, 2015.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 5, 2015 and no further action will be taken on the proposed rule.

Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 23, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 12, 2015.

Mark Hague,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (e) is amended by adding entry (66) at the end of the table to read as follows:

* * * * *

(e) * * *

EPA–APPROVED MISSOURI NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic area or nonattainment area	State submittal date	EPA approval date	Explanation
* *	* *	*	*	*
(66) Cross State Air Pollution Rule—State-Determined Allowance Allocations for the 2016 control periods.	Statewide	3/30/15	8/24/15 and [Insert **Federal Register** citation].	

■ 3. Section 52.1326 is amended by adding paragraphs (a)(3) and (b)(3) to read as follows:

§ 52.1326 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a) * * *

(3) Pursuant to § 52.38(a)(3), Missouri's state-determined TR NO_X Annual allowance allocations established in the March 30, 2015, SIP revision replace the unit-level TR NO_X Annual allowance allocation provisions of the TR NO_X Annual Trading Program at 40 CFR 97.411(a) for the State for the 2016 control period with a list of TR NO_X Annual units that commenced operation prior to January 1, 2010, in the State and the state-determined amount of TR NO_X Annual allowances allocated to each unit on such list for the 2016 control period, as approved by EPA on August 24, 2015, [Insert **Federal Register** citation].

(b) * * *

(3) Pursuant to § 52.38(b)(3), Missouri's state-determined TR NO_X Ozone Season allowance allocations established in the March 30, 2015, SIP revision replace the unit-level TR NO_X Ozone Season allowance allocation provisions of the TR NO_X Ozone Season Trading Program at 40 CFR 97.511(a) for the State for the 2016 control period with a list of TR NO_X Ozone Season units that commenced operation prior to January 1, 2010, in the State and the state-determined amount of TR NO_X Ozone Season allowances allocated to each unit on such list for the 2016 control period, as approved by EPA on August 24, 2015, [Insert **Federal Register** citation].

[FR Doc. 2015–20774 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0805; FRL–9932–65–Region 5]

Air Plan Approval; Michigan and Wisconsin; 2006 $PM_{2.5}$ NAAQS PSD and Visibility Infrastructure SIP Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of state implementation plan (SIP) submissions from Michigan regarding Prevention of Significant Deterioration (PSD) and Wisconsin regarding visibility infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2006 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This direct final rule will be effective October 23, 2015, unless EPA receives adverse comments by September 23, 2015. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0805 by one of the following methods:

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

Instructions: Direct your comments to Docket ID. EPA–R05–OAR–2009–0805. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

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

I. What is the background of these SIP submissions?
II. What is EPA's review of these SIP submissions?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background of these SIP submissions?

This rulemaking addresses submissions from the Michigan Department of Environmental Quality (MDEQ) and the Wisconsin Department of Natural Resources (WDNR). The states submitted their infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS on the following dates: Michigan—August 15, 2011, supplemented on July 9, 2012; Wisconsin—January 24, 2011, supplemented on March 28, 2011 and June 29, 2012.

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address. This specific rulemaking is only taking action on the PSD elements of the Michigan submittal and the visibility element of the Wisconsin submittal. The majority of the other infrastructure elements were addressed in a proposed rulemaking published August 2, 2012, (77 FR 45992). Final action was taken on those elements on October 29, 2012, (77 FR 65478).[1] The infrastructure elements for PSD are found in CAA 110(a)(2)(C), 110(a)(2)(D), and 110(a)(2)(J) and will be discussed in detail below. The infrastructure elements for visibility are also in CAA section 110(a)(2)(D). For further discussion on the background of infrastructure submittals, see 77 FR 45992.

II. What is EPA's review of these SIP submissions?

A. Michigan—PSD

PSD infrasture elements are addressed in different sections of the CAA: Sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J).

1. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; PSD

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under PSD and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers: (i) Enforcement of SIP measures; (ii) PSD provisions that explicitly identify oxides of nitrogen (NO_X) as a precursor to ozone in the PSD program; (iii) identification of precursors to $PM_{2.5}$ and the identification of $PM_{2.5}$ and PM_{10}[2] condensables in the PSD program; (iv) $PM_{2.5}$ increments in the PSD program; and, (v) Greenhouse Gas(GHG) permitting and the ''Tailoring Rule.''[3]

(i) Enforcement of SIP Measures

The enforcement of SIP measures provision was approved in the October 29, 2012 rulemaking (77 FR 65478) for the 2006 $PM_{2.5}$.

(ii): PSD Provisions That Explicitly Identify NO_X as a Precursor to Ozone in the PSD Program

EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (Phase 2 Rule) was published on November 29, 2005 (*see* 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_X as a precursor to ozone (70 FR 71612 at 71679, 71699–71700). This requirement was codified in 40 CFR 51.166.

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including those identifying NO_X as a precursor to ozone, by June 15, 2007 (*see* 70 FR 71612 at 71683, November 29, 2005).

EPA approved revisions to Michigan's PSD SIP reflecting these requirements on April 4, 2014 (*see* 79 FR 18802), and therefore finds that Michigan has met the set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2006 $PM_{2.5}$ NAAQS.

(iii): Identification of Precursors to $PM_{2.5}$ and the Identification of $PM_{2.5}$ and PM_{10} Condensables in the PSD Program

On May 16, 2008 (*see* 73 FR 28321), EPA issued the Final Rule on the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct $PM_{2.5}$ and other pollutants that contribute to secondary $PM_{2.5}$ formation. One of these

[1] For Michigan, action was taken on sections 110(a)(2)(A) through (H), and (J) through (M), except for the prevention of significant deterioration requirements in sections 110(a)(2)(C), (D)(i)(II), and (J), the visibility portion of 110(a)(2)(D)(i)(II), and the state board requirements in (E)(ii). For Wisconsin, action was taken on sections 110(a)(2)(A) through (H), and (J) through (M), except the prevention of significant deterioration requirements in sections 110(a)(2)(C), (D)(i)(II), and (J), the visibility portion of (D)(i)(II), and the state board requirements in (E)(ii).

[2] PM_{10} refers to particles with diameters between 2.5 and 10 microns, oftentimes referred to as ''coarse'' particles.

[3] EPA highlights this statutory requirement in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' and has issued additional guidance documents, the most recent on September 13, 2013, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' (2013 memo).

requirements is for NSR permits to address pollutants responsible for the secondary formation of $PM_{2.5}$, otherwise known as precursors. In the 2008 rule, EPA identified precursors to $PM_{2.5}$ for the PSD program to be sulfur dioxide (SO_2) and NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The 2008 NSR Rule also specifies that volatile organic compounds (VOCs) are not considered to be precursors to $PM_{2.5}$ in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient $PM_{2.5}$ concentrations.

The explicit references to SO_2, NO_X, and VOCs as they pertain to secondary $PM_{2.5}$ formation are codified at 40 CFR 51.166(b)(49)(i)(*b*) and 40 CFR 52.21(b)(50)(i)(*b*). As part of identifying pollutants that are precursors to $PM_{2.5}$, the 2008 NSR Rule also required states to revise the definition of ''significant'' as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define ''significant'' for $PM_{2.5}$ to mean the following emissions rates: 10 tons per year (tpy) of direct $PM_{2.5}$; 40 tpy of SO_2; and 40 tpy of NO_X (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in an area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (*see* 73 FR 28321 at 28341).[4]

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in $PM_{2.5}$ and PM_{10} emission limits in NSR permits. Instead, EPA determined that states had to account for $PM_{2.5}$ and PM_{10} condensables for applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(*a*) and 40 CFR 52.21(b)(50)(i)(*a*). Revisions to states' PSD programs incorporating the inclusion of condensables were required be submitted to EPA by May 16, 2011 (*see* 73 FR 28321 at 28341).

EPA approved revisions to Michigan's PSD SIP reflecting these requirements on April 4, 2014 (*see* 79 FR 18802), and therefore proposes that Michigan has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2006 $PM_{2.5}$ NAAQS.

(iv): $PM_{2.5}$ increments in the PSD program

On October 20, 2010, EPA issued the final rule on the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (2010 NSR Rule). This rule established several components for making PSD permitting determinations for $PM_{2.5}$, including a system of ''increments'' which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in the table below.

TABLE 1—$PM_{2.5}$ INCREMENTS ESTABLISHED BY THE 2010 NSR RULE IN MICROGRAMS PER CUBIC METER

	Annual arithmetic mean	24-hour max
Class I	1	2
Class II	4	9
Class III	8	18

The 2010 NSR Rule also established a new ''major source baseline date'' for $PM_{2.5}$ as October 20, 2010, and a new trigger date for $PM_{2.5}$ as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(*c*) and (b)(14)(ii)(*c*), and 40 CFR 52.21(b)(14)(i)(*c*) and (b)(14)(ii)(*c*). Lastly, the 2010 NSR Rule revised the definition of ''baseline area'' to include a level of significance of 0.3 micrograms per cubic meter, annual average, for $PM_{2.5}$. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

On April 4, 2014 (79 FR 18802), EPA finalized approval of the applicable infrastructure SIP PSD revisions; therefore, we are proposing that Michigan has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2006 $PM_{2.5}$ NAAQS.

(v): GHG permitting and the ''Tailoring Rule''

With respect to CAA Sections 110(a)(2)(C) and (J), EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of section 110(a)(2)(D)(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Michigan has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, the EPA is not continuing to apply EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the

[4] EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM_{10} nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1. As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR Rule in order to comply with the court's decision. Accordingly, EPA's approval of Michigan's infrastructure SIP as to elements (C),(D)(i)(II), or (J) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subparts 2 through 5 under part D, extending as far as 10 years following designations for some elements.

requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.* 40 CFR 51.166(b)(48)(v)).

EPA anticipates a need to revise Federal PSD rules and for many states to revise their existing SIP-approved PSD programs in light of the Supreme Court opinion. The timing and content of subsequent EPA actions with respect to the EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States Court of Appeals for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to ensure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, EPA is proposing that Michigan's SIP is sufficient to satisfy sections 110(a)(2)(C), (D)(i)(II), and (J) with respect to GHGs because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved Michigan PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy Section 110(a)(2)(C), (D)(i)(II), and (J). The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision.

For the purposes of the 2006 $PM_{2.5}$ NAAQS infrastructure SIPs, EPA reiterates that NSR Reform regulations are not within the scope of these actions. Therefore, we are not taking action on existing NSR Reform regulations for Michigan. EPA approved Michigan's minor NSR program on May 6, 1980 (*see* 45 FR 29790); and since that date, MDEQ and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

Certain sub-elements in this section overlap with elements of section 110(a)(2)(D)(i), section 110(a)(2)(E) and section 110(a)(2)(J). These links will be discussed in the appropriate areas below.

2. Section 110(a)(2)(D)(i)(II)—Interstate transport

Section 110(a)(2)(D)(i)(II) requires that SIPs include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

EPA notes that Michigan's satisfaction of the applicable infrastructure SIP PSD requirements for the 2006 $PM_{2.5}$ NAAQS have been detailed in the section addressing section 110(a)(2)(C). EPA further notes that the proposed actions in that section related to PSD are consistent with the proposed actions related to PSD for section 110(a)(2)(D)(i)(II), and they are reiterated below.

EPA has previously approved revisions to Michigan's SIP that meet certain requirements obligated by the Phase 2 Rule and the 2008 NSR Rule. These revisions included provisions that: Explicitly identify NO_X as a precursor to ozone, explicitly identify SO_2 and NO_X as precursors to $PM_{2.5}$, and regulate condensable $PM_{2.5}$ and PM_{10} in applicability determinations and establishing emissions limits. EPA has also previously approved revisions to Michigan's SIP that incorporate the $PM_{2.5}$ increments and the associated implementation regulations including the major source baseline date, trigger date, and level of significance for $PM_{2.5}$ per the 2010 NSR Rule. EPA is proposing that Michigan's SIP contains provisions that adequately address the 2006 $PM_{2.5}$ NAAQS.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. One way that this requirement can be satisfied is through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state.

Michigan's EPA–approved NNSR regulations found in Part 2 of the SIP, specifically in Michigan Administrative Code sections R 336.1220 and R 336.1221, are consistent with 40 CFR 51.165, or 40 CFR part 51, appendix S. Therefore, EPA proposes that Michigan has met all of the applicable PSD requirements for the 2006 $PM_{2.5}$ NAAQS for transport prong 3 related to section 110(a)(2)(D)(i)(II).

3. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; PSD; Visibility Protection

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. MDEQ's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II), and EPA notes that the proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J). Therefore, EPA proposes that Michigan has met all of the infrastructure SIP requirements for PSD associated with section 110(a)(2)(J) for the 2006 $PM_{2.5}$ NAAQS.

B. Wisconsin—Section 110(a)(2)(D)(i)(II)—Interstate Transport

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B, addressing visibility protection). The 2013 Memo states that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.

On August 7, 2012, EPA published its final approval of Wisconsin's regional haze plan (*see* 77 FR 46952). Therefore, EPA is proposing that Wisconsin has met the visibility protection requirements of section 110(a)(2)(D)(i)(II) for the 2006 $PM_{2.5}$ NAAQS.

III. What action is EPA taking?

EPA is approving the PSD related infrastructure requirements for Michigan's 2006 $PM_{2.5}$ NAAQS submittals found in CAA sections 110(a)(2)(C), (D)(i)(II), and (J). EPA is also approving the visibility related infrastructure requirements for Wisconsin's 2006 $PM_{2.5}$ NAAQS submittals found in CAA section 110 (a)(2)(D)(i)(II).

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective October 23, 2015 without

further notice unless we receive relevant adverse written comments by September 23, 2015. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective October 23, 2015.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 23, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 10, 2015.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. In § 52.1170, the table in paragraph (e) is amended by revising the entry for ''Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour $PM_{2.5}$ NAAQS'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	* * *
Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour $PM_{2.5}$ NAAQS.	Statewide	8/15/2011, 7/9/2012	8/24/2015, [Insert page number where the document begins].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on the visibility protection requirements of (D)(i)(II) and the state board requirements of (E)(ii). We will address these requirements in a separate action.
*	*	*	*	* * *

■ 3. Section 52.2591 is amended by revising paragraph (c) to read as follows:

§ 52.2591 Section 110(a)(2) Infrastructure Requirements.

* * * * *

(c) Approval and Disapproval — In a January 24, 2011, submittal, supplemented on March 28, 2011, and June 29, 2012, Wisconsin certified that the State has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2006 24-hour $PM_{2.5}$ NAAQS. EPA is approving Wisconsin's submission addressing the infrastructure SIP requirements of section 110(a)(2)(A), (B), (C) with respect to enforcement and the GHG permitting threshold PSD requirement, (D)(i)(II) with respect to the GHG permitting threshold PSD requirement and visibility protection, (D)(ii), (E) except for state board requirements, (F) through (H), (J) except for narrow prevention of significant deterioration requirements, and (K) through (M). We are not finalizing action on (D)(i)(I), the state board requirements of (E)(ii), and the PSD requirement of NO_X as a precursor to ozone in (C), (D)(i)(II), and (J). We will address these requirements in a separate action. We are disapproving narrow portions of Wisconsin's infrastructure SIP submission addressing the relevant prevention of significant deterioration requirements of the 2008 NSR Rule (identifying $PM_{2.5}$ precursors and the regulation of $PM_{2.5}$ and PM_{10} condensables in permits) with respect to section 110(a)(2)(C), (D)(i)(II), and (J).

* * * * *

[FR Doc. 2015–20771 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2015–0294; FRL–9932–93–Region 4]

North Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: North Carolina has applied to the United States Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this direct final rule. In the ''Proposed Rules'' section of today's **Federal Register**, EPA is also publishing a separate document that serves as the proposal to authorize these changes. EPA believes this action is not controversial and does not expect comments that oppose it. Unless EPA receives written comments that oppose this authorization during the comment period, the decision to authorize North Carolina's changes to its hazardous waste program will take effect. If EPA receives comments that oppose this action, EPA will publish a document in the **Federal Register** withdrawing today's direct final rule before it takes effect, and the separate document published in today's ''Proposed Rules'' section of this **Federal Register** will serve as the proposal to authorize the changes.

DATES: This final authorization will become effective on October 23, 2015 unless EPA receives adverse written comment by September 23, 2015. If EPA receives such comment, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2015–0294, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: gleaton.gwen@epa.gov.*
- *Fax:* (404) 562–9964 (prior to faxing, please notify the EPA contact listed below).
- *Mail:* Send written comments to Gwendolyn Gleaton, RCRA Programs and Materials Management Section, Materials and Waste Management Branch, Resource Conservation and Restoration Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
- *Hand Delivery or Courier:* Deliver your comments to Gwendolyn Gleaton, RCRA Programs and Materials Management Section, Materials and Waste Management Branch, Resource Conservation and Restoration Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: EPA must receive your comments by September 23, 2015. Direct your comments to Docket ID No. EPA–R04–RCRA–2015–0294. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential

Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made publicly available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*).

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov,* or in hard copy.

You may view and copy North Carolina's application and associated publicly available materials from 8:00 a.m. to 4:00 p.m. at the following locations: EPA, Region 4, Resource Conservation and Restoration Division, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960; telephone number: (404) 562–8500; and the North Carolina Department of Environment and Natural Resources, 217 West Jones Street, Raleigh, North Carolina 27603; telephone number: (919) 707–8219. Interested persons wanting to examine these documents should make an appointment with the office at least a week in advance.

FOR FURTHER INFORMATION CONTACT:

Gwendolyn Gleaton, RCRA Programs and Materials Management Section, Materials and Waste Management Branch, Resource Conservation and Restoration Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960; telephone number: (404) 562–8500; fax number: (404) 562–9964; email address: g*leaton.gwen@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized States at the same time that they take effect in unauthorized States. Thus, EPA will implement those requirements and prohibitions in North Carolina, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

B. What decisions has EPA made in this rule?

On March 9, 2014, North Carolina submitted a final complete program revision application seeking authorization of changes to its hazardous waste program that correspond to certain Federal rules promulgated between July 1, 2008 and June 30, 2014 (also known as RCRA Clusters XIX through XXIII). EPA concludes that North Carolina's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA grants North Carolina final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below in Section G of this document.

North Carolina has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of this authorization decision?

The effect of this decision is that the changes described in North Carolina's authorization application will become part of the authorized State hazardous waste program, and will therefore be federally enforceable. North Carolina will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA retains its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which North Carolina is being authorized by today's action are already effective and enforceable requirements under State law, and are not changed by today's action.

D. Why wasn't there a proposed rule before today's rule?

Along with this direct final rule, EPA is publishing a separate document in the ''Proposed Rules'' section of today's **Federal Register** that serves as the proposal to authorize these State program changes. EPA did not publish a proposed rule before today because EPA views this as a routine program change and does not expect comments that oppose this approval. EPA is providing an opportunity for public comment now, as described in Section E of this document.

E. What happens if EPA receives comments that oppose this action?

If EPA receives comments that oppose this authorization, EPA will withdraw today's direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposed rule

mentioned in the previous section, after considering all comments received during the comment period, and will address all such comments in a later final rule. You may not have another opportunity to comment on these State program changes. If you want to comment on this authorization, you must do so at this time.

If EPA receives comments that oppose only the authorization of a particular change to the State hazardous waste program, EPA will withdraw that part of today's direct final rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has North Carolina previously been authorized for?

North Carolina initially received final authorization on December 14, 1984, effective December 31, 1984 (49 FR 48694), to implement a hazardous waste management program. EPA granted authorization for changes to North Carolina's program on the following dates: March 25, 1986, effective April 8, 1986 (51 FR 10211); August 5, 1988, effective October 4, 1988 (53 FR 1988); February 9, 1989, effective April 10, 1989 (54 FR 6290); September 22, 1989, effective November 21, 1989 (54 FR 38993); January 18, 1991, effective March 19, 1991 (56 FR 1929); April 10, 1991, effective June 9, 1991 (56 FR 14474); July 19, 1991, effective September 17, 1991 (56 FR 33206); April 27, 1992, effective June 26, 1992 (57 FR 15254); December 12, 1992, effective February 16, 1993 (57 FR 59825); January 27, 1994, effective March 28, 1994 (59 FR 3792); April 4, 1994, effective June 3, 1994 (59 FR 15633); June 23, 1994, effective August 22, 1994 (59 FR 32378); November 10, 1994, effective January 9, 1995 (59 FR 56000); September 27, 1995, effective November 27, 1995 (60 FR 49800); April 25, 1996, effective June 24, 1996 (61 FR 18284); October 23, 1998, effective December 22, 1998 (63 FR 56834); August 25, 1999, effective October 25, 1999 (64 FR 46298); February 28, 2002, effective April 29, 2002 (67 FR 9219); December 14, 2004, effective February 14, 2005 (69 FR 74444); March 23, 2005, effective May 23, 2005 (70 FR 14556); February 7, 2011, effective April 8, 2011 (76 FR 6561); and June 14, 2013, effective August 13, 2013 (78 FR 35766).

G. What changes is EPA authorizing with this action?

On March 9, 2014, North Carolina submitted a final complete program revision application seeking authorization of its changes in accordance with 40 CFR 271.21. EPA now makes an immediate final decision, subject to receipt of written comments that oppose this action, that North Carolina's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, EPA grants North Carolina final authorization for the following program changes:

Description of Federal requirement	**Federal Register** date and page	Analogous state authority [1]
220—Academic Laboratories Generator Standards	73 FR 72912, 12/01/2008	15A NCAC 13A .0106(a); and 15A NCAC 13A .0107(a) & (i).
223—Hazardous Waste Technical Corrections and Clarifications.	75 FR 12989, 03/18/2010 75 FR 31716, 06/04/2010	15A NCAC 13A .0102(b); 15A NCAC 13A .0106(a), (c), (d) & (f); 15A NCAC 13A .0107(a)–(d) & (f); 15A NCAC 13A .0108(a); 15A NCAC 13A .0109(e), (f), (o) & (s); 15A NCAC 13A .0110(d), (e) & (n); 15A NCAC 13A .0111(a)–(d); 15A NCAC 13A .0112(c); and 15A NCAC 13A .0113(a).
225—Removal of Saccharin and Its Salts from the Lists of Hazardous Wastes.	75 FR 78918, 12/17/2010	15A NCAC 13A .0106(d) & (f); and 15A NCAC 13A .0112(c) & (e).
226—Academic Laboratories Generator Standards Technical Corrections.	75 FR 79304, 12/20/2010	15A NCAC 13A .0107(i).
227—Revision of the Land Disposal Treatment Standards for Carbamate Wastes.	76 FR 34147, 06/13/2011	15A NCAC 13A .0112(c).
228—Hazardous Waste Technical Corrections and Clarifications Rule.	77 FR 22229, 04/13/2012	15A NCAC 13A .0106(d); and 15A NCAC 13A .0111(a).
229—Conditional Exclusions for Solvent Contaminated Wipes.	78 FR 46448, 07/31/2013	15A NCAC 13A .0102(b); and 15A NCAC 13A .0106(a).

[1] The North Carolina provisions are from the North Carolina Hazardous Waste Management Rules, 15A NCAC 13A, effective as of May 17, 2011.

H. Where are the revised State rules different from the Federal rules?

There are no State requirements in this program revision considered to be more stringent or broader in scope than the Federal requirements.

I. Who handles permits after the authorization takes effect?

North Carolina will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issued prior to the effective date of this authorization until they expire or are terminated. EPA will not issue any more permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which North Carolina is not authorized.

J. How does today's action affect Indian Country (18 U.S.C. 1151) in North Carolina?

North Carolina is not authorized to carry out its hazardous waste program in Indian Country within the State, which includes the Eastern Band of Cherokee Indians. EPA will continue to implement and administer the RCRA program in these lands.

K. What is codification and is EPA codifying North Carolina's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State rules in

40 CFR part 272. EPA is not codifying the authorization of North Carolina's changes at this time. However, EPA reserves the amendment of 40 CFR part 272, subpart II, for the authorization of North Carolina's program changes at a later date.

L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective October 23, 2015, unless objections to this authorization are received.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: June 26, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2015–20907 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120109034–2171–01]

RIN 0648–XE120

Fisheries of the Northeastern United States; Small-Mesh Multispecies Fishery; Adjustment to the Northern Red Hake Inseason Possession Limit

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: We announce the reduction of the commercial possession limit for northern red hake for the remainder of the 2015 fishing year. This action is required to prevent the northern red hake total allowable landing limit from being exceeded. This announcement informs the public that the northern red hake possession limit is reduced.

DATES: Effective August 24, 2015, through April 30, 2016.

FOR FURTHER INFORMATION CONTACT: Reid Lichwell, Fishery Management Specialist, 978–675–9112.

SUPPLEMENTARY INFORMATION: The small-mesh multispecies fishery is managed primarily through a series of exemptions from the Northeast Multispecies Fisheries Management Plan. Regulations governing the red hake fishery are found at 50 CFR part 648. The regulations describing the process to adjust inseason commercial possession limits of northern red hake are described in § 648.86(d)(4) and (5). These regulations require the Regional Administrator to reduce the northern red hake possession limit from 3,000 lb (1,361 kg) to 1,500 lb (680 kg) when landings have been projected to reach or exceed 45 percent of the total allowable landings (TAL). The northern red hake possession limit is required to be further reduced to 400 lb (181 kg) if landings are projected to reach or exceed 62.5 percent of the TAL, unless such a reduction would be expected to prevent the TAL from being reached. The final rule implementing the small-mesh multispecies

specifications for 2015–2017, which published in the **Federal Register** on May 28, 2015 (80 FR 30379), set these inseason adjustment thresholds. These measures were imposed because the annual catch limits (ACL) for northern red hake were exceeded for the 2012 and 2013 fishing years, and northern red hake was experiencing overfishing. We implemented this possession limit reduction trigger to reduce the risk of continued overfishing on the stock and to better constrain catch to the ACL.

On August 12, 2015, the northern red hake commercial possession limit was reduced from 3,000 lb (1,361 kg) to 1,500 lb (680 kg) because the overall commercial landings reached 45 percent of the TAL. Based on commercial landings data reported through July 30, 2015, the northern red hake fishery is projected to reach 65.2 percent of the TAL on August 22, 2015. Based on this projection, reducing the commercial northern red hake possession limit from 1,500 lb (680 kg) to 400 lb (181 kg) is required to prevent the TAL from being exceeded. Upon the effective date of this action, no person may possess on board or land more than 400 lb (181 kg) of northern red hake per trip for the remainder of the fishing year (*i.e.,* through April 30, 2016).

Classification

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

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

Dated: August 19, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–20862 Filed 8–19–15; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 80, No. 163

Monday, August 24, 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1100, 1140, and 1143

[Docket No. FDA–2015–N–1514]

RIN 0910–AH24

Nicotine Exposure Warnings and Child-Resistant Packaging for Liquid Nicotine, Nicotine-Containing E-Liquid(s), and Other Tobacco Products; Request for Comments; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period for the advance notice of proposed rulemaking (ANPRM) entitled ''Nicotine Exposure Warnings and Child-Resistant Packaging for Liquid Nicotine, Nicotine-Containing E-Liquid(s), and Other Tobacco Products'' that appeared in the **Federal Register** of July 1, 2015. In the ANPRM, FDA requested comments, data, research results, or other information, that may inform regulatory actions that FDA might take with respect to nicotine exposure warnings and child-resistant packaging for liquid nicotine and nicotine-containing e-liquid(s) that are made or derived from tobacco and intended for human consumption, and potentially for other tobacco products including, but not limited to, novel tobacco products such as dissolvables, lotions, gels, and drinks. The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the ANPRM published July 1, 2015 (80 FR 37555). Submit either electronic or written comments by September 30, 2015.

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

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- Mail/Hand delivery/Courier (for paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Docket No. FDA–2015–N–1514 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Requests for Comments and Information'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Bryant M. Godfrey or Courtney S. Smith, Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 1–877–CTP–1373, *CTPRegulations@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 1, 2015 (80 FR 37555), FDA published an ANPRM with a 60-day comment period to request comments, data, research results, or other information, that may inform regulatory actions that FDA might take with respect to nicotine exposure warnings and child-resistant packaging for liquid nicotine and nicotine-containing e-liquid(s) that are made or derived from tobacco and intended for human consumption, and potentially for other tobacco products including, but not limited to, novel tobacco products such as dissolvables, lotions, gels, and drinks.

The Agency has received several comments requesting an extension of the comment period for the ANPRM. These comments convey concern that the current 60-day comment period does not allow sufficient time to develop meaningful or thoughtful responses to questions raised in the ANPRM.

FDA has considered the requests and is extending the comment period for the ANPRM for 30 days, until September 30, 2015. The Agency believes that a 30-day extension allows adequate time for interested persons to submit comments without significantly delaying any potential regulatory action on these important issues.

II. Requests for Comments and Information

A. General Information About Submitting Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see ADDRESSES). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document.

B. Public Availability of Comments

Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*. As a matter of Agency practice, FDA generally does not post comments submitted by individuals in their individual capacity on *http://www.regulations.gov*. This is determined by information indicating that the submission is written by an individual, for example, the comment is identified with the category ''Individual Consumer'' under the field entitled ''Category (Required)'', on the ''Your Information'' page on *http://www.regulations.gov;* for this ANPRM, however, FDA will not be following this general practice. Instead, FDA will post on *http://www.regulations.gov* comments to this docket that have been submitted by individuals in their individual capacity. If you wish to submit any information under a claim of

confidentiality, please refer to 21 CFR 10.20.

C. Information Identifying the Person Submitting the Comment

Please note that your name, contact information, and other information identifying you will be posted on *http://www.regulations.gov* if you include that information in the body of your comments. For electronic comments submitted to *http://www.regulations.gov,* FDA will post the body of your comment on *http://www.regulations.gov* along with your State/province and country (if provided), the name of your representative (if any), and the category identifying you (*e.g.,* individual, consumer, academic, industry). For written submissions submitted to the Division of Dockets Management, FDA will post the body of your comments on *http://www.regulations.gov,* but you can put your name and/or contact information on a separate cover sheet and not in the body of your comments.

Dated: August 18, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–20759 Filed 8–21–15; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0489; FRL–9932–74–Region 9]

Revision to the California State Implementation Plan; San Joaquin Valley; Demonstration of Creditable Emission Reductions from Economic Incentive Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a demonstration of creditable emission reductions submitted by California for approval into the San Joaquin Valley (SJV) portion of the California State Implementation Plan (SIP). This SIP submittal demonstrates that certain state mobile source incentive funding programs have achieved specified amounts of reductions in emissions of nitrogen oxides (NO_X) and fine particulate matter ($PM_{2.5}$) in the SJV area by 2014. The effect of this action would be to approve these amounts of emission reductions for credit toward an emission reduction commitment in the California SIP. We are taking comments on this proposal and plan to follow with a final action.

DATES: Written comments must be received on or before September 23, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R09–OAR–2015–0489, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: steckel.andrew@epa.gov*

3. *Mail or deliver:* Andrew Steckel (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, *perez.idalia@epa.gov,* (415) 972–3248.

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

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I. Background

On July 18, 1997, EPA established new national ambient air quality standards (NAAQS) for particles less than or equal to 2.5 micrometers (μm) in diameter ($PM_{2.5}$), including an annual standard of 15.0 micrograms per cubic meter (μg/m^3) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour (daily) standard of 65 μg/m^3 based on a 3-year average of 98th percentile 24-hour $PM_{2.5}$ concentrations.[1] EPA established these standards after considering substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$ concentrations above these levels.

Following promulgation of a new or revised NAAQS, EPA is required under Clean Air Act (CAA) section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. On January 5, 2005, EPA published initial air quality designations for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, using air quality monitoring data for the three-year periods of 2001–2003 and 2002–2004.[2] These designations became effective April 5, 2005.[3] EPA designated the San Joaquin Valley (SJV) area[4] as nonattainment for both the 1997 annual $PM_{2.5}$ standard (15.0 μg/m^3) and the 1997 24-hour $PM_{2.5}$ standard (65 μg/m^3).[5]

Between 2007 and 2011, California made six SIP submittals to address nonattainment area planning

[1] 62 FR 36852 (July 18, 1997) and 40 CFR 50.7. Effective December 18, 2006, EPA strengthened the 24-hour $PM_{2.5}$ NAAQS by lowering the level to 35 μg/m^3. 71 FR 61144 (October 17, 2006) and 40 CFR 50.13. Effective March 18, 2013, EPA strengthened the annual $PM_{2.5}$ NAAQS by lowering the level to 12 μg/m^3. 78 FR 3086 (January 15, 2013) and 40 CFR 50.18. In this preamble, all references to the $PM_{2.5}$ NAAQS, unless otherwise specified, are to the 1997 24-hour standard (65 μg/m^3) and annual standard (15.0 μg/m^3) as codified in 40 CFR 50.7.

[2] 70 FR 944 (January 5, 2005).

[3] *Id.*

[4] The SJV area encompasses over 23,000 square miles and includes all or part of eight counties in California's central valley: San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and Kern. For a precise description of the geographic boundaries of the San Joaquin Valley nonattainment area, see 40 CFR 81.305.

[5] 40 CFR 81.305.

requirements for the 1997 $PM_{2.5}$ NAAQS in the SJV.[6] We refer to these submittals collectively as the ''2008 $PM_{2.5}$ Plan.'' On November 9, 2011, EPA approved all elements of the 2008 $PM_{2.5}$ Plan except for the contingency measures, which EPA disapproved.[7] As part of this action, EPA approved, *inter alia,* commitments by the California Air Resources Board (CARB) and the SJVUAPCD to achieve specific amounts of NO_X and $PM_{2.5}$ emission reductions by 2014.[8] In July 2013, the State submitted a revised $PM_{2.5}$ contingency measure plan for the SJV, which EPA fully approved in May 2014.[9]

On May 20, 2015, the Ninth Circuit Court of Appeals issued its decision in a challenge to EPA's November 9, 2011 action on the 2008 $PM_{2.5}$ Plan.[10] In *Committee for a Better Arvin et. al* v. *EPA* (Case Nos. 11–73924 and 12–71332) (*CBA*), the court held that EPA violated the CAA by approving the 2008 $PM_{2.5}$ Plan even though the plan did not include certain state-adopted mobile source emission standards on which the plan relied to achieve its emission reduction goals.[11] The *CBA* court remanded EPA's action on the 2008 $PM_{2.5}$ Plan for further proceedings consistent with the decision but did not vacate EPA's action.[12] Thus, absent an EPA rulemaking to withdraw or revise the Agency's November 2011 approval of the emission reduction commitments in the 2008 $PM_{2.5}$ Plan, these commitments remain enforceable components of the California SIP.[13]

II. The State's Submittal

CARB adopted the ''Report on Reductions Achieved from Incentive-based Emission Reduction Measures in the San Joaquin Valley'' (Emission Reduction Report) on October 24, 2014 and submitted it to EPA as a revision to the California SIP on November 17, 2014. On May 17, 2015, the Emission Reduction Report submittal became complete by operation of law under CAA section 110(k)(1)(B).

The purpose of the Emission Reduction Report is to demonstrate that certain mobile source incentive funding programs implemented in the SJV area have achieved specified amounts of NO_X and $PM_{2.5}$ emission reductions by January 1, 2014 and to thereby satisfy a portion of the 2014 emission reduction commitments approved into the SIP as part of EPA's November 2011 action on the 2008 $PM_{2.5}$ Plan.[14] Specifically, the Emission Reduction Report documents the State's bases for concluding that a total of 2,286 incentive projects implemented in the SJV pursuant to the Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program) and the Proposition 1B: Goods Movement Emission Reduction Program (Prop 1B Program) have achieved a total of 7.8 tons per day (tpd) of NO_X emission reductions and 0.2 tpd of $PM_{2.5}$ emission reductions in the SJV, which may be credited toward the State's 2014 emission reduction commitment.[15]

The SIP submittal for the Emission Reduction Report includes eight appendices containing documentation to support the State's conclusions. First, Appendix A through Appendix E contain relevant excerpts from the Carl Moyer Program and Prop 1B Program guidelines[16] that apply to specifically identified types of incentive projects. Table 1 identifies the selected project types and relevant portions of the incentive program guidelines that govern their implementation.

TABLE 1

Project type	Applicable guideline (relevant portions)
Carl Moyer Program: Off-road equipment repower, replacement, and retrofit projects.	The Carl Moyer Program Guidelines, Approved Revision 2005, part I, ''Program Overview and Administrative Requirements,'' and part II, chapter 5, ''Compression-Ignition Off-Road Equipment''.
	The Carl Moyer Program Guidelines, Approved Revision 2008, part I, chapter 5, ''Off-Road Compression-Ignition Equipment,'' and Part III, ''Program Administration''.
	The Carl Moyer Program Guidelines, Approved Revisions 2011, part I, chapter 3, ''Program Administration,'' and chapter 7, ''Off-Road Compression-Ignition Equipment''.
Carl Moyer Program: Portable and stationary agricultural source repower projects.	The Carl Moyer Program Guidelines, Approved Revision 2005, part I, ''Program Overview and Administrative Requirements,'' and part II, chapter 10, ''Agricultural Sources''.
	The Carl Moyer Program Guidelines, Approved Revision 2008, part I, chapter 10, ''Agricultural Sources,'' and Part III, ''Program Administration''.
	The Carl Moyer Program Guidelines, Approved Revisions 2011, part I, chapter 3, ''Program Administration,'' and chapter 10, ''Portable and Stationary Agricultural Sources''.
Prop 1B Program: On-road vehicle replacement projects.	Proposition 1B: Goods Movement Emission Reduction Program, Final Guidelines for Implementation, 2008, Section II, ''ARB Program Administration,'' Section III, ''Local Agency Project,'' Section IV, ''General Equipment Project Requirements,'' and appendix A, ''Trucks Serving Ports and Intermodal Rail Yards''.
	Proposition 1B: Goods Movement Emission Reduction Program, Final Guidelines for Implementation, 2008, Section II, ''ARB Program Administration,'' Section III, ''Local Agency Project,'' Section IV, ''General Equipment Project Requirements,'' and appendix B, ''Other Heavy Duty Diesel Trucks''.

[6] 76 FR 69896 at n. 2 (November 9, 2011).

[7] *Id.* at 69924.

[8] 76 FR 69896, 69926 (codified at 40 CFR 52.220(c)(356)(ii)(B)(*2*) and 52.220(c)(392)(ii)(A)(*2*)).

[9] 79 FR 29327 (May 22, 2014).

[10] *Committee for a Better Arvin et al* v. *EPA,* Case Nos. 11–73924 and 12–71332, 2015 U.S. App. LEXIS 8295 (9th Cir. 2015).

[11] *Id.*

[12] *Id.*

[13] *See* n. 8, *supra.*

[14] Emission Reduction Report at 1–2.

[15] Emission Reduction Report at 24, Table 3 (''Total 2014 Incentive-Based Emission Reductions''), Appendix H.1 (''SIP Creditable Incentive Projects in the San Joaquin Valley (Moyer Program)'') and Appendix H.2 (''SIP Creditable Incentive Projects in the San Joaquin Valley (Prop 1B)'').

[16] Under both the Carl Moyer Program and the Prop 1B Program, CARB adopts or approves program ''guidelines'' that specify, among other things, terms and conditions that must apply to each grant of incentive funds to an applicant. *See* California Health & Safety Code sections 44275 *et seq.* (establishing Carl Moyer Program) and 39625 *et seq.* (establishing Prop 1B Program).

TABLE 1—Continued

Project type	Applicable guideline (relevant portions)
	Proposition 1B: Goods Movement Emission Reduction Program, Final Guidelines for Implementation, 2010, Section II, "ARB Program Administration," Section III, "Local Agency Project Proposal," Section IV, "Local Agency Project Implementation," Section V, "State Agency Project Implementation," Section VI, "General Equipment Project Requirements," and appendix A, "Heavy Duty Diesel Trucks".

Source: Emission Reduction Report at 5, 10, 14, and 17.

Second, Appendix F and Appendix G contain CARB's demonstrations that the identified portions of the Carl Moyer Program and Prop 1B Program guidelines adequately address EPA's recommended "integrity elements" by ensuring that the resulting emission reductions are quantifiable, surplus, enforceable, and permanent.[17] We refer to these analyses as the State's "integrity demonstrations" for these components of the Carl Moyer Program and Prop 1B Program.

Third, Appendix H lists each of the 832 Carl Moyer Program projects and 1,454 Prop 1B Program projects funded pursuant to the identified program guidelines that the State has relied upon in the Emission Reduction Report. For each of these projects, Appendix H identifies the "equipment project ID," contract term (project life), post-inspection date, adoption year of the applicable incentive program guideline, and NO_X and/or $PM_{2.5}$ emission reductions achieved in 2014, in pounds per year (lbs/yr).

The Carl Moyer Program is a California grant program established in 1998 that provides funding to encourage the voluntary purchase of cleaner-than-required engines, equipment, and other emission reduction technologies.[18] In its first 12 years, the Carl Moyer Program provided over $680 million in state and local funds to reduce air pollution from equipment statewide, *e.g.,* by replacing older trucks with newer, cleaner trucks, retrofitting controls on existing engines, and encouraging the early retirement of older, more polluting vehicles.[19]

The Prop 1B Program is a California grant program established in 2007, as a result of State bond funding approved by voters, which provides $1 billion in funding to CARB to reduce air pollution emissions and health risks from freight movement along California's priority trade corridors. Under the enabling legislation (California Senate Bill 88 and Assembly Bill 201 (2007)), CARB awards grants to fund projects proposed by local agencies that are involved in freight movement or air quality improvements associated with goods movement activities. Upon receipt of such grants, the local agencies are then responsible for providing financial incentives to owners of equipment used in freight movement to upgrade to cleaner technologies, consistent with program guidelines adopted by CARB.[20]

III. EPA's Evaluation of the State's Submittal

A. SIP Procedural Requirements

Sections 110(a)(2) and 110(l) of the Act require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

CARB's November 17, 2014 SIP submittal includes public process documentation for the Emission Reduction Report, including documentation of a duly noticed public hearing held by the State on October 24, 2014. On October 24, 2014, CARB adopted the Emission Reduction Report as a revision to the California SIP and submitted it to EPA on November 17, 2014 for action pursuant to CAA section 110(k) of the Act. We find that the process followed by CARB in adopting the Emission Reduction Report complies with the procedural requirements for SIP revisions under CAA section 110 and EPA's implementing regulations.

B. EPA Policy on Economic Incentives

The CAA explicitly provides for the use of economic incentives as one tool for states to use to achieve attainment of the NAAQS.[21] Economic incentive programs (EIPs) use market-based strategies to encourage the reduction of emissions from stationary, area, and/or mobile sources in an efficient manner. EPA has promulgated regulations for statutory EIPs required under section 182(g) of the Act and has issued guidance for discretionary EIPs.[22] In light of the increasing incremental cost associated with further stationary and mobile source emission reductions and the difficulty of identifying such additional sources of emissions reductions in many areas, EPA encourages innovative approaches to reducing emissions through EIPs and other nontraditional measures and programs, including "voluntary" and "emerging" measures.[23]

We provide below a summary of our evaluation of the Emission Reduction Report and related incentive program

[17] Under longstanding EPA guidance, emission reductions achieved through economic incentives and other nontraditional emission reduction measures must be quantifiable, surplus, enforceable, and permanent in order to qualify for SIP emission reduction credit under the CAA. *See, e.g.,* "Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs)," October 24, 1997 ("1997 VMEP") at 6–7; "Improving Air Quality with Economic Incentive Programs," U.S. EPA, Office of Air and Radiation, January 2001 (EPA–452/R–01–001) ("2001 EIP Guidance") at section 4.1; "Incorporating Emerging and Voluntary Measures in a State Implementation Plan," September 2004 ("2004 Emerging and Voluntary Measures Guidance") at 3–4; and "Diesel Retrofits: Quantifying and Using Their Emission Benefits in SIPs and Conformity," February 2014 ("2014 Diesel Retrofits Guidance") at 27–29.

[18] *See generally* CARB, "The Carl Moyer Program Guidelines, Approved Revisions 2011," Release Date: February 8, 2013, at Chapter 1 (*available electronically at http://www.arb.ca.gov/msprog/moyer/moyer.htm*).

[19] *Id.*

[20] *See generally* "Strategic Growth Plan Bond Accountability, Goods Movement Emission Reduction Program," Approved February 27, 2008 (*available at http://www.arb.ca.gov/bonds/gmbond/docs/gm_accountability_with_links_2-27-08.pdf*).

[21] *See, e.g.,* CAA section 110(a)(2)(A) (requiring that each SIP "include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of [the Act]"); *see also* sections 172(c)(6), 183(e)(4).

[22] *See* 59 FR 16690 (April 7, 1994) (codified at 40 CFR part 51, subpart U) and 2001 EIP Guidance.

[23] *See generally* 1997 VMEP; 2004 Emerging and Voluntary Measures Guidance; 2014 Diesel Retrofits Guidance; and "Guidance on Incorporating Bundled Measures in a State Implementation Plan," August 16, 2005 ("2005 Bundled Measures Guidance").

guidelines. Our Technical Support Document (TSD) contains a more detailed evaluation of the SIP submittal.

1. Programmatic ''integrity elements''

Where a State relies upon a discretionary EIP or other nontraditional emission reduction measure in a SIP submittal, EPA evaluates the programmatic elements of the measure to determine whether the resulting emission reductions are *quantifiable, surplus, enforceable and permanent.*[24] These four fundamental ''integrity elements,'' which apply to all discretionary EIPs and other innovative measures relied on for SIP purposes, are designed to ensure that such measures satisfy the applicable requirements of the Act.[25] EPA has generally defined the four fundamental integrity elements for discretionary EIPs and other innovative emission reduction programs as follows:

- *Quantifiable:* emission reductions are quantifiable if they can be measured in a manner that is reliable and replicable by different users;
- *Surplus:* Emission reductions are surplus if they are not otherwise required by or assumed in a SIP-related program (*e.g.,* an attainment or reasonable further progress plan or a transportation conformity demonstration), any other adopted State air quality program, a consent decree, or a federal rule designed to reduce emission of a criteria pollutant or its precursors (*e.g.,* a new source performance standard or federal mobile source requirement); additionally, emission reductions are ''surplus'' only for the remaining useful life of the vehicle, engine, or equipment being replaced.
- *Enforceable:* emission reductions and other required actions are enforceable if they are independently verifiable; program violations are defined; those liable can be identified; the State and EPA may apply penalties and secure appropriate corrective action where applicable; citizens have access to all emissions-related information obtained from participating sources; citizens may file suit against a responsible entity for violations; and the required reductions/actions are practicably enforceable consistent with EPA guidance on practical enforceability.
- *Permanent:* emission reductions are permanent if the State and EPA can ensure that the reductions occur for as long as they are relied upon in the SIP. The time period that the emission reductions are used in the SIP can be no longer than the remaining useful life of the retrofitted or replaced engine, vehicle, or equipment.[26]

The Emission Reduction Report documents CARB's bases for concluding that the portions of the incentive program guidelines identified in Table 1 adequately address each of these integrity elements. First, with respect to quantification, the Emission Reduction Report references and describes the formulas that the guidelines require applicants to use to determine annual emissions (*i.e.,* baseline emissions, based on existing equipment or new equipment certified by CARB to current emission standards) and annual emission reductions (*i.e.,* the difference between baseline emissions and reduced emissions from new/upgraded equipment).[27] These requirements ensure that program participants will calculate emission reductions reliably, using widely available methods and assumptions, and in a manner that can be replicated by different users.

Second, with respect to additionality (*i.e.,* ensuring that reductions are ''surplus'' or non-duplicative to existing requirements), the Emission Reduction Report references and describes the provisions in the guidelines that prohibit the use of program funds for emission reductions that are required by any federal, state or local regulation or other legal mandate and requirements to ensure that equipment or engines being replaced are still in usable form and would not have been replaced by normal fleet turnover.[28] These provisions ensure that projects funded under these guidelines will achieve emission reductions that are not otherwise required by or assumed in a SIP-related program and that are surplus to federal, state, and local requirements.

Third, with respect to enforceability, the Emission Reduction Report references and describes the funding criteria in the guidelines that are designed to ensure that emission reductions will be independently verifiable and practicably enforceable by CARB and the District, including detailed requirements for project applications, contracts, pre- and post-project inspections, and recordkeeping and reporting by both the grantees and the implementing local agencies.[29] These requirements ensure that emission reductions can be independently verified, that the public has access to emissions-related information, and that required actions are practicably enforceable consistent with EPA guidance on practical enforceability.

Finally, with respect to permanence, the Emission Reduction Report references and describes requirements in the guidelines for program applicants to demonstrate that both the baseline (old) and replacement (new/upgraded) equipment are used similarly in the nonattainment area and to document the destruction of the baseline (old) equipment, as well as requirements to identify in each contract the timeframe during which the State/District attribute emission reductions to the project.[30] These requirements ensure that emission reduction calculations are based on reasonable assumptions concerning equipment/vehicle activity; that baseline (old) equipment and vehicles do not continue in operation; and that EPA and the public can determine whether emission reductions attributed to a project adequately cover the period for which those reductions are relied upon in a SIP.

Based on these evaluations, we find that the portions of the Carl Moyer Program and Prop 1B Program guidelines identified in Table 1 establish emission reduction quantification protocols, grant conditions, recordkeeping and reporting obligations, and other requirements that adequately address EPA's recommended integrity elements for economic incentive programs.

2. Enforceable Commitment

Where a State relies on a discretionary EIP or other voluntary measure to satisfy an attainment planning requirement under the CAA (*e.g.,* to demonstrate that specific amounts of emission reductions will occur by a future milestone date), the State must take responsibility for assuring that SIP emission reduction requirements are met through an enforceable commitment, which becomes federally enforceable upon approval into the SIP.[31] The purpose of the Emission Reduction Report, however, is to demonstrate that a portion of the emission reductions required under a previously-approved

[24] *See, e.g.,* 2001 EIP Guidance at section 4.1.

[25] *See, e.g.,* 2001 EIP Guidance at section 4.1; 1997 VMEP at 6–7; 2004 Emerging and Voluntary Measures Guidance at 3–4; and 2014 Diesel Retrofits Guidance at 27–29.

[26] *See* 2001 EIP Guidance at Section 4.1; 1997 VMEP at 6–7; 2004 Emerging and Voluntary Measures Guidance at 3–4; and 2014 Diesel Retrofits Guidance at 27–29.

[27] Emission Reduction Report at 7–8, 11–12, 15, 19–20, Appendix F, and Appendix G.

[28] Emission Reduction Report at 9, 12, 15–16, 20, Appendix F, and Appendix G.

[29] Emission Reduction Report at 6–7, 10–11, 15, 17–19, Appendix F, and Appendix G.

[30] Emission Reduction Report at 9–10, 13–14, 16, 21–22, Appendix F, and Appendix G.

[31] *See, e.g.,* 1997 VMEP at 4–7; 2004 Emerging and Voluntary Measures Guidance at 8–12; and 2005 Bundled Measures Guidance at 7–12.

SIP commitment have in fact been achieved, not to satisfy a future emission reduction requirement. Accordingly, it is not necessary to require the State to submit additional commitments for this purpose.

C. Sections 110(l) and 193 of the Act

Section 110(l) of the CAA prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and RFP or any other applicable CAA requirement. The Emission Reduction Report documents CARB's bases for concluding that specific incentive projects implemented by January 1, 2014, in accordance with the identified portions of the Carl Moyer Program and Prop 1B Program guidelines, have achieved a total of 7.8 tpd of NO_X emission reductions and 0.2 tpd of $PM_{2.5}$ emission reductions in the SJV area which may be credited toward the State's 2014 emission reduction commitment in the 2008 $PM_{2.5}$ Plan. These calculations of emission reductions are based on actions taken by grantees before January 1, 2014 which reduced emissions of NO_X and $PM_{2.5}$ in the SJV (*e.g.,* through replacement of older, higher-polluting vehicles operating in the SJV area with newer, cleaner vehicles). The Emission Reduction Report does not establish or revise any emission limitation, control measure, or other requirement in the applicable SIP. We propose to determine that our approval of the Emission Reduction Report would comply with CAA section 110(l) because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for attainment of the NAAQS and other CAA provisions are met.

Section 193 of the Act does not apply to this proposed action because the Emission Reduction Report does not modify any SIP-approved control requirement in effect before November 15, 1990.

IV. Proposed Action and Public Comment

Under section 110(k)(3) of the Act, EPA is proposing to fully approve the submitted Emission Reduction Report and, based on CARB's documentation therein of actions taken by grantees in accordance with the identified incentive program guidelines, to approve 7.8 tpd of NO_X emission reductions and 0.2 tpd of $PM_{2.5}$ emission reductions for credit toward the State's 2014 emission reduction commitment in the 2008 $PM_{2.5}$ Plan.

We will accept comments from the public on this proposed action until the date noted in the **DATES** section above.

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: August 6, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2015–20749 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2015–0556; FRL–9932–94–Region 7]

Approval and Promulgation of Air Quality Implementation Plans; State of Missouri; Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the State of Missouri in a letter dated March 30, 2015. This SIP revision provides Missouri's state-determined allowance allocations for existing electric generating units (EGUs) in the state for the 2016 control period and replaces certain allowance allocations for the 2016 control periods established by EPA under the Cross-State Air Pollution Rule (CSAPR). The CSAPR addresses the ''good neighbor'' provision of the Clean Air Act (CAA or Act) that requires states to reduce the transport of pollution that significantly affects downwind air quality. In this action EPA is proposing to approve Missouri's SIP revision, incorporating the state-determined allocations for the 2016 control periods into the SIP, and amending the regulatory text of the CSAPR Federal Implementation Plan (FIP) to reflect this approval and inclusion of the state-determined allocations. EPA is proposing to take direct final action to

approve Missouri's SIP revision because it meets the requirements of the CAA and the CSAPR requirements to replace EPA's allowance allocations for the 2016 control periods. This action is being proposed pursuant to the CAA and its implementing regulations. EPA's allocations of CSAPR trading program allowances for Missouri for control periods in 2017 and beyond remain in place until the State submits and EPA approves state-determined allocations for those control periods through another SIP revision. The CSAPR FIPs for Missouri remain in place until such time as the State decides to replace the FIPs with a SIP revision.

DATES: Comments on this proposed action must be received in writing by September 23, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0556, by mail to Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7214 or by email at *kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides.

Dated: August 12, 2015.

Mark Hague,

Acting Regional Administrator, Region 7.

[FR Doc. 2015–20773 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2014–0916; FRL–9932–89–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; South Dakota; Revisions to South Dakota Administrative Code; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: This document contains a correction to the proposed rulemaking, which was published on July 14, 2015. The proposal contained an error that is identified and corrected in this action.

DATES: This document is effective August 24, 2015.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In a proposed rule published July 14, 2015 (80 FR 40952), EPA proposed to approve updates to Administrative Rules of South Dakota (ARSD) into the South Dakota State Implementation Plan (SIP). Among the updates EPA proposed to approve was Article 74:36:05, ''Operating Permits for Part 70 Sources'' which details South Dakota's Clean Air Act Title V program. Clean Air Act Title V requirements are not subject to Section 110 of the Clean Air Act and are thus not required to be incorporated into SIPs. Therefore, EPA is issuing this correction document to remove the proposed approval of ARSD 74:36:05 from our July 14, 2015 action. EPA is instead proposing not to take action on South Dakota's updates to this provision.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: August 10, 2015.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

[FR Doc. 2015–20740 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0408; EPA–R05–OAR–2015–0409; FRL–9932–62–Region 5]

Air Plan Approval; IL; MN; Determinations of Attainment of the 2008 Lead Standard for Chicago and Eagan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to make determinations under the Clean Air Act (CAA) that the Chicago, Illinois and Eagan, Minnesota nonattainment areas (hereafter also referred to, respectively, as the ''Chicago area,'' ''Eagan area,'' or ''areas'') have attained the 2008 lead (Pb) national ambient air quality standard (NAAQS or standard). These determinations of attainment are based upon complete, quality-assured, and certified ambient air monitoring data for the 2012–2014 design period showing that the areas have achieved attainment of the 2008 Pb NAAQS. Additionally, as a result of these determinations, EPA proposes to suspend the requirements for the areas to submit attainment demonstrations, and associated reasonably available control measures (RACM), reasonable further progress (RFP) plans, contingency measures for failure to meet RFP, and attainment deadlines, for as long as the areas continue to attain the 2008 Pb NAAQS. In this action EPA is not proposing a redesignation of the areas to attainment of the 2008 Pb NAAQS; the areas remain designated nonattainment until such

time as EPA determines that the areas meet the CAA requirements for redesignation to attainment and takes action to redesignate the areas.

DATES: Comments must be received on or before September 23, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0408 (Chicago area) or EPA–R05–OAR–2015–0409 (Eagan area), by one of the following methods:

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

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is making an attainment determination as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 10, 2015.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2015–20776 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0715; FRL–9932–73–Region 9]

Approval and Promulgation of Implementation Plans; California; San Joaquin Valley Unified Air Pollution Control District; Employer Based Trip Reduction Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a regulation submitted for incorporation into the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) portion of the California State Implementation Plan (SIP). The regulation, Rule 9410 (Employer Based Trip Reduction), establishes requirements for employers in the San Joaquin Valley to implement programs encouraging employees to use ridesharing and alternative transportation methods to reduce air pollution. The effect of this action would be to make the requirements of Rule 9410 federally enforceable as part of the California SIP.

DATES: Written comments must be received on or before September 23, 2015.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R09–OAR–2014–0715, by one of the following methods:

1. *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email:* Jeffrey Buss at *buss.jeffrey@epa.gov.*
3. *Mail:* Jeffrey Buss, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne, San Francisco, California 94105.
4. *Hand or Courier Delivery:* Jeffrey Buss, Air Planning Section (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne, San Francisco, California 94105. Such deliveries are only accepted during the Regional Office's normal hours of operation. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R09–OAR–2014–0715. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected from disclosure. The *www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at the U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available for viewing only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available at either location (*e.g.,* CBI). To inspect the docket materials in person, please

schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (415) 947–4152, email: *buss.jeffrey@epa.gov.*

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

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I. Background

The San Joaquin Valley (SJV) [1] is currently designated as nonattainment for several of the national ambient air quality standards (NAAQS) promulgated by EPA under the Clean Air Act (CAA) for ozone and fine particulate matter ($PM_{2.5}$). Specifically, the SJV area is designated and classified as extreme nonattainment for the 1-hour, 1997 8-hour, and 2008 8-hour ozone NAAQS; designated and classified as serious nonattainment for the 1997 $PM_{2.5}$ NAAQS; and designated and classified as moderate nonattainment for the 2006 and 2012 $PM_{2.5}$ NAAQS. See 40 CFR 81.305.

Section 172(c)(1) of the Act requires that all nonattainment areas implement, as expeditiously as practicable, reasonably available control measures (RACM) including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT). Additionally, Section 189(a)(1)(C) of the Act requires that moderate $PM_{2.5}$ nonattainment areas implement RACM (including RACT) and section 189(b)(1)(B) requires that serious $PM_{2.5}$ nonattainment areas implement best available control measures (BACM), including best available control technology (BACT). The SJV area is subject to all of these control requirements as a result of its designations and classifications for the ozone and $PM_{2.5}$ NAAQS. For an ozone nonattainment area classified as severe or above, section 182(d)(1)(B) also provides that a state may, in its discretion, submit a SIP revision requiring employers to implement programs to reduce work-related vehicle trips and miles travelled by employees.

Despite numerous air pollution control measures and programs that the SJVUAPCD has implemented over the years to reduce air pollution, the SJV continues to experience some of the worst air quality in the nation. *See, e.g.,* 80 FR 1482 (January 12, 2015) (discussing recent $PM_{2.5}$ air quality trends in SJV). As a result, the District has increasingly relied upon nontraditional emission reduction strategies to reduce air pollution in the SJV. *See, e.g.,* 79 FR 28650 (May 19, 2014) (proposed action on SJV Rule 9610 concerning incentive programs) and 80 FR 19020 (April 9, 2015) (final action on SJV Rule 9610). EPA supports state efforts to implement nontraditional and innovative strategies for reducing air pollutant emissions, including commuter programs to reduce the frequency that employees drive alone to work. *See, e.g.,* U.S. EPA, Transportation and Climate Division, Office of Transportation and Air Quality, ''Commuter Programs: Quantifying and Using Their Emission Benefits in SIPs and Conformity'' (February 2014).

II. The State Submittal

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by CARB.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	9410	Employer Based Trip Reduction	12/17/09	05/17/10

On November 17, 2010, the submittal for Rule 9410 was deemed by operation of law under CAA section 110(k)(1)(B) to meet the completeness criteria in 40 CFR part 51 Appendix V. There are no previous versions of Rule 9410 in the SIP.

The Rule 9410 SIP submittal includes Rule 9410 (as adopted December 17, 2009), the District's ''Final Staff Report: Rule 9410 (Employer Based Trip Reduction)'' dated December 17, 2009 (Final Staff Report), public process documentation, and technical support materials. CARB and the District submitted this rule to satisfy a SIP-approved regulatory commitment in the $PM_{2.5}$ plan for the SJV. *See* 76 FR 69896 at 69926 (November 9, 2011) ($PM_{2.5}$ control measure commitments, codified at 40 CFR 52.220(c)(392)(A)(*2*)).

The California Health and Safety Code specifically authorizes the District to adopt rules and regulations to reduce vehicle trips and requirements for certain businesses employing at least 100 people to establish rideshare programs. See Final Staff Report at 9 (citing California H&SC sections 40601(d) and 40612). Consistent with these authorities, Rule 9410 requires certain employers with at least 100 ''eligible employees'' [2] at a work site to establish programs to reduce employee commute-related vehicle travel, referred to in the rule as ''employer trip reduction implementation plans'' or ''ETRIPs.'' [3] According to the District, approximately 36% of employees in the SJV are employed at worksites with 100 or more employees. *See* Final Staff Report at B–6. Employers subject to the rule must, among other things, register with the SJVUAPCD, submit an ETRIP for each worksite to the District, and submit annual compliance reports to the District. *See* Rule 9410, sections 6.1, 6.3, and 6.5.

III. Evaluation of the State Submittal

A. SIP Procedural Requirements

CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submittal of a SIP or SIP revision. To meet this requirement, every SIP submittal should include

[1] The SJV area encompasses over 23,000 square miles and includes all or part of eight counties in California's central valley: San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and Kern.

[2] ''Eligible employees'' do not include emergency health and safety employees, farm workers, field construction workers, on-call employees, part-time employees, seasonal employees, and volunteers, among others. *See* Rule 9410, sections 3.19 and 3.31.

[3] Rule 9410 defines ETRIP as a ''group of measures implemented by an employer, designed to provide transportation information, assistance, and/or incentives to employees'' and intended to ''reduce mobile source emissions by reducing the number of vehicle miles traveled to the worksite.'' Rule 9410, section 3.28.

evidence that adequate public notice was given and an opportunity to request a public hearing was provided consistent with EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB have satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submittal of this SIP revision. The District conducted public workshops, provided public comment periods, and held public hearings prior to the adoption of Rule 9410 on December 17, 2009. *See* SJVUAPCD Governing Board Resolution No. 09–12–19 (December 17, 2009). CARB provided the required public notice and opportunity for public comment prior to its public hearing on the plan. See CARB Executive Order S–10–001 (May 17, 2010).

The SIP submittal includes proof of publication for notices of the District and CARB public hearings, as evidence that all hearings were properly noticed. We therefore find that the submittal meets the procedural requirements of CAA sections 110(a) and 110(l).

B. Enforceability Requirements

Section 110(a)(2)(A) of the Act requires that each SIP ''include enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of [the Act].'' EPA generally considers a requirement to be enforceable if it contains a clear statement as to applicability; specifies the standard that must be met; states compliance timeframes sufficient to meet the standard; specifies sufficient methods to determine compliance, including appropriate monitoring, record keeping and reporting provisions; and recognizes relevant enforcement consequences. *See* ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency,'' September 23, 1987 (''1987 Potter Memo'') and ''Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and Section 112 Rules and General Permits,'' January 25, 1995 (''1995 PTE Policy'') at 5, 6.

Rule 9410 adequately addresses these recommendations for enforceability. First, section 2.1 of the rule clearly states that the requirements of the rule ''apply to each employer in the [SJV] Air Basin with at least 100 Eligible Employees at a worksite for at least 16 consecutive weeks during the employer's previous fiscal year'' that is located: (1) Within an incorporated city with a population of at least 10,000; (2) within an incorporated city with a population of less than 10,000, and more than 50 percent of their employees work at least 2,040 hours per year; or (3) within the unincorporated area of a county, and more than 50 percent of their employees work at least 2,040 hours per year (section 2.1).

Second, sections 5.0 and 6.0 of the rule specify the requirements that must be met by employers subject to the rule—*e.g.,* the requirements to implement an ETRIP for each worksite with 100 or more ''eligible employees'' (section 5.1); to include in each ETRIP measures from several dozen listed strategies by specified implementation deadlines (section 5.2); to submit to the District no later than July 1, 2010 or within 180 days after becoming subject to the rule a complete ''employer registration form'' containing specific types of information about the employer's business (section 6.1); and to verify and report commuter activity to the District on an annual basis (sections 6.4 and 6.5).

Third, sections 6.0 and 8.0 of the rule specify appropriate compliance timeframes, including deadlines for employer registration (section 6.1), submittal of the ETRIPs and related updates (section 6.3), and submittal of annual reports regarding commuter activity (section 6.5).

Finally, section 6.0 of the rule specifies sufficient methods to determine compliance, including requirements for employers to annually collect information on the modes of transportation used for each eligible employee's commutes to and from work for each day of the ''commute verification period'' [4] (section 6.4.1); requirements for employers to ''keep records of steps taken to implement measures . . . included in the ETRIP on file for at least five years'' and to make such records available to the District and EPA upon request (section 6.3.5); and requirements for employers to submit annual reports to the District containing detailed information about the results of their commute verifications, implemented ETRIP measures, and any updates to an ETRIP (section 6.5).

All of these requirements are enforceable against covered employers under state law (*see* Final Staff Report at A–13, citing California H&SC sections 42402–42403) and, upon approval into the California SIP, would also be enforceable under sections 113 and 304 of the CAA.

C. Section 110(l) of the Act

Section 110(l) of the CAA prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and RFP or any other applicable CAA requirement. The requirements and procedures in Rule 9410 are designed to reduce mobile source emissions in the SJV by requiring certain businesses to implement programs that encourage employees to reduce their vehicle trips and miles traveled to and from worksites. Rule 9410 does not revise any requirement in the applicable SIP. We propose to determine that our approval of Rule 9410 would comply with CAA section 110(l) because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for attainment of the NAAQS and other CAA provisions are met.

D. Estimated Emission Reductions

SJVUAPCD estimates that the ETRIP program reduced NO_X, VOC and $PM_{2.5}$ emissions by 0.6, 0.6 and 0.05 tons per day (tpd), respectively, in 2014 and will further reduce emissions of these pollutants by 0.3, 0.4 and 0.06 tpd, respectively, in 2023. *See* Final Staff Report at Appendix B, Table B–4. We find these emission reduction estimates technically sound and generally consistent with the planning assumptions in the District's 2008 $PM_{2.5}$ Plan. *See generally id.* at Appendix B and 2008 $PM_{2.5}$ Plan, Appendix B, tables B–1, B–2, and B–4.

We note that Rule 9610 requires each employer subject to the rule to submit, beginning March 31, 2015, an annual compliance report identifying the measures the employer implemented and the results of the annual commute verification surveys distributed to employees. *See* Rule 9410, section 6.5. We recommend that the District periodically reassess the effectiveness of the ETRIP program and update its estimates of the associated emissions reductions based on these submitted reports and using the most recent EPA-approved version of the EMFAC model.[5]

[4] Section 3.11 of the rule generally defines ''commute verification period'' as ''[a] period of at least one week, selected by the employer to represent a typical work week,'' or in certain cases a two-week pay period, that does not contain a federal, state, or local holiday.

[5] EMFAC is the motor vehicle emissions factor model that EPA has approved for use in California SIPs (78 FR 14533, March 6, 2013).

IV. Proposed Action and Request for Public Comment

Under section 110(k)(3) of the CAA, EPA is proposing to fully approve the submitted rule as a revision to the California SIP. We will accept comments from the public on this proposal for the next 30 days.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SJVUAPCD rule described in Table 1 of this notice. The EPA has made, and will continue to make, these documents available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: August 6, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2015–20750 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–OAR–2009–0805; FRL–9932–64–Region 5]

Air Plan Approval; Michigan and Wisconsin; 2006 $PM_{2.5}$ NAAQS PSD and Visibility Infrastructure SIP Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of state implementation plan (SIP) submissions from Michigan regarding Prevention of Significant Deterioration and Wisconsin regarding visibility infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2006 fine particulate matter National Ambient Air Quality Standards. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before September 23, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0805 by one of the following methods:

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

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the States' SIP submittals as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and public comments received will be addressed in a subsequent final rule based on this

proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 10, 2015.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2015–20769 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0423; FRL–9932–86–Region 4]

Approval and Promulgation of Implementation Plans; Florida; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) submissions, submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP), on June 3, 2013, and supplemented on January 8, 2014, for inclusion into the Florida SIP. This proposal pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO_2) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure SIP submission.'' FDEP certified that the Florida SIP contains provisions that ensure the 2010 1-hour SO_2 NAAQS is implemented, enforced, and maintained in Florida. EPA is proposing to determine that Florida's infrastructure SIP submissions, provided to EPA on June 3, 2013, and supplemented on January 8, 2014, satisfy the required infrastructure elements for the 2010 1-hour SO_2 NAAQS.

DATES: Written comments must be received on or before September 23, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R04–OAR–2014–0423, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-ARMS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2014–0423,'' Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2014–0423. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via electronic mail at *notarianni.michele@epa.gov* or the telephone number (404) 562–9031.

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I. Background and Overview

On June 22, 2010 (75 FR 35520), EPA promulgated a revised primary SO_2 NAAQS to an hourly standard of 75 parts per billion (ppb) based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the

CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour SO_2 NAAQS to EPA no later than June 22, 2013.[1]

Today's action is proposing to approve Florida's infrastructure SIP submissions for the applicable requirements of the 2010 1-hour SO_2 NAAQS. With respect to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2), EPA is not proposing any action at this time regarding these requirements. For the Florida submissions proposed for approval today, EPA notes that the Agency is not approving any specific rule, but rather proposing that Florida's already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2010 1-hour SO_2 NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with earlier versions of the SO_2 NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements are summarized below and in EPA's September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).''[2]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[3]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[4]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submissions from Florida that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 1-hour SO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the

[1] In these infrastructure SIP submissions states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Florida's existing SIP consists largely of Florida Administrative Code (F.A.C.) rules adopted by FDEP and approved by EPA through the SIP revision process. However, there are some F.A.C. state regulations that are not part of the Florida federally-approved SIP. Throughout this rulemaking, unless otherwise indicated, the term ''F.A.C.'', ''Rule'', or ''Chapter'' indicate that the cited regulation has been approved into Florida's federally-approved SIP. The term ''Florida Statutes'' indicates cited Florida state statutes, which are not a part of the SIP unless otherwise indicated.

[2] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[3] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[4] As mentioned above, this element is not relevant to today's proposed rulemaking.

permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[5] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[6] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[7] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[8] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[9]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[10]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular

[5] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[6] See, *e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule,'' 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[8] See, *e.g.,* ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[9] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007, submittal.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[11] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[12] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[13] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases (GHG). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 fine particulate matter ($PM_{2.5}$) NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[14] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are

[11] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[12] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[13] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

[14] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[17]

IV. What is EPA's analysis of how Florida addressed the elements of the sections 110(a)(1) and (2) ''infrastructure'' provisions?

The Florida infrastructure submissions address the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A) *Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Several regulations within Florida's SIP are relevant to air quality control regulations. The regulations described below include enforceable emission limitations and other control measures. Chapters 62–204, *Air Pollution Control—General Provisions;* 62–210, *Stationary Sources—General Requirements;* 62–212, *Stationary Sources –Preconstruction Review;* 62–296, *Stationary Sources—Emissions Standards;* and 62–297, *Stationary Sources –Emissions Monitoring* collectively establish enforceable emissions limitations and other control measures, means or techniques for activities that contribute to SO_2 concentrations in the ambient air, and provide authority for FDEP to establish such limits and measures as well as schedules for compliance through SIP-approved permits to meet the applicable requirements of the CAA.

Additionally, the following sections of the Florida Statutes provide FDEP the authority to conduct certain actions in support of this infrastructure element. Section 403.061(9), Florida Statutes, authorizes FDEP to ''[a]dopt a comprehensive program for the prevention, control, and abatement of pollution of the air . . . of the state,'' and section 403.8055, Florida Statutes, authorizes FDEP to ''[a]dopt rules substantively identical to regulations adopted in the **Federal Register** by the United States Environmental Protection Agency pursuant to federal law. . .''

EPA has made the preliminary determination that the provisions contained in these State regulations and sections of the Florida Statutes, and Florida's practices are adequate to protect the 2010 1-hour SO_2 NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during start up, shut down, and malfunction (SSM) operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[18]

Additionally, in this action, EPA is not proposing to approve or disapprove

[15] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

[16] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] See, *e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

[18] On May 22, 2015, the EPA Administrator signed a final action entitled, ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction.'' The prepublication version of this rule is available at *http://www.epa.gov/airquality/urbanair/sipstatus/emissions.html.*

any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient Air Quality Monitoring/Data System:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. SIP-approved rules at Chapters 62–204, 62–210, and 62–212 of the F.A.C. require the use of Federal Reference Method or equivalent monitors and also provide authority for FDEP to establish monitoring requirements through SIP-approved permits. Additionally, the following three sections of the Florida Statutes provide FDEP the authority to take specific actions in support of this infrastructure element. Section 403.061(11), Florida Statutes, authorizes FDEP to ''[e]stablish ambient air quality . . . standards for the state as a whole or for any part thereof.'' Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan, and includes a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[19] On July 1, 2013, Florida submitted its plan for 2013 to EPA. On November 22, 2013, EPA approved Florida's monitoring network plan. Florida's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–0423. EPA has made the preliminary determination that Florida's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2010 1-hour SO_2 NAAQS.

3. 110(a)(2)(C) *Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* This element consists of three sub-elements: enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program). FDEP's 2010 1-hour SO_2 NAAQS infrastructure SIP submissions cited a number of SIP provisions to address these requirements. EPA's rationale for its proposed action regarding each sub-element is described below. Specifically, FDEP cited Chapters 62–204, 62–210, and 62–212, F.A.C. Collectively, these provisions of Florida's SIP regulate the construction of any new major stationary source or any modification at an existing major stationary source in an area designated as nonattainment, attainment or unclassifiable. These regulations enable FDEP to regulate sources contributing to the 2010 1-hour SO_2 NAAQS.

Additionally, the following two sections of the Florida Statutes provide FDEP the authority to take specific actions in support of this infrastructure element. Section 403.061(6), Florida Statutes, requires FDEP to ''[e]xercise general supervision of the administration and enforcement of the laws, rules, and regulations pertaining to air and water pollution.'' Section 403.121, Florida Statutes, authorizes FDEP to seek judicial and administrative remedies, including civil penalties, injunctive relief, and criminal prosecution for violations of any FDEP rule or permit.

Enforcement: Section 403.061(6), Florida Statutes, requires FDEP to ''[e]xercise general supervision of the administration and enforcement of the laws, rules, and regulations pertaining to air and water pollution.'' Section 403.121, Florida Statutes, authorizes FDEP to seek judicial and administrative remedies, including civil penalties, injunctive relief, and criminal prosecution for violations of any FDEP rule or permit. These provisions provide FDEP with authority for enforcement of SO_2 emission limits and control measures.

PSD Permitting for Major Sources: EPA interprets the PSD sub-element to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering the structural PSD requirements for all regulated NSR pollutants. A state's PSD permitting program is complete for this sub-element (and prong 3 of D(i) and J related to PSD) if EPA has already approved or is simultaneously approving the state's SIP with respect to all structural PSD requirements that are due under the EPA regulations or the CAA on or before the date of the EPA's proposed action on the infrastructure SIP submission. For the 2010 1-hour SO_2 NAAQS, Florida's authority to regulate new and modified sources to assist in the protection of air quality in attainment or unclassifiable areas is established in Florida Administrative Code Chapters 62–210, *Stationary Sources—General Requirements, Section 200—Definitions,* and 62–212, *Stationary Sources—Preconstruction Review, Section 400—Prevention of Significant Deterioration,* of the Florida SIP. Florida's infrastructure SIP submissions demonstrate that new major sources and major modifications in areas of the State designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD elements.[20]

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source program that regulates emissions of the 2010 1-hour SO_2 NAAQS. Florida's SIP-approved rules, 62–210.300, F.A.C., and 62–212.300, F.A.C., collectively govern the preconstruction permitting of modifications and construction of minor stationary sources, and minor modifications of major stationary sources.

EPA has made the preliminary determination that Florida's SIP and practices are adequate for program enforcement of control measures, regulation of minor sources and modifications, and preconstruction permitting of major sources and major modifications related to the 2010 1-hour SO_2 NAAQS.

[19] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

[20] More information concerning how the Florida infrastructure SIP submission currently meets applicable requirements for the PSD elements (110(a)(2)(C); (D)(i)(I), prong 3; and (J)) can be found in EPA's November 13, 2014 proposed rulemaking and March 18, 2015 final approval notices for these elements for the 2008 ozone NAAQS, 2008 lead NAAQS, and 2010 NO_2 NAAQS infrastructure SIP submissions. *See* 79 FR 67398 and 80 FR 14019 respectively. For more information on the structural PSD program requirements that are relevant to EPA's review of infrastructure SIPs in connection with the current PSD-related infrastructure SIP requirements, see the technical support document in the docket for today's rulemaking.

4. 110(a)(2)(D)(i)(I) and (II) *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1''), and interfering with maintenance of the NAAQS in another state (''prong 2''). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4'').

110(a)(2)(D)(i)(I)—prongs 1 and 2: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) because Florida's 2010 1-hour SO_2 NAAQS infrastructure submissions did not address prongs 1 and 2.

110(a)(2)(D)(i)(II)—prong 3: With regard to section 110(a)(2)(D)(i)(II), the PSD element, referred to as prong 3, may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to: A PSD program meeting all the current structural requirements of part C of title I of the CAA, or (if the state contains a nonattainment area for the relevant pollutant), a NNSR program that implements NAAQS for the relevant pollutant. As discussed in more detail above under section 110(a)(2)(C), Florida's SIP contains provisions for the State's PSD program that reflects the required structural PSD requirements to satisfy prong 3 of section 110(a)(2)(D)(i)(II). Florida addresses prong 3 through F.A.C. 62–204, 62–210, and 62–212 for the PSD and NNSR programs. EPA has made the preliminary determination that Florida's SIP and practices are adequate for interstate transport for PSD permitting of major sources and major modifications related to the 2010 1-hour SO_2 NAAQS for section 110(a)(2)(D)(i)(II) (prong 3).

110(a)(2)(D)(i)(II)—prong 4: Section 110(a)(2)(D)(i)(II) requires that the SIP contain adequate provisions to protect visibility in other states. EPA approved Florida's regional haze SIP.[21] Florida's supplemental submission on January 8, 2014, relied on EPA's approval of the State's regional haze SIP submission and incorporation of all relevant portions of Florida's visibility program into the State's implementation plan to address the prong 4 requirements of section 110(a)(2)(D)(i) for the 2010 1-hour SO_2 NAAQS. Federal regulations require that a state's regional haze SIP contain a long-term strategy to address regional haze visibility impairment in each Class I area within the state and each Class I area outside the state that may be affected by emissions from the state.[22] A state participating in a regional planning process, such as Florida, must include all measures needed to achieve its apportionment of emissions reduction obligations agreed upon through that process.[23] EPA's approval of Florida's regional haze SIP therefore ensures that emissions from Florida are not interfering with measures to protect visibility in other states, satisfying the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2010 1-hour SO_2 NAAQS.[24] Thus, EPA has made the preliminary determination that Florida's infrastructure SIP submissions for the 2010 1-hour SO_2 NAAQS meet the requirements of prong 4 of section 110(a)(2)(D)(i)(II).

5. 110(a)(2)(D)(ii): *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Chapters 62–204, 62–210, and 62–212 of the F.A.C. require any new major source or major modification to undergo PSD or NNSR permitting and thereby provide notification to other potentially affected Federal, state, and local government agencies. Additionally, Florida does not have any pending obligation under sections 115 and 126 of the CAA relating to international or interstate pollution abatement. EPA has made the preliminary determination that Florida's SIP and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2010 1-hour SO_2 NAAQS.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Florida's infrastructure SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii), and (iii).

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), FDEP's infrastructure submissions demonstrate that it is responsible for promulgating rules and regulations for the NAAQS, emissions standards and general policies, a system of permits, fee schedules for the review of plans, and other planning needs. Section 403.061(2), Florida Statutes, authorizes FDEP to ''[h]ire only such employees as may be necessary to effectuate the responsibilities of the department.'' Section 403.061(4), Florida Statutes, authorizes FDEP to ''[s]ecure necessary scientific, technical, research, administrative, and operational services by interagency agreement, by contract, or otherwise.'' Section 403.182, Florida Statutes, authorizes FDEP to approve local pollution control programs. Section 320.03(6), Florida Statutes, authorizes FDEP to establish an Air Pollution Control Trust Fund and use a $1 fee on every motor vehicle license

[21] *See* 77 FR 71111 (November 29, 2012); 78 FR 53250 (August 29, 2013).

[22] *See* 40 CFR 51.308(d).

[23] *See, e.g.,* 40 CFR 51.308(d)(3)(ii). Florida participated in the Visibility Improvement State and Tribal Association of the Southeast regional planning organization, a collaborative effort of state governments, tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Southeastern United States. Member state and tribal governments included: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the Eastern Band of the Cherokee Indians.

[24] *See* EPA's September 13, 2013, guidance document entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' at pp. 32–35, available at: *http://www.epa.gov/air/urbanair/sipstatus/infrastructure.html; see also* memorandum from William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, to Regional Air Division Directors, entitled ''Guidance on SIP Elements Required Under Sections 110(1)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) (September 25, 2009) at pp. 5–6, available at: *http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf.*

registration sold in the State for air pollution control purposes. As evidence of the adequacy of FDEP's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to FDEP on February 28, 2014, outlining 105 grant commitments and current status of these commitments for fiscal year 2013. The letter EPA submitted to FDEP can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0423. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2013, therefore, FDEP's grants were finalized and closed out. In addition, the requirements of 110(a)(2)(E)(i) and (iii) are met when EPA performs a completeness determination for each SIP submittal. This determination ensures that each submittal provides evidence that adequate personnel, funding, and legal authority under state law has been used to carry out the state's implementation plan and related issues. FDEP's authority is included in all prehearings and final SIP submittal packages for approval by EPA. FDEP is responsible for submitting all revisions to the Florida SIP to EPA for approval. EPA has made the preliminary determination that Florida has adequate resources for implementation of the 2010 1-hour SO_2 NAAQS.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that the SIP provide: (1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. For purposes of section 128(a)(1), Florida has no boards or bodies with authority over air pollution permits or enforcement actions. Such matters are instead handled by an appointed Secretary. As such, a ''board or body'' is not responsible for approving permits or enforcement orders in Florida, and the requirements of section 128(a)(1) are not applicable. Florida is only subject to the requirements of 128(a)(2) and submitted the applicable statutes for incorporation into Florida SIP. On July 30, 2012, EPA approved Florida statutes into the SIP to comply with section 128 respecting state boards. *See* 77 FR 44485. EPA has made the preliminary determination that the State has adequately addressed the requirements of section 128(a)(2), and accordingly has met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements.

Therefore, EPA is proposing to approve Florida's infrastructure SIP submissions as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii).

7. 110(a)(2)(F) *Stationary Source Monitoring and Reporting:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. FDEP's infrastructure SIP submissions describe the establishment of requirements for compliance testing by emissions sampling and analysis, and for emissions and operation monitoring to ensure the quality of data in the State. The Florida infrastructure SIP submissions also describe how the major source and minor source emission inventory programs collect emission data throughout the State and ensure the quality of such data. Florida meets these requirements through Chapters 62–204, 62–210, 62–212, 62–296, and 62–297, F.A.C., which require emissions monitoring and reporting for activities that contribute to SO_2 concentrations in the air, including requirements for the installation, calibration, maintenance, and operation of equipment for continuously monitoring or recording emissions, or provide authority for FDEP to establish such emissions monitoring and reporting requirements through SIP-approved permits and require reporting of SO_2 emissions.

The following sections of the Florida Statutes provide FDEP the authority to conduct certain actions in support of this infrastructure element. Section 403.061(13) authorizes FDEP to ''[r]equire persons engaged in operations which may result in pollution to file reports which may contain . . . any other such information as the department shall prescribe . . .''. Section 403.8055 authorizes FDEP to ''[a]dopt rules substantively identical to regulations adopted in the **Federal Register** by the United States Environmental Protection Agency pursuant to federal law. . . .''

Section 90.401, Florida Statutes, defines relevant evidence as evidence tending to prove or disprove a material fact. Section 90.402, Florida Statutes, states that all relevant evidence is admissible except as provided by law. EPA is unaware of any provision preventing the use of credible evidence in the Florida SIP.[25]

Additionally, Florida is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—NO_X, SO_2, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Florida made its latest update to the NEI on December 17, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Florida's SIP and practices are adequate for the stationary source monitoring systems related to the 2010 1-hour SO_2 NAAQS.

8. 110(a)(2)(G) *Emergency Powers:* This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Florida's infrastructure SIP submissions identify air pollution emergency episodes and preplanned abatement strategies as outlined in the Florida Statutes Sections 403.131 and 120.569(2)(n). These sections of the Florida Statutes were submitted for

[25] ''*Credible Evidence*'' makes allowances for owners and/or operators to utilize ''any credible evidence or information relevant'' to demonstrate compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certification and can be used to establish whether or not an owner or operator has violated or is in violation of any rule or standard.

inclusion in the SIP to address the requirements of section 110(a)(2)(G) of the CAA and have been approved by EPA into Florida's SIP. Section 403.131 authorizes FDEP to: Seek injunctive relief to enforce compliance with this chapter or any rule, regulation or permit certification, or order; to enjoin any violation specified in Section 403.061(1); and to seek injunctive relief to prevent irreparable injury to the air, waters, and property, including animal, plant, and aquatic life, of the State and to protect human health, safety, and welfare caused or threatened by any violation. Section 120.569(2)(n), Florida Statutes, authorizes FDEP to issue emergency orders to address immediate dangers to the public health, safety, or welfare. EPA has made the preliminary determination that Florida's SIP, State laws, and practices are adequate to satisfy the infrastructure SIP obligations for emergency powers related to the 2010 1-hour SO_2 NAAQS. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submissions with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) *SIP Revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan (i) as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. As previously discussed, FDEP is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Florida has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. Florida has two nonattainment areas for the 2010 1-hour SO_2 NAAQS for which the State must submit a SIP demonstrating future attainment and maintenance for these areas by April 4, 2015. *See* 78 FR 47191 (August 5, 2013). One of the nonattainment areas encompasses a portion of Nassau County and the other area encompasses a portion of Hillsborough County. The State submitted the required SIPs for the Nassau County and Hillsborough County SO_2 nonattainment areas on April 3, 2015.

The following sections of the Florida Statutes provide FDEP the authority to conduct certain actions in support of this element. Section 403.061(35) gives FDEP the broad authority to implement the CAA. Section 403.061(9) authorizes FDEP to ''[a]dopt a comprehensive program for the prevention, control, and abatement of pollution of the air . . . of the state, and from time to time review and modify such programs as necessary.'' EPA has made the preliminary determination that Florida adequately demonstrates a commitment to provide future SIP revisions related to the 2010 1-hour SO_2 NAAQS when necessary. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submissions with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) *Consultation with government officials, public notification, and PSD and visibility protection:* EPA is proposing to approve Florida's infrastructure SIP for the 2010 1-hour SO_2 NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section 121, the public notification requirements of section 127, PSD and visibility protection. EPA's rationale for each sub-element is described below.

Consultation with government officials (121 consultation): Florida's SIP-approved Chapters 62–204, 62–210, and 62–212, as well as its Regional Haze Implementation Plan (which allows for continued consultation with appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Specifically, Florida adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development. These consultation procedures were developed in coordination with the transportation partners in the State and are consistent with the approaches used for development of mobile inventories for SIPs. Required partners covered by Florida's consultation procedures include Federal, state and local transportation and air quality agency officials. Also, Section 403.061(21), Florida Statutes, authorizes FDEP to ''[a]dvise, consult, cooperate, and enter into agreements with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department''. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate consultation with government officials related to the 2010 1-hour SO_2 NAAQS when necessary.

Public notification (127 public notification): FDEP has public notice mechanisms in place to notify the public of instances or areas exceeding the NAAQS along with associated health effects through the Air Quality Index reporting system in required areas. Section 403.061(20), Florida Statutes, authorizes FDEP to ''[c]ollect and disseminate information . . . relating to pollution'' and Florida implements an Air Quality Index reporting system to notify the public in impacted areas. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submissions with respect to section 110(a)(2)(J) public notification.

PSD: With regard to the PSD element of section 110(a)(2)(J), this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a PSD program meeting all the current structural requirements of part C of title I of the CAA. As discussed in more detail above under the section discussing 110(a)(2)(C), Florida's SIP contains provisions for the State's PSD program that reflect the relevant SIP revisions pertaining to the required structural PSD requirements to satisfy the requirement of the PSD element of section 110(a)(2)(J). EPA has made the preliminary determination that Florida's SIP and practices are adequate for interstate transport for PSD permitting of major sources and major modifications related to the 2010 1-hour SO_2 NAAQS for the PSD element of section 110(a)(2)(J).

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. FDEP referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). EPA recognizes that states are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals so FDEP does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that it does not need to address the visibility

protection element of section 110(a)(2)(J) in Florida's infrastructure SIP submissions related to the 2010 1-hour SO_2 NAAQS.

11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. SIP-approved sections of Chapter 62–204, 62–210, and 62–212, F.A.C., require use of EPA-approved modeling of pollutant-emitting sources that contribute to SO_2 concentrations in the ambient air. Also, the following sections of the Florida Statutes provide FDEP the authority to conduct actions in support of this element. Section 403.061(13), Florida Statutes, authorizes FDEP to ''[r]equire persons engaged in operations which may result in pollution to file reports which may contain information relating to locations, size of outlet, height of outlet, rate and period of emission, and composition and concentration of effluent and such other information as the department shall prescribe to be filed . . .'' Section 403.061(18), Florida Statutes, authorizes FDEP to ''[e]ncourage and conduct studies, investigations, and research relating to pollution and its causes, effects, prevention, abatement, and control.'' These regulations and State statutes also demonstrate that Florida has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2010 1-hour SO_2 NAAQS. Additionally, Florida supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2010 1-hour SO_2 NAAQS, for the Southeastern states. Florida notes in its SIP submissions that the FDEP has the technical capability to conduct or review all air quality modeling associated with the NSR program and all SIP-related modeling, except photochemical grid modeling which is performed for FDEP under contract. All such modeling is conducted in accordance with the provisions of 40 CFR part 51, Appendix W, ''Guideline on Air Quality Models.'' Taken as a whole, Florida's air quality regulations and practices demonstrate that FDEP has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS had been promulgated, and to provide such information to the EPA Administrator upon request. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate the State's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2010 1-hour SO_2 NAAQS. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submissions with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) *Permitting Fees:* This section requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V. Section 403.087(6)(a), Florida Statutes, directs FDEP to ''require a processing fee in an amount sufficient, to the greatest extent possible, to cover the costs of reviewing and acting upon any application for a permit . . .''. Florida's Air Pollution Control Trust Fund is the depository for all funds for the operation of the Division of Air Resource Management. Within the fund is an account that contains all fees under the title V program. EPA has made the preliminary determination that Florida's State rules and practices adequately provide for permitting fees related to the 2010 1-hour SO_2 NAAQS, when necessary. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submissions with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation and Participation by Affected Local Entities:* Florida coordinates with local governments affected by the SIP. Florida's SIP also includes a description of the public participation process for SIP development. Florida has consulted with local entities for the development of transportation conformity and has worked with the Federal Land Managers as a requirement of the regional haze rule. Section 403.061(21), Florida Statutes, authorizes FDEP to ''[a]dvise, consult, cooperate and enter into agreements with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department.'' Section 403.061(21), Florida Statutes, is one way that the State meets the requirements of this element as described further below. More specifically, Florida adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development and the requirements that link transportation planning and air quality planning in nonattainment and maintenance areas. Required partners covered by Florida's consultation procedures include Federal, state and local transportation and air quality agency officials. The state and local transportation agency officials are most directly impacted by transportation conformity requirements and are required to provide public involvement for their activities including the analysis demonstrating how they meet transportation conformity requirements. Also, FDEP has agreements with eight county air pollution control agencies (Duval, Orange, Hillsborough, Pinellas, Sarasota, Palm Beach, Broward, and Miami-Dade) that delineate the responsibilities of each county in carrying out Florida's air program, including the Florida SIP. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate consultation with affected local entities related to the 2010 1-hour SO_2 NAAQS when necessary.

V. Proposed Action

EPA is proposing to approve Florida's infrastructure submissions submitted on June 3, 2013, and supplemented on January 8, 2014, for the 2010 1-hour SO_2 NAAQS for the above described infrastructure SIP requirements. EPA is proposing to approve Florida's infrastructure SIP submissions for the 2010 1-hour SO_2 NAAQS because the submissions are consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

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

• Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: August 12, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2015–20748 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0440; FRL–9932–88–Region 4]

Air Plan Approval; North Carolina; Conflict of Interest Infrastructure Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the North Carolina State Implementation Plan (SIP), submitted by the North Carolina Department of Environment and Natural Resources, Division of Air Quality (DAQ), on February 5, 2013, and supplemented on July 27, 2015. The submissions pertain to conflict of interest requirements of the Clean Air Act (CAA or Act) and were submitted to satisfy the infrastructure SIP sub-element related to the State board for the 2010 Nitrogen Dioxide (NO_2) National Ambient Air Quality Standards (NAAQS), 2010 Sulfur Dioxide (SO_2) NAAQS, 2008 8-hour Ozone NAAQS and 2008 Lead NAAQS. The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an ''infrastructure'' SIP, which includes conflict of interest requirements. EPA is proposing to approve the portions of North Carolina's 2010 NO_2 infrastructure SIP, 2010 SO_2 infrastructure SIP, 2008 8-hour ozone infrastructure SIP, and 2008 Lead infrastructure SIP as meeting these State board requirements. EPA is also proposing to convert conditional approvals related to the State board for the 1997 8-hour ozone NAAQS, and the 1997 Annual Fine Particulate Matter ($PM_{2.5}$) and 2006 24-hour $PM_{2.5}$ NAAQS to full approval under the CAA. EPA notes that all other applicable North Carolina infrastructure SIP elements for the above listed NAAQS have been or will be addressed in separate rulemakings.

DATES: Written comments must be received on or before September 23, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0440, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-ARMS@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2015–0440'' Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2015–0440''. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of

encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information may not be publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. EPA is proposing to approve: (1) North Carolina's February 5, 2013, and July 27, 2015, submissions as satisfying the requirements of 128 of the CAA; and (2) the infrastructure SIP sub-element for section 110(a)(2)(E)(ii) related to the State board for the 2010 NO_2 NAAQS, 2010 SO_2 NAAQS, 2008 8-hour Ozone NAAQS and 2008 Lead NAAQS.[1]

Additionally, North Carolina's February 5, 2013, and July 27, 2015, submissions satisfy EPA's multiple conditional approvals of sub-element 110(a)(2)(E)(ii) published on February 6, 2012 (77 FR 5703), and October 16, 2012 (77 FR 63234), for the 1997 8-hour ozone NAAQS, and 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS, respectively.[2] As a result of today's proposed action related to the State's submissions meeting section 128 of the CAA, EPA is proposing to convert the aforementioned conditional approvals to full approvals regarding North Carolina's infrastructure requirements for section 110(a)(2)(E)(ii) for the 1997 8-hour ozone NAAQS, and 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

II. Requirements of Section 110(a)(2)(E)(ii)—Adequate Resources

Sub-element 110(a)(2)(E)(ii) provides that each State ''comply with the requirements respecting State boards under section [128 of the CAA] . . . .'' Section 128 provides that each SIP shall contain requirements that: (1) Any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to permits or enforcement orders under the Act (hereafter ''section 128(a)(1) requirements''); and, (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed (hereafter ''section 128(a)(2) requirements.'').

III. Requirements of Section 128

Section 128 of the CAA requires that each state's SIP contain provisions to address conflicts of interest for state boards or bodies that oversee CAA permits and enforcement orders and disclosure of conflict of interest requirements. Specifically, CAA section 128(a)(1) necessitates that each SIP require that at least a majority of any board or body which approves permits or enforcement orders represent the public interest and meet income restrictions. Subsection 128(a)(2) requires that the members of any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements. Furthermore, section 128 affords the Administrator of EPA the authority to incorporate conflict of interest provisions that go beyond those required by the CAA into the SIP when such provisions are submitted by a state as part of its implementation plan.

IV. What is EPA's analysis of how North Carolina addressed the section 110(a)(2)(E)(ii) infrastructure requirement?

For purposes of section 128(a)(1), as of October 1, 2012, North Carolina has no boards or bodies with authority over air pollution permits or enforcement actions. The authority to approve CAA permits or enforcement orders are instead delegated to the Secretary of the Department of Environment and Natural Resources (DENR) and his/her delegatee. As such, a ''board or body'' is not responsible for approving permits or enforcement orders in North Carolina, and the requirements of section 128(a)(1) are not applicable.

For purposes of section 128(a)(2), EPA is proposing to approve North Carolina's revisions submitted by DAQ, on February 5, 2013, and amended on July 27, 2015. Section 128(a)(2) requires that any potential conflicts of interest by members of a board or body that approves permits or enforcement orders under the CAA, or head of executive agency with similar powers, be adequately disclosed. Subsection 128(a)(2) applies to all states, regardless of whether the state has a multi-member board or body that approves permits or enforcement orders under the CAA. In instances where the head of an executive agency delegates his or her power to approve permits or enforcement orders, or where the

[1] Sub-element 110(a)(2)(E)(ii) was previously submitted by North Carolina DAQ to EPA to satisfy the state board requirements for the referenced NAAQS. EPA is proposing through today's rulemaking that the February 5, 2013, and July 27, 2015, final submissions in conjunction with the previously submissions for the 2010 NO_2 NAAQS (August 23, 2013), 2010 SO_2 NAAQS (March 18, 2014), 2008 8-hour Ozone NAAQS (November 2, 2012), and 2008 Lead NAAQS (July 20, 2012) satisfy the state board requirements for this sub-element.

[2] Sub-element 110(a)(2)(E)(ii) was previously submitted by North Carolina DAQ to EPA to satisfy the state board requirements for the referenced NAAQS. EPA is proposing through today's rulemaking that the February 5, 2013, and July 27, 2015, final submissions in conjunction with the previous conditional approvals for the 1997 8-hour ozone NAAQS and 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS satisfy the state board requirements for this sub-element.

statutory authority to approve permits or enforcement orders is nominally vested in another state official, the requirement to adequately disclose potential conflicts of interest still applies. As noted above, the Secretary of DENR and his/her delegatees have the authority to issue CAA permits and enforcement orders in North Carolina and are subject to conflict of interest disclosure procedures. Under these procedures, such individuals are required to file a certification disclosing sources of income and relationships that constitute a potential conflict of interest each year, which are subject to public inspection. If circumstances change such that the certification is no longer complete or accurate, they are required to promptly file a new certification. In addition, disclosure of potential conflicts of interest are required for each final decision, which may merit recusal from the particular matter. If recusal is determined not to be necessary, the disclosure of potential conflict of interest is made part of the public record. North Carolina's revision would incorporate these conflict of interest disclosure procedures and a certification form into its SIP to address section 128(a)(2) requirements.

On October 1, 2012, North Carolina's enacted state law that involved changes to how contested DENR cases are handled. Previously these matters where heard on appeal by an Administrative Law Judge (ALJ) in the State's Office of Administrative Hearings (Administrative Procedures Act-type review). The ALJ would render a decision that would then go before the State's Environmental Management Commission (EMC) for a final agency decision. Under the new state law, the EMC's role is eliminated and instead the ALJ decision constitutes the final agency action which could then be appealed by either party to state superior court. The Director of the Office of Administrative Hearings appoints an ALJ to preside over contested matters such as appeals of CAA permits and enforcement orders. The Office of Administrative Hearings is an executive agency with quasi-judicial functions.

In 1978, following the adoption of the section 128 provisions, EPA published a guidance to the states providing suggested definitions that the Agency viewed as representing the ''minimum level of stringency necessary to meet the requirements of section 128.'' The guidance defined ''Board or body'' as including instrumentalities ''authorized to approve permits or enforcement orders under the CAA, in the first instance or on appeal.'' Because section 128(a)(2) applies to boards or bodies, or the heads of executive agencies *with similar powers,* EPA interprets the inclusion of appeals within the definition of board or bodies in the 1978 guidance as likewise applying to appeals of matters handled initially by the head of an executive agency. Further, as stated above, if the statutory scheme vests final approval authority for CAA permits and orders with a state official other than the head of an executive agency, EPA interprets section 128(a)(2) as applying to that state official as well because they are functionally equivalent.

North Carolina's July 27, 2015, supplement addresses the section 128(a)(2) conflict of interest disclosure requirements for ALJs through Chapter 7A section 754 of the North Carolina General Statues, which contains provisions related to the Office of Administrative Hearings addressing these requirements for the ALJ. Specifically, North Carolina is requesting that the following paragraph of 7A–754 stating *''The Chief Administrative Law Judge and the administrative law judges shall comply with the Model Code of Judicial Conduct for State Administrative Law Judges, as adopted by the National Conference of Administrative Law Judges, Judicial Division, American Bar Association, (revised August 1998), as amended from time to time, except that the provisions of this section shall control as to the private practice of law in lieu of Canon 4G, and G.S. 126–13 shall control as to political activity in lieu of Canon 5.''* be adopted into the SIP. The *Model Code of Judicial Conduct for State Administrative Law Judges, as adopted by the National Conference of Administrative Law Judges, Judicial Division, American Bar Association, (revised August 1998),* requires ALJs to act impartially, which broadly includes financial considerations, relationships, and other associations. ALJs are prohibited from participating in any matter in which the ALJs impartiality might reasonably be questioned or the ALJ must disclose the potential conflict of interest on the record in the proceeding. In the case of such disclosures, the parties to the matter must agree that the disclosed conflict of interest is immaterial before the ALJ may continue to participate in the matter. EPA has determined that the provision of Chapter 7A section 754 of the North Carolina General Statutes submitted for incorporation in the SIP provides for adequate disclosure of potential conflicts of interest for any ALJ that will make final decisions on CAA permits and enforcement orders. Therefore, EPA is proposing to approve the North Carolina SIP revision related to section 128(a)(2). EPA is also proposing to approve the portions of North Carolina's 2010 NO_2 infrastructure SIP (submitted on August 23, 2013), 2010 SO_2 infrastructure SIP (submitted on March 18, 2014), 2008 8-hour ozone infrastructure SIP (submitted on November 2, 2012), and 2008 Lead infrastructure SIP (submitted on July 20, 2012) related to 110(a)(2)(E)(ii).

Additionally, as mentioned above, EPA conditionally approved North Carolina's infrastructure submissions for the 1997 8-hour ozone NAAQS, 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS as they related to 110(a)(2)(E)(ii) because provisions related to CAA 128 were not included in North Carolina's SIP. As a result of EPA's proposed approval of North Carolina's February 5, 2013, and July 27, 2015, submittals, EPA is also proposing to convert EPA's previous conditional approval of North Carolina's infrastructure submissions for the 1997 8-hour ozone NAAQS, 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS as they relate to 110(a)(2)(E)(ii) to full approval.

V. Proposed Action

As described above, EPA is proposing to approve North Carolina's February 5, 2013, and July 27, 2015, submissions concerning conflict of interest requirements related to CAA section 128(a)(2). Specifically, today, EPA is proposing to approve North Carolina's 110(a)(2)(E)(ii) submission as it relates to the Secretary of the DENR and his/her delegatee that approve permit or enforcement orders described at section 110(a)(2) of the CAA. EPA is also proposing to approve North Carolina's July 27, 2015, 110(a)(2)(E)(ii) submission as it relates to appealed matters decided by ALJs. Additionally, EPA is proposing to approve the portions of North Carolina's 2010 NO_2 infrastructure SIP, 2010 SO_2 infrastructure SIP, 2008 8-hour ozone infrastructure SIP, and 2008 Lead infrastructure SIP related to 110(a)(2)(E)(ii). EPA is also proposing to convert previous conditional approvals for North Carolina's infrastructure submissions for the 1997 8-hour ozone NAAQS, 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS addressing CAA section 110(a)(2)(E)(ii) requirements to approval.

VI. Statutory and Executive Order Reviews

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: August 12, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2015–20747 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R02–OAR–2015–0509, FRL–9933–01–Region 2]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to withdraw its approval of a provision of the New York State plan that implements and enforces the Emission Guidelines for existing sewage sludge incineration units. This action would withdraw the EPA's approval of a provision of the State sewage sludge incineration plan allowing for affirmative defenses of Clean Air Act violations in the case of malfunctions. No other provision in the State plan would be affected by this action.

DATES: Comments must be received on or before September 23, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2015–0509 by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: Ruvo.Richard@epa.gov*
- *Mail:* EPA–R02–OAR–2015–0509, Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:00 p.m. excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2015–0509. 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 *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means 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 *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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available at *www.regulations.gov* or at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. The EPA requests, if at all possible, that you

contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the docket. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella (*Gardella.anthony@epa.gov*), Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3892.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the **SUPPLEMENTARY INFORMATION** section:

I. What action is the EPA proposing today?
II. Which provision of the State sewage sludge incineration (SSI) plan is EPA withdrawing approval of?
III. Why is the EPA taking this action?
IV. Who is affected by the State SSI plan and the amendment to the State SSI plan?
V. What is the background for New York State's request to amend the State SSI plan?
VI. What approval criteria did we use to evaluate New York State's January 2015 request to amend the State SSI plan?
VII. What is the EPA's conclusion?
VIII. Statutory and Executive Order Reviews

I. What action is the EPA proposing today?

The EPA is proposing to withdraw its prior approval of an affirmative defense provision in New York State's SSI plan, based on a request submitted on January 27, 2015, by New York State. New York State submitted the State SSI plan for EPA approval on July 1, 2013 to fulfill the requirements of section 111(d) and 129 of the Clean Air Act (CAA). The EPA approved the proposed State SSI plan on June 11, 2014 (79 FR 33456). The State SSI plan adopts and implements the emission guidelines (EG) set forth at Title 40 part 60 subpart MMMM of the Code of Federal Regulations (CFR) and is applicable to existing SSI units and establishes air emission limits and other requirements. Existing SSI units are units constructed on or before October 14, 2010.

II. Which provision of the State SSI plan is EPA withdrawing approval of?

New York State is requesting that the EPA withdraw its approval of a provision in the State SSI plan that allows for an affirmative defense by an owner/operator of an SSI unit for violations of air emissions or other requirements of the State's plan in the event of malfunction(s) of an SSI unit. The EPA's proposed withdrawal of its prior approval, once finalized and effective, will result in the removal of the affirmative defense provisions from the federally-enforceable State SSI plan while maintaining the federal enforceability of the remainder of the State SSI plan for covered SSI units located in New York State.

III. Why is the EPA taking this action?

The EPA has determined that New York State's request that EPA withdraw approval of the affirmative defense provision in the State SSI plan meets all applicable requirements and therefore the EPA is proposing to withdraw its approval of that provision.

IV. Who is affected by the State SSI plan and the amendment to the State SSI plan?

The State SSI plan regulates all the units designated by the EG for existing SSI units and which are located at a wastewater treatment facility designed to treat domestic sewage sludge. If the owner or operator of a covered SSI unit made changes after September 21, 2011, that meet the definition of modification (see 40 CFR 60.5250), the SSI unit would become subject to 40 CFR part 60 subpart LLLL (New Source Performance Standards for New Sewage Sludge Incineration Units), and the State SSI plan would no longer apply to that unit.

V. What is the background for New York State's request to amend the State SSI plan?

In an April 18, 2014 opinion, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated an affirmative defense in one of the EPA's Section 112 regulations. *NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir., 2014) (vacating affirmative defense provisions in Section 112 rule establishing emission standards for Portland cement kilns). The court found that the EPA lacked authority to establish an affirmative defense for private civil suits and held that under the CAA, the authority to determine civil penalty amounts in such cases lies exclusively with the courts, not the EPA. The vacated affirmative defense provision in the EPA's Portland cement MACT rule is identical to the affirmative defense provision in the EPA's SSI EG, promulgated on March 21, 2011, under sections 111(d) and 129 of the CAA, at § 60.5181 *(''How do I establish an affirmative defense for exceedance of an emission limit or standard during a malfunction?'').* New York's State SSI plan adopted by reference all the applicable requirements of the EPA's SSI EG, including the affirmative defense provisions at § 60.5181, into its State plan at Part 200 of Title 6 of the New York Code of Rules and Regulations (6NYCRR) of the State of New York, entitled ''General Provisions.''

Because of the April 2014 D.C. Court vacatur referred to above, New York State submitted its January 27, 2015 letter requesting that EPA withdraw its approval of the affirmative defense provision as part of the State SSI plan submitted to the EPA for approval on July 1, 2013.[1] Consequently, the EPA is proposing to withdraw its prior approval of that particular provision of the State SSI plan as discussed herein.

VI. What approval criteria did we use to evaluate New York State's January 2015 request to amend the State SSI plan?

The EPA reviewed New York State's request against the applicable requirements of section 129(b)(2) of the CAA. To ensure consistency, the EPA reviewed New York State's request against the proposed Federal SSI plan, discussed in footnote 1 of this notice, which does not include an affirmative defense to violations that result from malfunctions.

VII. What is the EPA's conclusion?

The EPA has determined that New York State's SSI plan will continue to meet all the applicable approval criteria if EPA withdraws its approval of the affirmative defense provision. First, the removal of the affirmative defense provision is consistent with the D.C. Circuit's decision in *NRDC* v. *EPA,* as described above. Second, a state plan must be at least as protective as the emissions guidelines promulgated by the EPA, and the removal of the affirmative defense provision from the approved state plan does not render the plan less protective, as it removes a potential defense to a violation resulting from a malfunction. Therefore, the EPA is proposing to withdraw its approval of that provision of the plan, which the EPA approved on June 11, 2014 (79 FR 33456) as part of New York's sections 111(d) and 129 State SSI plan for existing sewage sludge incineration units.

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a 111(d)/129 plan submission that complies with the provisions of the Act and applicable Federal regulations. 40 CFR 62.04. Thus, in reviewing 111(d)/129 plan

[1] EPA has proposed a Federal SSI plan which would apply to SSI units that are not covered by an approved and effective state plan. The proposed federal plan does not include an affirmative defense to violations that result from malfunctions. 80 FR 23402, 23407 (Apr. 27, 2015).

submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

The 111(d)/129 plan is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian Nation Land, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: August 13, 2015.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2015–20904 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2015–0294; FRL–9932–92–Region 4]

North Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: North Carolina has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). These changes correspond to certain Federal rules promulgated between July 1, 2008 and June 30, 2014 (also known as RCRA Clusters XIX through XXIII). With this proposed rule, EPA is proposing to grant final authorization to North Carolina for these changes.

DATES: Send your written comments by September 23, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2015–0294, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: gleaton.gwen@epa.gov.*
- *Fax:* (404) 562–9964 (prior to faxing, please notify the EPA contact listed below).
- *Mail:* Send written comments to Gwendolyn Gleaton, RCRA Programs and Materials Management Section, Materials and Waste Management Branch, Resource Conservation and Restoration Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
- *Hand Delivery or Courier:* Deliver your comments to Gwendolyn Gleaton, RCRA Programs and Materials Management Section, Materials and Waste Management Branch, Resource Conservation and Restoration Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Please see the direct final rule in the ''Rules and Regulations'' section of today's **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Gleaton, RCRA Programs and Materials Management Section, Materials and Waste Management Branch, Resource Conservation and Restoration Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960; telephone number: (404) 562–8500; fax number: (404) 562–9964; email address: *gleaton.gwen@epa.gov*

SUPPLEMENTARY INFORMATION: Along with this proposed rule, EPA is publishing a direct final rule in the ''Rules and Regulations'' section of today's **Federal Register** pursuant to which EPA is authorizing these changes. EPA did not issue a proposed rule before today because EPA believes this action is not controversial and does not expect comments that oppose it. EPA has explained the reasons for this authorization in the direct final rule. Unless EPA receives written comments that oppose this authorization during the comment period, the direct final rule in today's **Federal Register** will become effective on the date it establishes, and EPA will not take further action on this proposal. If EPA receives comments that oppose this action, EPA will withdraw the direct final rule and it will not take effect. EPA will then respond to public comments in a later final rule based on this proposed rule. You may not have another opportunity to comment on these State program changes. If you want to comment on this action, you must do so at this time. For additional information, please see the direct final rule published in the ''Rules and Regulations'' section of today's **Federal Register**.

Dated: June 26, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2015–20908 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 8 and 197

[Docket No. USCG–1998–3786]

RIN 1625–AA21

Commercial Diving Operations—Reopening of Comment Period

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Coast Guard is reopening for 60 days the comment period for the notice of proposed rulemaking entitled ''Commercial Diving Operations,'' published on February 19, 2015. Reopening the comment period will allow time for the public to review and submit comments on changes to the applicability of this proposed rule, and on the draft regulatory analysis documentation that was not available in the docket during the original comment period. This notice of proposed rulemaking also provides corrected contact information for those persons interested in the proposed regulatory incorporation of certain material by reference, and the reopened comment period facilitates public comment on the proposed incorporation. Finally, although we are making no changes to the collection of information proposed in the February notice of proposed rulemaking, during the reopened comment period the public may continue to submit additional comments on that proposed collection. Specific instructions for commenting on the proposed collection are printed in the **ADDRESSES** section that follows.

DATES: The comment period for the notice of proposed rulemaking published on February 19, 2015 (80 FR 9152), is reopened. Comments and related material must be submitted to the docket by October 23, 2015. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before October 23, 2015.

ADDRESSES: Submit comments using one of the listed methods, and see **SUPPLEMENTARY INFORMATION** for more information on public comments.

- *Online—http://www.regulations.gov* following Web site instructions.
- *Fax*—202–493–2251.
- *Mail*—Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand deliver*—mail address, 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays (telephone 202–366–9329).

Collection of information. You must submit comments on the collection of information discussed in the notice of proposed rulemaking at 80 FR 9173 both to the Coast Guard's docket and to the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget. OIRA submissions can be made using one of the listed methods.

- *Email* (preferred)—*oira_submission@omb.eop.gov* (include the docket number and ''Attention: Desk Officer for Coast Guard, DHS'' in the subject line of the email).
- *Fax*—202–395–6566.
- *Mail*—Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

Viewing material proposed for incorporation by reference. To make arrangements to view this material, please call or email Mr. Ken Smith (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of proposed rulemaking, call or email Mr. Ken Smith, Project Manager, U.S. Coast Guard, Headquarters, Vessel and Facility Operating Standards Division, Commandant (CG–OES–2); telephone 202–372–1413, email *Ken.A.Smith@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Comments

We encourage you to submit comments (or related material) on this notice of proposed rulemaking (NPRM). We will consider all submissions and may adjust our final action based on your comments. Comments should be marked with docket number USCG–1998–3786, and should provide a reason for each suggestion or recommendation. You may provide personal contact information so that we can contact you if we have questions regarding your comments, but please note that all comments will be posted to the online docket without change and any personal information you include will be searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008).

Mailed or hand-delivered comments should be in an unbound 8½ × 11 inch format suitable for reproduction. The Docket Management Facility will acknowledge receipt of mailed comments if you enclose a stamped, self-addressed postcard or envelope with your submission.

Documents mentioned in this NPRM and all public comments are available in our online docket at *http://www.regulations.gov* and can be viewed by following the instructions on that Web site. You can also view the docket online at the Docket Management Facility (see the address under **ADDRESSES**) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Regulatory History and Information

On February 19, 2015, we published an NPRM entitled ''Commercial Diving Operations'' (80 FR 9152) that proposed amendments to our regulations for commercial diving conducted from deepwater ports or deepwater port safety zones, or in connection with Outer Continental Shelf (OCS) activities, or from vessels that are required to have a Coast Guard certificate of inspection. The NPRM would revise and update current regulations to improve safety and to reflect current industry best practices. The NPRM would also allow the Coast Guard to approve independent third-party organizations to assist in ensuring compliance with commercial diving regulations. All comments on the NPRM, including comments on the proposed collection of information, were due by May 20, 2015. In the course of reviewing comments on the NPRM, we became aware of several errors on our part.

First, on page 9175 of the NPRM, our proposed regulatory text for 46 CFR 197.200 contained two unintended changes in the applicability of subpart B. We do not intend, despite the proposed language for § 197.200(a)(3), to extend applicability to commercial diving operations involving any vessel operating on the navigable waters of the United States. Nor do we intend, despite the proposed language for § 197.200(a)(5), to remove from applicability those U.S. vessels engaged in an OCS activity as defined in 33 CFR part 140, or connected to a deepwater port as defined in 33 CFR part 150. In a final rule, in § 197.200, we would remove paragraph (a)(3), remove the words ''foreign flagged'' from paragraph (a)(5), and renumber paragraphs in accordance with this change. As we stated in Table 2 on page 9156 of the NPRM, our intentions for § 197.200 are only to add paragraph (d) concerning

foreign vessels, and to improve the clarity of our existing provisions, without making any other changes to the substance of the applicability provisions of subpart B.

Second, we provided incorrect telephone and email contact information for those wishing to view material proposed for incorporation by reference on pages 9158 and 9159 of the NPRM. To make arrangements to view that material, please contact Mr. Ken Smith (*see* **FOR FURTHER INFORMATION CONTACT**).

Third, throughout the NPRM comment period that ended May 20, 2015, the Preliminary Regulatory Analysis and Interim Regulatory Flexibility Analysis document for the NPRM was unavailable in the rulemaking docket. We corrected that omission in June 2015, and that document is currently available at *http://www.regulations.gov* as docket number USCG–1998–3786–0195.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: August 18, 2015.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2015–20825 Filed 8–21–15; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 15–180; DA 15–865]

Comment Sought on Scoping Document Under Section 106 of the National Historic Preservation Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission's Wireless Telecommunications Bureau (Bureau) releases a Scoping Document and seeks public comment on a proposed Program Alternative to improve and facilitate the review process for deployments of small wireless communications facilities, including Distributed Antenna Systems (DAS) and small cell facilities, under section 106 of the National Historic Preservation Act.

DATES: Comments are due September 28, 2015.

ADDRESSES: You may submit comments, identified by DA No. 15–865; WT Docket No. 15–180, by any of the following methods:

▪ *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): *http://fjallfoss.fcc.gov/ecfs2/.*

▪ *Paper Filers:* Parties who choose to file by paper should file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers should submit two additional copies for each additional docket or rulemaking number.

▪ Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Stephen DelSordo, Wireless Telecommunications Bureau, 202–418–1986, email *Stephen.Delsordo@fcc.gov;* Paul D'Ari, Wireless Telecommunications Bureau, (202) 418–1550, email *Paul.DAri@fcc.gov;* Mania Baghdadi, Wireless Telecommunications Bureau, (202) 418–2133, email *Mania.Baghdadi@fcc.gov;* or Brenda Boykin, Wireless Telecommunications Bureau, (202) 418–2062, email *Brenda.Boykin@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Public Notice, DA No. 15–865; WT Docket No 15–180, released July 28, 2015. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com.* Copies of the Public Notice also may be obtained via ECFS by entering the docket number WT Docket 15–180; DA No. 15–865. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

By this Public Notice, the Bureau releases a scoping document (the section 106 Scoping Document) and invites input on a new program alternative to improve and facilitate the review process for deployments of small wireless communications facilities, including Distributed Antenna Systems (DAS) and small cell facilities, under section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108. In particular, the attached section 106 Scoping Document describes options and seeks public input on potentially amending the *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (Collocation Agreement), 47 CFR part 1, App. B, to address the historic preservation review of deployments of small wireless communications facilities under section 106. Copies of the section 106 Scoping Document are also being sent to State Historic Preservation Officers (SHPOs), Tribal and Native Hawaiian cultural preservation officials (including Tribal Historic Preservation Officers (THPOs)), and other stakeholders. By this Public Notice, the Bureau also initiates and invites government-to-government consultation with Federally-recognized Tribal Nations.

As described more fully in the section 106 Scoping Document, new and additional infrastructure deployments are necessary to meet the increasing demand for advanced wireless services and greater wireless bandwidth. Many wireless providers are deploying new infrastructure technologies, particularly DAS and small cells, in order to increase coverage and capacity in indoor and outdoor environments. Because DAS networks and small cell facilities use radio spectrum licensed by the Commission, the installation of these facilities on utility poles, buildings, and other existing structures is acknowledged as a Commission undertaking under section 106 of the NHPA. The Commission's rules require applicants to follow the regulations of the Advisory Council on Historic Preservation (ACHP), as modified by two Nationwide Programmatic Agreements (NPAs) executed by the Commission with the ACHP and the National Conference of State Historic

Preservation Officers (NCSHPO) (47 CFR part 1, Apps. B and C), in order to determine whether undertakings will affect historic properties. Such historic preservation reviews serve important local and national interests, and the NPAs tailor the Commission's processes to maximize efficiency by eliminating unnecessary procedures and establishing exclusions for proposed facilities that do not have the potential to adversely affect historic properties.

In the *Infrastructure Report and Order,* 80 FR 1238, Jan. 8, 2015, the Commission recognized that DAS networks and small cell facilities use components that are a fraction of the size of traditional cell tower deployments and can often be installed on utility poles, buildings, and other existing structures with no potential to cause effects on historic properties. The *Infrastructure Report and Order* established targeted exceptions from historic preservation review requirements under Section 106 in such cases. The Commission stressed that there is room for additional improvement to its process in this area, but added that any more comprehensive measures would require additional consideration and consultation and are more appropriately addressed and developed through the program alternative process.

The Commission made a commitment to work with ACHP and other stakeholders to develop a program alternative to appropriately promote additional efficiencies in the historic preservation review of DAS and small-cell deployments. An amendment to the Collocation Agreement would be considered a program alternative that falls under the process outlined in the ACHP regulations.

This Public Notice and the accompanying section 106 Scoping Document formally initiate the process of amending the Collocation Agreement to more comprehensively define and limit section 106 review for small wireless communications facility deployments that are unlikely to have adverse effects on historic properties. Pursuant to the Commission's commitment in the *Infrastructure Report and Order,* the attached section 106 Scoping Document seeks specific comment on a number of options for such an amendment that would further tailor the section 106 process to the specific circumstances posed by the deployment of small wireless communications facilities. The Bureau notes that any amendment to the Collocation Agreement would affect only the Commission's review process under section 106 of the NHPA, and would not limit State and local governments' authority to enforce their own historic preservation requirements consistent with Section 332(c)(7) of the Communications Act, 47 U.S.C. 332(c)(7)), and section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. 1455(a).

The Collocation Agreement provides that most collocations of antennas on existing buildings and structures are excluded from section 106 review, with a few defined exceptions to address potentially problematic situations. The Commission's goal is to amend the Collocation Agreement by adopting provisions specific to the review of small wireless communications facility deployments that meet specified criteria. The exclusions and other provisions adopted pursuant to an amendment to the Collocation Agreement would supplement the two targeted exclusions from section 106 review that the Commission adopted in the *Infrastructure Report and Order* for DAS and small cell deployments, as well as the exclusions set forth in the Collocation Agreement. In developing an amendment to the Collocation Agreement, the Commission is required to arrange for public participation appropriate to the subject matter and the scope of the category of covered undertakings in accordance with the standards set forth in the ACHP's rules. This Public Notice and the accompanying section 106 Scoping Document fulfill this requirement.

Comments are due on or before September 28, 2015. The Commission is not requesting Reply Comments.

This proceeding will be treated as exempt under the Commission's *ex parte* rules. The Commission finds that treating this proceeding as exempt is in the public interest because: (1) The ACHP's program alternative procedures require the Commission to gather facts, views, and information from multiple parties through consultation, including government-to-government consultation with Tribal Nations; (2) requiring *ex parte* filings for each conversation in the development of the program alternative would be cumbersome, would potentially inhibit the consultation process, and would likely delay its development; and (3) once developed, the Commission will submit the proposed amendment to the Collocation Agreement to the ACHP and will publish notice of the availability of the proposed program alternative in the **Federal Register** as required by ACHP regulations, thus giving all stakeholders an opportunity to comment on the record at the decisional stage.

Availability of Documents: Comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. *http://fjallfoss.fcc.gov/ecfs2/Documents* will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Accessibility information: To request information in accessible formats (computer diskettes large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at *www.fcc.gov.*

Program Alternative for Small Wireless Comunications Facility Deployments Potential Amendments to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas

Section 106 Scoping Document

July 28, 2015

The Federal Communications Commission (FCC or Commission) invites the participation of State Historic Preservation Officers (SHPOs), Federally-recognized Tribal Nations, the historic preservation community, and other stakeholders in developing a proposed program alternative pursuant to Section 800.14(b) of the rules of the Advisory Council on Historic Preservation (ACHP), 36 CFR part 800, to improve and facilitate the review process under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108, for deployments of Distributed Antenna System (DAS) networks and small cell facilities that constitute FCC undertakings. The Commission's process for developing this program alternative includes government-to-government consultation with Federally-recognized Tribal Nations in accordance with section 800.14(b)(2) and (f) of the ACHP rules and in accordance with the trust relationship the Commission shares with sovereign Tribal Nations, as outlined in the FCC's *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes,* 65 FR 41668, July 6, 2000.

To develop this program alternative, the FCC proposes to negotiate an amendment to the 2001 *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*

(Collocation Agreement), 47 CFR part 1, App. B. The Collocation Agreement provides that most collocations of antennas on existing structures are excluded from historic preservation review, with a few defined exceptions to address potentially problematic situations. The FCC proposes to amend the Collocation Agreement to better account for the limited potential of small wireless communications facility collocations that meet specified criteria, including DAS and small cell deployments, to affect historic properties. The FCC is considering revisions that would augment the two targeted exclusions from Section 106 review that the Commission adopted in the *Infrastructure Report and Order,* 80 FR 1238, Jan. 8, 2015, as well as the exclusions set forth in the Collocation Agreement.

The FCC specifically seeks comment on the following potential additional exclusions for small wireless communications facility collocations:

- An exclusion for small facility deployments on structures more than 45 years of age where the deployments meet specified volume limits, involve no new ground disturbance, and are not on historic properties or in or near a historic district.
- An exclusion for small facility deployments located on historic properties or in or near a historic district if they: Meet specified size or volume limits; cause no new ground disturbance; meet visibility restrictions; comply in their installation with the Secretary of the Interior's standards and guidelines for historic preservation (Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Restructuring Historic Buildings, available at *http://www.nps.gov/tps/standards/four-treatments/standguide/index.htm*); and comply with all conditions on any existing deployment, located within the same vicinity on the same property, that were imposed pursuant to any regulatory or Section 106 review in order to directly mitigate or prevent the facility's effects.
- Additional exclusions for small facility deployments on historic properties or in or near a historic district, regardless of visibility limitations, in certain limited circumstances such as: Deployments of small facilities on utility poles, light posts, and traffic lights; deployments of small facilities in certain locations, such as utility or communications rights-of-way; and replacements or modifications of existing small facilities where the replacements meet specified volume/size limits.

The FCC also invites ideas regarding any other potential measures to improve the Section 106 process for small wireless communications facilities.

The purpose of this section 106 Scoping Document is to inform and engage all stakeholders in this important process, and also to initiate formal consultation on the development of the proposed program alternative with Federally-recognized Tribal Nations. This document provides a statement of purpose, an overview of DAS and small cell infrastructure, an explanation of compliance with section 106 for DAS and small cell infrastructure, a discussion of ideas for the proposed program alternative, and a description of next steps.

I. Purpose

The FCC seeks to develop alternative review processes under section 106 of the NHPA that are appropriate for new wireless technologies that use smaller antennas and compact radio equipment. These facilities, including those used in DAS and small cell systems, are a fraction of the size of traditional cell tower deployments and can be installed on utility poles, buildings, and other existing structures. Further tailoring the Section 106 review process for small wireless communications facilities would foster efficient deployment of infrastructure and equipment that could deliver greater spectrum capacity in more locations and fill in coverage gaps, while also taking into account historic preservation requirements and respecting the vital roles of State, local and Tribal governments.

The Commission's environmental rules, including its historic preservation rules, generally addressed the deployment of traditional ''macrocells'' on towers, buildings and non-tower structures. For decades, the Commission's rules have excluded most collocations of antennas from regulatory review, recognizing the benefits to the environment and historic properties that accrue from using existing support structures rather than building new structures. The current trend towards small wireless facility deployments has compelled the Commission to update and expand these exclusions to address and account for the smaller infrastructure associated with new technology. Among other things, eliminating the review of deployments with minimal potential to affect historic properties will allow the valuable and scarce administrative resources supporting Section 106 reviews to be focused on more problematic undertakings, thereby serving the preservation values these review processes were intended to protect.

In the *Infrastructure Report and Order,* the Commission eliminated unnecessary reviews of proposed deployments of small wireless communications facilities by adopting two targeted exclusions from section 106 review for certain small facility collocations on utility structures and on buildings and other non-tower structures, provided that they meet certain specified criteria. The *Infrastructure Report and Order* also noted that Commission staff was working with the ACHP and other stakeholders to develop a program alternative to promote additional efficiencies in the section 106 review of DAS and small-cell deployments. The Commission stated that it expected that the process for developing a program alternative would conclude between 18 and 24 months after the release of the *Infrastructure Report and Order.*

In accordance with the commitment made in the *Infrastructure Report and Order* to develop a program alternative for small facilities, this section 106 Scoping Document seeks comment on potential options to further update the Commission's historic preservation process under section 106 by amending the Collocation Agreement to account for the specific characteristics of DAS and small cell facilities. The Commission has observed that in most cases, the deployment of small wireless communications facilities such as DAS and small cells has minimal effects, if any, on historic properties and can deliver more broadband service to more communities, while reducing the need for new construction that is potentially more intrusive. The goal of this Scoping Document is to identify additional exclusions and/or alternative processes that would facilitate greater efficiencies and therefore expedite section 106 reviews and reduce burdens on all parties to the section 106 process, while ensuring that deployments with significant potential to affect historic properties will continue to receive appropriate scrutiny.

II. DAS and Small Cell Infrastructure

Small cells are low-powered wireless base stations that function like cells in a mobile wireless network. They typically cover targeted indoor or localized outdoor areas ranging in size from homes and offices to stadiums, shopping malls, hospitals, and metropolitan outdoor spaces. Wireless service providers often use small cells to provide connectivity to their subscribers in areas that present capacity and

coverage challenges to traditional wide-area macrocell networks, such as coverage gaps created by buildings, tower siting difficulties, and challenging terrain. These cells cover significantly less area than traditional macrocells, so networks that incorporate small-cell technology can make greater reuse of scarce wireless frequencies. This greatly increases spectral efficiency and data capacity within the network footprint.

DAS networks distribute RF signals from transceivers at a central hub to a specific service area where the signals are needed because of poor coverage or inadequate capacity. The network typically consists of a number of remote communications nodes deployed throughout the desired coverage area (each with at least one antenna for transmission and reception), a high capacity signal transport medium that connects each node to a central communications hub site, and radio transceivers at the hub site to process or control the communications signals transmitted and received through the antennas. DAS deployments offer robust and broad coverage without the visual and physical impacts of multiple macrocells. In contrast to small cells, which usually are operator-managed and support only a single wireless service provider, DAS networks often can accommodate multiple providers using different frequencies and/or wireless air interfaces.

Small wireless technologies have a number of advantages over traditional macrocells. The facilities deployed at each node are much smaller than macrocell antennas and associated equipment and do not require the same elevation, so they can be placed on light stanchions, utility poles, building walls, rooftops and other small structures either privately owned or in the public rights-of-way. As a result, providers can deploy these technologies in areas where traditional towers are not feasible or in areas where wireless traffic demands would require an unrealistic number of macrocells. DAS and small cells can also be deployed in indoor environments to improve interior wireless services. The facilities are smaller and less visible than macrocells, so providers can more easily deploy them with stealth measures such as concealment enclosures. One of the challenges of these technologies, though, is that providers must often deploy a substantial number of nodes to achieve the seamless coverage of a single macrocell.

DAS and small-cell deployments are a comparatively cost-effective way of addressing ever increasing demand for wireless broadband services, and, accordingly, providers are rapidly increasing their use of these technologies. There are estimates that more than 37 million small cells will be deployed by 2017 and that 16 million DAS nodes will be deployed by 2018. One study projects that aggregate small-cell capacity will overtake macrocell capacity by 2016–2017.

III. Compliance With Section 106 for DAS and Small Cell Infrastructure

The FCC is committed to protecting historic properties under the NHPA, including properties that have religious and cultural significance to Tribal Nations and Native Hawaiian Organizations (NHOs). The FCC's rules require that applicants follow the ACHP's Section 106 regulations, as modified by two Nationwide Programmatic Agreements executed by the Commission with the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO), to ascertain whether proposed facilities may affect historic properties. (47 CFR 1.1307(a)(4); 47 CFR part 1, Apps B and C.) Among other things, the FCC maintains an electronic system, the Tower Construction Notification System (TCNS), to ensure that Federally-recognized Tribal Nations and NHOs receive timely notice of projects proposed in their geographic areas of concern and to ensure their opportunity to participate in the review. The FCC also maintains a companion system, E106, which may be used to transmit the required documentation to the SHPOs and other interested parties.

The Collocation Agreement excludes from section 106 review most collocations on towers that either have completed section 106 review or were built before March 16, 2001, as well as on buildings and other non-tower structures, unless: (1) The non-tower structure is over 45 years old; (2) the non-tower structure is inside the boundary of a historic district or is within 250 feet of the boundary of a historic district and the antenna is visible from ground level within the historic district; (3) the non-tower structure is a designated National Historic Landmark or is listed on or eligible for listing on the National Register; or (4) the proposed collocation is the subject of a pending complaint alleging an adverse effect on historic properties. (Collocation Agreement sections III, IV, V.)

The *Infrastructure Report and Order* adopted revisions to the section 106 review process for DAS and other small facilities. These revisions include two new targeted exclusions from section 106 review when small facilities are being deployed—one for collocations on utility structures and another for collocations on other non-tower structures. These exclusions apply to collocations that were not previously excluded from review under the Collocation Agreement because the underlying structures are more than 45 years old.

- *Utility Structures.* Small facilities on utility structures over 45 years old are excluded from section 106 review where they meet both of the following conditions:
  - *Size Limitation.* Covered antenna enclosures may be no more than three cubic feet in volume per enclosure, or exposed antennas must fit within imaginary enclosures of no more than three cubic feet in volume per imaginary enclosure, up to an aggregate maximum of six cubic feet; and all other equipment enclosures (or imaginary enclosures) associated with the collocation on any single structure must be limited cumulatively to seventeen cubic feet in volume (certain enumerated equipment does not count towards this limit).
  - *No New Ground Disturbance.* Deployment may not involve new ground disturbance.
- *Buildings and Non-Tower Structures.* Small facilities on buildings or other non-tower structures over 45 years old are excluded from section 106 review provided that:
  - *Pre-existing Antenna.* There is an existing antenna on the building or structure.
  - *Proximity, Visibility, Size.* The new antenna meets requirements of proximity to existing antenna(s), depending on the visibility and size of the new deployment.
  - *No New Ground Disturbance.* Deployment may not involve new ground disturbance.
  - *Zoning and Historic Preservation Conditions.* The new deployment complies with all zoning conditions and historic preservation conditions applicable to existing antennas in the same vicinity on the structure that would directly mitigate or prevent effects, such as camouflage, concealment, or painting requirements.
- *Both Categories—Utility Structures and other Non-tower Structures.* With respect to both of these categories—utility structures and other non-tower structures—the exclusion extends only to small facility deployments that are not: (1) Inside the boundary of a historic district or within 250 feet of the boundary of a historic district; (2) located on a structure that is a designated National Historic Landmark or is listed on or eligible for listing on

the National Register of Historic Places (National Register); or (3) the subject of a pending complaint alleging an adverse effect on historic properties. Section VIII of the Collocation Agreement provides the signatories with an opportunity to propose amendments to the agreement, to be executed upon the written concurrence of all parties. In the *Infrastructure Report and Order,* the Commission stated that additional exclusions for DAS networks and other small facilities may well be appropriate in light of their minimal potential to cause effects on historic properties. The FCC finds it appropriate to consider excluding additional categories of DAS and small cell deployments from Section 106 review within the framework of an amendment to the Collocation Agreement. The amendment would require the concurrence of the original signatories to the Collocation Agreement, including ACHP, NCSHPO, and the FCC, and it would fall within the FCC's general obligation to consult with Federally-recognized Tribal Nations under the Section 106 process.

IV. Potential Amendments to the Collocation Agreement

The FCC has identified several areas in which an amendment to the Collocation Agreement might further tailor the section 106 process for DAS and small cell deployments by excluding deployments that meet criteria designed to ensure that there is minimal potential for adverse effects on historic properties. Any new exclusions from the section 106 process for small wireless communications facilities adopted pursuant to an amendment to the Collocation Agreement would be in addition to the two exclusions that the Commission adopted in the *Infrastructure Report and Order,* as well as the exclusions that are included in the Collocation Agreement. Like the existing exclusions in the Collocation Agreement as well as those adopted in the *Infrastructure Report and Order,* the FCC anticipates that these would be complete exclusions from routine Section 106 processing, including any notification to SHPOs, Tribal Nations, and NHOs. Further, any amendment to the Collocation Agreement would affect only the Commission's review process under Section 106 of the NHPA, and would not limit State and local governments' authority to enforce their own historic preservation requirements consistent with Section 332(c)(7) of the Communications Act, 47 U.S.C. 332(c)(7), and section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. 1455(a).

Three approaches are set forth below for the potential expansion of exclusions from the section 106 process for small facility collocations. These approaches, which are not mutually exclusive, are offered to facilitate a productive dialogue with stakeholders on issues and options at a pre-decisional point. The FCC invites stakeholders' views on these and any other possible alternatives to improve the section 106 process for small facility deployments.

Small Deployments Not on Historic Properties or in or near Historic Districts. The first option would be to amend the Collocation Agreement to exclude from section 106 review small wireless communications facility deployments on any building or structure (such as bridges, water towers, silos, etc.) where review is required only because the building or structure is over 45 years old, provided that the antenna and associated equipment meet specified volume limitations and the deployment involves no new ground disturbance. This exclusion would not be available for deployments on historic properties or in or near historic districts. Accordingly, the exclusion would not apply if the deployment is (1) on a structure designated as a National Historic Landmark or listed on or eligible for listing on the National Register; (2) located in a historic district or within 250 feet of a historic district; or (3) subject to a complaint filed against the deployment alleging a potential for adverse effects on historic properties. The Commission considered this proposal in the *Infrastructure Report and Order* but declined to adopt it, stating that it would be addressed in the program alternative process.

The FCC seeks input on the criteria that should apply under this option. The collocation exclusion for small wireless facilities on utility structures adopted in the *Infrastructure Report and Order* includes a volumetric limit of no more than three cubic feet for each antenna enclosure and six cubic feet for all antennas on the structure, as well as a requirement that all other wireless equipment associated with the structure not exceed 17 cubic feet (47 CFR 1.1307(a)(4)(ii)(A)(1) & (2)). The FCC proposes the same volumetric limits for this proposed exclusion and seeks input on this proposal. The FCC also seeks input on what equipment should be subject to the volumetric limits. The collocation exclusion for small wireless facilities on utility structures adopted in the *Infrastructure Report and Order* provides that the 17-cubic-foot limit applies to ''all other wireless equipment associated with the structure'' but does not apply to vertical cable runs for the connection of power and other services, ancillary equipment installed by other entities that is outside of the applicant's ownership or control, and comparable equipment from pre-existing deployments on the structure (47 CFR 1.1307(a)(4)(ii)(A)(2)(i)-(iii)). Should the exclusion contemplated under this option include a similar provision? The collocation exclusions adopted in the *Infrastructure Report and Order* provide that a deployment causes no new ground disturbance when the depth and width of previous disturbance exceeds the proposed construction depth and width by at least two feet (47 CFR 1.1307(a)(4)(ii), Note to paragraph (a)(4)(ii)). The FCC seeks input on whether the same measure of ground disturbance should be used if this proposed exclusion is adopted.

Both of the collocation exclusions adopted in the *Infrastructure Report and Order* do not apply if the deployment is inside a historic district or within 250 feet of the boundary of a historic district; located on a building or structure that is a National Historic Landmark or listed on or eligible for listing on the National Register; or the subject of a pending complaint alleging adverse effect on historic properties. The FCC seeks input on whether to limit this exclusion in the same manner.

Minimally Visible Small Deployments on Historic Properties and in or near Historic Districts. The FCC seeks input as to whether the Collocation Agreement should be amended to exclude from section 106 review small wireless communications facility collocations on historic properties or in or near historic districts, subject to visibility limits and reasonable safeguards on the method of installation. The FCC expects that such an exclusion, if adopted, would include restrictions to minimize the potential for adverse effects on historic properties, including size or volume limits on antennas and associated equipment, a requirement that there be no new ground disturbance, and restrictions on the visibility of collocations from public streets or spaces. The FCC solicits input on whether such an exclusion should also include a requirement that the installation of facilities complies with the Secretary of the Interior's Standards, as well as a requirement that these facilities comply with any conditions applicable to any pre-existing antennas in the vicinity of the new collocation that were imposed to directly mitigate or prevent the facility's effects.

The exclusion for collocation of small wireless facilities on utility structures adopted in the *Infrastructure Report and Order* includes a volumetric limit of no

more than three cubic feet for each antenna enclosure and six cubic feet for all antennas on the structure, as well as a requirement that all other wireless equipment associated with the structure not exceed 17 cubic feet (47 CFR 1.1307(a)(4)(ii)(A)(1) & (2)). The FCC believes the same volumetric limits may be appropriate for any exclusion applicable on historic properties or in or near historic districts and invites input on these limits. The FCC similarly seeks input on whether the wireless equipment to be included for purposes of meeting the 17-cubic-foot limit should be consistent with the list of equipment specified in the *Infrastructure Report and Order* for utility structures.

The FCC solicits input on the visibility restrictions that should be adopted for any exclusion for small facility deployments on historic properties or in or near historic districts. In addition, the FCC believes that any exclusion for deployments on historic properties or in or near historic districts should apply only if the deployment involves no new ground disturbance as defined in the collocation exclusions adopted in the *Infrastructure Report and Order* (47 CFR 1.1307(a)(4)(ii), Note to paragraph (a)(4)(ii)). The FCC suggests that the Secretary of the Interior's Standards apply to any installation of facilities on historic properties under this exclusion. The FCC solicits input on whether there are any other guidelines that should apply. Should this exclusion include a requirement that any installation of equipment on historic properties not harm original historic materials or their replacements-in-kind? Should it prohibit any anchoring of antennas or associated equipment on the historic materials of the property or their replacements-in-kind? The FCC solicits input as to whether it should consider any other provisions to minimize the potential for adverse effects on historic properties for the purpose of this proposed exclusion.

Additional Deployments on Historic Properties or in or near Historic Districts. The FCC solicits input on whether to amend the Collocation Agreement to exclude from Section 106 review the deployment of small facilities even where they are visible and on historic properties or in or near historic districts, in limited circumstances and subject to specified criteria. To minimize the potential for adverse effects on historic properties, the FCC anticipates that any such exclusion would be limited to deployments on certain structures (such as utility poles, non-historic light posts, and traffic lights), deployments in certain locations (such as utility or communications rights-of-way), or replacement facilities that meet size limits.

The FCC seeks input on whether small facilities collocated on certain structures, including utility poles, light posts, street lamps, and traffic lights, located in or near historic districts should be excluded from section 106 review. Should such exclusion be limited to utility poles as defined in the *Infrastructure Report and Order*? That order defines utility pole as a pole that is in active use by a ''utility'' as defined in section 224 of the Communications Act, but not including light poles, lamp posts, and other structures whose primary purpose is to provide public lighting. The FCC seeks input as to whether light posts and street lamps located in historic districts should also be excluded from section 106 review under certain conditions. The FCC recognizes that an exclusion for light posts and street lamps in historic districts may be of concern in cases where they are integral to the character of the historic district or are themselves considered historic properties or eligible to be historic properties. Are there conditions under which deployments on light posts or street lamps might appropriately be excluded even when located in or near historic districts? If so, can these be clearly enough defined so that project proponents can objectively and accurately determine their applicability? What about traffic lights? What considerations affect the potential to exclude collocations on traffic lights in or near historic districts?

The FCC solicits input as to whether historic districts contain certain locations within which small facility deployments should always be excluded, such as utility or communications rights-of-way. The FCC seeks input as to how rights-of-way should be defined. Should the Commission incorporate the NPA requirements that: (1) The right-of-way must be designated by a federal, State, local, or Tribal government for communications towers, above-ground utility transmission or distribution lines, or any associated structures and equipment; (2) the right-of-way is in active use for such designated purposes; and (3) the facility will not constitute a substantial increase in size over existing support structures that are located in the right-of-way within the vicinity of the proposed construction? Should the FCC require that the collocation be within the boundaries of the right-of-way, or should the FCC include collocations that are within a stated distance of a right-of-way? For example, Section III.E of the NPA provides an exclusion from Section 106 review for construction of a facility in or within 50 feet of a communications or utility right-of-way.

The FCC solicits input as to whether replacements of facilities in historic districts should be excluded from section 106 review, and if so, how the FCC should define replacement facilities. Would this be limited to replacement ''in kind'' or would it be sufficient to require that such replacement facilities not constitute a substantial increase in size, as set forth in the Collocation Agreement? Under these criteria, a deployment would result in a substantial increase in size if it would: (1) Exceed the height of existing support structures that are located in the right-of-way within the vicinity of the proposed construction by more than 10% or twenty feet, whichever is greater; (2) involve the installation of more than four new equipment cabinets or more than one new equipment shelter; (3) add an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater (except that the deployment may exceed this size limit if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable); or (4) involve excavation outside the current site, defined as the area that is within the boundaries of the leased or owned property surrounding the deployment or that is in proximity to the structure and within the boundaries of the utility easement on which the facility is to be deployed, whichever is more restrictive. The FCC invites input on whether these criteria (or some of them) should apply to the potential exclusion of replacement facilities for small deployments. The FCC also seeks input on any other criteria that should apply to this exclusion.

V. Next Steps and Contact Information

The FCC staff will follow-up with information regarding meetings, webinars, or other structured opportunities for dialogue on the proposed Program Alternative. Following the public comment period and consideration of the comments, as well as other input in the coming months, the FCC will release the text of a proposed amendment to the Collocation Agreement and seek comment on the proposal. In addition, throughout this process, FCC staff will engage in ongoing consultation with Federally-recognized Tribal Nations under the Section 106 process. The final

step in the process of adopting an amendment will be the concurrence of the original signatories to the Collocation Agreement—ACHP, NCSHPO, and the FCC staff. In the meantime, the FCC welcomes ideas from all interested parties and is happy to meet or talk with you. Please contact the following FCC officials:

- Jeffrey Steinberg, Deputy Chief of the Competition and Infrastructure Policy Division, at *Jeffrey.Steinberg@fcc.gov* or 202–418–0896;
- Paul D'Ari, Special Counsel, Competition and Infrastructure Policy Division, at *Paul.Dari@fcc.gov* or 202–418–1550;
- Steve DelSordo, Federal Preservation Officer, at *Stephen.Delsordo@fcc.gov* or 202–418–1986;
- Mania Baghdadi, Competition and Infrastructure Policy Division, at *Mania.Baghdadi@fcc.gov* or 202–418–2133;
- Brenda Boykin, Competition and Infrastructure Policy Division, at *Brenda.Boykin@fcc.gov* or 202–418–2062;
- Geoffrey Blackwell, Chief of the FCC's Office of Native Affairs and Policy, at *Geoffrey.Blackwell@fcc.gov* or 202–418–3629;
- Irene Flannery, Deputy Chief of the FCC's Office of Native Affairs and Policy, at *Irene.Flannery@fcc.gov* or 202–418–1307.

Federal Communications Commission.

Brian Regan,

Chief of Staff, Wireless Telecommunications Bureau.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 228

[Docket No. FRA–2012–0101, Notice No. 1]

RIN 2130–AC41

Hours of Service Recordkeeping; Automated Recordkeeping

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking is part of FRA's broader initiative to reduce the paperwork burden of its regulations. To support compliance with the Federal hours of service laws, Federal regulations have long required railroads to create and retain records regarding the hours of service of their employees who are covered by those laws (covered service employees). In general, the current regulations require covered service employees whose hours are recorded to sign the record by hand (the traditional, manual system) or ''certify'' the record using a complex computerized system (an electronic system). FRA proposes to amend these regulations to provide a third, simplified method of compliance, for certain entities. FRA proposes to allow railroads with less than 400,000 employee hours per year, and contractors and subcontractors providing covered service employees to such railroads to use an automated system, in which employees apply their electronic signatures to the automated records, which are stored in a railroad computer system. The proposed rule would not require the use of electronic or automated recordkeeping, would be better tailored to small operations, and is expected, if adopted, to decrease the burden hours spent on hours of service recordkeeping.

DATES: *Comments:* Written comments must be received by October 23, 2015. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

Public hearing: FRA anticipates being able to resolve this rulemaking without a public hearing. However, if FRA receives a specific request for a public hearing prior to September 23, 2015, one will be scheduled, and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and specific location of any such hearing.

ADDRESSES: Comments, which should be identified by Docket No. FRA–2012–0101, Notice No. 1, may be submitted by any one of the following methods:

- *Fax:* 1–202–493–2251;
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590;
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- *Electronically through the Federal eRulemaking Portal, http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Colleen A. Brennan, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6028 or 202–493–6052); or Zachary Zagata, Operating Practices Specialist, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., RRS–11, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6476).

SUPPLEMENTARY INFORMATION:

Commonly Used Abbreviations

CFR Code of Federal Regulations
FRA Federal Railroad Administration
HS hours of service (when the term is used as an adjective, except as part of the name of a specific Act of Congress or the title of a document, and not when the term is used as a noun; for example, ''HS records'' but not ''the HS Act'')

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I. Executive Summary

Federal laws governing railroad employees' hours of service date back to 1907. FRA has long administered both the statutory hours of service (HS) requirements and the agency's HS recordkeeping and reporting regulations

(49 CFR part 228, subpart B), which promote compliance with the HS laws. Currently, the HS statutory requirements cover three groups of employees; employees performing the functions of a ''train employee,'' ''signal employee,'' or ''dispatching service employee,'' as defined at 49 U.S.C. 21101. These terms are also defined in the HS recordkeeping and reporting regulations at 49 CFR 228.5 and FRA interpretations.

The HS statutory requirements have been amended several times over the years, most recently in 2008. Section 108(f) of the Rail Safety Improvement Act of 2008 (RSIA) required FRA to amend its then-current HS recordkeeping regulations at 49 CFR part 228 (part 228) to support compliance with the new statutory requirements and to authorize electronic recordkeeping and reporting as a means of compliance with the regulations. 74 FR 25330, May 27, 2009.

In general, the FRA 2009 recordkeeping amendments require that electronic HS records of information required by revised subpart B of part 228 be certified either (1) by the employee whose time was being recorded, or (2) by the reporting crewmember of a train crew or signal gang whose time was being recorded, instead of being signed by hand, and that the records be electronically stamped with the name of the certifying employee and the date and time of certification. See 49 CFR 228.9(b). The 2009 recordkeeping amendments also added new subpart D to part 228, which established comprehensive requirements for electronic recordkeeping systems.

Some smaller railroads have informed FRA that the current requirements of 49 CFR part 228, subpart D for electronic recordkeeping systems make using such systems infeasible for their operations, which are less complex and variable than larger railroads' operations. FRA considered those concerns and proposes in this NPRM to allow smaller railroads (specifically railroads with less than 400,000 employee hours per year), and their contractors and subcontractors who provide covered service employees to those railroads, to use an alternative ''automated recordkeeping system'' to create and maintain their covered-service employees' required HS records.

FRA is aware that some railroads currently use an automated system, in which covered service employees access a blank HS record on a railroad computer, enter required data on the form, and then print and sign the record, which is still considered a manual or paper record. This proposed rule would allow railroads with less than 400,000 employee hours annually (defined for purposes of this proposed rule as an ''eligible smaller railroad''), and contractors and subcontractors that provide covered service employees to the railroads, to have employees electronically sign the automated records of their hours of duty and then store the records in the railroad's computer system. This system would eliminate the requirement to print and sign the record.

The proposed rule would not require an eligible smaller railroad's automated system to conform to some of the existing requirements for electronic recordkeeping systems under 49 CFR part 228, subpart D that may not be relevant to the operations of these smaller railroads. Because of the less complex and less varied nature of the operations of smaller railroads with less than 400,000 employee hours annually, FRA is comfortable with allowing those railroads to use a system that lacks the programming and analysis that are required of an electronic recordkeeping system under 49 CFR part 228, subpart D. For example, the proposed rule would not require an eligible smaller railroad's automated system to calculate and fill in total time on duty based on the information entered by the employee because it would require programming to enable the system to identify how various periods of time are treated and perform the calculation. As further described below, this proposed rule would significantly reduce costs and paperwork burdens for eligible smaller railroads that develop an automated system, because, like electronic records, automated records require substantially less time to complete than manual records. In addition, the records would be stored in the automated system, which would relieve eligible smaller railroads of the burden of storing and maintaining paper records.

The proposed rule would define ''automated recordkeeping system'' as one that conforms to the requirements of proposed new §§ 228.201(b) and 228.206. The proposal would define ''electronic recordkeeping system'' as one that conforms to the requirements of proposed § 228.201(a), and current §§ 228.203–228.205. The proposed rule would provide general requirements for automated records in proposed new § 228.9(c). It would require employees to electronically sign automated records, and would provide requirements for retention of, and FRA access to, automated records in the automated recordkeeping system.

The proposed rule would also provide general requirements for automated recordkeeping systems, in proposed new § 228.201(b). It would require that the automated recordkeeping system conform to the requirements of proposed new § 228.206, (which provides more detailed requirements for automated recordkeeping systems and automated records), and that the records created and maintained in the automated recordkeeping system conform to the requirements of proposed revised § 228.11. New § 228.201 of the proposed rule would also require eligible smaller railroads, and their contractors and subcontractors using the automated system, to train their employees on the use of the automated system to create their required HS records. The rule also would require sufficient information technology security to ensure the integrity of the system and to prevent unauthorized access to the system or individual records and that FRA may prohibit or revoke the authority to use an automated system that does not meet the requirements.

New § 228.206 of the proposed rule would provide the requirements for automated recordkeeping systems and automated records. The requirements of this proposed section are similar to some of the requirements for electronic recordkeeping systems found in current §§ 228.203 and 228.205. However, the proposed requirements of § 228.206 are tailored to the nature and lesser complexity of the operations of the eligible smaller railroads that would be subject to this proposed rule. Therefore, the proposed rule would not require an automated system to include some of the program components and other features that would not be appropriate or necessary for the operations of eligible smaller railroads, but would require other elements for the automated systems that are not used in an electronic recordkeeping system.

Paragraph (a) of this section would require that automated records be electronically signed and would provide requirements for establishing and using an electronic signature. Paragraph (b) of this section would provide system security requirements for access to the automated recordkeeping system, data entry on individual records, pre-population of some data on an employee's record subject to certain conditions, procedures for amendment of records and protection against alteration or deletion of a record once the employee who created it has signed the record. Paragraph (c) of this section would require an automated recordkeeping system to be able to

identify who entered data on a record and which person entered which data items if more than one person entered data on a single record. Paragraph (d) would establish the required search criteria for an automated recordkeeping system, establishing specific data fields and other criteria which must be searchable. Finally, paragraph (e) of this section would establish requirements for access to the system and its records by FRA and participating State inspectors. Railroads would be required to provide access as soon as possible and not later than 24 hours after a request for access. Each data field that an employee enters would have to be visible, and data fields would have to be searchable as paragraph (d) provides and yield access to all records meeting the specified search criteria.

Finally, the proposed rule would modify the training requirements at § 228.207 to require that railroads using an automated recordkeeping system train their employees and supervisors on the use of that system as part of initial and refresher training (just as would be required for manual or electronic recordkeeping).

As stated above, this amended rule would apply to all railroads subject to the HS recordkeeping regulations with less than 400,000 employee hours annually under FRA accident/incident reporting regulations at 49 CFR 225.21(d), and their contractors and subcontractors that provide such railroads with covered service employees. Adopting an automated system would be voluntary.

By providing an alternative set of requirements specifically tailored to the circumstances of smaller operations, FRA expects a greater number of railroads to create and maintain HS records using an automated recordkeeping system rather than to continue using manual records. These changes would produce a total reduction of over 194,000 burden hours. The costs of implementing an automated recordkeeping system should be substantially less than an electronic recordkeeping system and are relatively small compared to the benefits gained by eliminating a paper recordkeeping system.

FRA has estimated the cost savings expected from this proposed rule. Our analysis calculates an estimated $81.8 million in net savings over a 10-year period through the adoption of the proposed automated recordkeeping. The present value of this savings is $51.5 million (discounted at 7 percent), and $66.7 million (discounted at 3 percent).

The table below presents the estimated benefits (from cost savings) associated with the proposed rule over a 10-year period.

TABLE 1—10-YEAR ESTIMATED BENEFITS OF PROPOSED RULE

Costs to prepare and operate automated recordkeeping (investment required to realize cost savings)	$3,139,347
Benefits: Reduced recordkeeping labor costs	54,638,880
Net Benefits	51,499,533

Dollars are discounted at a present value rate of 7%.

FRA estimates that there will be a relatively small investment associated with implementing automated systems necessary to realize the significant benefits (cost burden reduction). Railroads are already producing hours of service duty records manually on paper records to comply with 49 CFR 228.11 and adopting an automated recordkeeping system is voluntary.

II. Statutory and Regulatory History

Federal laws governing railroad employees' hours of service date back to 1907 [1] and are presently codified at 49 U.S.C. 21101–21109,[2] 21303, and 21304.[3] FRA, under 49 U.S.C. 103(g), 49 CFR 1.89, and internal delegations, has long administered the statutory HS requirements and the agency's HS recordkeeping and reporting regulations (49 CFR part 228, subpart B), which promote compliance with the HS laws. Currently, the HS statutory requirements cover three groups of employees; train employees, signal employees, or dispatching service employees, as those terms are defined at Sec. 21101. The HS recordkeeping and reporting regulations at 49 CFR 228.5 include the statutory definitions of these terms and FRA interpretations discuss them. See FRA's ''Requirements of the Hours of Service Act; Statement of Agency Policy and Interpretation'' at 49 CFR part 228, appendix A, most of which was issued in the 1970s, and subsequent FRA interpretations of the HS laws published in the **Federal Register**.

Congress has amended the HS statutory requirements several times over the years, most recently in the Rail Safety Improvement Act of 2008 (RSIA).[4] The RSIA substantially amended the requirements of Sec. 21103, applicable to a train employee,'' [5] and the requirements of Sec. 21104, applicable to a signal employee.'' [6] The RSIA also added new provisions at Secs. 21102(c) and 21109 that together made train employees providing rail passenger transportation subject to HS regulations, not Sec. 21103, if the Secretary timely issued regulations. Subsequently, FRA, as the Secretary's delegate, timely issued those regulations, codified at 49 CFR part 228, subpart F (Passenger Train Employee HS Regulations), which became effective on October 15, 2011.

Section 108(f) of the RSIA required the Secretary to—

> prescribe a regulation revising the requirements for recordkeeping and reporting for Hours of Service of Railroad Employees contained in part 228 of title 49, Code of Federal Regulations . . . to adjust record keeping and reporting requirements to support compliance with chapter 211 of title 49, United States Code, as amended by [the RSIA]; . . . to authorize electronic record keeping, and reporting of excess service, consistent with appropriate considerations for user interface; and . . . to require training of affected employees and supervisors, including training of employees in the entry of hours of service data.

[1] See the Hours of Service Act (Public Law 59–274, 34 Stat. 1415 (1907)). Effective July 5, 1994, Public Law 103–272, 108 Stat. 745 (1994), repealed the Hours of Service Act as amended, then codified at 45 U.S.C. 61–64b, and also revised and reenacted its provisions, without substantive change, as positive law at 49 U.S.C. 21101–21108, 21303, and 21304. The Hours of Service Act was administered by the Interstate Commerce Commission until these duties were transferred to FRA in 1966.

[2] These sections may also be cited as 49 U.S.C. Chapter 211. Hereinafter, references to a ''Sec.'' are to a section of title 49 of the U.S. Code unless otherwise specified.

[3] For a table comparing and contrasting the current Federal HS requirements with respect to freight train employees, passenger train employees, signal employees, and dispatching service employees, please see Appendix A to the Second Interim Interpretations. 78 FR 58830, 58850–58854, Sept. 24, 2013.

[4] Public Law 110–432, Div. A, 122 Stat. 4848.

[5] *See* Sec. 21101(5).

[6] *See* Sec. 21101(4). The RSIA also amended the definition of ''signal employee'' effective October 16, 2008. Before the RSIA, the term meant ''an individual *employed by a railroad carrier* who is engaged in installing, repairing, or maintaining signal systems.'' Emphasis added.

49 U.S.C. 21101 (notes).

FRA, as the Secretary's delegate, issued those regulations, codified at 49 CFR part 228, including subpart D (Electronic Recordkeeping), which became effective on July 16, 2009. 74 FR 25330, May 27, 2009 (2009 Recordkeeping Amendments).

FRA issued its first HS recordkeeping regulation, codified at 49 CFR part 228, subparts A and B, in 1972. *See* 37 FR 12234, Jun. 21, 1972.[7] Because the regulation did not contemplate electronic recordkeeping, that regulation required that HS records be signed manually.[8] Therefore, prior to the effective date of the 2009 Recordkeeping Amendments, railroads that wished to create and maintain their required HS records electronically rather than manually needed FRA's waiver of the requirement for a handwritten signature. *See* FRA procedural regulations at 49 CFR part 211. At the time that the 2009 recordkeeping amendments went into effect, several Class I railroads were creating and maintaining their required HS records using an electronic recordkeeping system that had been approved by FRA pursuant to a waiver.[9]

In general, the 2009 Recordkeeping Amendments required that either the employee whose time was being recorded, or the reporting crewmember of a train crew or signal gang whose time was being recorded, certify their electronic HS records, instead of signing them by hand, and that the recordkeeping system electronically stamp the records with the name of the certifying employee and the date and time of certification. *See* 49 CFR 228.9(b). These amendments also established comprehensive requirements for electronic recordkeeping systems. A brief summary of the most significant requirements follows.

- First, electronic recordkeeping systems must generate records that provide sufficient data fields for an employee to report a wide variety and number of activities that could arise during a duty tour. *See* 49 CFR 228.201.
- Second, the systems must have security features to control access to HS records and to identify any individual who entered information on a record. *See* 49 CFR 228.203(a)(1)(i), (a)(2)–(a)(7) and (b).
- Third, systems must include complex program logic that allows the system to identify how periods of time spent in any activity that is entered on a record are treated under the HS laws (and also now under the substantive HS regulations for passenger train employees).
- Fourth, program logic must allow the system to calculate total time on duty from the data the employee entered, flag employee-input errors so the employee can correct them before certifying the record, and require the employee to enter an explanation when the data entered shows a violation of the HS laws or regulations. *See* 49 CFR 228.203(c).
- Fifth, electronic recordkeeping systems must provide a method known as a ''quick tie-up'' for employees to enter limited HS information when they have met or exceeded the maximum hours allowed for the duty tour, and railroads must have procedures for employees to do a quick tie-up by telephone or facsimile (fax) if computer access is not available. *See* 49 CFR 228.5 and 228.203(a)(1)(ii).
- Finally, an electronic recordkeeping system must provide search capability so that records may be searched by date or date range and by employee name or identification number, train or job assignment, origin or release location, territory, and by records showing excess service. The results of any such search must yield all records matching specified criteria. *See* 49 CFR 228.203(d).

III. Rationale for This Proposed Rule

In this NPRM, FRA proposes to allow railroads with less than 400,000 employee hours per year, and their contractors and subcontractors who provide those railroads with covered service employees (collectively referred to for the purpose of this proposed rule as ''eligible smaller railroads''), to use an ''automated recordkeeping system'' to create and maintain their covered-service employees' HS records.[10] (*See* detailed discussion under section V.A. below, regarding eligible smaller railroads. FRA is aware that some railroads currently use an automated system, in which covered service employees access a blank HS record on a railroad computer, enter required data on the form, and then print and sign the record, which is still considered a manual or paper record. As further described below, this proposed rule would allow employees of eligible smaller railroads to electronically sign the automated record and store it in a railroad computer system, eliminating the requirement to print and sign the record. The proposed rule would not require an automated system to comply with some of the existing requirements for electronic recordkeeping systems under 49 CFR part 228, subpart D that may not be relevant to the operations of these eligible smaller railroads. Electronic or automated records require substantially less time to complete than manual records. However, some eligible smaller railroads have told FRA the existing requirements of 49 CFR part 228, subpart D for electronic recordkeeping systems make using such systems infeasible for their operations, which are less complex and variable than other railroads' operations. By providing an alternative set of requirements specifically tailored to the circumstances of smaller operations, FRA expects a greater number of railroads to create and maintain HS records using an automated recordkeeping system, rather than continuing to use manual records. These changes will produce a total reduction of over 194,000 burden hours. In addition, as discussed in more detail in Section V.A. of this document, FRA expects the cost of implementing an automated recordkeeping system to be substantially less than an electronic recordkeeping system.

FRA also expects that many of the companies that would be subject to this proposed regulation could choose to comply with its requirements using existing equipment and software that many of them already use for other purposes. For example, many eligible smaller railroads will find that their existing equipment and software can be used to generate a form that would allow employees to enter the information relevant to their duty tour that is required by § 228.11 and save the record in a directory structure that would allow either the railroad or FRA to retrieve it using the search criteria provided in this proposed regulation. FRA believes it is appropriate to allow the eligible smaller railroads to use a system that lacks the programming and analysis that are required of an

[7] 24 Stat. 383, as amended, 24 Stat. 386, as amended, 80 Stat. 937, 34 Stat. 1415, as amended and 49 CFR 1.89 (d).

[8] In particular, the regulation required the handwritten signature be that of the employee whose time was being recorded.

[9] The preamble of the 2009 Recordkeeping Amendments contains a detailed discussion of the history of electronic recordkeeping and the development of waiver-approved electronic recordkeeping systems. *See* 74 FR 25330, 25330–25334.

[10] Given the size and nature of their operations, FRA's understanding is that it is not common for eligible smaller railroads to have contractors or subcontractors that provide employees to perform covered service for the railroad. However, if an eligible smaller railroad has a contractor or subcontractor whose employees perform covered service for the railroad, the proposed rule would apply to such contractors and subcontractors for the HS records of their employees performing covered service on a railroad subject to this proposed regulation.

electronic recordkeeping system because of the less complex and less varied nature of the operations of eligible smaller railroads. For example, the proposed rule would not require an automated system to calculate and fill in total time on duty based on the information the employee entered because that would require costly programming to enable the system to identify how various periods of time are treated and to perform the calculation. Instead, the employee would enter that information just as if it were a paper record. Similarly, the proposed rule would not require an automated system to include costly programming that would prompt the employee to enter an explanation of a duty tour over 12 hours or that would flag possible input errors or missing data (for example, showing an on-duty location that differs from the released location of the previous duty tour).

Currently, the proposed rule would apply to 723 Class III railroads and 15 commuter railroads, and their contractors and subcontractors. FRA considered extending the scope of this proposed regulation to all Class III railroads and all commuter railroads. However, because of the number of employees, volume of HS records, and complexity of operations on some commuter railroads, we believe an electronic recordkeeping system that complies with subpart D of part 228 is the appropriate alternative to the use of manual records for these railroads. Likewise, the definition of ''Class III railroad'' includes all terminal and switching operations,[11] regardless of their operating revenues. Some of these operations have extensive operations and a number of employees and HS records more appropriately served by an electronic recordkeeping system. A larger and more complex operation would benefit from an electronic recordkeeping system's program logic capability to help ensure accurate recordkeeping. In addition, the greater search capabilities of an electronic recordkeeping system would enable a railroad with larger and more complex operations to better identify relevant records, whether for the railroad's own review, or in response to requests from FRA.

FRA is aware that at least one commuter railroad is currently using an electronic recordkeeping system and that several other commuter railroads are developing electronic recordkeeping systems. FRA understands that these railroads are willing to share some information with other commuter railroads to help them develop their systems. This may provide an opportunity for more commuter railroads to eliminate paper records and adopt electronic recordkeeping systems.

For these reasons, FRA concluded that the proposed rule should only apply to railroads with less than 400,000 employee hours per year. FRA requests comment on this aspect of the proposed rule.

IV. Section-by-Section Analysis

Subpart A—General

Section 228.5 Definitions

FRA proposes to add definitions of ''automated recordkeeping system,'' ''electronic recordkeeping system'' ''electronic signature,'' ''eligible smaller railroad'' and ''railroad that has less than 400,000 employee hours annually.''

The proposed definitions of the terms ''automated recordkeeping system'' and ''electronic recordkeeping system'' would differentiate between the automated systems that are the subject of this rulemaking, which would be required to conform to the requirements of proposed new §§ 228.201(b) and 228.206, from the electronic recordkeeping systems that must meet the requirements of §§ 228.201(a) and 228.203–228.205.

The proposed definition of ''electronic signature'' is consistent with the Electronic Signatures in Global and National Commerce Act.[12] It would allow railroads to use two different types of electronic signatures for their employees to sign their HS records: either (1) a unique digital signature, created based on the employee's identification number and password, or other means used to uniquely identify the employee in the automated recordkeeping system; or (2) a unique digitized version of the employee's handwritten signature that would be applied to the HS record.[13] The definition would also provide that the electronic signature must be created as § 228.19(g) provides (existing regulatory requirements for creating an electronic signature for railroads' use on their reports of excess service) or proposed § 228.206(a) (proposed new requirements for creating electronic signatures for use on employees' HS records in an automated recordkeeping system).

For the purpose of this proposed rule, an ''eligible smaller railroad'' would be, as a general rule, a railroad with less than 400,000 employee hours annually. Such railroads would be eligible to use an automated recordkeeping system under this proposed rule. A ''railroad that has less than 400,000 employee hours annually'' would be defined as a railroad that has reported to FRA that it had less than 400,000 employee hours during the preceding three consecutive calendar years on Form FRA 6180.56—Annual Railroad Reports of Manhours by State, as required by 49 CFR 225.21(d). The exception to the general rule would be railroads that have not been operating for three prior consecutive calendar years, but expect to have less than 400,000 employee hours annually during the current year.

Section 228.9 Records; General

Proposed new § 228.9(c) would establish requirements for automated records that parallel the requirements of paragraph (a) for manual records and paragraph (b) for electronic records. Proposed paragraph (c) would require that automated records be electronically signed and stamped with the certifying employee's electronic signature that meets the requirements of § 228.206(a), and the date and time that the employee electronically signed the record. Like paragraphs (a) and (b), paragraph (c) would contain requirements for retaining and accessing the records. However, unlike paragraph (b), paragraph (c) would not require using an employee identification (ID) and password to access automated records. While some railroads subject to this proposed rule might choose to provide an ID and password for the purpose of accessing the system, this process might be more complex than necessary for smaller operations, which may choose, for example, to have a railroad official directly provide access.[14] Finally, paragraph (c) would require that automated records be capable of being reproduced on printers available at the location where records are accessed, meaning that railroads must have printers available at any location where they provide access to records. This requirement also applies to electronic

[11] *See* 49 CFR 1201.1–1(d).

[12] Public Law 106–229, 114 Stat. 472 (2000). *See, e.g.,* 15 U.S.C. 7006.

[13] If a railroad creates an electronic signature that is a unique digital signature for each of its employees, the employee's HS record will be signed with the employee's printed name or other identifying information, when the employee signs the record using his or her electronic signature. If the railroad instead creates a digitized version of the employee's handwritten signature, the record will be signed with the employee's handwritten signature when the employee signs the record using his or her electronic signature.

[14] It is important to note that access should be available upon request, and railroads and managers risk civil and criminal liability if they control access to the recordkeeping system in a manner that prevents an employee from accurately reporting his or her hours of service.

recordkeeping systems in current § 228.9(b).

Section 228.11 Hours of Duty Records

Currently § 228.11(a) requires each railroad, or a contractor or a subcontractor that provides covered service employees to a railroad, to keep a record, either manually or electronically, concerning the hours of duty of each employee. Because HS records created and maintained using an automated recordkeeping system would also be required to comply with the requirements of § 228.11 (*see* section-by-section analysis of § 228.201(b) below), FRA proposes to delete the words ''manually or electronically'' from the requirement.

Section 228.201 Electronic Recordkeeping and Automated Recordkeeping; General

The proposed rule would designate the current requirements of this section for electronic recordkeeping systems as paragraph (a) and proposed new paragraph (b) would add similar requirements for automated recordkeeping systems, in part by cross-referencing those requirements of paragraph (a) that would also be applicable to automated recordkeeping systems. The proposed rule would also make minor non-substantive changes to paragraphs (a)(3), (a)(4), and (a)(5) to correct typographical errors, deleting the ''and'' after paragraph (a)(3), replacing the periods at the end of paragraphs (a)(4) and (a)(5) with semicolons, and adding ''and'' after the semicolon at the end of paragraph (a)(5). Proposed new § 228.201(b)(1) would provide that an automated recordkeeping system must comply with the requirements of proposed § 228.206. Proposed new § 228.201(b)(2) would require eligible smaller railroads using automated recordkeeping systems to comply with the requirements of paragraphs (a)(2) and (a)(4)–(a)(6), requirements also applicable to electronic records and recordkeeping systems. Specifically, the proposed rule would require the records created and stored in the automated recordkeeping system to comply with the requirements of § 228.11, as required by paragraph (a)(2). Further, the rule would require eligible smaller railroads that use an automated system to train employees on how to use the automated system to create their HS records, as required by paragraph (a)(4). The railroads would also have to have sufficient information technology security to ensure the integrity of the system and to prevent unauthorized access to the system or individual records, as required by paragraph (a)(5). Finally, under paragraph (a)(6), the proposed rule would provide that FRA may prohibit or revoke the authority to use an automated system that does not meet the requirements. The main difference between the proposed requirements of § 228.201(b)(2) for automated records and recordkeeping systems and the corresponding existing requirements for electronic records and recordkeeping systems is that automated systems would not be required to have monitoring indicators in the system to help the railroad monitor the accuracy of the records. However, railroads using an automated system would certainly be responsible for the accuracy of their required HS records, regardless of whether the record is manual, automated, or electronic.

Finally, under proposed § 228.201(b)(3), if a railroad, or a contractor or subcontractor to a railroad with an automated recordkeeping system reports to FRA under § 225.21(d) of this chapter on its Annual Railroad Report of Manhours by State that it has more than 400,000 employee hours in three consecutive calendar years, that railroad, or contractor or subcontractor to a railroad may not use an automated recordkeeping system unless FRA grants a waiver under 49 CFR 211.41. As described above, FRA believes larger railroads are better served by the use of an electronic recordkeeping system. In most cases, a railroad with such growth for three consecutive calendar years will have had sufficient time to transition to an electronic recordkeeping system.

Section 228.206 Requirements for Automated Records and Recordkeeping Systems on Eligible Smaller Railroads

This proposed new section would establish the requirements for an automated recordkeeping system. These proposed requirements are similar to some of the requirements for electronic recordkeeping systems found in current §§ 228.203 and 228.205. However, as discussed in Section III above, the proposed requirements of § 228.206 are tailored to the nature and lesser complexity of the operations of railroads with less than 400,000 employee hours annually. Therefore, as discussed above, the proposed rule would not require an automated system to include some of the program components and other features that apply to electronic recordkeeping systems that are not appropriate or necessary for the operations of these railroads. However, this proposed new section would require other elements for the automated systems that are not used in an electronic recordkeeping system.

Paragraph (a) would require an employee creating the automated record sign the record to use an electronic signature. This paragraph also would explain the requirements for establishing and using an electronic signature. These requirements are taken from paragraph (g) of § 228.19, which explains the requirements for railroads to establish and use electronic signatures for the purpose of filing reports of excess service. These proposed requirements do not apply to creating HS records using an electronic recordkeeping system and would be unique to automated recordkeeping systems.

Paragraph (b) would provide the standards that automated recordkeeping systems must meet for system security. The paragraph would require railroads to protect access to the automated recordkeeping system by the use of a user name and password or comparable method. The exact method used may vary depending on the number of employees and other ways that access to a railroad's system may already be protected.

Paragraph (b)(1) would restrict data entry to the employee, train crew, or signal gang whose time is being reported. However, an exception to this requirement would allow a railroad to pre-populate some of the known factual data on its employees' HS record. An employee's name or identification number, or the on-duty time for an employee who works a regular schedule, are examples of the kind of data that could be pre-populated. However, the paragraph would require that the employee be able to make changes to any pre-populated data on his or her record.

Proposed paragraph (b) also would provide that the system may not allow two individuals to have the same electronic signature and that the system must be structured so that a record cannot be deleted or altered once it is electronically signed. The proposed paragraph would also require that any amendment to a record must (1) either be stored electronically apart from the record it amends or electronically attached as information without altering the record and (2) identify the person making the amendment. Finally, proposed paragraph (b) would require the automated recordkeeping system to be capable of maintaining records as submitted without corruption or loss of data, and ensure supervisors and crew management officials can access, but not delete or alter, a record after the employee electronically signs the record. The proposed rule does not establish a specific interval for railroads

to back up the data contained in their automated recordkeeping system, but FRA expects there would be sufficient backup to prevent loss of data in compliance with this paragraph. FRA requests comment on the need for specific requirements related to data backup and what interval and method would be most appropriate.

Paragraph (c) would provide that the automated recordkeeping system be able to identify each individual who entered data on a record and which data items each individual entered if more than one person entered data on a given record.

Paragraph (d) would establish the search capabilities an automated recordkeeping system must have. This includes the specific data fields and other criteria the system must be able to use to search for and retrieve responsive records.

Paragraph (e) would explain the requirements for access to automated recordkeeping systems. Eligible smaller railroads must grant FRA inspectors, and participating State inspectors, access to the system using railroad computer terminals. The railroads would have to provide access as soon as possible, but not later than 24 hours after a request for access. And, each data field an employee entered must be visible. Finally, data fields must be searchable as described in paragraph (d) and yield access to all records matching the specified search criteria.

Section 228.207 Training

This proposed rule would slightly revise the training requirements of part 228. The proposed rule would revise paragraph (b) of this section, which sets forth the components of initial training, to add the requirement for training on how to enter HS data into an automated system. The paragraph currently requires training on electronic recordkeeping systems or the appropriate paper records used by the railroad, contractor, or subcontractor for whom the employee performs covered service. We propose to revise this paragraph by adding a requirement for eligible smaller railroads that develop an automated recordkeeping system in compliance with the requirements of this proposed rule to give their employees training on how to prepare HS records in that system.

Likewise, the proposed rule would revise paragraph (c) of this section to specifically require eligible smaller railroads with automated systems to provide refresher training emphasizing any changes in HS substantive requirements, HS recordkeeping requirements, or a railroad's HS recordkeeping system since the employee was last provided training. The paragraph currently refers to changes in ''the carrier's electronic or other recordkeeping system.'' FRA expects that any railroad implementing an automated recordkeeping system to replace previous paper records would need to provide training on the use of that system to its employees, even if those employees had previously received training required by this section for paper records.

V. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures under Executive Order 12866, Executive Order 13563, and DOT policies and procedures. 44 FR 11034, Feb. 26, 1979. FRA has prepared and placed in the docket a Regulatory Impact Analysis addressing the economic impacts of this proposed rule. In this NPRM, FRA proposes to allow railroads with less than 400,000 employee hours annually, and their contractors and subcontractors, to use an automated recordkeeping system. An automated recordkeeping system would provide a simpler way to create and maintain hours of duty records as 49 CFR part 228, subpart B requires than complying with some of the existing requirements for electronic recordkeeping systems under 49 CFR part 228, subpart D that may not be relevant to the operations of these eligible smaller railroads. Electronic and automated records require substantially less time to complete than manual records. However, some eligible smaller railroads have told FRA the requirements of 49 CFR part 228, subpart D make using such systems infeasible for their operations, which are less complex and variable than larger railroads. As part of its regulatory evaluation, FRA has explained the benefits of automated records and recordkeeping systems under this proposed rule and provided monetized estimates of the benefits' value. The proposed rule would substantially reduce the costs of current paper recordkeeping systems by allowing eligible smaller railroads to replace it with an automated system to create and maintain hours of duty records. The proposed rule accomplishes this by providing an alternative set of requirements for an automated system specifically tailored to the circumstances of smaller operations. FRA believes the majority of eligible smaller railroads will take advantage of the opportunity for cost savings and incur a small burden to realize what would be a net cost savings.

As discussed below, FRA estimates these changes will produce a total estimated reduction of just over 194,000 burden hours annually. Based on railroads' annual 6180.56 reports to FRA for 2013, this amended rule will apply to a total of approximately 738 railroads with less than 400,000 employee hours annually. These 738 railroads include 723 probable Class III freight railroads, 15 ''smaller commuter railroads,'' and their contractors and subcontractors. FRA estimates that 578 of these entities will adopt an automated recordkeeping system; 80 percent of the 723 Class III railroads will adopt an automated recordkeeping system and all 15 of the smaller commuter railroads, and the 2 small passenger railroads will do so.

The economic analysis [15] provides a quantitative evaluation of the costs and benefits of the proposed rule. The benefits equal the reduced time an employee spends entering hours of duty in an automated system compared to the time they currently spend to manually produce a paper record of hours on duty. FRA calculated a reduction of 8 minutes per record achieved over a 5-year period.

FRA has estimated the cost savings expected from this proposed rule. In particular, over a 10-year period, $81.9 million in net savings could accrue through the adoption of the proposed automated recordkeeping. The present value of this savings is $51.5 million (discounted at 7 percent) and $66.7 million (discounted at 3 percent). FRA concludes that the eligible smaller railroads would benefit significantly from adoption of the proposed rule.

Railroads are already producing HS records manually on paper records to comply with 49 CFR 228.11, and adopting an automated recordkeeping system is voluntary. FRA estimates that there would be a relatively small investment for entities that elect to take advantage of the far larger cost saving benefits that would be achieved. The investment costs associated with this proposed rule are primarily for setting up and transferring the reporting to an automated recordkeeping system. FRA estimates that if each of these railroads were to expend $5,294 discounted at 7 percent over a 10-year period to set up and operate an automated recordkeeping system for HS records,

[15] The Regulatory Impact Analysis for Docket No. FRA–2012–101, Notice No. 1, is placed in the regulatory docket for this NPRM.

the railroads would reduce their paperwork burden by $92,140 discounted at 7 percent over that same period.

Therefore, this proposed rule would have a positive effect on these railroads, saving each railroad approximately a net $86,846 in costs at discounted 7 percent over the 10-year analysis. The table below presents the estimated benefits (from cost savings) associated with the proposed rule, over the 10-year analysis.

TABLE 1—10-YEAR ESTIMATED BENEFITS OF PROPOSED RULE

Costs to prepare and operate automated recordkeeping (investment required to realize cost savings)	$3,139,347
Benefits: Reduced recordkeeping labor costs	54,638,880
Net Benefits	51,499,533

Dollars are discounted at a present value rate of 7%.

B. Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Analysis

Both the Regulatory Flexibility Act (RFA), Public Law 96–354, as amended, and codified as amended at 5 U.S.C. 601–612, and Executive Order 13272—Proper Consideration of Small Entities in Agency Rulemaking, 67 FR 53461, Aug. 16, 2002, require agency review of proposed and final rules to assess their impact on ''small entities'' for purposes of the RFA. An agency must prepare a regulatory flexibility analysis unless it determines and certifies that a proposed rule is not expected to have a significant impact on a substantial number of small entities. Pursuant to the RFA, 5 U.S.C. 605(b), the Acting Administrator of FRA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Although this proposed rule could affect many small railroads, they may voluntarily adopt the requirements. Moreover, the effect on those railroads that do voluntarily adopt the requirements will be primarily beneficial and not significant because it will reduce their labor burden for hours of service recordkeeping and reporting.

The term ''small entity'' is defined in 5 U.S.C. 601 (Section 601). Section 601(6) defines ''small entity'' as having the same meaning as ''the terms 'small business', 'small organization' and 'small governmental jurisdiction' defined in paragraphs (3), (4), and (5) of this section.'' In turn, Section 601(3) defines a ''small business'' as generally having the same meaning as ''small business concern'' under Section 3 of the Small Business Act, and includes any a small business concern that is independently owned and operated, and is not dominant in its field of operation. Next, Sec. 601(4) defines ''small organization'' as generally meaning any not-for-profit enterprises that is independently owned and operated, and not dominant in its field of operations. Additionally, Sec. 601(5) defines ''small governmental jurisdiction'' in general to include governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

The U.S. Small Business Administration (SBA) stipulates ''size standards'' for small entities. It provides that the largest a for-profit railroad business firm may be to be classified as a ''small entity'' is 1,500 employees for ''Line-Haul Operating'' railroads and 500 employees for ''Short-Line Operating'' railroads. *See* ''Size Eligibility Provisions and Standards,'' 13 CFR part 121, subpart A.

Under exceptions in Section 601, Federal agencies may adopt their own size standards for small entities in consultation with SBA, and in conjunction with public comment. Under that authority, FRA published a ''Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws'' (Policy) which formally establishes that small entities include among others, the following: (1) Railroads that Surface Transportation Board (STB) regulations classify as Class III; and (2) commuter railroads ''that serve populations of 50,000 or less.'' [16] *See* 68 FR 24891, May 9, 2003, codified at appendix C to 49 CFR part 209. Currently, to be a small entity under the Policy, the eligible railroads also must have $20 million or less in annual operating revenue, adjusted annually for inflation. The $20 million limit (adjusted annually for inflation) is based on the STB's threshold for a Class III railroad, which is adjusted by applying the railroad revenue deflator adjustment. For further information on the calculation of the specific dollar limit, *see* 49 CFR part 1201. FRA is using this definition of ''small entity'' for this proposed rule.

FRA is proposing to amend its hours of service recordkeeping regulations, to provide simplified recordkeeping requirements to allow railroads with less than 400,000 employee hours annually, and their contractors and subcontractors, to utilize an automated system to create and maintain hours of duty records as required by 49 CFR 228.11. As stated above, FRA has reports that indicate there are 723 Class III railroads with less than 400,000 employee hours annually that would be eligible to use the simplified automated recordkeeping system this proposed rule provides. However, if they are affected, it is voluntary because the proposed rule would not require any railroad to develop and use an automated recordkeeping system. As stated above, there are also 15 smaller commuter railroads, each of which is run by a State, County, or Municipal Agency that could be affected by the proposed rule if they voluntarily decide to develop and use an automated recordkeeping system, but all serve populations of 50,000 or more and are not designated as small businesses.[17] There are also 2 small passenger railroads.

For the purposes of this analysis the 578 railroads FRA estimates to be potentially affected by this proposed rule are assumed to be small railroads. However, as discussed above, the impact on these small railroads would not be significant. This proposed rule would not affect any other small entities other than these small railroads. As stated above in Section V.A., although FRA estimates that if each of these railroads were to expend $5,294, this proposed rule would have a positive effect on these railroads, saving each

[16] ''In the Interim Policy Statement [62 FR 43024, Aug. 11, 1997], FRA defined 'small entity,' for the purpose of communication and enforcement policies, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* and the Equal Access for Justice Act 5 U.S.C. 501 *et seq.,* to include only railroads which are classified as Class III. FRA further clarified the definition to include, in addition to Class III railroads, hazardous materials shippers that meet the income level established for Class III railroads (those with annual operating revenues of $20 million per year or less, as set forth in 49 CFR 1201.1–1); railroad contractors that meet the income level established for Class III railroads; and those commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.'' 68 FR 24892 (May 9, 2003). ''The Final Policy Statement issued today is substantially the same as the Interim Policy Statement.'' 68 FR 24894.

[17] Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), ''small governmental jurisdictions'' are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

railroad approximately $86,846 in costs at discounted 7 percent over the 10-year analysis. Since this amount is relatively small and beneficial, FRA concludes that this proposed rule would not have a significant impact on these railroads.

C. Federalism

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The executive order defines ''policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA analyzed this NPRM consistent with the principles and criteria contained in Executive Order 13132. FRA has determined the proposed rule would not have substantial direct effects on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined this proposed rule would not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

This proposed rule would amend FRA's regulations on the HS reporting and recordkeeping requirements to allow a railroad with less than 400,000 employee hours annually, and a contractor or subcontractor providing covered service employees to such a railroad to create and maintain HS records for its covered service employees using an automated recordkeeping system. FRA is not aware of any State with regulations similar to this proposed rule. However, FRA notes that this part could have preemptive effect by the operation of law under Section 20106 of the former Federal Railroad Safety Act of 1970, that Congress repealed, reenacted without substantive change, codified at 49 U.S.C. 20106, and later amended (Section 20106). Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters), unless the State law, regulation, or order (1) qualifies under the ''essentially local safety or security hazard'' exception to Section 20106, (2) is not incompatible with a law, regulation, or order of the U.S. Government, and (3) does not unreasonably burden interstate commerce.

In sum, FRA has analyzed this proposed rule consistent with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications other than possible preemption of State laws under 49 U.S.C. 20106 and 21109 (providing regulatory authority for hours of service). Accordingly, FRA has determined it is not required to prepare a federalism summary impact statement for this proposed rule.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards, and, where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

E. Paperwork Reduction Act

FRA is submitting the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 19995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements are duly designated, and the estimated time to fulfill each requirement is as follows:

CFR Section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
228.11—Hours of Duty Records	768 railroads/signal contractors.	27,511,875 records	2 min./5 min./8 min	2,733,439
228.17—Dispatchers Record of Train Movements.	150 Dispatch Offices	200,750 records	3 hours	602,250
228.19—Monthly Reports of Excess Service	300 railroads	2,670 reports	2 hours	5,340
228.103—Construction of Employee Sleeping Quarters—Petitions to allow construction near work areas.	50 railroads	1 petition	16 hours	16
228.201—Electronic Recordkeeping System and Automated System (Revised Requirement)—RR Automated Systems.	563 railroads	563 automated systems	24 hours	13,512
228.206—Requirements for Automated Records and for Automated Recordkeeping Systems on Class III Railroads (New Requirements)—Certification of Employee's Electronic Signature.	100,500 employees	19,365 signed certifications.	5 minutes	1,614
—Additional Certification/Testimony provided by Employee upon FRA Request.	100,500 employees	75 signed certifications	5 minutes	6
—Class III Procedure for Providing FRA/State inspector with System Access Upon Request.	563 railroads	563 procedures	90 minutes	845

CFR Section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
228.207—Training in Use of Electronic System—Initial Training.	563 railroads	5,879 trained employees.	2 hours	11,758
—Refresher Training (Revised Requirement)	768 railroads/contractors.	47,000 trained employees.	1 hour	47,000
49 U.S.C. 21102—The Federal Hours of Service Laws—Petitions for Exemption from Laws.	10 railroads	1 petition	10 hours	10
228.407—Analysis of Work Schedules—RR Analysis of one cycle of work schedules of employees engaged in commuter or intercity passenger transportation.	168 Railroads	2 analyses	20 hours	40
—RR Report to FRA Administrator of Each Work Schedule that Exceeds Fatigue Threshold.	168 railroads	1 report	2 hours	2
—RR Fatigue Mitigation Plan—Submission and FRA Approval.	168 railroads	1 plan	4 hours	4
—Work Schedules, Proposed Mitigation Plans/Tools, Determinations of Operational Necessity—found Deficient by FRA and Needing Correction.	168 railroads	1 corrected document	2 hours	2
—Follow-up Analyses submitted to FRA for Approval.	168 railroads	5 analyses	4 hours	20
—Deficiencies found by FRA in Revised Work Schedules and Accompanying Fatigue Mitigation Tools and Determinations of Operational Necessity Needing Correction.	168 railroads	1 corrected document	2 hours	2
—Updated Fatigue Mitigation Plans	168 railroads	8 plans	4 hours	32
—RR Consultation with Directly Affected Employees on: (i) RR Work Schedules at Risk for Fatigue Level Possibly Compromising Safety; (ii) Railroad's Selection of Fatigue Mitigation Tools; and (iii) All RR Submissions Required by this Section Seeking FRA Approval.	168 railroads	5 consultations	2 hours	10
—Filed Employee Statements with FRA Explaining Any Issues Related to paragraph (f)(1) of this Section Where Consensus was Not Reached.	RR Employee Organizations.	2 filed statements	2 hours	4
228.411—RR Training Programs on Fatigue and Related Topics (*e.g.*, Rest, Alertness, Changes in Rest Cycles, etc.).	168 railroads	14 training programs	5 hours	70
—Refresher Training for New Employees	168 railroads	150 initially tr. employees.	1 hour	150
—RR Every 3-Years Refresher Training for Existing Employees.	168 railroads	3,400 trained employees.	1 hour	3,400
—RR Record of Employees Trained in Compliance with this Section.	168 railroads	3,550 records	5 minutes	296
—Written Declaration to FRA by Tourist, Scenic, Historic, or Excursion Railroad Seeking Exclusion from this Section's Requirements because its Employees are Assigned Schedules wholly within the Hours of 4 a.m. to 8 p.m. on the Same Calendar Day that Comply the Provisions of § 228.405.	140 railroads	2 written declarations	1 hour	2
Appendix D—Guidance on Fatigue Management Plan—RR Reviewed and Updated Fatigue Management Plans.	168 railroads	2 updated plans	10 hours	20

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Under 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: (1) Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection requirements; (3) the quality, utility, and clarity of the information to be collected; and (4) whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kim.Toone@dot.gov.*

For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or

Ms. Kimberly Toone at 202–493–6132. (These phone numbers are not toll-free).

OMB must make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, to ensure OMB has sufficient time to fully consider a comment to OMB, OMB should receive it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule, and will announce the OMB control number, when assigned, by separate notice in the **Federal Register**.

F. Environmental Assessment

FRA has evaluated this proposed rule consistent with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined this proposed rule is not a major FRA action requiring the preparation of an environmental impact statement or environmental assessment because it is categorically excluded from detailed environmental review under section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547, May 26, 1999. Section 4(c)(20) states:

> [c]ertain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded: * * * (20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.

FRA has further concluded no extraordinary circumstances exist with respect to this proposed regulation that might trigger the need for a more detailed environmental review under sections 4(c) and (e) of FRA's Procedures. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

G. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that:

> before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement. . . .

The written statement, if required, would detail the effect on State, local, and tribal governments and the private sector.

For the year 2013, FRA adjusted the monetary amount of $100,000,000 to $151,000,000 for inflation. This proposed rule would not result in the expenditure of more than $151,000,000 by the public sector in any one year, and thus preparation of such a statement is not required.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355, May 22, 2001. Under the Executive Order, ''significant energy action'' means any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, advance NPRM, and NPRM) that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM consistent with Executive Order 13211. FRA has determined this NPRM will not have a significant adverse effect on the supply, distribution, or use of energy and, thus, is not a ''significant energy action'' under the Executive Order 13211.

I. Privacy Act Statement

Consistent with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* Anyone can search the electronic form of any written communications and comments received into any of FRA's dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). *See http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

List of Subjects in 49 CFR Part 228

Administrative practice and procedures, Buildings and facilities, Hazardous materials transportation, Noise control, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 228 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 228—PASSENGER TRAIN EMPLOYEE HOURS OF SERVICE; RECORDKEEPING AND REPORTING; SLEEPING QUARTERS

■ 1. The authority for part 228 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21101–21109; Sec. 108, Div. A, Public Law 110–432, 122 Stat. 4860–4866, 4893–4894; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; 49 U.S.C. 103; and 49 CFR 1.89.

■ 2. The heading of part 228 is revised to read as set forth above.

■ 3. In § 228.5, add definitions of ''Automated recordkeeping system'', ''Electronic recordkeeping system'', ''Electronic signature'', ''Eligible smaller railroad'', and ''Railroad that has less than 400,000 employee hours per year'' in alphabetical order to read as follows:

§ 228.5 Definitions.

* * * * *

Automated recordkeeping system means a recordkeeping system that—

(1) An eligible smaller railroad, or a contractor or subcontractor to such a

railroad, may use instead of a manual recordkeeping system or electronic recordkeeping system to create and maintain any records subpart B requires; and

(2) Conforms to the requirements of § 228.206.

* * * * *

Electronic recordkeeping system means a recordkeeping system that—

(1) A railroad may use instead of a manual recordkeeping system or automated recordkeeping system to create and maintain any records required by subpart B; and

(2) Conforms to the requirements of §§ 228.201–228.205.

Electronic signature means an electronic sound, symbol, or process that—

(1) Is attached to, or logically associated with, a contract or other record;

(2) Is executed or adopted by a person with the intent to sign the record, to create either an individual's unique digital signature, or unique digitized handwritten signature; and

(3) Complies with the requirements of § 228.19(g) or § 228.206(a).

Eligible smaller railroad means a railroad with less than 400,000 employee hours per year that may create and maintain its hours of service records required by subpart B of this part by using an automated recordkeeping system.

* * * * *

Railroad that has less than 400,000 employee hours per year means either: (1) A railroad that reported to FRA that it had less than 400,000 employee hours during the preceding three consecutive calendar years under § 225.21(d) of this chapter on Form FRA 6180.56, Annual Railroad Reports of Manhours by State; or (2) a railroad operating less than 3 consecutive calendar years that reported to FRA that it had less than 400,000 employee hours during the current calendar year under § 225.21(d) of this chapter on Form FRA 6180.56, Annual Railroad Reports of Manhours by State.

* * * * *

■ 4. In § 228.9, revise its heading, add headings to paragraphs (a) and (b), and add paragraph (c) to read as follows:

§ 228.9 Manual, electronic, and automated records; general.

(a) *Manual records.* * * *

* * * * *

(b) *Electronic records.* * * *

* * * * *

(c) *Automated records.* Each automated record maintained under this part shall be—

(1) Signed electronically by the employee whose time on duty is being recorded or, in the case of a member of a train crew or a signal employee gang, digitally signed by the reporting employee who is a member of the train crew or signal gang whose time is being recorded as provided by § 228.206(a);

(2) Stamped electronically with the certifying employee's electronic signature and the date and time the employee electronically signed the record;

(3) Retained for 2 years in a secured file that prevents alteration after electronic signature;

(4) Accessible by the Administrator through a computer terminal of the railroad; and

(5) Reproducible using printers at the location where records are accessed.

■ 5. In § 228.11, revise the first sentence of paragraph (a) to read as follows:

§ 228.11 Hours of duty records.

(a) *In general.* Each railroad, or a contractor or a subcontractor of a railroad, shall keep a record of the hours of duty of each employee. * * *

* * * * *

■ 6. Revise the heading of subpart D to read as follows:

Subpart D—Electronic Recordkeeping System and Automated Recordkeeping System

■ 7. In § 228.201, revise the section heading, designate the introductory text as paragraph (a) introductory text, redesignate paragraphs (1) through (6) as paragraphs (a)(1) through (6), revise the paragraphs newly designated as (a)(1), (a)(3), (a)(4), and (a)(5), and add paragraph (b) to read as follows:

§ 228.201 Electronic recordkeeping system and automated recordkeeping system; general.

(a) *Electronic recordkeeping system.* For purposes of compliance with the recordkeeping requirements of subpart B, a railroad, or a contractor or a subcontractor to a railroad, may create and maintain any of the records required by subpart B through electronic transmission, storage, and retrieval, if all of the following conditions are met:

(1) The system used to generate the electronic record meets all requirements of this paragraph (a) and all requirements of §§ 228.203 and 228.205;

* * * * *

(3) The railroad, or contractor or subcontractor to the railroad, monitors its electronic database of employee hours of duty records through a sufficient number of monitoring indicators to ensure a high degree of accuracy of these records;

(4) The railroad, or contractor or subcontractor to the railroad, trains its affected employees on the proper use of the electronic recordkeeping system to enter the information necessary to create their hours of service record, as required by § 228.207;

(5) The railroad, or contractor or subcontractor to the railroad, maintains an information technology security program adequate to ensure the integrity of the system, including the prevention of unauthorized access to the program logic or individual records; and

* * * * *

(b) *Automated recordkeeping system.* For purposes of compliance with the recordkeeping requirements of subpart B, an eligible smaller railroad, or a contractor or a subcontractor that provides covered service employees to such a railroad, may create and maintain any of the records required by subpart B using an automated recordkeeping system if all of the following conditions are met:

(1) The automated recordkeeping system meets all requirements of this paragraph (b) and all requirements of § 228.206; and

(2) The eligible smaller railroad or its contractor or subcontractor complies with all of the requirements of paragraph (a)(2) and paragraphs (a)(4) through (6) of this section for its automated records and automated recordkeeping system.

(3) The railroad, or a contractor or subcontractor to the railroad that has developed an automated recordkeeping system continues to have less than 400,000 employee hours. If a railroad, or a contractor or subcontractor to the railroad, that has developed an automated recordkeeping system reports to FRA that the railroad has 400,000 or more than 400,000 employee hours in three consecutive calendar years under § 225.21(d) of this chapter on its Annual Railroad Report of Manhours by State, then that railroad, or contractor or subcontractor to the railroad, is no longer eligible to use an automated recordkeeping system to record data subpart B of this part requires, unless the entity requests, and FRA grants, a waiver under § 211.41 of this chapter.

■ 8. Add § 228.206 to read as follows:

§ 228.206 Requirements for automated records and for automated recordkeeping systems on eligible smaller railroads, and their contractors or subcontractors that provide covered service employees to such railroads.

(a) *Use of electronic signature.* Each employee creating a record required by subpart B of this part must sign the record using an electronic signature that meets the following requirements:

(1) The record contains the printed name of the signer and the date and actual time the signature was executed, and the meaning (such as authorship, review, or approval) associated with the signature;

(2) Each electronic signature is unique to one individual and shall not be used by, or assigned to, anyone else.

(3) Before an eligible smaller railroad, or a contractor or subcontractor to the railroad, establishes, assigns, certifies, or otherwise sanctions an individual's electronic signature, or any element of such electronic signature, the organization shall verify the identity of the individual.

(4) A person using an electronic signature shall, prior to or at the time of each such use, certify to FRA that the person's electronic signature in the system, used on or after [*THE EFFECTIVE DATE OF THE FINAL RULE*] is the legally binding equivalent of the person's traditional handwritten signature.

(5) Each employee shall sign the initial certification of his or her electronic signature with a traditional handwritten signature. Each railroad using an automated system must maintain certification of each electronic signature at its headquarters or the headquarters of any contractor or subcontractor providing employees who perform covered service to such a railroad. Railroads, contractors, and subcontractors must also make the certification available to FRA upon request.

(6) A person using an electronic signature in such a system shall, upon FRA request, provide additional certification or testimony on whether or not a specific electronic signature is the legally binding equivalent of his or her handwritten signature.

(b) *System security.* Railroads using an automated recordkeeping system must protect the integrity of the system by the use of an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

(1) Data input is restricted to the employee or train crew or signal gang whose time is being recorded, except that an eligible smaller railroad, or a contractor or subcontractor to such a railroad, may pre-populate fields of the hours of service record provided that—

(i) The eligible smaller railroad, or its contractor or subcontractor, pre-populates fields of the hours of service record with information the railroad, or its contractor or subcontractor knows is factually accurate for a specific employee.

(ii) The recordkeeping system may allow employees to copy data from one field of a record into another field, where applicable.

(iii) The eligible smaller railroad, or its contractor or subcontractor does not use estimated, historical, or arbitrary information to pre-populate any field of an hours of service record.

(iv) An eligible smaller railroad, or a contractor or a subcontractor to such a railroad, is not in violation of paragraph (b)(1) of this section if it makes a good faith judgment as to the factual accuracy of the data for a specific employee but nevertheless errs in pre-populating a data field.

(v) The employee may make any necessary changes to the data by typing into the field without having to access another screen or obtain clearance from railroad, or contractor or subcontractor to the railroad.

(2) No two individuals have the same electronic signature.

(3) No individual can delete or alter a record after the employee who created the record electronically signs the record.

(4) Any amendment to a record is either:

(i) Electronically stored apart from the record that it amends; or

(ii) Electronically attached to the record as information without changing the original record.

(5) Each amendment to a record uniquely identifies the individual making the amendment.

(6) The automated system maintains the records as originally submitted without corruption or loss of data.

(7) Supervisors and crew management officials can access, but cannot delete or alter, the records of any employee after the employee electronically signs the record.

(c) *Identification of the individual entering data.* If a given record contains data entered by more than one individual, the record must identify each individual who entered specific information within the record and the data the individual entered.

(d) *Search capabilities.* The automated recordkeeping system must store records using the following criteria so all records matching the selected criteria are retrieved from the same location:

(1) Date (month and year);

(2) Employee name or identification number; and

(3) Electronically signed records containing one or more instances of excess service, including duty tours in excess of 12 hours.

(e) *Access to records.* An eligible smaller railroad, or contractor or subcontractor providing covered service employees to such a railroad, must provide access to its hours of service records under subpart B that are created and maintained in its automated recordkeeping system to FRA inspectors and State inspectors participating under 49 CFR part 212, subject to the following requirements:

(1) Access to records created and maintained in the automated recordkeeping system must be obtained as required by § 228.9(c)(4);

(2) An eligible smaller railroad must establish and comply with procedures for providing an FRA inspector or participating State inspector with access to the system upon request. Railroads must provide access to the system as soon as possible but not later than 24 hours after a request for access;

(3) Each data field entered by an employee on the input screen must be visible to the FRA inspector or participating State inspector;

(4) The data fields must be searchable as described in paragraph (d) of this section and must yield access to all records matching the criteria specified in a search.

9. In § 228.207, revise paragraphs (b)(1)(iii)(B) and (c)(1)(i) to read as follows:

§ 228.207 Training.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(B) The entry of hours of service data, into the electronic system or automated system or on the appropriate paper records used by the railroad or contractor or subcontractor to a railroad for which the employee performs covered service; and

* * * * *

(c) * * *

(1) * * *

(i) Emphasize any relevant changes to the hours of service laws, the recording and reporting requirements in subparts B and D of this part, or the electronic, automated, or manual recordkeeping system of the railroad or contractor or subcontractor to a railroad for which the employee performs covered service since the employee last received training; and

* * * * *

Issued in Washington, DC, on August 6, 2015.

Sarah Feinberg,

Acting Administrator.

[FR Doc. 2015–20663 Filed 8–21–15; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 150615523–5705–01]

RIN 0648–XD998

Pacific Island Pelagic Fisheries; 2015 U.S. Territorial Longline Bigeye Tuna Catch Limits

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

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes a 2015 limit of 2,000 metric tons (mt) of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the Northern Mariana Islands). NMFS would allow each territory to allocate up to 1,000 mt each year to U.S. longline fishing vessels in a specified fishing agreement that meets established criteria. As an accountability measure, NMFS would monitor, attribute, and restrict (if necessary) catches of longline-caught bigeye tuna, including catches made under a specified fishing agreement. The proposed catch limits and accountability measures support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

DATES: NMFS must receive comments by September 8, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0077, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0077,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible.

NMFS prepared an environmental analysis that describes the potential impacts on the human environment that would result from the proposed catch limits and accountability measures. NMFS provided additional background information in the 2014 proposed and final specifications (79 FR 1354, January 8, 2014; 79 FR 64097, October 28, 2014). The environmental analysis is available at *www.regulations.gov.* The information contained in the environmental analysis is not repeated here.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIRO Sustainable Fisheries, 808–725–5176.

SUPPLEMENTARY INFORMATION: NMFS proposes to specify a catch limit of 2,000 mt of longline-caught bigeye tuna for each U.S. participating Pacific territory in 2015. NMFS would also authorize each U.S. Pacific territory to allocate up to 1,000 mt of its 2,000 mt bigeye tuna limit to U.S. longline fishing vessels that are permitted to fish under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). Those vessels must be identified in a specified fishing agreement with the applicable territory. The Western Pacific Fishery Management Council recommended these specifications.

NMFS will monitor catches of longline-caught bigeye tuna by the longline fisheries of each U.S Pacific territory, including catches made by U.S. longline vessels operating under specified fishing agreements. The criteria a specified fishing agreement must meet, and the process for attributing longline-caught bigeye tuna, will follow the procedures in 50 CFR 665.819 (Territorial catch and fishing effort limits). When NMFS projects a territorial catch or allocation limit will be reached, NMFS would, as an accountability measure, prohibit the catch and retention of longline-caught bigeye tuna by vessels in the applicable territory (if the territorial catch limit is projected to be reached), and/or vessels in a specified fishing agreement (if the allocation limit is projected to be reached). The proposed catch and allocation limits and accountability measures are identical to those that NMFS specified in 2014 (79 FR 64097, October 28, 2014). NMFS notes that there is a pending case in litigation—*Conservation Council for Hawai'i, et al.,* v. *NMFS* (D. Hawaii)—that challenges the framework process for allocations from the territories to U.S. longline fishing vessels.

NMFS will consider public comments on the proposed action and will announce the final specifications in the **Federal Register**. NMFS must receive any comments by the date provided in the **DATES** heading. NMFS may not consider any comments not postmarked or otherwise transmitted by that date. Regardless of the final specifications, all other management measures will continue to apply in the longline fishery.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed specification is consistent with the applicable FEPs, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the proposed action, why it is being considered, and the legal basis for it are contained in the preamble to this proposed specification.

The proposed action would specify a 2015 limit of 2,000 metric tons (mt) (4,409,240 lb) of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI). Without this catch limit, these U.S. territories would not be subject to a limit because they, as Participating Territories to the Western and Central Pacific Fisheries Commission (WCPFC), do not have a bigeye tuna limit under international measures adopted by the WCPFC. NMFS would also allow each territory to allocate up to 1,000 mt (2,204,620 lb) of its 2,000 mt bigeye tuna limit each year to U.S. longline fishing vessels in a specified fishing agreement that meets established criteria set forth in 50 CFR 665.819. As an accountability measure, NMFS would monitor, attribute, and restrict (if necessary) catches of longline-caught bigeye tuna by vessels in the applicable U.S. territory (if the territorial catch limit is projected to be reached), or by vessels operating under the applicable specified fishing agreement (if the allocation limit is projected to be reached). The proposed

catch limits and accountability measures supports fisheries development in the U.S. Pacific territories and the long-term sustainability of fishery resources of the U.S. Pacific Islands.

This proposed action would directly apply to longline vessels federally permitted under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (Pelagic FEP), specifically Hawaii longline limited entry, American Samoa longline limited entry, and Western Pacific general longline permit holders. As of July 2015, 140 vessels possessed Hawaii longline limited entry permits (out of 164 total permits), 46 possessed American Samoa longline limited entry permits (out of 60 total permits), and no vessels held Western Pacific general longline permits.

According to landings information provided in the environmental assessment prepared in support of this action and logbook information, Hawaii-based longline vessels landed approximately 25,791,000 lb of pelagic fish valued at $93,963,000 in 2012 and 27,053,000 lb of pelagic fish valued at $88,552,000 in 2013. With 129 vessels making either a deep- or shallow-set trip in 2012, and 135 vessels in 2013, the ex-vessel value of pelagic fish caught by Hawaii-based longline fisheries averaged about $728,000 and $656,000 per vessel in 2012 and 2013 respectively. In 2013, 22 American Samoa longline vessels turned in logbooks reporting the landing of 162,444 pelagic fish (approximately 6 million lb) valued at $6,772,386. Albacore made up the largest proportion of pelagic landings at 4,525,453 lb and bigeye tuna comprised of 187,954 lb. With 22 active longline vessels, the ex-vessel value of pelagic fish caught by the American Samoa longline fishery averaged about $307,836 per vessel in 2013. With regard to Guam and CNMI, no longline fishing has occurred since 2011.

Based on available information, NMFS has determined that all vessels federally permitted under Pelagic FEP are small entities under the SBA definition of a small entity, *i.e.,* they are engaged in the business of fish harvesting (NAICS Code: 114111), are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of $20.5 million. Even though this proposed action would apply to a substantial number of vessels, the implementation of this action would not result in significant adverse economic impact to individual vessels. The proposed action would potentially benefit Hawaii-based longline fishery participants by allowing them to fish under specified fishing agreements with a territory, which could extend fishing effort for bigeye tuna in the Western Pacific Ocean and provide more bigeye tuna for markets in Hawaii.

Amendment 7 to the Pelagic FEP established a process by which NMFS could specify catch and/or effort limits for pelagic fisheries in American Samoa, Guam and CNMI, regardless of whether the WCPFC adopts a limit for those entities or not. Amendment 7 also allows NMFS to authorize the government of each territory to allocate a portion of their catch and/or effort limits through territorial fishing agreements. Specifically, bigeye tuna landed by vessels included in a fishing agreement are attributed to the U.S. territory to which the agreement applies, and not counted towards the U.S. bigeye tuna limit established by NMFS under a separate authority in 50 CFR part 300, subpart O.

In 2014, through this process, the CNMI government entered into an agreement with Hawaii-based longline vessels that authorized vessels identified in the agreement to use up to 1,000 mt of the CNMI's 2,000 mt quota. In that year, NMFS projected that the 2014 U.S. bigeye tuna limit of 3,763 mt established in 50 CFR part 300, subpart O, and applicable to U.S. longline vessels would be reached in mid-November. In accordance with Federal regulations at 50 CFR 665.819, within seven days of the date that NMFS projected the fishery would reach the U.S. bigeye tuna limit, NMFS began attributing to CNMI the bigeye tuna catches made by longline vessels identified in the fishing agreement with CNMI.

In accordance with Federal regulations at 50 CFR part 300, subpart O, vessels that possess both an American Samoa and Hawaii longline permit are not subject to the U.S bigeye tuna limit. Therefore, these vessels are allowed to retain bigeye tuna and land fish in Hawaii after the date NMFS projects the fishery would reach that limit. Further, catches of bigeye tuna made by such vessels are attributed to American Samoa, provided the fish was not caught in the U.S. EEZ around Hawaii. In 2014, all dual American Samoa/Hawaii longline permitted vessels were included in the fishing agreement with CNMI. Therefore, NMFS attributed bigeye catches by those vessels to the CNMI.

The 2015 U.S. bigeye tuna catch limit established in 50 CFR 300, Subpart O is 3,502 mt, which is about 7% lower than the 2014 limit. With the lower limit for 2015, combined with apparent higher catch rates in 2015, NMFS forecasted that the fishery reached the limit on August 5, 2015 (80 FR 44883, July 28, 2015), far earlier than in previous years. Through this action, Hawaii-based longline vessels could potentially enter into one or more fishing agreements with participating territories. This would enhance the ability of these vessels to extend fishing effort in the Western and Central Pacific Ocean and provide more bigeye tuna for markets in Hawaii. Providing opportunity to land bigeye tuna in Hawaii in the last quarter of the year when market demand is high will result in positive economic benefits for fishery participants and net benefits to the nation. Allowing participating territories to enter into specified fishing agreements under this action, provides benefits to the territories by providing funds for territorial fisheries development projects. In terms of the impacts of reducing the limits of bigeye tuna catch by longline vessels based in the territories from an unlimited amount to 2,000 mt, this is not likely to adversely affect vessels based in the territories.

Historical catch of bigeye tuna by the American Samoa longline fleet has been less than 2,000 mt, even including the catch of vessels based in American Samoa, catch by dual permitted vessels that land their catch in Hawaii, and catch attributed to American Samoa from U.S. vessels under specified fishing agreements (which occurred in 2011 and 2012). With regard to Guam and CNMI, no longline fishing has occurred since 2011.

Under the proposed action, longline fisheries managed under the Pelagic FEP are not expected to expand substantially nor change the manner in which they are currently conducted, (*i.e.,* area fished, number of vessels longline fishing, number of trips taken per year, number of hooks set per vessel during a trip, depth of hooks, or deployment techniques in setting longline gear), due to existing operational constraints in the fleet, the limited entry permit programs, and protected species mitigation requirements. The proposed rule does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small organizations or government jurisdictions. Furthermore, there would be little, if any, disproportionate adverse economic impacts from the proposed rule based on gear type, or relative vessel size. The proposed rule also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

This action is exempt from review under the procedures of E.O. 12866 because this action contains no implementing regulations.

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

Dated: August 18, 2015.

Samuel D. Rauch III,

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

[FR Doc. 2015–20778 Filed 8–21–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 80, No. 163

Monday, August 24, 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

National Agricultural Statistics Service

Notice of Intent To Request an Early Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Bee and Honey Survey. Revision to burden hours will be needed due to a change in the size of the target population, sample design, and the expansion of the questionnaire to accommodate changes to the scope of the survey to include some economic questions.

DATES: Comments on this notice must be received by October 23, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0153, by any of the following methods:

- *Email: omboffcer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: R. Renee Picanso, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS–OMB Clearance Officer, at (202) 690–2388 or at *omboffcer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Bee and Honey Survey.

OMB Control Number: 0535–0153.

Expiration Date of Approval: June 30, 2016.

Type of Request: Intent to revise and extend a currently approved information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue state and national estimates of crop and livestock production, livestock products, prices, and disposition; as well as economic statistics, environmental statistics related to agriculture, and also to conduct the Census of Agriculture.This request for renewal of the Bee and Honey Survey (0535–0153) will expand the historic collection to collect additional data to respond to the increased demand for data relating to honey bees.

As pollinators, honey bees are vital to the agricultural industry for producing food for the world's population. Ad hoc surveys showed a dramatic rise in the number of disappearances of honey bee colonies in North America in late 2006; disappearances ranged from 10–15 percent annual colony loss in some areas to greater than 30 percent in other areas. Often called Colony Collapse Disorder (CCD), the condition occurs when worker bees from a beehive or a European honey bee colony abruptly disappear, with minimal mortality evident near the hive and an intact queen and food supply readily available. The cost for maintaining and replenishing of honey bee colonies is exacerbated in a climate of higher than expected losses. Further data is needed to accurately describe the costs associated with pest/disease control, wintering fees, and replacement worker and queen bees. The USDA and the Environmental Protection Agency (EPA), in consultation with other relevant Federal partners, are scaling up efforts to address the decline of honey bee health with a goal of ensuring the recovery of this critical subset of pollinators. NASS supports the Pollinator Research Action Plan, published May 19, 2015, which emphasizes the importance of coordinated action to identify the extent and causal factors in honey bee mortality.

NASS will collect Colony Loss data under the OMB approval number 0535–0255. Under the expanded Bee and Honey Survey (0535–0153), NASS will collect information on the number of colonies, honey production, stocks, prices, and basic economic data from beekeepers in all 50 States. Findings from the expanded Bee and Honey Survey can be paired with results from the Colony Loss program to more wholly describe the economics of beekeeping.

The survey will use two questionnaire versions. Operations with five or more colonies will receive the expanded bee and honey questionnaire and operations with less than five colonies will receive a shorter version of the questionnaire. Collecting data from operations with less than five colonies will help better compare their experiences to larger operations. These surveys will provide data needed by the U.S. Department of Agriculture and other government agencies to administer programs. State universities and agriculture departments also use the enhanced data from this survey.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*), and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per

response for operations with five or more colonies. Operations with less than five colonies will receive the shorter questionnaire which is estimated to average 10 minutes per response. Publicity materials and instruction sheets will account for 5 minutes of additional burden per respondent. Respondents who refuse to complete a survey will be allotted 2 minutes of burden per attempt to collect the data.

Respondents: Farmers.

Estimated Number of Respondents: 31,500.

Estimated Total Annual Burden on Respondents: With an estimated response rate of approximately 80%, we estimate the total burden to be approximately 9,000 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, August 13, 2015.

R. Renee Picanso,

Associate Administrator.

[FR Doc. 2015–20845 Filed 8–21–15; 8:45 am]

BILLING CODE 3410–20–P

BROADCASTING BOARD OF GOVERNORS

Government in the Sunshine Act Meeting Change Notice

DATE AND TIME: Monday, August 24, 2015, 11:15 a.m. EDT.

PLACE: Cohen Building, Room 3321, 330 Independence Ave. SW., Washington, DC 20237.

SUBJECT: Notice of Closed Meeting of the Broadcasting Board of Governors.

SUMMARY: The Broadcasting Board of Governors (Board) previously announced a special session, originally scheduled for August 19, 2015, to discuss and approve a budget submission for Fiscal Year 2017. The meeting date had to be changed, and the Board will now meet in a special session, to be conducted telephonically, at the date and time listed above.

According to Office of Management and Budget (OMB) Circular A–11, section 22.1, all agency budgetary materials and data are considered confidential prior to the President submitting a budget to Congress. In accordance with section 22.5 of Circular A–11, the BBG has determined that its meeting should be closed to public observation pursuant to 5 U.S.C. 552b(c)(9)(B). In accordance with the Government in the Sunshine Act and BBG policies, the meeting will be recorded and a transcript of the proceedings, subject to the redaction of information protected by 5 U.S.C. 552b(c)(9)(B), will be made available to the public. The publicly-releasable transcript will be available for download at *www.bbg.gov* within 21 days of the date of the meeting.

Information regarding member votes to close the meeting and expected attendees can also be found on the Agency's public Web site.

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact Oanh Tran at (202) 203–4545.

Oanh Tran,

Director of Board Operations.

[FR Doc. 2015–21056 Filed 8–20–15; 4:15 pm]

BILLING CODE 8610–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana 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 planning meeting of the Montana Advisory Committee to the Commission will convene at 1:00 p.m. (MDT) on Thursday, September 10, 2015, via teleconference. The purpose of the planning meeting is for the Advisory Committee to finalize its selection of a civil rights issue for further study.

Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1–888–437–9445; Conference ID: 2651219. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1–800–977–8339 and provide the FRS operator with the Conference Call Toll-Free Number: 1–888–437–9445, Conference ID: 2651219. Members of the public are invited to submit written comments; the comments must be received in the regional office by Monday, October 12, 2015. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1050, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://www.facadatabase.gov/committee/meetings.aspx?cid=259* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain 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 Rocky Mountain Regional Office at the above phone number, email or street address.

AGENDA:

Welcome and Introductions
  Norma Bixby, Chair
Civil Rights Discussion and Select Issues for Further Study
  Montana State Advisory Committee
Administrative Matters
  Malee V. Craft, Designated Federal Official (DFO)

DATES: Thursday, September 10, 2015, at 1:00 p.m. (MDT)

ADDRESSES: To be held via teleconference:

Conference Call Toll-Free Number: 1–888–437–9445, Conference ID: 2651219.

TDD: Dial Federal Relay Service 1–800–977–8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: Malee V. Craft, DFO, *mcraft@usccr.gov*, 303–866–1040

Dated: August 18, 2015.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2015–20758 Filed 8–21–15; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–55–2015]

Foreign-Trade Zone 50—Long Beach, California; Application for Expansion of Subzone 50H; Tesoro Refining and Marketing Company, LLC

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Port of Long Beach, California, grantee of FTZ 50, requesting the expansion of Subzone 50H located at the facilities of Tesoro Refining and Marketing Company, LLC, in Long Beach, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on August 18, 2015.

The grantee proposes to expand Subzone 50H to include an additional 5.02 acres. The additional acreage is located at 1600 Pier C Street in Long Beach. No changes to the subzone's existing production authority have been requested at this time.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is *October 5, 2015.* Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to *October 19, 2015.*

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at christopher.kemp@trade.gov or (202) 482–0862.

Dated: August 18, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–20883 Filed 8–21–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–843, A–570–029, A–533–865, A–588–873, A–580–881, A–421–812, A–821–822, A–412–824]

Certain Cold-Rolled Steel Flat Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

DATES: *Effective date:* August 24, 2015.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla at (202) 482–3477 (Brazil); Scott Hoefke at (202) 482–2947 (the People's Republic of China (PRC)); Patrick O'Connor at (202) 482–0989 (India and Japan); Steve Bezirganian at (202) 482–1131 (the Republic of Korea (Korea)); Yang Jin Chun at (202) 482–5760 (the Netherlands); Eve Wang at (202) 482–6231 (the Russian Federation (Russia)); or Thomas Schauer at (202) 482–0410 (the United Kingdom), AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On July 28, 2015, the Department of Commerce (the Department) received antidumping duty (AD) petitions concerning imports of certain cold-rolled steel flat products (cold-rolled steel) from Brazil, the PRC, India, Japan, Korea, the Netherlands, Russia, and the United Kingdom, filed in proper form on behalf of AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (Petitioners).[1] The AD petitions were accompanied by five countervailing duty (CVD) petitions.[2] Petitioners are domestic producers of cold-rolled steel.[3]

On July 31, 2015, the Department requested additional information and clarification of certain areas of the Petitions.[4] Petitioners filed responses to these requests on August 4, 2015.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), Petitioners allege that imports of cold-rolled steel from Brazil, the PRC, India, Japan, Korea, the Netherlands, Russia, and the United Kingdom are being, or are likely to be, sold in the United States at less-than-fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to Petitioners supporting their allegations.

The Department finds that Petitioners filed these Petitions on behalf of the domestic industry because Petitioners are interested parties as defined in section 771(9)(C) of the Act. The Department also finds that Petitioners demonstrated sufficient industry support with respect to the initiation of the AD investigations that Petitioners are requesting.[6]

Periods of Investigation

Because the Petitions were filed on July 28, 2015, the period of investigation (POI) is, pursuant to 19 CFR 351.204(b)(1), as follows: July 1, 2014, through June 30, 2015, for Brazil, India, Japan, Korea, the Netherlands, Russia,

[1] *See* Petitions for the Imposition of Antidumping Duties on imports of Certain Cold-Rolled Steel Flat Products from Brazil, China, India, Japan, Korea, the Netherlands, Russia, and the United Kingdom, dated July 28, 2015 (the Petitions).

[2] *See* the Petitions for the Imposition of Countervailing Duties on Imports of Certain Cold-Rolled Steel Flat Products from Brazil, China, India, Korea, and Russia, dated July 28, 2015.

[3] *See* Volume I of the Petitions, at 2.

[4] *See* Letter from the Department to Petitioners entitled ''Re: Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, the Republic of Korea, and Russia and Antidumping Duties on Imports from Japan, Netherlands, and the United Kingdom: Supplemental Questions'' dated July 31, 2015 (General Issues Supplemental Questionnaire); and Letters from the Department to Petitioners entitled ''Re: Petition for the Imposition of Antidumping Duties on Imports of Certain Cold-Rolled Steel Flat Products from {country}: Supplemental Questions'' on each of the country-specific records, dated July 31, 2015.

[5] *See* ''Response to the Department's July 31, 2015 Questionnaire Regarding Volume I of the Petition for the Imposition of Antidumping and Countervailing Duties,'' dated August 4, 2015 (General Issues Supplement); *see also* the responses to the Department's July 31, 2015 questionnaires regarding the remaining antidumping Volumes of the Petition for the Antidumping and Countervailing Duties, each dated August 4, 2015.

[6] *See* the ''Determination of Industry Support for the Petitions'' section below.

and the United Kingdom, and January 1, 2015, through June 30, 2015, for the PRC.

Scope of the Investigations

The product covered by these investigations is cold-rolled steel from Brazil, the PRC, India, Japan, Korea, the Netherlands, Russia, and the United Kingdom. For a full description of the scope of these investigations, *see* the ''Scope of the Investigations,'' in Appendix I of this notice.

Comments on Scope of the Investigations

During our review of the Petitions, the Department discussed with Petitioners the proposed scope to ensure that the scope language in the Petitions would be an accurate reflection of the products for which the domestic industry is seeking relief.[7]

As discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Tuesday, September 8, 2015, which is the first business day after 20 calendar days from the signature date of this notice.[8] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Friday, September 18, 2015, which is 10 calendar days after the deadline for initial comments.

The Department requests that any factual information the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must be filed on the records of each of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[9] An electronically filed document must be received successfully in its entirety by the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

The Department will be giving interested parties an opportunity to provide comments on the appropriate physical characteristics of cold-rolled steel to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors and costs of production accurately as well as to develop appropriate product-comparison criteria.

Subsequent to the publication of this notice, the Department will be releasing a proposed list of physical characteristics and product-comparison criteria, and interested parties will have the opportunity to provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe cold-rolled steel, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

All comments and submissions to the Department must be filed electronically using ACCESS, as explained above, on the records of the Brazil, the PRC, India, Japan, Korea, the Netherlands, Russia, and the United Kingdom less-than-fair-value investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[10] they do so

[7] *See* Memorandum from Vicki Flynn to The File, dated August 7, 2015. *See also* Letter from Petitioners entitled ''Revised Scope, Amendment to Petitions,'' dated August 10, 2015.

[8] *See* 19 CFR 351.303(b).

[9] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[10] *See* section 771(10) of the Act.

for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[11]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petitions).

With regard to the domestic like product, Petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that cold-rolled steel constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[12]

In determining whether Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in Appendix I of this notice. Petitioners provided their production of the domestic like product in 2014, as well as total production of the domestic like product for the entire domestic industry.[13] To establish industry support, Petitioners compared their own production to total production of the domestic like product for the entire domestic industry.[14]

Our review of the data provided in the Petitions, General Issues Supplement, and other information readily available to the Department indicates that Petitioners have established industry support.[15] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[16] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act for the Petitions because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[17] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[18] Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the AD investigations that they are requesting the Department initiate.[19]

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, with regard to Brazil, the PRC, India, Japan, Korea, Russia, and the United Kingdom, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[20]

With regard to the Netherlands, while the allegedly dumped imports from the Netherlands do not exceed the statutory requirements for negligibility, Petitioners allege and provide supporting evidence that (1) there is a reasonable indication that data obtained in the ITC's investigation will establish that imports exceed the negligibility threshold,[21] and (2) there is the potential that imports from the Netherlands will imminently exceed the negligibility threshold and, therefore, are not negligible for purposes of a threat determination.[22] Petitioners'

[11] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[12] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from Brazil (Brazil AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom (Attachment II); Antidumping Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from the People's Republic of China (PRC AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from India (India AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from Japan (Japan AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from the Republic of Korea (Korea AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from the Netherlands (Netherlands AD Initiation Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from the Russian Federation (Russia AD Initiation Checklist); and Antidumping Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from the United Kingdom (United Kingdom AD Initiation Checklist). These checklists are dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[13] *See* Volume I of the Petitions, at 2–4 and Exhibits I–3 and I–4; General Issues Supplement, at 3. Petitioners also provided an alternate industry support calculation based on American Iron and Steel Institute shipment data. *See* Volume I of the Petitions, at 2–3 and Exhibit I–3; *see also* General Issues Supplement, at 2–4 and Exhibits I-Supp-10 through I–Supp–13. Petitioners demonstrate requisite industry support for the initiation of these investigations regardless of which calculation is used.

[14] *See* Volume I of the Petitions, at 2–4 and Exhibits I–3 and I–4; General Issues Supplement, at 3. For further discussion, *see* Brazil AD Initiation Checklist, PRC AD Initiation Checklist, India AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, Netherlands AD Initiation Checklist, Russia AD Initiation Checklist, and United Kingdom AD Initiation Checklist, at Attachment II.

[15] *See* Brazil AD Initiation Checklist, PRC AD Initiation Checklist, India AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, Netherlands AD Initiation Checklist, Russia AD Initiation Checklist, and United Kingdom AD Initiation Checklist, at Attachment II.

[16] *See* section 732(c)(4)(D) of the Act; *see also* Brazil AD Initiation Checklist, PRC AD Initiation Checklist, India AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, Netherlands AD Initiation Checklist, Russia AD Initiation Checklist, and United Kingdom AD Initiation Checklist, at Attachment II.

[17] *See* Brazil AD Initiation Checklist, PRC AD Initiation Checklist, India AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, Netherlands AD Initiation Checklist, Russia AD Initiation Checklist, and United Kingdom AD Initiation Checklist, at Attachment II.

[18] *Id.*

[19] *Id.*

[20] *See* Volume I of the Petitions, at 28–29 and Exhibit I–12.

[21] *See Statement of Administrative Action* (SAA), H.R. Doc. No. 103–316, Vol. 1, (1994) (SAA), at 857; *see also* General Issues Supplement, at 5–7 and Exhibit I–Supp–14.

[22] *See* section 771(24)(A)(iv) of the Act; *see also* Volume I of the Petitions, at Exhibit I–8; and General Issues Supplement, at 7–9 and Exhibits I–Supp–14 and I–Supp–15.

arguments regarding the limitations of publicly available import data and the collection of scope-specific import data in the ITC's investigation are consistent with the SAA. Furthermore, Petitioners' arguments regarding the potential for imports from the Netherlands to imminently exceed the negligibility threshold are consistent with the statutory criteria for ''negligibility in threat analysis'' under section 771(24)(A)(iv) of the Act, which provides that imports shall not be treated as negligible if there is a potential that subject imports from a country will imminently exceed the statutory requirements for negligibility.

Petitioners contend that the industry's injured condition is illustrated by reduced market share; reduced shipments, production, and capacity utilization; underselling and price suppression or depression; declining employment variables; lost sales and revenues; and declining financial performance.[23] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[24]

Allegations of Sales at Less-Than-Fair Value

The following is a description of the allegations of sales at less-than-fair value upon which the Department based its decision to initiate investigations of imports of cold-rolled steel flat products from Brazil, the PRC, India, Japan, Korea, the Netherlands, Russia, and the United Kingdom. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the country-specific initiation checklists.

Export Price

For Brazil, the PRC, India, Korea, the Netherlands, and the United Kingdom, Petitioners based export price (EP) U.S. prices on price quotes/offers for sales of cold-rolled steel flat products produced in, and exported from, the subject country.[25] For the Netherlands and the United Kingdom, Petitioners also based EP U.S. prices on average unit values (AUVs) of U.S. imports from those countries.[26] Petitioners also used AUV data as the basis for U.S. price for Japan.[27] Where applicable, Petitioners made deductions from U.S. price for movement expenses consistent with the delivery terms.[28] Where applicable, Petitioners also deducted from U.S. price trading company/distributor/reseller mark-ups estimated using Petitioners' knowledge of the U.S. industry.[29]

Constructed Export Price

For Russia, Petitioners based constructed export price (CEP) on a price quote/offer for sale of cold-rolled steel flat products produced in, and exported from, Russia.[30] Petitioners made deductions from U.S. price for movement expenses consistent with the delivery terms, and deducted from U.S. price trading company/distributor/reseller mark-ups estimated using publicly reported expenses in the most recently available annual report of a distributor of steel.[31]

Normal Value

For Brazil, India, Korea, and Russia, Petitioners provided home market price information obtained through market research for cold-rolled steel produced in and offered for sale in each of these countries.[32] For all four of these countries, Petitioners provided an affidavit or declaration from a market researcher for the price information.[33] For India, Petitioners made a distributor mark-up adjustment to the price.[34] For Korea, home market imputed credit expenses were deducted from the price, and U.S. imputed credit expenses were added to the price.[35] Petitioners made no other adjustments to the offer prices to calculate NV, as no others were warranted by the terms associated with the offers.[36]

For Brazil, Korea, and Russia, Petitioners provided information that sales of cold-rolled steel in the respective home markets were made at prices below the cost of production (COP), and for the United Kingdom, the Netherlands, and Japan, Petitioners did not provide home market price information because, as noted below, they were unable to obtain home market or third country prices. For all six of these countries, Petitioners calculated NV based on constructed value (CV).[37] For further discussion of COP and NV based on CV, see below.[38]

With respect to the PRC, Petitioners stated that the Department has found the PRC to be a non-market economy (NME) country in every previous less-than-fair-value investigation.[39] In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production (FOPs) valued in a surrogate market economy country, in accordance with section 773(c) of the Act. In the course of this investigation, all parties, and the public, will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

[23] *See* Volume I of the Petitions, at 14–16, 23–45, and Exhibits I–3, I–4, I–6, I–8 and I–10 through I–15; *see also* General Issues Supplement, at Exhibits I–Supp–1, I–Supp–14, and I–Supp–15.

[24] *See* Brazil AD Initiation Checklist, PRC AD Initiation Checklist, India AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, Netherlands AD Initiation Checklist, Russia AD Initiation Checklist, and United Kingdom AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, Russia, and the United Kingdom.

[25] *See* Brazil AD Initiation Checklist, PRC AD Initiation Checklist, India AD Initiation Checklist, Korea AD Initiation Checklist, Netherlands AD Initiation Checklist, and United Kingdom AD Initiation Checklist.

[26] *See* Netherlands AD Initiation Checklist and United Kingdom AD Initiation Checklist.

[27] *See* Japan AD Initiation Checklist.

[28] *See* Brazil AD Initiation Checklist, PRC AD Initiation Checklist, India AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, Netherlands AD Initiation Checklist, and United Kingdom AD Initiation Checklist.

[29] *Id.*

[30] *See* Russia AD Initiation Checklist.

[31] *Id.*

[32] *See* Brazil AD Initiation Checklist, India AD Initiation Checklist, Korea AD Initiation Checklist, and Russia AD Initiation Checklist.

[33] *Id.; see also* Memorandum to the File, ''Telephone Call to Foreign Market Researcher Regarding Antidumping Petition,'' on each of the country-specific records, dated August 4, 2015 (Russia), August 5, 2015 (Korea), August 10, 2015 (Brazil), and August 10, 2015 (India).

[34] *See* India AD Initiation Checklist.

[35] *See* Korea AD Initiation Checklist.

[36] *See* India AD Initiation Checklist, Korea AD Initiation Checklist, and Russia AD Initiation Checklist. Note that home market price was not used as the basis for NV for Brazil, but for calculation of net price for comparison to COP, movement expenses were deducted for Brazil. *See* Brazil AD Initiation Checklist.

[37] *See* Brazil AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, Netherlands AD Initiation Checklist, Russia AD Initiation Checklist, and United Kingdom AD Initiation Checklist.

[38] In accordance with section 505(a) of the Trade Preferences Extension Act of 2015, amending section 773(b)(2) of the Act, for all of the investigations other than that for the PRC, the Department will request information necessary to calculate the CV and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. The Department will no longer require a COP allegation to conduct this analysis.

[39] *See* Volume II of the Petitions, at 1–2.

Petitioners claim that South Africa is an appropriate surrogate country because it is a market economy that is at a level of economic development comparable to that of the PRC, it is a significant producer of the merchandise under consideration, and the data for valuing FOPs, factory overhead, selling, general and administrative (SG&A) expenses and profit are both available and reliable.[40]

Based on the information provided by Petitioners, we believe it is appropriate to use South Africa as a surrogate country for initiation purposes. Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

Petitioners based the FOPs for materials, labor, and energy on a petitioning U.S. producer's consumption rates for producing cold-rolled steel as they did not have access to the consumption rates of PRC producers of the subject merchandise.[41] Petitioners note that the selected U.S. producer was chosen because, like the Chinese producer of the U.S. price offers, the U.S. producer is a large, integrated producer of subject merchandise.[42] Petitioners valued the estimated factors of production using surrogate values from South Africa.[43]

Valuation of Raw Materials

Petitioners valued the FOPs for raw materials (*e.g.,* coke, iron ore, aluminum, ferromanganese) using reasonably available, public import data for South Africa from the Global Trade Atlas (GTA) for the period of investigation.[44] Petitioners excluded all import values from countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies and from countries previously determined by the Department to be NME countries. In addition, in accordance with the Department's practice, the average import value excludes imports that were labeled as originating from an unidentified country. The Department determines that the surrogate values used by Petitioners are reasonably available and, thus, are acceptable for purposes of initiation.

Valuation of Labor

Petitioners valued labor using South African labor data published by the International Labor Organization (ILO).[45] Specifically, Petitioners relied on industry-specific wage rate data from Chapter 5A of the ILO's ''Labor Cost in Manufacturing'' publication as South African wage information was not available in Chapter 6A of the ILO's ''Yearbook of Labor Statistics'' publication.[46] As the South African wage data are monthly data from 2012 in South African Rand, Petitioners converted the wage rates to hourly, adjusted for inflation and then converted to U.S. Dollars using the average exchange rate during the POI.[47] Petitioners then applied that resulting labor rate to the labor hours expended by the U.S. producer of cold-rolled-resistant steel.[48]

Valuation of Energy

Petitioners used public information, as compiled by Eskom (a South African electricity producer), to value electricity.[49] This 2014–2015 Eskom price information was converted to U.S. Dollars and from kilowatt hours to thousand kilowatt hours in order to be compared to the U.S producer factor usage rates.[50] The cost of natural gas in South Africa was calculated from the average unit value of imports of liquid natural gas for the period, as reported by GTA.[51] Using universal conversion factors, Petitioners converted that cost to the U.S. producer-reported factor unit of million British thermal units to ensure the proper comparison.[52]

Valuation of Factory Overhead, Selling, General and Administrative Expenses, and Profit

Petitioners calculated surrogate financial ratios (*i.e.,* manufacturing overhead, SG&A expenses, and profit) using the 2013 audited financial statement of EVRAZ Highveld Steel and Vanadium, a South African producer of comparable merchandise (*i.e.,* flat-rolled steel).[53]

Normal Value Based on Constructed Value

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM); SG&A expenses; financial expenses; and packing expenses. Petitioners calculated COM based on Petitioners' experience adjusted for known differences between their industry in the United States and the industries of the respective country (*i.e.,* Brazil, Japan, Korea, the Netherlands, Russia, and the United Kingdom), during the proposed POI.[54] Using publicly-available data to account for price differences, Petitioners multiplied their usage quantities by the submitted value of the inputs used to manufacture cold-rolled steel in each country.[55] For Brazil, Japan, Korea, the Netherlands, Russia, and the United Kingdom, labor rates were derived from publicly available sources multiplied by the product-specific usage rates.[56] For Brazil, Japan, Korea, the Netherlands, Russia, and the United Kingdom, to determine factory overhead, SG&A, and financial expense rates, Petitioners relied on financial statements of producers of comparable merchandise operating in the respective foreign country, although for Brazil and Japan, we made adjustments to Petitioners' calculations of these rates.[57]

For Brazil, Korea, and Russia, because certain home market prices fell below COP, pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, as noted above, Petitioners calculated NVs based on constructed value (CV) for those countries.[58] For the Japan, the Netherlands, and the United Kingdom, Petitioners indicated they were unable to obtain home market or third country prices; accordingly, Petitioners based NV only on CV for those countries.[59] Pursuant to section 773(e) of the Act, CV consists of the COM, SG&A, financial expenses, packing expenses, and profit. Petitioners calculated CV using the same average COM, SG&A, and financial expenses, to calculate COP.[60]

[40] *Id.* at 2.

[41] *See* Volume II of the Petitions, at Exhibit II–14 (page 1).

[42] *Id.*

[43] *Id.,* at Exhibit II–14.

[44] *See* Volume II of the Petitions, at Exhibit II–14(D).

[45] *Id.,* at Exhibit II–14 (page 5 and Exhibit II–14(E)).

[46] *Id.*

[47] *Id.*

[48] *Id.,* at Exhibit II–14(I).

[49] *Id.,* at Exhibit II–14(F).

[50] *Id.,* at Exhibit II–14 (page 7 and Exhibit II–14(F)).

[51] *Id.,* at Exhibit II–14(G).

[52] *Id.,* at Exhibit II–14 (page 7).

[53] *Id.,* at Exhibit II–14 (page 8 and Exhibit II–14(H)).

[54] *See* Brazil AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, Netherlands AD Initiation Checklist, Russia AD Initiation Checklist, and United Kingdom AD Initiation Checklist.

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *See* Brazil AD Initiation Checklist, Korea Initiation Checklist, and Russia Initiation Checklist.

[59] *See* Japan AD Initiation Checklist, Netherlands AD Initiation Checklist, and United Kingdom AD Initiation Checklist.

[60] *See* Brazil AD Initiation Checklist, Japan AD Initiation Checklist, Korea AD Initiation Checklist, Netherlands AD Initiation Checklist, Russia AD Initiation Checklist, and United Kingdom AD Initiation Checklist.

Petitioners relied on the financial statements of the same producers that they used for calculating manufacturing overhead, SG&A, and financial expenses to calculate the profit rate, though for Brazil and Japan, in addition to the same adjustments to Petitioners' calculations of factory overhead, SG&A, and financial expense rates as we made for the calculation of COP, we made an adjustment to the Petitioners' calculated profit rates.[61]

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of cold-rolled steel from Brazil, the PRC, India, Japan, Korea, the Netherlands, Russia, and the United Kingdom are being, or are likely to be, sold in the United States at less-than-fair value. Based on comparisons of EP or CEP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margin(s) for cold-rolled steel for each country are as follows: (1) Brazil ranges from 30.28 to 35.43 percent;[62] (2) India is 43.12 percent;[63] (3) Japan is 71.35 percent;[64] (4) Korea ranges from 75.42 to 177.50 percent;[65] (5) the Netherlands ranges from 39.43 to 121.53 percent;[66] (6) Russia ranges from 69.12 to 227.52 percent;[67] and (7) the United Kingdom ranges from 32.59 to 69.30 percent.[68]

Based on comparisons of EP to NV, in accordance with section 773(c) of the Act, the estimated dumping margin for cold-rolled steel from the PRC is 265.79 percent.[69]

Initiation of Less-Than-Fair-Value Investigations

Based upon the examination of the AD Petitions on cold-rolled steel from Brazil, the PRC, India, Japan, Korea, the Netherlands, Russia, and the United Kingdom, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of cold-rolled steel from Brazil, the PRC, India, Japan, Korea, the Netherlands, Russia, and the United Kingdom are being, or are likely to be, sold in the United States at less-than-fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law.[70] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[71] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to these AD investigations.[72]

Respondent Selection

Petitioners named eight companies from Brazil,[73] 43 companies from India,[74] 13 companies from Japan,[75] nine companies from Korea,[76] four companies from the Netherlands,[77] 11 companies from Russia,[78] and nine companies from the United Kingdom,[79] as producers/exporters of cold-rolled steel. Following standard practice in AD investigations involving market economy countries, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate HTSUS numbers listed with the scope in Appendix I, below. We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five business days of publication of this **Federal Register** notice. Interested parties wishing to comment regarding respondent selection must do so within seven business days of the publication of this notice. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. ET by the date noted above. We intend to make our decision regarding respondent selection within 20 days of publication of this notice.

With respect to the PRC, Petitioners named 224 companies as producers/exporters of cold-rolled steel.[80] In accordance with our standard practice for respondent selection in cases involving NME countries, we intend to issue quantity-and-value (Q&V) questionnaires to each potential respondent and base respondent selection on the responses received. In addition, the Department will post the Q&V questionnaire along with filing instructions on the Enforcement and Compliance Web site at *http://www.trade.gov/enforcement/news.asp*.

Exporters/producers of cold-rolled steel from the PRC that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy from the Enforcement and Compliance Web site. The Q&V response must be submitted by all PRC exporters/producers no later than August 31, 2015, which is two weeks from the signature date of this notice. All Q&V responses must be filed electronically via ACCESS.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[81] The specific requirements for submitting a separate-rate application in the PRC investigation are outlined in detail in the application itself, which is available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html*. The separate-rate application will be due 30 days after publication of this initiation notice.[82] Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of the Department's AD questionnaire as mandatory respondents. The

[61] *Id.*

[62] *See* Brazil AD Initiation Checklist.

[63] *See* India AD Initiation Checklist.

[64] *See* Japan AD Initiation Checklist.

[65] *See* Korea AD Initiation Checklist.

[66] *See* Netherlands AD Initiation Checklist.

[67] *See* Russia AD Initiation Checklist.

[68] *See* United Kingdom AD Initiation Checklist.

[69] *See* PRC AD Initiation Checklist.

[70] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[71] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

[72] *Id.* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[73] *See* the Volume I of the Petitions, at Exhibit I–7.

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *See* the Volume I of the Petitions, at Exhibit I–7. *See also* the Volume XI of the Petitions, at 1.

[78] *See* the Volume I of the Petitions, at Exhibit I–7.

[79] *See* the Volume I of the Petitions, at Exhibit I–7. *See also* the Volume XIV of the Petitions, at 1.

[80] *Id.*

[81] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[82] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

Department requires that respondents from the PRC submit a response to both the Q&V questionnaire and the separate-rate application by their respective deadlines in order to receive consideration for separate-rate status.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.[83]

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of Brazil, the PRC, India, Japan, Korea, the Netherlands, Russia, and the United Kingdom via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of cold-rolled steel from Brazil, the PRC, India, Japan, Korea, the Netherlands, Russia and/or the United Kingdom are materially injuring or threatening material injury to a U.S. industry.[84] A negative ITC determination for any country will result in the investigation being terminated with respect to that country;[85] otherwise, these investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[86] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[87] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[88] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[89] The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: August 17, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigations

The products covered by these investigations are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated

[83] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[84] *See* section 733(a) of the Act.

[85] *Id.*

[86] *See* 19 CFR 351.301(b).

[87] *See* 19 CFR 351.301(b)(2).

[88] *See* section 782(b) of the Act.

[89] *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

with metal. The products covered include coils that have a width or other lateral measurement (''width'') of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of these investigations are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these investigations unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of these investigations:

- Ball bearing steels; [90]
- Tool steels; [91]
- Silico-manganese steel; [92]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland.* [93]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.* [94]

The products subject to these investigations are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6075, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8015, 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigations may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigations is dispositive.

[FR Doc. 2015–20881 Filed 8–21–15; 8:45 am]

BILLING CODE 3510–DS–P

[90] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[91] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[92] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[93] *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances,* 79 FR 42,501, 42,503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as ''a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths.''

[94] *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71,741, 71,741–42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as ''cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.''

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–844, C–533–866, C–570–030, C–580–882, C–821–823]

Certain Cold-Rolled Steel Flat Products From Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective date:* August 24, 2015.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin at (202) 482–6478 (Brazil); Howard Smith at (202) 482–5193 (India); Yasmin Nair at (202) 482–3813 (the People's Republic of China and the Republic of Korea); and Kristen Johnson at (202) 482–4793 (the Russian Federation), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On July 28, 2015, the Department of Commerce (Department) received countervailing duty (CVD) petitions concerning imports of certain cold-rolled steel flat products (cold-rolled steel) from Brazil, India, the People's Republic of China (the PRC), the Republic of Korea (Korea), and the Russian Federation (Russia), filed in proper form on behalf of AK Steel Corporation, ArcelorMittal USA EEC, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively, Petitioners). The CVD petitions were accompanied by antidumping duty (AD) petitions also concerning imports of cold-rolled steel from all of the above countries, in addition to Japan, the Netherlands, and the United Kingdom.[1] Petitioners are domestic producers of cold-rolled steel.[2]

On July 31, 2015, the Department requested information and clarification for certain areas of the Petitions.[3] Petitioners filed responses to these requests on August 4, 2015.[4] On August 6, 2015, the Department sought additional information with regard to the India CVD Petition and the Russia CVD Petition.[5] Petitioners filed their Russia CVD response on August 7, 2015, and their India CVD response on August 10, 2015.[6]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioners allege that the Governments of Brazil (GOB), India (GOI), the PRC (GOC), Korea (GOK), and Russia (GOR) are providing countervailable subsidies (within the meaning of sections 701 and 771(5) of the Act) to imports of cold-rolled steel from Brazil, India, the PRC, Korea, and Russia, respectively, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 702(b)(1) of the Act, the Petitions are accompanied by information reasonably available to Petitioners supporting their allegations.

The Department finds that Petitioners filed the Petitions on behalf of the domestic industry because Petitioners are interested parties as defined in section 771(9)(C) of the Act. The Department also finds that Petitioners demonstrated sufficient industry support with respect to the initiation of the CVD investigations that Petitioners are requesting.[7]

Period of Investigations

The period of investigations is January 1, 2014, through December 31, 2014.[8]

Scope of the Investigations

The product covered by these investigations is cold-rolled steel from Brazil, India, the PRC, Korea, and Russia. For a full description of the scope of these investigations, *see* the ''Scope of the Investigations'' in Appendix I of this notice.

Comments on Scope of the Investigations

During our review of the Petitions, the Department discussed with Petitioners the proposed scope to ensure that the scope language in the Petitions would be an accurate reflection of the products

[1] *See* ''Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, Netherlands, Russia, and the United Kingdom,'' dated July 28, 2015 (Petitions).

[2] *See* Volume I of the Petitions, at 2, and Exhibits I–3 and I–4.

[3] *See* Letter from the Department to Petitioners entitled ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, the Republic of Korea, and Russia and Antidumping Duties on Imports from Japan, Netherlands, and the United Kingdom: Supplemental Questions,'' dated July 31, 2015 (General Issues Questionnaire); Letter from the Department to Petitioners entitled ''Petition for the Imposition of Countervailing Duties on Imports of Certain Cold-Rolled Steel Flat Products from Brazil: Supplemental Questions,'' dated July 31, 2015 (Brazil Questionnaire); Letter from the Department to Petitioners entitled ''Petition for the Imposition of Countervailing Duties on Imports of Certain Cold-Rolled Steel Flat Products from India: Supplemental Questions,'' dated July 31, 2015 (India Questionnaire); Letter from the Department to Petitioners entitled ''Petition for the Imposition of Countervailing Duties on Imports of Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Supplemental Questions,'' dated July 31, 2015 (PRC Questionnaire); Letter from the Department to Petitioners entitled ''Petition for the Imposition of Countervailing Duties on Imports of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Supplemental Questions,'' dated July 31, 2015 (Korea Questionnaire); Letter from the Department to Petitioners entitled ''Petition for the Imposition of Countervailing Duties on Imports of Certain Cold-Rolled Steel Flat Products from Russia: Supplemental Questions,'' dated July 31, 2015 (Russia Questionnaire).

[4] *See* Letter from Petitioners entitled ''Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, Netherlands, Russia, and the United Kingdom: Response to the Department's July 31, 2015 Questionnaire Regarding Volume I of the Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated August 4, 2015 (General Issues Supplement); Letter from Petitioners entitled ''Certain Cold-Rolled Steel Flat Products from Brazil: Response to the Department's July 31, 2015 Questionnaire Regarding Volume V of the Petition for the Imposition of Countervailing Duties,'' dated August 4, 2015 (Brazil Supplement); Letter from Petitioners entitled ''Certain Cold-Rolled Steel Flat Products from India: Response to the Department's July 31, 2015 Questionnaire Regarding Volume VII of the Petition for the Imposition of Countervailing Duties,'' dated August 4, 2015 (India Supplement); Letter from Petitioners entitled ''Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Response to the Department's July 31, 2015 Questionnaire Regarding Volume III of the Petition for the Imposition of Countervailing Duties,'' dated August 4, 2015 (PRC Supplement); Letter from Petitioners entitled ''Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Response to the Department's July 31, 2015 Questionnaire Regarding Volume X of the Petition for the Imposition of Countervailing Duties,'' dated August 4, 2015 (Korea Supplement); and Letter from Petitioners entitled ''Certain Cold-Rolled Steel Flat Products from Russia: Response to the Department's July 31, 2015 Questionnaire Regarding Volume XIII of the Petition for the Imposition of Countervailing Duties,'' dated August 4, 2015 (Russia Supplement).

[5] *See* Letter from the Department to Petitioners entitled ''Petition for the Imposition of Countervailing Duties on Imports of Certain Cold-Rolled Steel Flat Products from Russia: Supplemental Question,'' dated August 6, 2015 (Russia Second Questionnaire); and Letter from the Department to Petitioners entitled ''Petition for the Imposition of Countervailing Duties on Imports of Certain Cold-Rolled Steel Flat Products from India: Supplemental Question,'' dated August 6, 2015 (India Second Questionnaire).

[6] *See* Letter from Petitioners entitled ''Certain Cold-Rolled Steel Flat Products from Russia: Response to the Department's August 6, 2015 Questionnaire Regarding Volume XIII of the Petition for the Imposition of Countervailing Duties,'' dated August 7, 2015 (Russia Second Supplement); and Letter from Petitioners entitled ''Certain Cold-Rolled Steel Flat Products from India: Response to the Department's August 6, 2015 Questionnaire Regarding Volume VII of the Petition for the Imposition of Countervailing Duties,'' dated August 10, 2015 (India Second Supplement);

[7] *See* the ''Determination of Industry Support for the Petitions'' section below.

[8] 19 CFR 351.204(b)(2).

for which the domestic industry is seeking relief.[9]

As discussed in the preamble to the Department's regulations,[10] we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determinations. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Time (ET) on Tuesday, September 8, 2015, which is the first business day after 20 calendar days from the signature date of this notice.[11] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Friday, September 18, 2015, which is 10 calendar days after the initial comments deadline.

The Department requests that any factual information the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must be filed on the records of each of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). An electronically-filed document must be received successfully in its entirety by the time and date it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to section 702(b)(4)(A)(i) of the Act, the Department notified representatives of the GOB, GOI, GOK, GOC, and GOR of the receipt of the Petitions. Also, in accordance with section 702(b)(4)(A)(ii) of the Act, the Department provided representatives of the GOB, GOI, GOK, GOC, and GOR the opportunity for consultations with respect to the Petitions. On August 11, 2015, consultations were held with the GOR, and on August 14, 2015 consultations were held with the GOB and GOK.[12] All invitation letters and memoranda regarding these consultations are on file electronically *via* ACCESS.

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[13] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[14]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petitions).

With regard to the domestic like product, Petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that cold-rolled steel constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[15]

In determining whether Petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in

[9] *See* Memorandum from Vicki Flynn to The File, dated August 7, 2015. *See also* Letter from Petitioners entitled ''Revised Scope, Amendment to Petitions,'' dated August 10, 2015.

[10] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[11] *See* 19 CFR 351.303(b).

[12] Consultations were not held with the GOI and GOC, as none were requested by those governments prior to initiation of these investigations.

[13] *See* section 771(10) of the Act.

[14] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[15] For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from Brazil (Brazil CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom (Attachment II); Countervailing Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from the People's Republic of China (PRC CVD Initiation Checklist), at Attachment II; Countervailing Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from India (India CVD Initiation Checklist), at Attachment II; Countervailing Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from the Republic of Korea (Korea CVD Initiation Checklist), at Attachment II; and Countervailing Duty Investigation Initiation Checklist: Certain Cold-Rolled Steel Flat Products from the Russian Federation (Russia CVD Initiation Checklist). These checklists are dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in Appendix I of this notice. Petitioners provided their production of the domestic like product in 2014, as well as total production of the domestic like product for the entire domestic industry.[16] To establish industry support, Petitioners compared their own production to total production of the domestic like product for the entire domestic industry.[17]

Our review of the data provided in the Petitions, General Issues Supplement, and other information readily available to the Department indicates that Petitioners have established industry support.[18] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[19] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act for the Petitions because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[20] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act for the Petitions because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[21] Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that Petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the CVD investigations that they are requesting the Department initiate.[22]

Injury Test

Because Brazil, India, the PRC, Korea, and Russia are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from Brazil, India, the PRC, India, Korea, and Russia materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, with regard to Brazil, the PRC, Korea, and Russia, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[23]

In CVD petitions, section 771(24)(A) of the Act provides that imports of subject merchandise must exceed the negligibility threshold of three percent, except that imports of subject merchandise from developing countries in CVD investigations must exceed the negligibility threshold of four percent, pursuant to section 771(24)(B) of the Act. Brazil has been designated as a developing country, and India has been designated as a least developed country.[24]

While the allegedly subsidized imports from India do not meet the statutory negligibility threshold of four percent, Petitioners allege and provide supporting evidence that (1) there is a reasonable indication that data obtained in the ITC's investigation will establish that imports exceed the negligibility threshold,[25] and (2) there is the potential that imports from India will imminently exceed the negligibility threshold and, therefore, are not negligible for purposes of a threat determination.[26] Petitioners' arguments regarding the limitations of publicly available import data and the collection of scope-specific import data in the ITC's investigation are consistent with the SAA. Furthermore, Petitioners' arguments regarding the potential for imports to imminently exceed the negligibility threshold are consistent with the statutory criteria for ''negligibility in threat analysis'' under section 771(24)(A)(iv) of the Act, which provides that imports shall not be treated as negligible if there is a potential that subject imports from a country will imminently exceed the statutory requirements for negligibility.

Petitioners contend that the industry's injured condition is illustrated by reduced market share; reduced shipments, production, and capacity utilization; underselling and price suppression or depression; declining employment variables; lost sales and revenues; and declining financial performance.[27] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[28]

Initiation of Countervailing Duty Investigations

Section 702(b)(1) of the Act requires the Department to initiate a CVD investigation whenever an interested party files a CVD petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of

[16] *See* Volume I of the Petitions, at 2–4 and Exhibits I–3 and I–4; General Issues Supplement, at 3. Petitioners also provided an alternate industry support calculation based on American Iron and Steel Institute shipment data. *See* Volume I of the Petitions, at 2–3 and Exhibit I–3; *see also* General Issues Supplement, at 2–4 and Exhibits I–Supp–10 through I–Supp–13. Petitioners demonstrate requisite industry support for the initiation of these investigations regardless of which calculation is used.

[17] *See* Volume I of the Petitions, at 2–4 and Exhibits I–3 and I–4; General Issues Supplement, at 3. For further discussion, *see* Brazil CVD Initiation Checklist, PRC CVD Initiation Checklist, India CVD Initiation Checklist, Korea CVD Initiation Checklist, and Russia CVD Initiation Checklist, at Attachment II.

[18] *See* Brazil CVD Initiation Checklist, PRC CVD Initiation Checklist, India CVD Initiation Checklist, Korea CVD Initiation Checklist, and Russia CVD Initiation Checklist, at Attachment II.

[19] *See* section 702(c)(4)(D) of the Act; *see also* Brazil CVD Initiation Checklist, PRC CVD Initiation Checklist, India CVD Initiation Checklist, Korea CVD Initiation Checklist, and Russia CVD Initiation Checklist, at Attachment II.

[20] *See* Brazil CVD Initiation Checklist, PRC CVD Initiation Checklist, India CVD Initiation Checklist, Korea CVD Initiation Checklist, and Russia CVD Initiation Checklist, at Attachment II.

[21] *Id.*

[22] *Id.*

[23] *See* Volume I of the Petitions, at 28–29 and Exhibit I–12.

[24] *See* section 771(36)(A)–(B) of the Act.

[25] *See Statement of Administrative Action* (SAA), H.R. Doc. No. 103–316, Vol. 1, (1994) (SAA), at 857; *see also* General Issues Supplement, at 5–7 and Exhibit I-Supp-14.

[26] *See* section 771(24)(A)(iv) of the Act; *see also* Volume I of the Petitions, at Exhibit I–8; and General Issues Supplement, at 7–9 and Exhibits I-Supp-14 and I-Supp-15.

[27] *See* Volume I of the Petitions, at 14–16, 23–45, and Exhibits I–3, I–4, I–6, I–8 and I–10 through I–15; *see also* General Issues Supplement, at Exhibits I-Supp-1, I-Supp-14, and I-Supp-15.

[28] *See* Brazil CVD Initiation Checklist, PRC CVD Initiation Checklist, India CVD Initiation Checklist, Korea CVD Initiation Checklist, and Russia CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, Russia, and the United Kingdom.

a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to Petitioners supporting the allegations.

Petitioners allege that producers/exporters of cold-rolled steel in Brazil, India, the PRC, Korea, and Russia benefited from countervailable subsidies bestowed by the governments of these countries, respectively. The Department examined the Petitions and finds that they comply with the requirements of section 702(b)(1) of the Act. Therefore, in accordance with section 702(b)(1) of the Act, we are initiating CVD investigations to determine whether manufacturers, producers, or exporters of cold-rolled steel from Brazil, India, the PRC, Korea, and Russia receive countervailable subsidies from the governments of these countries, respectively.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law.[29] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[30] The amendments to sections 776 and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to these CVD investigations.[31]

Brazil

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation on 32 of the 35 alleged programs. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* the Brazil CVD Initiation Checklist.

India

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation on 53 of the 56 alleged programs. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* the India CVD Initiation Checklist.

The PRC

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation on 44 of the 45 alleged programs. For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* the PRC CVD Initiation Checklist.

Korea

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation 39 of the 41 alleged programs.[32] For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* the Korea CVD Initiation Checklist.

Russia

Based on our review of the petition, we find that there is sufficient information to initiate a CVD investigation on 10 of the 14 alleged programs.[33] For a full discussion of the basis for our decision to initiate or not initiate on each program, *see* the Russia CVD Initiation Checklist.

A public version of the initiation checklist for each investigation is available on ACCESS.

In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of this initiation.

Respondent Selection

Petitioners named eight companies as producers/exporters of cold-rolled steel from Brazil, 43 from India, 224 from the PRC, nine from Korea, and 11 from Russia.[34] Following standard practice in CVD investigations, the Department will, where appropriate, select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of cold-rolled steel during the periods of investigation under the following Harmonized Tariff Schedule of the United States (HTSUS) numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6075, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8015, 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

We intend to release CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five business days of publication of this **Federal Register** notice. The Department invites comments regarding respondent selection within seven business days of publication of this **Federal Register** notice.

Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS, by 5:00 p.m. ET by the date noted above. We intend to make our decision regarding respondent selection within 20 days of publication of this notice. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at *http://enforcement.trade.gov/apo.*

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the GOB, GOI, GOC, GOK, and GOR *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each known exporter (as named in the Petitions), consistent with 19 CFR 351.203(c)(2).

ITC Notification

We notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of cold-rolled steel from Brazil, India, the PRC, Korea, and Russia are materially injuring, or threatening

[29] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[30] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[31] *Id.* at 46794–95.

[32] The Department decided to partially initiate on Dongbu's Debt Restructuring program. *See* the Korea CVD Initiation Checklist for a more detailed explanation.

[33] The Department decided to partially initiate on the Provision of Mining Rights for Less Than Adequate Remuneration program. *See* the Russia CVD Initiation Checklist for a more detailed explanation.

[34] *See* Volume I of the Petitions, at Exhibit I–7.

material injury to, a U.S. industry.[35] A negative ITC determination for any country will result in the investigation being terminated with respect to that country;[36] otherwise, these investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The regulation requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Parties should review the regulations prior to submitting factual information in these investigations.

Extension of Time Limits Regulation

Parties may request an extension of time limits before the expiration of a time limit established under part 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under part 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm* prior to submitting factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[37] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[38] The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act.

Dated: August 17, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigations

The products covered by these investigations are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (''width'') of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of these investigations are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and

[35] *See* section 703(a) of the Act.

[36] *Id.*

[37] *See* section 782(b) of the Act.

[38] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these investigations unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of these investigations:

- Ball bearing steels; [1]
- Tool steels; [2]
- Silico-manganese steel; [3]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland.*[4]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.*[5]

The products subject to these investigations are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6075, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8015, 7225.50.8085, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigations may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigations is dispositive.

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BILLING CODE 3510–DS–P

[1] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[2] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[3] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[4] *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances,* 79 FR 42,501, 42,503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as ''a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths.''

[5] *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71741, 71741–42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as ''cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.''

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE069

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Kodiak Ferry Terminal and Dock Improvements Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the Alaska Department of Transportation and Public Facilities (DOT&PF) for authorization to take marine mammals incidental to reconstructing the existing ferry terminal at Pier 1 in Kodiak, Alaska, referred to as the Kodiak Ferry Terminal and Dock Improvements project (State Project Number 68938). The DOT&PF requests that the incidental harassment authorization (IHA) be valid for 1 year, from September 30, 2015 through September 29, 2016. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to the DOT&PF incidentally take, by harassment, small numbers of marine mammals for its reconstruction of the ferry terminal at Pier 1 in Kodiak, AK.

DATES: Comments and information must be received no later than September 23, 2015.

ADDRESSES: Comments on the application 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.Pauline@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 *http://www.nmfs.noaa.gov/*

pr/permits/incidental/construction.htm without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the DOT&PFs application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

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, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On March 27, 2015, NMFS received an application from the DOT&PF for the taking of marine mammal incidental to reconstructing the existing ferry terminal at Pier 1 in Kodiak, Alaska, referred to as the Kodiak Ferry Terminal and Dock Improvements project (State Project Number 68938). On June 18, 2015 NMFS received a revised application. NMFS determined that the application was adequate and complete on June 25, 2015. DOT&PF proposes to conduct in-water work that may incidentally harass marine mammals (*i.e.,* pile driving and removal). This IHA would be valid from September 30, 2015 through September 29, 2016.

Proposed activities included as part of the Kodiak Ferry Terminal and Dock Improvements project (Pier 1 project) with potential to affect marine mammals include vibratory and impact pile-driving operations and use of a down-hole drill/hammer to install piles in bedrock.

Species with the expected potential to be present during the project timeframe include killer whale (*Orcinus orca*), Steller sea lion (*Eumatopius jubatus*), harbor porpoise (*Phocoena phocoena*), and harbor seal (*Phoca vitulina richardii*).

Description of the Specified Activity

Overview

DOT&PF is seeking an IHA for work that includes removal of the old timber dock and piles and installation of the new dock, including mooring and fender systems. The existing decking, piles, and other dock materials will be removed. Temporary steel H-piles will be installed to support temporary false work structures (*i.e.,* templates). The new dock will be supported by steel piles, and dock fenders will include steel piles and timber piles. Note that these estimates are the number of days when each activity may occur at some point during the day, and that the number of days is not additive.

Dates and Duration

Pile installation and extraction associated with the Pier 1 project will begin no sooner than September 30, 2015 and will be completed no later than September 29, 2016 (1 year following IHA issuance). To minimize impacts to pink salmon (*Oncorhynchus gorbuscha*) fry and coho salmon (*O. kisutch*) smolt, all in-water pile extraction and installation is planned to be completed by April 30, 2016. If work cannot be completed by April 30, the Alaska Department of Fish & Game (ADF&G) recommended that the DOT&PF refrain from impact pile installation without a bubble curtain from May 1 through June 30 within the 12-hour period beginning daily at the start of civil dawn (Marie 2015). ADF&G stated that this is the daily time period when the majority of juvenile salmon are moving through the project area, and a 12-hour quiet period may protect migrating juvenile salmon from excessive noise (Frost 2015). Impact pile installation would be acceptable without a bubble curtain from May 1 through June 30 in the evenings, beginning at 12 hours past civil dawn (Marie 2015). At this time, DOT&PF does not propose using bubble curtains. However, it is possible that in-water work may extend past April 30 in compliance with the mitigation for salmon as recommended by ADF&G.

Removal of existing timber piles, installation of temporary piles and new permanent piles, and removal of temporary piles are expected to occur over approximately 120 working days over a period of 4 to 6 months. This IHA requests authorization for up to 1 year of construction activities in case unforeseen construction delays occur. Pile extraction, pile driving, and drilling will occur intermittently over the work period, for anything from minutes to hours at a time (Table 1–1 in the application). The proposed Pier 1 project will require an estimated 120 days total of pile extraction and installation, including 80 days of vibratory extraction and installation, 60 days of down-hole drilling, and 22 days of impact hammering. Note that these days are not additive. Timing will vary based on the weather, delays, substrate type (the rock is layered and is of varying hardness across the site, so some holes will be drilled quickly and others may take longer), and other factors. A production rate of two permanent piles per day, on days when pile installation occurs, is considered typical for a project of this type.

A 25 percent contingency has been added to the estimate of pile extraction and driving time to account for unknown substrate conditions (See Table 1–1 in the application). Therefore, the project may require approximately 614 hours of pile extraction or driving. The days for pile driving and extraction will not always be successive, but will be staggered over a 4- to 6-month period, depending on weather, construction and mechanical delays, marine mammal shutdowns, and other

potential delays and logistical constraints. The number of hours of pile driving within any single day will vary.

Specified Geographic Region

The Kodiak Ferry Terminal and Dock at Pier 1 is located in the City of Kodiak, Alaska, at 57°47′12.78″ N, 152°24′09.73″ W, on the northeastern corner of Kodiak Island, in the Gulf of Alaska (See Figure 1–1 in the Application). Pier 1 is an active ferry terminal and multi-use dock located in Near Island Channel, which separates downtown Kodiak from Near Island (Figure 1–2). The channel is approximately 200 meters (656 feet) wide in the project area. Pier 1 is situated between a marine fuel service floating dock to the northeast (Petro Marine Services) and a pile-supported dock owned by a shore-based seafood processor to the southwest. Pier 1 is separated from the seafood processing plant dock by only about 15 meters (50 feet; Figure 1–3).

Detailed Description of Activities

The proposed action for this IHA request includes removal of the old timber dock and piles and installation of the new dock, including mooring and fender systems. The existing decking, piles, and other dock materials will be removed. Temporary steel H-piles will be installed to support temporary false work structures (*i.e.,* templates). The new dock will be supported by steel piles, and dock fenders will include steel piles and timber piles. The proposed Pier 1 project will require an estimated 120 days total of pile extraction and installation, including 80 days of vibratory extraction and installation, 60 days of down-hole drilling, and 22 days of impact hammering. Note that these estimates are the number of days when each activity may occur at some point during the day, and that the number of days is not additive. The total hours of pile installation for each activity is estimated in more detail later in this section.

The existing dock consists of approximately 156 vertical, 13-inch-diameter creosote-treated timber piles, 40 timber battered piles, and 14 16-inch-diameter steel fender piles. All piles, decking, and other existing dock materials will be removed. The exact method for pile extraction will be determined by the contractor. It is anticipated that when possible, existing piles will be extracted by directly lifting them with a crane. A vibratory hammer will be used only if necessary to extract piles that cannot be directly lifted. Removal of each old pile is estimated to require 5 minutes of vibratory hammer use. Under the worst-case scenario, if all old piles were removed by using the vibratory hammer, it would require a total time of about 17.5 hours (See Table 1–1 in the application). If the piles break below the waterline, the pile stubs will be removed with a clamshell bucket.

The exact means and method for pile installation will be determined by the contractor; however, a few options are available within a general framework. Temporary steel pipe or H-piles will be installed as part of a template to ensure proper placement and alignment during driving of the permanent steel piles. Temporary piles will be driven with a vibratory hammer 10–30 feet through the overburden sediment layer but are not expected to penetrate into the bedrock. A vibratory hammer will be used to remove the temporary piles, which will then be reinstalled at a new location. Individual temporary piles will be driven and removed an estimated 88 times. It is estimated that it will take 10 minutes of vibratory pile driving per temporary pile for installation and 5 minutes each for extraction, for a total of 15 minutes of vibratory pile driving per temporary pile. For 88 temporary piles, this is an estimated 22 hours of total time using active vibratory equipment.

The new terminal and dock will be supported by approximately 88 round, 24-inch-diameter steel piles. The 24-inch steel piles will be driven 10–30 feet through the sediment layer and 15 feet into the bedrock. Dock fenders will be supported atop 10 round, 18-inch-diameter steel piles. In addition, eight round, 16-inch timber piles, which are somewhat variable in size from about 16 inches at the butt (top) to about 12 inches at the tip (bottom), will be installed as fender piles along the north side of the dock. Both the steel and timber fender piles will be driven with a vibratory hammer approximately 22 feet embedment, or to refusal.

The sequence for installing the permanent 24-inch piles begins with insertion through overlying sediment with a vibratory hammer for about 10 minutes per pile. A hole will then be drilled in the underlying bedrock by using a down-hole drill/hammer. A down-hole hammer is a drill bit that drills through the sediment and a pulse mechanism that functions at the bottom of the hole, using a pulsing bit to break up the harder materials or rock to allow removal of the fragments and insertion of the pile. The head extends so that the drilling takes place below the pile. Drill cuttings are expelled from the top of the pile as dust or mud. It is estimated that drilling piles through the layered bedrock will take about 5 hours per pile. Then, about five blows of an impact hammer will be used to confirm that piles are set into bedrock (proofed), for a maximum time expected of 1 minute of impact hammering per pile. When the impact hammer is employed for proofing, a pile cap or cushion will be placed between the impact hammer and the pile.

All permanent 18-inch steel piles and timber piles will be driven into the marine sediment by using a vibratory hammer. It is anticipated to take about 10 minutes of vibratory driving to install each permanent 18-inch steel and timber pile.

Table 1–1 in the application illustrates that the project will require an estimated 60 hours of vibratory hammer time, 440 hours of down-hole drilling time, and 2 hours of impact hammer time. DOT&PF has conservatively added a contingency of 25% to the total hours required resulting in 75 hours of vibratory hammer time, 550 hours of down-hole drilling time, and 3 hours of impact hammer time.

Description of Marine Mammals in the Area of the Specified Activity

Marine waters near Kodiak Island support many species of marine mammals, including pinnipeds and cetaceans; however, the number of species regularly occurring near the project area is limited. Steller sea lions are the most common marine mammals in the project area and are part of the western Distinct Population Segment (wDPS) that is listed as Endangered under the Endangered Species Act (ESA). Harbor seals (*Phoca vitulina*), harbor porpoises (*Phocoena phocoena*), and killer whales (*Orcinus orca*) may also occur in the project area, but far less frequently and in lower abundance than Steller sea lions. Humpback whales (*Megaptera novaeangliae),* fin whales (*Balaenoptera physalus*), and gray whales (*Eschrichtius robustus*) occur in the nearshore waters around Kodiak Island), but are not expected to be found near the project area because of the narrow channel and boat traffic. Dall's porpoise (*Phocoenoides dalli*) generally inhabit more offshore habitats than the Near Island channel. The relatively large numbers of Steller sea lions in the area may serve as an additional deterrent for some marine mammals. This IHA application is limited to the species shown in Table 1 and will assess potential impacts to Steller sea lions, harbor seals, harbor porpoises, and killer whales.

In the species accounts provided here, we offer a brief introduction to the species and relevant stock as well as available information regarding

population trends and threats, and describe any information regarding local occurrence.

TABLE 1—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA

Species	Stock(s) abundance estimate [1]	ESA * Status	MMPA ** Status	Frequency of occurrence
Killer Whale (*Orcinus orca*) *Eastern N. Pacific, Alaska Resident Stock*.	2,347	.....	Non-depleted	Occasional.
Killer Whale (*Orcinus orca*) *Eastern N. Pacific, Gulf of Alaska, Aleutian Islands, and Bering Seat Transient Stock*.	587	.....	Non-depleted	Occasional.
Harbor Porpoise (*Phocoena phocoena*) *Gulf of Alaska Stock*.	31,046	.....	Non-depleted and Strategic	Occasional.
Steller Sea Lion (*Eumetopias jubatus*) *wDPS Stock*	52,200	Endangered	Depleted and Strategic	Common.
Harbor Seal (*Phoca vitulina richardii*) *South Kodiak Stock*.	11,117	.....	Non-depleted	Occasional.

[1] NOAA/NMFS 2014 marine mammal stock assessment reports at *http://www.nmfs.noaa.gov/pr/sars/species.htm.*
* ESA = Endangered Species Act.
** MMPA = Marine Mammal Protection Act.

Cetaceans

Killer Whale

Killer whales have been observed in all oceans and seas of the world, but the highest densities occur in colder and more productive waters found at high latitudes (NOAA 2015). Killer whales are found throughout the North Pacific, and occur along the entire Alaska coast, in British Columbia and Washington inland waterways, and along the outer coasts of Washington, Oregon, and California (NOAA 2015).

Based on data regarding association patterns, acoustics, movements, and genetic differences, eight killer whale stocks are now recognized within the Pacific U.S. Exclusive Economic Zone, seven of which occur in Alaska: (1) The Alaska Resident stock; (2) the Northern Resident stock; (3) the Southern Resident stock; (4) the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock; (5) the AT1 Transient stock; (6) the West Coast transient stock, occurring from California through southeastern Alaska; and (7) the Offshore stock. Only the Alaska Resident stock and the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock are considered in this application because other stocks occur outside the geographic area under consideration.

The Alaska Resident stock occurs from southeastern Alaska to the Aleutian Islands and Bering Sea. Although the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock occupies a range that includes all of the U.S. Exclusive Economic Zone in Alaska, few individuals have been seen in southeastern Alaska. The transient stock occurs primarily from Prince William Sound through the Aleutian Islands and Bering Sea.

The Alaska Resident stock of killer whales is currently estimated at 2,347 individuals, and the estimate of the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock is 587 individuals (Allen and Angliss 2013). The Gulf of Alaska component of the transient stock is estimated to include 136 of the 587 individuals. The abundance estimate for the Alaska Resident stock is likely underestimated because researchers continue to encounter new whales in the Gulf of Alaska and western Alaskan waters. At present, reliable data on trends in population abundance for both stocks are unavailable.

Transient killer whales are seen periodically in waters of Kodiak Harbor, with photo-documentation since at least 1993 (Kodiak Seafood and Marine Science Center 2015). One pod known to visit Kodiak Harbor includes an adult female and adult male that have distinctive dorsal fins that make repeated recognition possible. This, as well as their easy visibility from shore, has led to their ''popularity'' in Kodiak, where their presence is often announced on public radio. They have been repeatedly observed and photographed attacking Steller sea lions.

The Kodiak killer whales appear to specialize in preying on Steller sea lions commonly found near Kodiak's processing plants, fishing vessels, and docks. This pod kills and consumes at least four to six Steller sea lions per year from the Kodiak harbor area, primarily from February through May (Kodiak Seafood and Marine Science Center 2015, Wynne 2015b). Further information on the biology and local distribution of these species can be found in the DOT&PF application available online at: *http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* and the NMFS Marine Mammal Stock Assessment Reports, which may be found at: *http://www.nmfs.noaa.gov/pr/species/.*

Harbor Porpoise

The harbor porpoise inhabits temporal, subarctic, and arctic waters. In the eastern North Pacific, harbor porpoises range from Point Barrow, Alaska, to Point Conception, California. Harbor porpoise primarily frequent coastal waters and occur most frequently in waters less than 100 m deep (Hobbs and Waite 2010). They may occasionally be found in deeper offshore waters.

In Alaska, harbor porpoises are currently divided into three stocks, based primarily on geography. These are the Bering Sea stock, the Southeast Alaska stock, and the Gulf of Alaska stock. (Allen and Angliss 2014). Only the Gulf of Alaska stock is considered in this application because the other stocks are not found in the geographic area under consideration.

Harbor porpoises are neither designated as depleted under the MMPA nor listed as threatened or endangered under the ESA. Because the most recent abundance estimate is 14 years old and information on incidental harbor porpoise mortality in commercial fisheries is not well understood, the Gulf of Alaska stock of harbor porpoise is classified as strategic. Population trends and status of this stock relative to optimum sustainable population size are currently unknown. The Gulf of Alaska stock is currently estimated at 31,046 individuals (Allen and Angliss 2013). No reliable information is available to determine trends in abundance.

According to the online database, Ocean Biogeographic Information System, Spatial Ecological Analysis of Megavertebrate Populations (Halpin 2009 at OBIS–SEAMAP 2015), West Coast populations have more restricted movements and do not migrate as much as East Coast populations. Most harbor porpoise groups are small, generally consisting of less than five or six individuals, though for feeding or migration they may aggregate into large, loose groups of 50 to several hundred animals.

Harbor porpoises commonly frequent Kodiak's nearshore waters, but are rarely if ever noted in the Kodiak channel (K. Wynne, pers. comm.). Harbor porpoises are expected to be encountered rarely in the project area, although no data exist to quantify harbor porpoise attendance.

Pinnipeds

Steller Sea Lion

The Steller sea lion is a pinniped and the largest of the eared seals. Steller sea lion populations that primarily occur west of 144° W (Cape Suckling, Alaska) comprise the western Distinct Population Segment (wDPS). Only the wDPS is considered in this application because the eastern DPS (eDPS) occurs outside the geographic area under consideration. Steller sea lions were listed as threatened range-wide under the ESA on November 26, 1990 (55 FR 49204). Steller sea lions were subsequently partitioned into the western and eastern DPSs in 1997 (Allen and Angliss 2010), with the wDPS being listed as endangered under the ESA and the eDPS remaining classified as threatened (62 FR 24345) until it was delisted in November 2013.

On August 27, 1993, NMFS published a final rule designating critical habitat for the Steller sea lion as a 20 nautical mile buffer around all major haul-outs and rookeries, as well as associated terrestrial, air and aquatic zones, and three large offshore foraging areas (50 CFR 226.202)

The range of the Steller sea lion includes the North Pacific Ocean rim from California to northern Japan. Steller sea lions forage in nearshore and pelagic waters where they are opportunistic predators. They feed primarily on a wide variety of fishes and cephalopods. Steller sea lions use terrestrial haulout sites to rest and take refuge. They also gather on well-defined, traditionally used rookeries to pup and breed. These habitats are typically gravel, rocky, or sand beaches; ledges; or rocky reefs (Allen and Angliss, 2013).

Steller sea lions have a worldwide population estimated at 120,000 to 140,000 animals, with approximately 93,000 in Alaska. The most recent comprehensive estimate (pups and non-pups) for abundance of the wDPS in Alaska is 52,209 sea lions, based on aerial surveys of non-pups conducted in June and July 2008–2011 and aerial and ground-based pup counts conducted in June and July 2009–2011 (Allen and Angliss 2014).

The wDPS of Steller sea lions declined approximately 75 percent from 1976 to 1990. Factors that may have contributed to this decline include (1) incidental take in fisheries, (2) legal and illegal shooting, (3) predation, (4) contaminants, (5) disease, and (6) climate change. Non-pup Steller sea lion counts at trend sites in the wDPS increased 11 percent during 2000–2004. These counts were the first region-wide increases for the wDPS since standardized surveys began in the 1970s, and were due to increased or stable counts in all regions except the western Aleutian Islands. During 2004–2008, western Alaska non-pup counts increased only 3 percent; eastern Gulf of Alaska (Prince William Sound area) counts were higher; counts from the Kenai Peninsula through Kiska Island, including Kodiak Island, were stable; and western Aleutian counts continued to decline (Allen and Angliss 2010).

Steller sea lions are the most obvious and abundant marine mammals in the project area. The major natural Steller sea lion haulouts closest to the project area are located on Long Island and Cape Chiniak, which are approximately 4.6 nautical miles (8.5 kilometers) and 13.8 nautical miles (25.6 kilometers) away from the project site, respectively. Annual counts averaged 33 animals on Long Island from 2008 through 2010, and 119 animals at Cape Chiniak during the same time period (Table 4–1). The closest rookery is located on Marmot Island, approximately 30 nautical miles (55.5 kilometers) from the project site, which had average annual counts of 656 animals from 2008 through 2010 (*as cited in* NMFS 2013).

Many individual sea lions have become habituated to human activity in the Kodiak harbor area and utilize a man-made haulout float called Dog Bay float located in St. Herman Harbor, about 1,300 meters (4,300 feet) from the project site (See Figure 1–2; Figure 3–1 in the application). This is not a federally recognized haulout and is not considered part of sea lion critical habitat. Critical habitat is associated with breeding and haulout areas in Alaska, California, and Oregon (NMFS 1993). Steller sea lion critical habitat is defined by a 20-nautical-mile (37-km) radius (straight line distance) encircling a major haulout or rookery. The project area occurs within critical habitat for two major haulouts, Long Island and Cape Chiniak, described above. A section from an old floating breakwater, the float was relocated to Dog Bay in the year 2000 and intended to serve as a dedicated sea lion haulout. It serves its purpose of reducing sea lion-human conflicts in Kodiak's docks and harbors by providing an undisturbed haulout location and reducing the numbers of sea lions that haul out on vessel moorage floats.

Counts of sea lions hauled out on the Dog Bay float provide an index of the number of Steller sea lions in the harbor area. Because this float is not considered an official haulout by NMFS, few standardized surveys to count sea lions have been conducted (Wynne 2015a). Surveys from 2004 through 2006 indicated peak winter (October–April) counts ranging from 27 to 33 animals (Wynn *et al.* 2011). Counts from February 2015 during a site visit by HDR biologists ranged from approximately 28 to 45 sea lions on the float. More than 100 sea lions were counted on the Dog Bay float at times in spring 2015, although the mean number was much smaller (Wynne 2015b).

Abundant and predictable sources of food for sea lions in the Kodiak area include fishing gear, fishing boats and tenders, and the many seafood processing facilities that accept transfers of fish from offloading vessels. Sea lions have become accustomed to depredating fishing gear and raiding fishing vessels during fishing and offloading and they follow potential sources of food around the harbors and docks, waiting for opportunities to feed. When vessels are offloading fish at the docks of processing facilities, the sea lions rear out of the water to look over the gunnels for fish on the deck; if the vessel is a stern trawler, they charge up the stern ramp or codend to gain access to the deck (Speckman 2015; Ward 2015; Wynne 2015a). Sea lions have killed dogs and have dragged humans into the water (Wynne 2015a).

The number of sea lions in the immediate project area varies depending on the season and presence of commercial fishing vessels unloading their catch at the seafood processing plant dock immediately adjacent to Pier 1. During the February 2015 site visit by HDR biologists, from zero up to about 25 sea lions were seen at one time in the Pier 1 project area. About 22 of those sea lions were subadults that were clearly foraging on schooling fishes in the area and were not interacting with the

fishing vessels offloading at the seafood processing plant at the time. The stern trawler offloading at the processing plant dock during this period was attended by three mature bull sea lions, which constantly swam back and forth behind the stern watching for an opportunity to gain access.

At least four other seafood processing facilities are present in Kodiak and operate concurrently with the one located next to Pier 1. All are visited by sea lions looking for food, and all are successfully raided by sea lions with regularity (Wynne 2015a). Sea lions also follow and raid fishing vessels. The seafood processing facility adjacent to the Pier 1 project site is therefore not the only source of food for Kodiak sea lions that inhabit the harbor area. Furthermore, sea lions in a more ''natural'' situation do not generally eat every day, but tend to forage every 1–2 days and return to haulouts to rest between foraging trips (Merrick and Loughlin 1997; Rehburg *et al.* 2009). The foraging habits of sea lions using the Dog Bay float and Kodiak harbor area are not documented, but it is reasonable to assume that, given the abundance of readily available food, not every sea lion in the area visits the seafood processing plant adjacent to Pier 1 every day. Based on numbers at the Dog Bay float and sea lion behavior, it is estimated that about 40 unique individual sea lions likely pass by the project site each day (Speckman 2015; Ward 2015; Wynne 2015a). Sea lions in the Kodiak harbor area are habituated to fishing vessels and are skilled at gaining access to fish. It is likely that some of the same animals follow local vessels to the nearby fishing grounds and back to town. It is also likely that hearing-impaired or deaf sea lions are among the sea lions that attend the seafood processing facility adjacent to the Pier 1 construction site. It is not known how a hearing-impaired or deaf sea lion would respond to typical mitigation efforts at a construction site such as ramping up of pile-driving equipment. It is also unknown whether a hearing-impaired or deaf sea lion would avoid pile-driving activity, or whether such an animal might approach closely, even within the Level A harassment zone, without responding to or being impacted by the noise level.

Harbor Seal

Harbor seals range from Baja California north along the west coasts of Washington, Oregon, California, British Columbia, and Southeast Alaska; west through the Gulf of Alaska, Prince William Sound, and the Aleutian Islands; and north in the Bering Sea to Cape Newenham and the Pribilof Islands. Distribution of the South Kodiak stock extends from East Cape (northeast coast of Kodiak Island) south to South Cape (Chirikof Island), including Tugidak Island, and up the southwest coast of Kodiak Island to Middle Cape.

In 2010, harbor seals in Alaska were partitioned into 12 separate stocks based largely on genetic structure (Allen and Angliss 2010). Only the South Kodiak stock is considered in this application because other stocks occur outside the geographic area under consideration.

The current statewide abundance estimate for Alaskan harbor seals is 152,602, based on aerial survey data collected during 1998–2007. The abundance estimate for the South Kodiak stock is 11,117 (Allen and Angliss 2010). Harbor seals have declined dramatically in some parts of their range over the past few decades, while in other parts their numbers have increased or remained stable over similar time periods.

A significant portion of the harbor seal population within the South Kodiak stock is located at and around Tugidak Island off the southwest of Kodiak Island. Sharp declines in the number of seals present on Tugidak were observed between 1976 and 1998. Although the number of seals on Tugidak Island has stabilized and shows some evidence of increase since the decline, the population in 2000 remained reduced by 80 percent compared to the levels in the 1970s (Jemison *et al.* 2006). The current population trend for this stock is unknown.

Harbor seals haul out on rocks, reefs, beaches, and drifting glacial ice (Allen and Angliss 2014). They are non-migratory; their local movements are associated with tides, weather, season, food availability, and reproduction, as well as sex and age class (Allen and Angliss 2014; Boveng *et al.* 2012; Lowry *et al.* 2001; Swain *et al.* 1996).

Although the number of harbor seals on eastern Kodiak haulouts has been increasing steadily since the early 1990s (Kodiak Seafood and Marine Science Center 2015), sightings are rare in the project area. Several harbor seals tagged at Uganik Bay (Northwest Kodiak Island) dispersed as far north as Anchorage and as far south as Chignik, but none were found near Kodiak (Kodiak Seafood and Marine Science Center 2015). Harbor seals are expected to be encountered occasionally in the project area, although no data exist to quantify harbor seal attendance.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that stressors, (*e.g.* pile driving,) and potential mitigation activities, associated with the reconstruction of the Pier 1 Kodiak Ferry Terminal and Dock may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document will include an analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis* section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks. In the following discussion, we provide general background information on sound and marine mammal hearing before considering potential effects to marine mammals from sound produced by pile extraction, vibratory pile driving, impact pile driving and down-hole drilling.

Description of Sound Sources

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds and attenuate (decrease) more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source

level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 μPa and all airborne sound levels in this document are referenced to a pressure of 20 μPa.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- Wind and waves*:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- Precipitation: Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.
- Biological: Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.
- Anthropogenic: Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.,* 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound. Representative levels of anthropogenic sound are displayed in Table 2.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

TABLE 2—REPRESENTATIVE SOUND LEVELS OF ANTHROPOGENIC SOURCES

Sound source	Frequency range (Hz)	Underwater sound level	Reference
Small vessels	250–1,000	151 dB rms at 1 m	Richardson *et al.,* 1995.
Tug docking gravel barge	200–1,000	149 dB rms at 100 m	Blackwell and Greene, 2002.
Vibratory driving of 72-in steel pipe pile	10–1,500	180 dB rms at 10 m	Reyff, 2007.
Impact driving of 36-in steel pipe pile	10–1,500	195 dB rms at 10 m	Laughlin, 2007.
Impact driving of 66-in cast-in-steel-shell (CISS) pile	10–1,500	195 dB rms at 10 m	Reviewed in Hastings and Popper, 2005.

The Pier 1 project area is frequented by fishing vessels and tenders; ferries, barges, tugboats; and other commercial and recreational vessels that use the channel to access harbors and city docks, fuel docks, processing plants where fish catches are offloaded, and other commercial facilities. At the seafood processing plant, to the southwest of Pier 1, fish are offloaded by vacuum hose straight into the processing plant from the vessels' holds, and vessels raft up three and four deep to the dock during peak fishing seasons. On the northeast side of Pier 1 is the Petro Marine fuel dock, which services a range of vessel sizes, including larger vessels that can be accommodated by docking at Pier 1. Two boat harbors exist in Near Island Channel, which house a number of commercial and recreational marine vessels. The channel is also a primary route for local

vessel traffic to access waters outside the Gulf of Alaska.

High levels of vessel traffic are known to elevate background levels of noise in the marine environment. For example, continuous sounds for tugs pulling barges have been reported to range from 145 to 166 dB re 1 μPa rms at 1 meter from the source (Miles *et al.* 1987; Richardson *et al.* 1995; Simmonds *et al.* 2004. Ambient underwater noise levels in the Pier 1 project area are both variable and relatively high, and are expected to mask some sounds of drilling, pile installation, and pile extraction.

In-water construction activities associated with the project include vibratory pile driving and removal, down-hole drilling, and impact pile driving. There are two general categories of sound types: Impulse and non-pulse (defined in the following). Vibratory pile driving is considered to be continuous or non-pulsed while impact pile driving is considered to be an impulse or pulsed sound type. The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.,* (2007) for an in-depth discussion of these concepts. Note that information related to impact hammers is included here for comparison. Pulsed sound sources (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986; Harris, 1998; NIOSH, 1998; ISO, 2003; ANSI, 2005) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

The likely or possible impacts of the proposed pile driving program at Pier 1 on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel. Any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors could include effects of heavy equipment operation, pile installation and pile removal at Pier 1.

Marine Mammal Hearing

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 30 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz;
- Phocid pinnipeds in Water: functional hearing is estimated to occur between approximately 75 Hz and 75 kHz; and
- Otariid pinnipeds in Water: functional hearing is estimated to occur between approximately 100 Hz and 40 kHz.

As mentioned previously in this document, nine marine mammal species (seven cetacean and two pinniped) may occur in the project area. Of the two species likely to occur in the proposed project area, one is classified as a mid-frequency cetacean (*i.e.,* killer whale), and one is classified as a high-frequency cetaceans (*i.e.,* harbor porpoise) (Southall *et al.,* 2007). Additionally, harbor seals are classified as members of the phocid pinnipeds in water functional hearing group while Steller sea lions and California sea lions are grouped under the Otariid pinnipeds in water functional hearing group. A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

Acoustic Impacts

Potential Effects of Pile Driving Sound—The effects of sounds from pile driving might result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (*e.g.,* sand) would absorb or attenuate the sound more readily than hard substrates (*e.g.,* rock) which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species would be expected to result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.,* 2008). The type and severity of

behavioral impacts are more difficult to define due to limited studies addressing the behavioral effects of impulse sounds on marine mammals. Potential effects from impulse sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973).

Hearing Impairment and Other Physical Effects—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.,* 1999; Schlundt *et al.,* 2000; Finneran *et al.,* 2002, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Marine mammals depend on acoustic cues for vital biological functions, (*e.g.,* orientation, communication, finding prey, avoiding predators); thus, TTS may result in reduced fitness in survival and reproduction. However, this depends on the frequency and duration of TTS, as well as the biological context in which it occurs. TTS of limited duration, occurring in a frequency range that does not coincide with that used for recognition of important acoustic cues, would have little to no effect on an animal's fitness. Repeated sound exposure that leads to TTS could cause PTS. PTS constitutes injury, but TTS does not (Southall *et al.,* 2007). The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. In terrestrial mammals, TTS can last from minutes or hours to days (in cases of strong TTS). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007).

Given the available data, the received level of a single pulse (with no frequency weighting) might need to be approximately 186 dB re 1 μPa²-s (*i.e.,* 186 dB sound exposure level [SEL] or approximately 221–226 dB p-p [peak]) in order to produce brief, mild TTS. Exposure to several strong pulses that each have received levels near 190 dB rms (175–180 dB SEL) might result in cumulative exposure of approximately 186 dB SEL and thus slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy.

The above TTS information for odontocetes is derived from studies on the bottlenose dolphin (*Tursiops truncatus*) and beluga whale (*Delphinapterus leucas*). There is no published TTS information for other species of cetaceans. However, preliminary evidence from a harbor porpoise exposed to pulsed sound suggests that its TTS threshold may have been lower (Lucke *et al.,* 2009). As summarized above, data that are now available imply that TTS is unlikely to occur unless odontocetes are exposed to pile driving pulses stronger than 180 dB re 1 μPa rms.

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of sound can cause PTS in any marine mammal. However, given the possibility that mammals close to a sound source can incur TTS, it is possible that some individuals might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS, however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals, based on anatomical similarities. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as pile driving pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.,* 2007). On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans, Southall *et al.* (2007) estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of approximately 198 dB re 1 μPa²-s (15 dB higher than the TTS threshold for an impulse). Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Measured source levels from impact pile driving can be as high as 214 dB rms. Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds (Finneran *et al.,* 2000, 2002, 2005). The animals tolerated high received levels of sound before exhibiting aversive behaviors. Experiments on a beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (30 psi) p-p, which is equivalent to 228 dB p-p, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.,* 2002). Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more sound exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa²-s) in the aforementioned experiment (Finneran *et al.,* 2002). However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity sound levels for a prolonged period of time. Based on the best scientific information available, these SPLs are far below the thresholds that could cause TTS or the onset of PTS.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in

marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Behavioral responses to sound are highly variable and context-specific and reactions, if any, depend on species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007).

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Behavioral state may affect the type of response as well. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003).

Controlled experiments with captive marine mammals showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic guns or acoustic harassment devices, but also including pile driving) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; Thorson and Reyff, 2006; see also Gordon *et al.,* 2004; Wartzok *et al.,* 2003; Nowacek *et al.,* 2007). Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds.

With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Changes in diving/surfacing patterns;
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007).

Auditory Masking—Natural and artificial sounds can disrupt behavior by masking, or interfering with, a marine mammal's ability to hear other sounds. Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher levels. Chronic exposure to excessive, though not high-intensity, sound could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs only during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

Masking occurs at specific frequency bands so understanding the frequencies that the animals utilize is important in determining any potential behavioral impacts. Because sound generated from in-water vibratory pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. However, lower frequency man-made sounds are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey sound. It may also affect communication signals when they occur near the sound band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009).

Masking has the potential to impact species at the population or community levels as well as at individual levels. Masking affects both senders and receivers of the signals and can potentially in certain circumstances have long-term chronic effects on marine mammal species and populations. Recent research suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and that most of these increases are from distant shipping (Hildebrand, 2009). All anthropogenic sound sources, such as those from vessel traffic, pile driving, and dredging activities, contribute to the elevated ambient sound levels, thus intensifying masking.

Vibratory pile driving may potentially mask acoustic signals important to marine mammal species. However, the short-term duration and limited affected area would result in insignificant impacts from masking.

Acoustic Effects, Airborne—Marine mammals that occur in the project area could be exposed to airborne sounds associated with pile driving that have

the potential to cause harassment, depending on their distance from pile driving activities. Airborne pile driving sound would have less impact on cetaceans than pinnipeds because sound from atmospheric sources does not transmit well underwater (Richardson *et al.,* 1995); thus, airborne sound would only be an issue for pinnipeds either hauled-out or looking with heads above water in the project area. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon their habitat and move further from the source. Studies by Blackwell *et al.* (2004) and Moulton *et al.* (2005) indicate a tolerance or lack of response to unweighted airborne sounds as high as 112 dB peak and 96 dB rms. However, all estimates for distances that airborne sound could travel and exceed the harassment threshold for in-air disturbance fall far short of the 1,300 meters to the nearest known pinniped haulout, the Dog Bay float. Therefore, airborne noise is not considered further in this application, and no incidental take for airborne noise is requested.

Vessel Interaction

Besides being susceptible to vessel strikes, cetacean and pinniped responses to vessels may result in behavioral changes, including greater variability in the dive, surfacing, and respiration patterns; changes in vocalizations; and changes in swimming speed or direction (NRC 2003). There will be a temporary and localized increase in vessel traffic during construction.

Potential Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory and impact pile driving and removal in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

Potential Pile Driving Effects on Prey—Construction activities would produce continuous (*i.e.,* vibratory pile driving, down-hole drilling) sounds and pulsed (*i.e.* impact driving) sounds. Essential Fish Habitat (EFH) has been designated within the project area for the Alaska stocks of Pacific salmon, walleye pollock, Pacific cod, yellowfin sole (*Limanda aspera*), arrowtooth flounder (*Atheresthes stomias*), rock sole (*Lepidopsetta spp.*), flathead sole (*Hippoglossoides elassodon*), sculpin (Cottidae), skate (Rajidae), and squid (Teuthoidea). On 30 April 2013, informal EFH consultation was initiated, and NMFS determined that the project would not adversely affect EFH and did not offer any EFH conservation recommendations or require further consultation (FHWA 2013).

Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

Effects to Foraging Habitat—Pile installation may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. DOT&PF must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area. In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.* 1980). Cetaceans are not expected to be close enough to the project pile driving areas to experience effects of turbidity, and any pinnipeds will be transiting the area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. Furthermore, pile driving and removal at the project site will not obstruct movements or migration of marine mammals.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, ''and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking'' for certain subsistence uses.

For the proposed project, DOT&PF worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. The primary purposes of these mitigation measures are to minimize sound levels from the activities, and to monitor marine mammals within designated zones of influence corresponding to NMFS' current Level A and B harassment thresholds which are depicted in Table 3 found later in the *Estimated Take by Incidental Harassment* section.

DOT&PF committed to the use of both impact and vibratory hammers for pile installation and will implement a soft-start procedure.

Mitigation &Monitoring Protocols—Monitoring would be conducted before, during, and after pile driving and removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Monitoring will take place from 30 minutes prior to initiation through 20 minutes post-completion of pile driving activities. Pile driving activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Please see Appendix A of the application for details on the marine mammal monitoring plan developed by the DOT&PF's with NMFS' cooperation.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures

when applicable by calling for the shutdown to the hammer operator. These vantage points include Jett A or the barge. Qualified observers are trained biologists, with the following minimum qualifications:

(a) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

(b) Advanced education in biological science or related field (undergraduate degree or higher required);

(c) Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);

(d) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(e) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(f) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

(g) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for 30 minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (*i.e.,* when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted.

If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 20 minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile.

Ramp Up or Soft Start—The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. This procedure is repeated two additional times. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers. The project will utilize soft start techniques for all vibratory and impact pile driving. We require the DOT&PF to initiate sound from vibratory hammers for fifteen seconds at reduced energy followed by a 1-minute waiting period, with the procedure repeated two additional times. For impact driving, we require an initial set of three strikes from the impact hammer at reduced energy, followed by a 1-minute waiting period, then two subsequent three strike sets. Soft start will be required at the beginning of each day's pile driving work and at any time following a cessation of pile driving of 20 minutes or longer.

If a marine mammal is present within the Level A harassment zone, ramping up will be delayed until the animal(s) leaves the Level A harassment zone. Activity will begin only after the Wildlife Observer has determined, through sighting, that the animal(s) has moved outside the Level A harassment zone.

If a Steller sea lion, harbor seal, harbor porpoise, or killer whale is present in the Level B harassment zone, ramping up will begin and a Level B take will be documented. Ramping up will occur when these species are in the Level B harassment zone whether they entered the Level B zone from the Level A zone, or from outside the project area.

If any marine mammal other than Steller sea lions, harbor seals, harbor porpoises, or killer whales is present in the Level B harassment zone, ramping up will be delayed until the animal(s) leaves the zone. Ramping up will begin only after the Wildlife Observer has determined, through sighting, that the animal(s) has moved outside the harassment zone.

Pile Caps—Pile caps will be used during all impact pile-driving activities.

In addition to the measures described later in this section, the DOT&PF would employ the following standard mitigation measures:

(a) Conduct briefings between construction supervisors and crews, marine mammal monitoring team, and DOT&PF staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(b) For in-water heavy machinery work other than pile driving (using, *e.g.,* standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

Monitoring and Shutdown for Pile Driving

The following measures would apply to DOT&PF's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving activities, the DOT&PF's will establish a shutdown zone. Shutdown zones are intended to contain the area in which SPLs equal or exceed the 180/190 dB rms acoustic injury criteria, with the purpose being to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals. A conservative 4-meter shutdown zone will be in effect for Steller sea lions and harbor seals. The estimated shutdown zone for Level A injury to harbor porpoises and killer whales would be 15 meters. DOT&PF, however, would implement a minimum shutdown zone of 10 m radius for all marine mammals around all vibratory pile driving and removal activities. These precautionary measures are intended to further reduce the unlikely possibility of injury from direct physical interaction with construction operations.

Disturbance Zone—Disturbance zones are the areas in which sound pressure levels (SPLs) equal or exceed 120 dB rms (for continuous sound) for pile driving installation and removal. Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential

shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see ''Proposed Monitoring and Reporting''). Nominal radial distances for disturbance zones are shown in Table 4 later in this notice. During impact driving, the Level B harassment zone shall extend to 225 meters for Steller sea lions, harbor seals, harbor porpoises, and killer whales. This 225 meter distance will serve as a shutdown zone for all other marine mammals (humpback whale, Dall's porpoise, gray whale, fin whale, or any other) to avoid Level B take. Level B take of humpback whales, Dall's porpoises, gray whales, and fin whales is not requested and will be avoided by shutting down before individuals of these species enter the Level B zone.

During vibratory pile installation and removal, the Level B harassment zone shall extend to 1,150 meters for Steller sea lions, harbor seals, harbor porpoises, and killer whales. This 1,150-meter distance will serve as a shutdown zone for all other marine mammals (humpback whale, Dall's porpoise, gray whale, fin whale, or any other) to avoid Level B take.

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile and the estimated zone of influence (ZOI) for relevant activities (*i.e.,* pile installation and removal). This information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Time Restrictions—Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. To minimize impacts to pink salmon (*Oncorhynchus gorbuscha*) fry and coho salmon (*O. kisutch*) smolt, all in-water pile extraction and installation is planned to be completed by 30 April 2016. If work cannot be completed by 30 April, the DOT&PF refrain from impact pile installation without a bubble curtain from May 1, through June 30 within the 12-hour period beginning daily at the start of civil dawn (Marie 2015). ADF&G stated that this is the daily time period when the majority of juvenile salmon are moving through the project area, and a 12-hour quiet period may protect migrating juvenile salmon from excessive noise (Frost 2015). Impact pile installation would be acceptable without a bubble curtain from May 1 through June 30 in the evenings, beginning at 12 hours past civil dawn (Marie 2015).

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of affecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals.
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned.
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations (ITAs) must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below,
2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of pile driving that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS.
3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to

observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);

▪ Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);

▪ Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

The DOT&PF submitted a marine mammal monitoring plan as part of the IHA application for this project, which can be found at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* The plan may be modified or supplemented based on comments or new information received from the public during the public comment period.

Visual Marine Mammal Observation

The DOT&PF will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The DOT&PF will monitor the shutdown zone and disturbance zone before, during, and after pile driving. The Marine Mammal Observers (MMOs) and DOT&PF authorities will meet to determine the most appropriate observation platform(s) for monitoring during pile installation and extraction.

Based on our requirements, the Marine Mammal Monitoring Plan would implement the following procedures for pile driving:

• Individuals meeting the minimum qualifications identified in the applicant's monitoring plan (Appendix A of the application) would monitor Level A and Level B harassment zones during pile driving and extraction activities.

• The area within the Level B harassment threshold for impact driving will be monitored by appropriately stationed MMOs. Any marine mammal documented within the Level B harassment zone during impact driving would constitute a Level B take (harassment), and will be recorded and reported as such.

• During Impact and vibratory pile driving, a shutdown zone will be established to include all areas where the underwater SPLs are anticipated to equal or exceed the Level A (injury) criteria for marine mammals (180 dB isopleth for cetaceans; 190 dB isopleth for pinnipeds). Pile installation will not commence or will be suspended temporarily if any marine mammals are observed within or approaching the area.

• The individuals will scan the waters within each monitoring zone activity using binoculars (Vector 10X42 or equivalent), spotting scopes (Swarovski 20–60 zoom or equivalent), and visual observation.

• Use a hand-held or boat-mounted GPS device or rangefinder to verify the required monitoring distance from the project site.

• If waters exceed a sea-state which restricts the observers' ability to make observations within the marine mammal shutdown zone (*e.g.* excessive wind or fog), pile installation will cease. Pile driving will not be initiated until the entire shutdown zone is visible.

• Conduct pile driving and extraction activities only during daylight hours from sunrise to sunset when it is possible to visually monitor marine mammals.

• The waters will be scanned 30 minutes prior to commencing pile driving at the beginning of each day, and prior to commencing pile driving after any stoppage of 20 minutes or greater. If marine mammals enter or are observed within the designated marine mammal shutdown zone during or 20 minutes prior to pile driving, the monitors will notify the on-site construction manager to not begin until the animal has moved outside the designated radius.

• The waters will continue to be scanned for at least 20 minutes after pile driving has completed each day, and after each stoppage of 20 minutes or greater.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the DOT&PF will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the DOT&PF will attempt to distinguish between the number of individual animals taken and the number of incidents of take. We require that, at a minimum, the following information be collected on the sighting forms:

• Date and time that monitored activity begins or ends;

• Construction activities occurring during each observation period;

• Weather parameters (*e.g.,* percent cover, visibility);

• Water conditions (*e.g.,* sea state, tide state);

• Species, numbers, and, if possible, sex and age class of marine mammals;

• Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

• Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

• Locations of all marine mammal observations; and

• Other human activity in the area.

Proposed Reporting Measures

The DOT&PF would provide NMFS with a draft monitoring report within 90 days of the conclusion of the proposed construction work. This report will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), the DOT&PF would immediately cease the specified activities and immediately report the incident to Jolie Harrison (*Jolie.Harrison@NOAA.gov*), Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and Aleria Jensen (*Aleria.Jensen@noaa.gov*), Alaska Stranding Coordinator. The report would include the following information:

• Time, date, and location (latitude/longitude) of the incident;

• Name and type of vessel involved;

• Vessel's speed during and leading up to the incident;

• Description of the incident;

• Status of all sound source use in the 24 hours preceding the incident;

• Water depth;

• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

• Description of all marine mammal observations in the 24 hours preceding the incident;

• Species identification or description of the animal(s) involved;
• Fate of the animal(s); and
• Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with the DOT&PF to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The DOT&PF would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the DOT&PF discovers an injured or dead marine mammal, and the lead MMO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), the DOT&PF would immediately report the incident to Jolie Harrison (*Jolie.Harrison@nooa.gov*), Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and Aleria Jensen (*Aleria.Jensen@noaa.gov*), Alaska Stranding Coordinator.

The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the DOT&PF to determine whether modifications in the activities are appropriate.

In the event that the DOT&PF discovers an injured or dead marine mammal, and the lead MMO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the DOT&PF would report the incident to Jolie Harrison (*Jolie.Harrison@noaa.gov*), Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS West Coast Stranding Hotline and/or by email to Aleria Jensen (*Aleria.Jensen@noaa.gov*), Alaska Stranding Coordinator, within 24 hours of the discovery. The DOT&PF would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

All anticipated takes would be by Level A and Level B harassment resulting from vibratory pile driving and removal. Level A harassment has the potential to cause injury to a marine mammal or marine mammal stock while Level B harassment may result in temporary changes in behavior. Note that lethal takes are not expected due to the proposed mitigation and monitoring measures that are expected to minimize the possibility of such take.

If a marine mammal responds to a stimulus by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound.

Upland work can generate airborne sound and create visual disturbance that could potentially result in disturbance to marine mammals (specifically, pinnipeds) that are hauled out or at the water's surface with heads above the water. However, because there are no regular haul-outs in close proximity to Pier 1, NMFS believes that incidents of incidental take resulting from airborne sound or visual disturbance are unlikely.

DOT&PF has requested authorization for the incidental taking of small numbers of killer whale, harbor porpoise, Steller sea lion, and harbor seal near the Pier 1 project area that may result from impact and vibratory pile driving, vibratory pile removal and down-hole drilling construction activities associated with the dock improvement project at Pier 1.

In order to estimate the potential incidents of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then consider in combination with information about marine mammal density or abundance in the project area. We first provide information on applicable sound thresholds for determining effects to marine mammals before describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidences of take.

Sound Thresholds

We use the following generic sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by harassment might occur.

TABLE 3—UNDERWATER INJURY AND DISTURBANCE THRESHOLD DECIBEL LEVELS FOR MARINE MAMMALS

Criterion	Criterion definition	Threshold *
Level A harassment	PTS (injury) conservatively based on TTS.**	190 dB RMS for pinnipeds 180 dB RMS for cetaceans.
Level B harassment	Behavioral disruption for impulse noise (*e.g.,* impact pile driving)	160 dB RMS.
Level B harassment	Behavioral disruption for non-pulse noise (*e.g.,* vibratory pile driving, drilling).	120 dB RMS.

* All decibel levels referenced to 1 micropascal (re: 1 μPa). Note all thresholds are based off root mean square (RMS) levels.
** PTS = Permanent Threshold Shift; TTS = Temporary Threshold Shift.

Distance to Sound Thresholds

The sound field in the project area is the existing ambient noise plus additional construction noise from the proposed project. The primary components of the project expected to affect marine mammals is the sound generated by impact pile driving, vibratory pile driving, vibratory pile removal and down-hole drilling. Direct pull and clamshell removal of old timber piles do not produce noise levels expected to impact marine mammals, although, depending on conditions, these may require vibratory hammer removal.

After vibratory hammering has installed the pile through the overburden to the top of the bedrock layer, the vibratory hammer will be removed, and the down-hole drill will be inserted through the pile. The head extends below the pile and the drill rotates through soils and rock. The drilling/hammering takes place below the sediment layer and, as the drill advances, below the bedrock layer as well. Underwater noise levels are relatively low because the impact is taking place below the substrate rather than at the top of the piling, which limits transmission of noise through the water column. Additionally, there is a drive shoe welded on the bottom of the pile and the upper portion of the bit rests on the shoe, which aids in advancement of the pile as drilling progresses. When the proper depth is achieved, the drill is retracted and the pile is left in place. Down-hole drilling is considered a pulsed noise due to periodic impacts from the drill below ground level (PND Engineers 2013). Impact hammering typically generates the loudest noise associated with pile driving, but for the Pier 1 project, use will be limited to a few blows per permanent 24-inch pile.

Several factors are expected to minimize the potential impacts of pile-driving and drilling noise associated with the project:

- The soft sediment marine seafloor and shallow waters in the proposed project area.
- Land forms across the channel that will block the noise from spreading .
- The relatively high background noise level in the project area.

Sound will dissipate relatively rapidly in the shallow waters over soft seafloors in the project area (NMFS 2013). St. Herman Harbor (Figure 1–2 in the application), where the Dog Bay float is located, is protected from the Pier 1 construction noise by land projections and islands, which will block and redirect sound. Near Island and Kodiak Island, on either side of Near Island Channel, prevent the sound from travelling underwater to the north, south, and southeast, restricting the noise to the channel.

The project includes direct pulling and possibly vibratory removal of 13-inch timber and 16-inch steel piles; vibratory installation and removal of temporary steel pipe or H-piles; vibratory installation and down-hole drilling of permanent 24-inch steel pipe piles; and vibratory installation of 18-inch steel pipe piles and 16-inch timber piles (16 inches is the typical butt/top dimension, and these are typically around 12-inches in diameter at the pile tip/bottom). Each 24-inch pile will also be subject to a few blows from an impact hammer for proofing. No data are available for vibratory removal of piles, so it will be conservatively assumed that vibratory removal of piles will produce the same source level as vibratory installation.

Vibratory extraction and installation of timber piles will be estimated to generate 152 dB rms at 16 meters as is shown in Table 6–3 of the application (Laughlin 2011). Vibratory extraction of 16-inch steel piles will be conservatively estimated to generate the same sound as installation of 24-inch piles (162 dB rms at 10 meters).

Little information is available for sound generated during vibratory installation or removal of steel H-piles; however, ICF Jones & Stokes and Illingworth & Rodkin, Inc. (2009) reported that the typical noise level during vibratory hammering was 147 dB rms at 10 meters for 10-inch steel H-piles and 150 dB rms at 10 meters for 12-inch steel H-piles. Vibratory installation and removal of temporary steel pipe or H-piles will therefore be estimated to generate 150 dB rms at 10 meters (Table 6–3).

Vibratory installation of a 24-inch steel pile generated 162 dB rms measured at 10 meters (Laughlin 2010a). Vibratory installation of 12-inch and 36-inch steel piles generated 150 and 170 dB rms at 10 meters, respectively (Maine Department of Transportation and Eastport Port Authority 2014), further supporting the intermediate estimate of 162 dB rms for driving 24-inch steel piles (Table 6–3).

Vibratory installation of 18-inch steel piles will be conservatively estimated to generate the same sound as driving of 24-inch piles (162 dB rms at 10 meters). No data are available for the vibratory installation of 12-inch timber piles; therefore, vibratory installation of 12-inch timber piles will also be conservatively estimated to generate the same sound level as installation of 24-inch steel piles (Table 6–3).

Dazey *et al.* (2012) measured sound levels generated by down-hole drilling and found the average calculated source SPL to be 133 dB rms. URS (2011) reported that down-hole drilling methods generate pulses with a maximum sound source level of 165 dB (re 1 μPa at 1 meter) at 200 Hz. The 160-dB isopleth (Level B harassment for pulsed noise sources) for a down-hole drill was estimated to be 3 meters during a project in Australia that included installation of piles (URS 2011). Down-hole drilling will therefore be estimated to generate 160 dB rms at 3 meters (Table 6–3).

Impact driving of 24-inch steel piles is commonly assumed to generate 189 dB rms measured at 10 meters (WSDOT 2010). Laughlin (2006) reported that use of Micarta caps resulted in 7- to 8-dB reductions in sound level. A conservative reduction of 6 dB therefore yields an estimate of 183 dB rms at 10 meters if pile caps are used (Table 6–3).

Underwater Sound Propagation Formula—Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10} (R_1/R_2),$$

where:

TL = transmission loss in dB

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

NMFS typically recommends a default practical spreading loss of 15 dB per tenfold increase in distance. However, for this analysis for the Pier 1 project area, a TL of 18Log(R/10) (*i.e.,* 18–dB loss per tenfold increase in distance) was used for vibratory pile driving and a 17Log TL(R/10) function was used for impact driving (Illingworth & Rodkin 2014). TL values were based on measured attenuation rates in Hood Canal in the State of Washington (Illingworth & Rodkin 2013), where the marine environment is assumed to be similar to marine conditions in the Pier 1 project area. Illingworth & Rodkin (2013, 2014) have applied these same TL values to a test pile project proposed at the Port of Anchorage, and other

researchers have measured similar attenuation rates for pile-driving projects (Caltrans 2012). Field measurements of TL can be as high as 22 to 29 dB per tenfold increase in distance in some locations (*e.g.,* Knik Arm, Alaska; Blackwell 2005), and the use of these values is therefore considered a conservative application.

Distances to the harassment isopleths vary by marine mammal type and pile extraction/driving tool. The Level B harassment isopleth during impact pile driving is 225 meters when pile caps are used; 1,136 meters during vibratory pile driving; and 3 meters during down-hole drilling (Table 6–6; Figure 6–1). The Level B harassment monitoring zone for vibratory pile driving will be rounded up to 1,150 meters for the Pier 1 project. Level A harassment of Steller sea lions would occur only within 4 meters if pile caps are used during impact hammering, or within 9 meters if pile caps are not used as is shown in Table 4.

TABLE 4—DISTANCES IN METERS FROM PIER 1 CONSTRUCTION ACTIVITY TO NMFS' LEVEL A AND LEVEL B HARASSMENT THRESHOLDS (ISOPLETHS) FOR DIFFERENT PILE INSTALLATION AND EXTRACTION METHODS AND PILE TYPES, ASSUMING A 125-dB BACKGROUND NOISE LEVEL

Method, Pile Type	Level A		Level B
	Pinnipeds	Cetaceans	Pinnipeds and Cetaceans
Vibratory Hammer			
Timber pile extraction	<1	<1	506
Steel H-piles	<1	<1	167
24-inch steel piles	<1	1	1136
18-inch steel piles	<1	1	1136
16-inch timber piles	<1	1	1136
Down-hole Drill			
24-inch steel piles	<1	<1	3
Impact Hammer			
With caps			
24-inch steel piles	4	15	225
Without caps			
24-inch steel piles	9	34	508

Note that the actual area insonified by pile driving activities is significantly constrained by local topography relative to the total threshold radius. The actual insonified area was determined using a straight line-of-sight projection from the anticipated pile driving locations. Distances to the underwater sound isopleths for Level B and Level A are illustrated respectively in Figure 6–1 and Figure 6–2 in the application.

The method used for calculating potential exposures to impact and vibratory pile driving noise for each threshold was estimated using local marine mammal data sets, the Biological Opinion, best professional judgment from state and federal agencies, and data from IHA estimates on similar projects with similar actions. All estimates are conservative and include the following assumptions:

- All pilings installed at each site would have an underwater noise disturbance equal to the piling that causes the greatest noise disturbance (*i.e.,* the piling furthest from shore) installed with the method that has the largest ZOI. The largest underwater disturbance ZOI would be produced by vibratory driving steel and timber piles. The ZOIs for each threshold are not spherical and are truncated by land masses on either side of the channel which would dissipate sound pressure waves.
- Exposures were based on estimated work days. Numbers of days were based on an average production rate of 80 days of vibratory driving, 22 days of impact driving and 60 days of down-hole drilling. Note that impact driving is likely to occur only on days when vibratory driving occurs.
- In absence of site specific underwater acoustic propagation modeling, the practical spreading loss model was used to determine the ZOI.

Steller Sea Lions

Incidental take was estimated for Steller sea lions by assuming that, within any given day, about 40 unique individual Steller sea lions may be present at some time during that day within the Level B harassment zone during active pile extraction or installation. This estimate was derived from the following information, previously described in the FR in the section

Description of Marine Mammals in the Area of the Specified Activity

Pinniped population estimates are typically made when the animals are hauled out and available to be counted. Steller sea lions hauled out on the Dog Bay float are believed to represent the Kodiak Harbor population. Aerial surveys from 2004 through 2006 indicated peak winter (October–April) counts at the Dog Bay float ranging from 27 to 33 animals (Wynn *et al.* 2011). Counts in February 2015 during a site visit by HDR biologists ranged from approximately 28 to 45 Steller sea lions. More than 100 Steller sea lions were counted on the Dog Bay float at times in spring 2015, although the mean number was much smaller (Wynne 2015b). Together, this information may indicate a maximum population of about 120 Steller sea lions that uses the Kodiak harbor area.

Steller sea lions found in more ''natural'' settings do not usually eat every day, but tend to forage every 1–

2 days and return to haulouts to rest between foraging trips (Merrick and Loughlin 1997; Rehburg *et al.* 2009). This means that on any given day a maximum of about 60 Steller sea lions from the local population may be foraging. Note that there are at least four other seafood processing facilities in Kodiak that operate concurrently with the one located next to Pier 1, and all are visited by local Steller sea lions looking for food (Wynne 2015a). The seafood processing facility adjacent to the Pier 1 project site is not the only source of food for local Steller sea lions that inhabit the harbor area. The foraging habits of Steller sea lions using the Dog Bay float and Kodiak harbor area are not documented, but it is reasonable to assume that, given the abundance of readily available food, not every Steller sea lion in the area visits the seafood processing plant adjacent to Pier 1 every day. If about half of the foraging Steller sea lions visit the seafood processing plant adjacent to Pier 1, it is estimated that about 30 unique individual Steller sea lions likely pass through the Pier 1 project area each day and could be exposed to Level B harassment. To be conservative, exposure is estimated at 40 unique individual Steller sea lions per day.

It is assumed that Steller sea lions may be present every day, and also that take will include multiple harassments of the same individual(s) both within and among days, which means that these estimates are likely an overestimate of the number of individuals.

Expected durations of pile extraction and driving were estimated in Section 1.4 of the application. For each pile extraction or installation activity, the calculation for Steller sea lion exposures to underwater noise is therefore estimated as:

Exposure estimate = (number of animals exposed > sound thresholds)/day * number of days of activity

An estimated total of 3,200 Steller sea lions (40 sea lions/day * 80 days of pile installation or extraction) could be exposed to noise at the Level B harassment level during vibratory and impact pile driving (Table 5). The expected take from exposure to noise from down-hole drilling is expected to be very low because of the low noise levels produced by this type of pile installation, and the 3-meter distance to the Level B isopleth. Potential exposure at the Level B harassment level for down-hole drilling is estimated at 60 Steller sea lions, roughly one every one to two days.

TABLE 5—NUMBERS OF POTENTIAL EXPOSURES OF STELLER SEA LIONS TO LEVEL A AND LEVEL B HARASSMENT NOISE FROM PILE DRIVING BASED ON PREDICTED UNDERWATER NOISE LEVELS RESULTING FROM PROJECT ACTIVITIES

	Vibratory and impact	Down-hole drill	Impact hammer
	Level B	Level B	Level A
Number of Days	80	60	22
Number of Steller Sea Lion Exposures	3,200	60	30

The attraction of sea lions to the seafood processing plant increases the possibility of individual Steller sea lions occasionally entering the Level A harassment zone before they are observed and before pile driving can be shut down. Even with marine mammal observers present at all times during pile installation, it is possible that sea lions could approach quickly and enter the Level A harassment zone, even as pile driving activity is being shut down. This likelihood is increased by the high level of sea lion activity in the area, with Steller sea lions following vessels and swimming around vessels at the neighboring dock. It is possible that a single sea lion could be taken each day that impact pile driving occurs. As such, NMFS proposes an additional 22 Level A takes plus a roughly 30 percent contingency of 8 additional takes, for a total of 30 takes for Level A harassment. Potential for Level A harassment of Steller sea lions is estimated to only occur during impact hammering due to the very small Level A harassment zones for all other construction activities.

Harbor Seals

Harbor seals are expected to be encountered in low numbers, if at all, within the project area. However, based on the known range of the South Kodiak stock, and occasional sightings during monitoring of projects at other locations on Kodiak Island, NMFS proposes 40 Level B takes (1 take every other day) of harbor seals by exposure to underwater noise over the duration of construction activities.

Harbor Porpoises

Harbor porpoises are expected to be encountered in low numbers, if at all, within the project area. However, based on the known range of the Gulf of Alaska stock and occasional sightings during monitoring of projects at other locations on Kodiak Island, NMFS proposes 40 Level B takes (1 take every other day) of harbor porpoises by exposure to underwater noise over the duration of construction activities.

Killer Whales

Resident killer whales are rarely sighted in the project area and, therefore, NMFS is not proposing the take of any resident killer whales. Transient killer whales are expected to be encountered in the project area occasionally, although no data exist to quantify killer whale attendance. Killer whales are expected to be in the Kodiak harbor area sporadically from January through April and to enter the project area in low numbers. Based on the known range and behavior of the Alaska Resident stock and the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stocks, it is reasonable to estimate that 6 individual whales may enter the project area twice a month from February through May. NMFS therefore proposes 48 Level B takes (6 killer whales/visit * 2 visits/month * 4 months) of killer whales by exposure to underwater noise over the duration of construction activities.

TABLE 6—SUMMARY OF THE ESTIMATED NUMBERS OF MARINE MAMMALS POTENTIALLY EXPOSED TO LEVEL A AND LEVEL B HARASSMENT NOISE LEVELS SPECIES

Species	Level threshold cetaceans (180 dB)	Level injury threshold pinnipeds (190 dB)	Level B harassment threshold (160 dB)	Total
Steller sea lion	NA	30	3,260	3,290
Harbor seal	NA	0	40	40
Harbor porpoise	0	NA	40	40
Killer whale	0	NA	48	48
Total	0	30	3,388	3,418

NA indicates Not Applicable.

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is ''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'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

To avoid repetition, the discussion of our analyses applies to all the species listed in Table 6, given that the anticipated effects of this pile driving project on marine mammals are expected to be relatively similar in nature. There is no information about the size, status, or structure of any species or stock that would lead to a different analysis for this activity, else species-specific factors would be identified and analyzed.

Pile extraction, pile driving, and down-hole drilling activities associated with the reconstruction of the Pier 1 Kodiak Ferry Terminal and Dock, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A (injury) and Level B harassment (behavioral disturbance), from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the insonified zone when pile driving is under way.

The takes from Level B harassment will be due to potential behavioral disturbance and TTS. The takes from Level A harassment will be due to potential PTS. No mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, the use of impact driving will be limited to an estimated maximum of 3 hours over the course of 80 days of construction, and will likely require less time. Each 24-inch pile will require about five blows of an impact hammer to confirm that piles are set into bedrock for a maximum time expected of 1 minute of impact hammering per pile (88 piles × 1 minute/per pile = 88 minutes). Vibratory driving will be necessary for an estimated maximum of 75 hours and down-hole drilling will require a maximum of 550 hours. Vibratory driving and down-hole drilling do not have significant potential to cause injury to marine mammals due to the relatively low source levels produced and the lack of potentially injurious source characteristics. The likelihood that marine mammal detection ability by trained observers is high under the environmental conditions described for the reconstruction of the Pier 1 Kodiak Ferry Terminal and Dock further enables the implementation of shutdowns to limit injury, serious injury, or mortality.

The DOT&PF's proposed activities are localized and of short duration. The entire project area is limited to the Pier 1 area and its immediate surroundings. Actions covered under the Authorization would include extracting 196 13-inch timber piles, 14 16-inch steel piles, installing 88 temporary steel or H-piles, extracting those 88 piles, installing 88 24-inch steel piles, 10 18-inch steel piles and 8 16-inch timber piles.

These localized and short-term noise exposures may cause auditory injury to a small number of Steller sea lions, as well as short-term behavioral modifications in killer whales, Steller sea lions, harbor porpoises, and harbor seals. Moreover, the proposed mitigation and monitoring measures are expected to reduce the likelihood of injury and behavior exposures. Additionally, no important feeding and/or reproductive areas for marine mammals are known to be near the proposed action area. Therefore, the take resulting from the proposed project is not reasonably expected to and is not reasonably likely to adversely affect the marine mammal species or stocks through effects on annual rates of recruitment or survival.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, including Steller sea lion critical habitat. The project activities would not modify existing marine mammal habitat. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Effects on individuals that are taken by Level A harassment may include permanent threshold shift. However, the possibility exists that some of the sea lions frequenting the Kodiak harbor area are already hearing-impaired or deaf (Wynne 2014). Fishermen have been known to protect their gear and catches by using ''seal bombs'' in an effort to disperse sea lions away from fishing

gear. Sound levels produced by seal bombs are well above levels that are known to cause Temporary Threshold Shift (TTS, temporary loss of hearing) and Permanent Threshold Shift (PTS, partial or full loss of hearing) in marine mammals (Wynne 2014). The use of seal bombs requires appropriate permits from the Bureau of Alcohol, Tobacco, Firearms and Explosives. Seal bombs may be used as long as such use does not result in mortality or serious injury of a marine mammal; however, seal bombs should not be used on any ESA-listed species (Laws 2015). Although no studies have been published that document hearing-impaired sea lions in the area, this possibility is important to note as it pertains to mitigation measures that will be effective for this project.

Sea lions in the Kodiak harbor area are habituated to fishing vessels and are skilled at gaining access to fish. It is likely that some of the same animals follow local vessels to the nearby fishing grounds and back to town. It is also likely that hearing-impaired or deaf sea lions are among the sea lions that attend the seafood processing facility adjacent to the Pier 1 construction site. It is not known how a hearing-impaired or deaf sea lion would respond to typical mitigation efforts at a construction site such as ramping up of pile-driving equipment. It is also unknown whether a hearing-impaired or deaf sea lion would avoid pile-driving activity, or whether such an animal might approach closely, even within the Level A harassment zone, without responding to or being impacted by the noise level. If it is observed that some sea lions found within the Level A harassment zone do not respond to mitigation efforts, these animals may have previously suffered injury in the form of PTS. Therefore, any additional auditory injury associated with the Pier 1 project would be unlikely.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. In response to vibratory driving, pinnipeds (which may become somewhat habituated to human activity in industrial or urban waterways) have been observed to orient towards and sometimes move towards the sound. The pile extraction and driving activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness for the affected individuals, and thus would not result in any adverse impact to the stock as a whole.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of non-auditory injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior and; (3) the presumed efficacy of the proposed mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the DOT&PF's reconstruction of the Pier 1 Kodiak Ferry Terminal and Dock will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

Table 7 demonstrates the number of animals that could be exposed to received noise levels that could cause Level A and Level B behavioral harassment for the proposed work at the Pier 1 project site. The analyses provided above represents between <0.01%–8.1% of the populations of these stocks that could be affected by harassment. The numbers of animals authorized to be taken for all species would be considered small relative to the relevant stocks or populations even if each estimated taking occurred to a new individual—an extremely unlikely scenario. For pinnipeds, especially Steller sea lions, occurring in the vicinity of Pier 1 there will almost certainly be some overlap in individuals present day-to-day, and these takes are likely to occur only within some small portion of the overall regional stock.

TABLE 7—ESTIMATED NUMBERS AND PERCENTAGE OF STOCK THAT MAY BE EXPOSED TO LEVEL A AND B HARASSMENT

Species	Proposed authorized takes	Stock(s) abundance estimate	Percentage of total stock
Killer Whale (*Orcinus orca*); *Eastern N. Pacific, Gulf of Alaska, Aleutian Islands, and Bering Seat Transient Stock*	48	587	8.1%
Harbor Porpoise (*Phocoena phocoena*); *Gulf of Alaska Stock*	40	31,046	<0.01%
Steller Sea Lion (*Eumetopias jubatus*); *wDPS Stock*	* 3,290	52,200	6.3
Harbor Seal (*Phoca vitulina richardii*); *South Kodiak Stock*	40	11,117	<0.01%

* (Includes 3,260 Level B and 30 Level A takes).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, which are expected to reduce the number of marine mammals potentially affected by the proposed action, NMFS preliminarily finds that small numbers of marine mammals will be taken

relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

Alaska Natives have traditionally harvested subsistence resources in the Kodiak area for many hundreds of years, particularly Steller sea lions and harbor seals. No traditional subsistence hunting areas are within the project vicinity, however; the nearest haulouts for Steller sea lions and harbor seals are the Long Island and Cape Chiniak haul-outs and the Marmot Island rookery, many miles away. These locations are respectively 4, 12 and 30 nautical miles distant from the project area. Since all project activities will take place within the immediate vicinity of the Pier 1 site, the project will not have an adverse impact on the availability of marine mammals for subsistence use at locations farther away. No disturbance or displacement of sea lions or harbor seals from traditional hunting areas by activities associated with the Pier 1 project is expected. No changes to availability of subsistence resources will result from Pier 1 project activities.

Endangered Species Act (ESA)

There are two marine mammal species that are listed as endangered under the ESA with confirmed or possible occurrence in the study area: Humpback whale and Southern resident killer whale. For the purposes of this IHA, NMFS determined that take of Southern resident killer whales was highly unlikely given the rare occurrence of these animals in the project area. A similar conclusion was reached for humpback whales. On March 18, 2011, NMFS signed a Biological Opinion concluding that the proposed action is not likely to jeopardize the continued existence of humpback whales and may affect, but is not likely to adversely affect Southern resident killer whales.

National Environmental Policy Act (NEPA)

NMFS is also preparing an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) and will consider comments submitted in response to this notice as part of that process. The EA will be posted at *http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* once it is finalized.

Proposed Incidental Harassment Authorization

As a result of these preliminary determinations, we propose to issue an IHA to the DOT&PF for the Pier 1 Kodiak Ferry Terminal and Dock Improvements Project provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

1. This Incidental Harassment Authorization (IHA) is valid from September 30, 2015 through September 29, 2016.

2. This Authorization is valid only for in-water construction work associated with the Pier 1 Kodiak Ferry Terminal and Dock Improvements Project.

3. General Conditions:

(a) A copy of this IHA must be in the possession of the DOT&PF, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking include killer whale (*Orcinus orca*), Steller sea lion (*Eumatopius jubatus),* harbor porpoise (*Phocoena phocoena*), and harbor seal (*Phoca vitulina richardii*).

(c) The taking, by Level B harassment only, is limited to the species listed in condition 3(b).

(d) The taking, by Level A harassment only, is limited Steller sea lions.

(e) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in condition 3(b) with the exception of Steller sea lions or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(f) The DOT&PF shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and staff prior to the start of all in-water pile driving, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

4. Mitigation Measures

The holder of this Authorization is required to implement the following mitigation measures:

(a) Time Restriction: For all in-water pile driving activities, the DOT&PF shall operate only during daylight hours when visual monitoring of marine mammals can be conducted. To minimize impacts to pink salmon (*Oncorhynchus gorbuscha*) fry and coho salmon (*O. kisutch*) smolt, all in-water pile extraction and installation is planned to be completed by April 30, 2016. If work cannot be completed by April 30, the DOT&PF must refrain from impact pile installation without a bubble curtain from May 1 through June 30 within the 12-hour period beginning daily at the start of civil dawn. Impact pile installation would be acceptable without a bubble curtain from May 1 through June 30 in the evenings, beginning at 12 hours past civil dawn.

(b) Establishment of Level B Harassment (ZOI)

(i) Before the commencement of in-water pile driving activities, the DOT&PF shall establish Level B behavioral harassment ZOI where received underwater sound pressure levels (SPLs) are higher than 120 dB (rms) re 1 μPa for and non-pulse sources (vibratory hammer). The ZOI delineates where Level B harassment would occur. For vibratory driving, the level B harassment area extends out to 1,150. This 1,150-meter distance will serve as a shutdown zone for all other marine mammals not listed in 3(b). During impact driving, the Level B harassment zone shall extend to 225 meters for animals listed in 3(b). This 225-meter distance will serve as a shutdown zone for all other marine mammals not listed in 3(b).

(c) Establishment of shutdown zone

(i) For impact pile driving activities, the DOT&PF's will establish a shutdown zone. Shutdown zones are intended to contain the area in which SPLs equal or exceed the 180/190 dB rms acoustic injury criteria, with the purpose being to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals. A conservative 4-meter shutdown zone will be in effect for Steller sea lions and harbor seals. The shutdown zone for Level A injury to harbor porpoises and killer whales would be 15 meters.

(d) The Level A and Level B harassment zones will be monitored throughout the time required to install or extract a pile. If a harbor seal, harbor porpoise, or killer whale is observed entering the Level B harassment zone, a Level B exposure will be recorded and behaviors documented. That pile segment will be completed without cessation, unless the animal approaches the Level A shutdown zone. Pile installation or extraction will be halted immediately before the animal enters the Level A zone.

(e) Use of Ramp Up/Soft Start

(i) The project will utilize soft start techniques for all vibratory and impact pile driving. We require the DOT&PF to initiate sound from vibratory hammers for fifteen seconds at reduced energy followed by a 1-minute waiting period, with the procedure repeated two additional times. For impact driving, we require an initial set of three strikes

from the impact hammer at reduced energy, followed by a 1-minute waiting period, then two subsequent three strike sets.

(ii) Soft start will be required at the beginning of each day's pile driving work and at any time following a cessation of pile driving of 20 minutes or longer.

(iii) If a marine mammal is present within the shutdown zone, ramping up will be delayed until the animal(s) leaves the Level A harassment zone. Activity will begin only after the MMO has determined, through sighting, that the animal(s) has moved outside the Level A harassment zone.

(iv) If a Steller sea lion, harbor seal, harbor porpoise, or killer whale is present in the Level B harassment zone, ramping up will begin and a Level B take will be documented. Ramping up will occur when these species are in the Level B harassment zone whether they entered the Level B zone from the Level A zone, or from outside the project area.

(v) If any marine mammal other than Steller sea lions, harbor seals, harbor porpoises, or killer whales is present in the Level B harassment zone, ramping up will be delayed until the animal(s) leaves the zone. Ramping up will begin only after the Wildlife Observer has determined, through sighting, that the animal(s) has moved outside the harassment zone.

(f) Pile Caps—

(i) Pile caps will be used during all impact pile-driving activities.

(g) Standard mitigation measures

(i) Conduct briefings between construction supervisors and crews, marine mammal monitoring team, and DOT&PF staff prior to the start of all pile driving and extraction activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(ii) For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 10 meters, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

(h) The DOT&PF shall establish monitoring locations as described below.

5. Monitoring and Reporting

The holder of this Authorization is required to report all monitoring conducted under the IHA within 90 calendar days of the completion of the marine mammal monitoring

(a) Visual Marine Mammal Monitoring and Observation

(i) At least one individual meeting the minimum qualifications identified in Appendix A of the application by the DOT&PF will monitor the shutdown and Level B harassment zones during impact and vibratory pile driving.

(ii) During pile driving and extraction the shutdown zone, as described in 4(b) will be monitored and maintained. Pile installation or extraction will not commence or will be suspended temporarily if any marine mammals are observed within or approaching the area of potential disturbance.

(iii) The area within the Level B harassment threshold for pile driving and extraction will be monitored by observers stationed to provide adequate view of the harassment zone. Marine mammal presence within this Level B harassment zone, if any, will be monitored. Pile driving activity will not be stopped if marine mammals are found to be present. Any marine mammal documented within the Level B harassment zone during impact driving would constitute a Level B take (harassment), and will be recorded and reported as such.

(iv) The individuals will scan the waters within each monitoring zone activity using binoculars (Vector 10X42 or equivalent), spotting scopes (Swarovski 20–60 zoom or equivalent), and visual observation.

(v) If waters exceed a sea-state which restricts the observers' ability to make observations within the marine mammal buffer zone (the 100 meter radius) (*e.g.* excessive wind or fog), impact pile installation will cease until conditions allow the resumption of monitoring.

(vi) The waters will be scanned 30 minutes prior to commencing pile driving at the beginning of each day, and prior to commencing pile driving after any stoppage of 20 minutes or greater. If marine mammals enter or are observed within the designated marine mammal shutdown zone during or 20 minutes prior to impact pile driving, the monitors will notify the on-site construction manager to not begin until the animal has moved outside the designated radius.

(vii) The waters will continue to be scanned for at least 20 minutes after pile driving has completed each day,

(b) Data Collection

(i) Observers are required to use approved data forms. Among other pieces of information, DOT&PF the DOT&PF will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the DOT&PF will attempt to distinguish between the number of individual animals taken and the number of incidents of take. At a minimum, the following information be collected on the sighting forms:

1. Date and time that monitored activity begins or ends;

2. Construction activities occurring during each observation period;

3. Weather parameters (*e.g.,* percent cover, visibility);

4. Water conditions (*e.g.,* sea state, tide state);

5. Species, numbers, and, if possible, sex and age class of marine mammals;

6. Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

7. Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

8. Locations of all marine mammal observations; and

9. Other human activity in the area.

(c) Reporting Measures

(i) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment to animals other than Steller sea lions), serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), the DOT&PF would immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report would include the following information:

1. Time, date, and location (latitude/longitude) of the incident;

2. Name and type of vessel involved;

3. Vessel's speed during and leading up to the incident;

4. Description of the incident;

5. Status of all sound source use in the 24 hours preceding the incident;

6. Water depth;

7. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

8. Description of all marine mammal observations in the 24 hours preceding the incident;

9. Species identification or description of the animal(s) involved;

10. Fate of the animal(s); and

11. Photographs or video footage of the animal(s) (if equipment is available).

(ii) Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with the DOT&PF to

determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The DOT&PF would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

(iii) In the event that the DOT&PF discovers an injured or dead marine mammal, and the lead MMO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), the DOT&PF would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with the DOT&PF to determine whether modifications in the activities are appropriate.

(iv) In the event that the DOT&PF discovers an injured or dead marine mammal, and the lead MMO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the DOT&PF would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator, within 24 hours of the discovery. The DOT&PF would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

6. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

NMFS requests comment on our analysis, the draft authorization, and any other aspect of the Notice of Proposed IHA for the DOT&PF's Kodiak Ferry Terminal and Dock Improvements Project. Please include with your comments any supporting data or literature citations to help inform our final decision on DOT&PF's request for an MMPA authorization.

Dated: August 18, 2015.

Perry Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–20828 Filed 8–21–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE127

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and its advisory entities will hold an 8-day public meeting to consider actions affecting West Coast fisheries in the exclusive economic zone.

DATES: Advisory entities to the Pacific Council will meet beginning at 8 a.m. Wednesday, September 9, 2015 through Wednesday, September 16, 2015 as listed in the Schedule of Ancillary Meetings. The Pacific Council general session will begin on Friday, September 11, 2015 at 8 a.m., reconvening each day through Wednesday, September 16, 2015. All meetings are open to the public, except a closed session will be held at 8 a.m. on Friday, September 11 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Council and its advisory entities will be held at the Doubletree by Hilton Sacramento, 2001 Point West Way, Sacramento, CA 95815; telephone: (916) 929–8855. Instructions for attending the meeting via live stream broadcast are given under **SUPPLEMENTARY INFORMATION**, below.

Council address: Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director, Pacific Fishery Management Council; telephone: (503) 820–2280 or (866) 806–7204 toll free. Access the Pacific Council Web site, *http://www.pcouncil.org/council-operations/council-meetings/current-meeting/* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION:

Live Stream Broadcast

Friday, September 11, 2015 Through Wednesday, September 16, 2015

The general session of the Pacific Fishery Management Council will be streamed live on the internet beginning at 9 a.m. Pacific Time (PT) on Friday, September 11, 2015 through Wednesday, September 16, 2015. The broadcast will end daily at 6 p.m. PT or when business for the day is complete. Only the audio portion, and portions of the presentations displayed on the screen at the Council meeting, will be broadcast. The audio portion is listen-only; you will be unable to speak to the Council via the broadcast. Join the meeting by visiting this link *http://www.gotomeeting.com/online/webinar/join-webinar,* enter the Webinar ID for this meeting, which is 141–257–515, and enter your email address as required. It is recommended that you use a computer headset as GoToMeeting allows you to listen to the meeting using your computer headset and speakers. If you do not have a headset and speakers, you may use your telephone for the audio portion of the meeting by dialing this toll number 1–702–489–0008 (not a toll free number); entering the phone audio access code 418–407–809; and then entering your Audio Pin which will be shown to you after joining the webinar. The webinar is broadcast in listen-only mode.

Agenda

Friday, September 11, 2015 Through Wednesday, September 16, 2015

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''(Final Action)'' refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, and meeting rooms, is described in Agenda Item A.5, Proposed Council Meeting Agenda, and will be in the advance September 2015 briefing materials and posted on the Council Web site *http://www.pcouncil.org/council-operations/council-meetings/current-briefing-book/.*

A. Call to Order
  1. Opening Remarks
  2. Council Member Appointments
  3. Roll Call
  4. Executive Director's Report
  5. Approve Agenda

B. Open Comment Period

1. Comments on Non-Agenda Items
C. Administrative Matters
1. Update on Council Coordination Committee Meeting
2. Legislative Matters
3. Approval of Council Meeting Record
4. Membership Appointments and Council Operating Procedures
5. Future Council Meeting Agenda and Workload Planning
D. Ecosystem Management
1. Fishery Ecosystem Plan Initiative Scoping
2. Unmanaged Forage Fish Regulations (Final Action)
E. Salmon Management
1. Salmon Methodology Review
2. Sacramento River Winter Chinook Update
F. Habitat
1. Current Habitat Issue
G. Highly Migratory Species Management
1. Update on International Issues
2. Swordfish Management and Monitoring Plan Hardcaps (Final Action)
3. Scoping of Amendment 4 to the Fishery Management Plan: Authorizing a Shallow-Set Longline Fishery Outside of the EEZ
H. Groundfish Management
1. Mid-Water Recreational Fishing Regulations
2. Consideration of Gear Regulations for the Trawl Catch Shares Sector
3. Final Stock Assessments
4. Electronic Monitoring Regulations and Exempted Fishing Permit Update
5. Specifications Process for 2017–2018 Management (Final Action)
6. Salmon Endangered Species Act Reinitiation of Consultation Workshop Report
7. Blackgill-Slope Rockfish Intersector Allocation and Accumulation Limit Adjustments
8. Amendment To Modify Groundfish Essential Fish Habitat and To Adjust Rockfish Conservations Areas
9. Inseason Adjustments (Final Action)
10. Groundfish Management Science Improvements and Methodology Review Topics
I. Pacific Halibut Management
1. 2016 Catch Sharing Plan and Annual Regulation Changes

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Council agenda for this meeting, and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Council Web site *http://www.pcouncil.org/council-operations/council-meetings/current-briefing-book/* prior to their meeting date.

Schedule of Ancillary Meetings

Day 1, Wednesday, September 9, 2015

Scientific and Statistical Committee Ecosystem Subcommittee 8 a.m.

Day 2, Thursday, September 10, 2015

Ecosystem Advisory Subpanel 8 a.m.
Ecosystem Workgroup 8 a.m.
Groundfish Management Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Habitat Committee 8:30 a.m.
Legislative Committee 1 p.m.
Budget Committee 2:30 p.m.

Day 3, Friday, September 11, 2015

Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Enforcement Consultants 8 a.m.
Chairman's Reception 6 p.m.

Day 4, Saturday, September 13, 2015

Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Enforcement Consultants *Ad hoc*
Stock Assessment Briefing 7 p.m.

Day 5, Sunday, September 13, 2015

Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Enforcement Consultants *Ad hoc*

Day 6, Monday, September 14, 2015

Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Enforcement Consultants *Ad hoc*

Day 7, Tuesday, September 15, 2015

Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Enforcement Consultants *Ad hoc*

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kristopher Kleinschmidt at least 5 days prior to the meeting date by telephone (503) 820–2280; at the Council office (see **ADDRESSES**); or by email at *kris.kleinschmidt@noaa.gov.*

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

Dated: August 18, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–20830 Filed 8–21–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE128

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Ecosystem and Ocean Planning Advisory Panel (AP) will hold a public meeting.

DATES: The meeting will be held on Wednesday, Sept. 9, 2015, from 10 a.m. to 5 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Double Tree by Hilton Baltimore—BWI Airport, 890 Elkridge Landing Road, Linthicum, Maryland, 21090; telephone: (410) 859–8400.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The MAFMC's Ecosystem and Ocean Planning Advisory Panel (AP) will meet to provide input to the Council on the development of written Council policy on non-fishing activities that impact fish habitat. The development of written policy on these activities will allow the

Council to comment more quickly on proposed activities and projects, and enable the Council to work more effectively in addressing fish habitat and ecosystem issues in our region.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: August 19, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–20831 Filed 8–21–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 130718637–5699–02]

RIN 0648–XC775

Endangered and Threatened Wildlife and Plants; Notice of 12-Month Finding on a Petition To List the Orange Clownfish as Threatened or Endangered Under the Endangered Species Act

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

ACTION: Notice of 12-month finding and availability of a status review report.

SUMMARY: We, NMFS, announce a 12-month finding and listing determination on a petition to list the orange clownfish (*Amphiprion percula*) as threatened or endangered under the Endangered Species Act (ESA). We have completed a comprehensive status review under the ESA for the orange clownfish and we determined that, based on the best scientific and commercial data available, the orange clownfish does not warrant listing under the ESA. We conclude that the orange clownfish is not currently in danger of extinction throughout all or a significant portion of its range and is not likely to become so within the foreseeable future.

DATES: The finding announced in this notice was made on August 24, 2015.

ADDRESSES: You can obtain the petition, status review report, 12-month finding, and the list of references electronically on our NMFS Web site at: *http://www.fpir.noaa.gov/PRD/prd_reef_fish.html.*

FOR FURTHER INFORMATION CONTACT: Krista Graham, NMFS, Pacific Islands Regional Office, (808) 725–5152; or Kimberly Maison, NMFS, Pacific Islands Regional Office, (808) 725–5143; or Chelsey Young, NMFS, Office of Protected Resources, (301) 427–8491.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 2012, we received a petition from the Center for Biological Diversity (Center for Biological Diversity, 2012) to list eight species of pomacentrid reef fish as threatened or endangered under the ESA and to designate critical habitat for these species concurrent with the listing. The species are the orange clownfish (*Amphiprion percula*) and seven other damselfishes: The yellowtail damselfish (*Microspathodon chrysurus*), Hawaiian dascyllus (*Dascyllus albisella*), blue-eyed damselfish (*Plectroglyphidodon johnstonianus*), black-axil chromis (*Chromis atripectoralis*), blue-green damselfish (*Chromis viridis*), reticulated damselfish (*Dascyllus reticulatus*), and blackbar devil or Dick's damselfish (*Plectroglyphidodon dickii*). Given the geographic ranges of these species, we divided our initial response to the petition between our Pacific Islands Regional Office (PIRO) and Southeast Regional Office (SERO). PIRO led the response for the seven Indo-Pacific species. On September 3, 2014, PIRO published a positive 90-day finding (79 FR 52276) for the orange clownfish announcing that the petition presented substantial scientific or commercial information indicating the petitioned action of listing the orange clownfish may be warranted and explained the basis for that finding. We also announced a negative 90-day finding for the six Indo-Pacific damselfishes: The Hawaiian dascyllus, blue-eyed damselfish, black-axil chromis, blue-green damselfish, reticulated damselfish, and blackbar devil or Dick's damselfish. SERO led the response to the petition to list the yellowtail damselfish and, on February 18, 2015, announced a negative 90-day finding for that species (80 FR 8619).

In our positive 90-day finding for the orange clownfish, we also announced the initiation of a status review of the species, as required by section 4(b)(3)(A) of the ESA, and requested information to inform the agency's decision on whether the species warranted listing as endangered or threatened under the ESA.

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a ''species'' under the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS; together, the Services) adopted a policy describing what constitutes a distinct population segment (DPS) of a taxonomic species (the DPS Policy; 61 FR 4722). The DPS Policy identifies two elements that must be considered when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. As stated in the DPS Policy, Congress expressed its expectation that the Services would exercise authority with regard to DPSs sparingly and only when the biological evidence indicates such action is warranted. Based on the scientific information available, we determined that the orange clownfish (*Amphiprion percula*) is a ''species'' under the ESA. There is nothing in the scientific literature indicating that this species should be further divided into subspecies or DPSs.

Section 3 of the ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as one ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' We interpret an ''endangered species'' to be one that is presently in danger of extinction. A ''threatened species,'' on the other hand, is not presently at risk of extinction, but is likely to become so in the foreseeable future. In other words, the primary statutory difference between an endangered and threatened species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

When we consider whether a species might qualify as threatened under the ESA, we must consider the meaning of the term ''foreseeable future.'' It is appropriate to interpret ''foreseeable future'' as the horizon over which predictions about the conservation status of the species can be reasonably relied upon. The foreseeable future

considers the life history of the species, habitat characteristics, availability of data, particular threats, ability to predict threats, and the reliability to forecast the effects of these threats and future events on the status of the species under consideration. Because a species may be susceptible to a variety of threats for which different data are available, or which operate across different time scales, the foreseeable future is not necessarily reducible to a particular number of years. In determining an appropriate ''foreseeable future'' timeframe for the orange clownfish, we considered the generation length of the species and the estimated life span of the species. Generation length, which reflects turnover of breeding individuals and accounts for non-breeding older individuals, is greater than first age of breeding but lower than the oldest breeding individual (IUCN 2015) (*i.e.,* the age at which half of total reproductive output is achieved by an individual). For the orange clownfish, we estimated this to range between 6 and 15 years. We concluded that two to three generation lengths of the species comports with the estimated lifespan of approximately 30 years for the orange clownfish (Buston and Garcia, 2007). Therefore, we conservatively define the foreseeable future for the orange clownfish as approximately 30 years from the present.

On July 1, 2014, NMFS and USFWS published a policy to clarify the interpretation of the phrase ''significant portion of its range'' (SPR) in the ESA definitions of ''threatened'' and ''endangered'' (the SPR Policy; 79 FR 37578). Under this policy, the phrase ''significant portion of its range'' provides an independent basis for listing a species under the ESA. In other words, a species would qualify for listing if it is determined to be endangered or threatened throughout all of its range or if it is determined to be endangered or threatened throughout a significant portion of its range. The policy consists of the following four components:

(1) If a species is found to be endangered or threatened in only an SPR, the entire species is listed as endangered or threatened, respectively, and the ESA's protections apply across the species' entire range.

(2) A portion of the range of a species is ''significant'' if the species is not endangered or threatened throughout its range, and its contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction or likely to become so in the foreseeable future, throughout all of its range.

(3) The range of a species is considered to be the general geographical area within which that species can be found at the time USFWS or NMFS makes any particular status determination. This range includes those areas used throughout all or part of the species' life cycle, even if they are not used regularly (*e.g.,* seasonal habitats). Lost historical range is relevant to the analysis of the status of the species, but it cannot constitute an SPR.

(4) If a species is not endangered or threatened throughout all of its range but is endangered or threatened within an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

We considered this policy in evaluating whether to list the orange clownfish as endangered or threatened under the ESA.

Section 4(a)(1) of the ESA requires us to determine whether any species is endangered or threatened due to any one of the following five threat factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. We are also required to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the species' status and after taking into account efforts being made by any state or foreign nation to protect the species.

In assessing extinction risk of this species, we considered the demographic viability factors developed by McElhany *et al.* (2000) and the risk matrix approach developed by Wainwright and Kope (1999) to organize and summarize extinction risk considerations. The approach of considering demographic risk factors to help frame the consideration of extinction risk has been used in many of our status reviews (see *http://www.nmfs.noaa.gov/pr/species* for links to these reviews). In this approach, the collective condition of individual populations is considered at the species level according to four demographic viability factors: Abundance, growth rate/productivity, spatial structure/connectivity, and diversity. These viability factors reflect concepts that are well founded in conservation biology and that individually and collectively provide strong indicators of extinction risk.

Scientific conclusions about the overall risk of extinction faced by the orange clownfish under present conditions and in the foreseeable future are based on our evaluation of the species' demographic risks and section 4(a)(1) threat factors. Our assessment of overall extinction risk considered the likelihood and contribution of each particular factor, synergies among contributing factors, and the cumulative effects of all demographic risks and threats to the species.

NMFS PIRO staff conducted the status review for the orange clownfish. In order to complete the status review, we compiled information on the species' biology, demography, ecology, life history, threats, and conservation status from information contained in the petition, our files, a comprehensive literature search, and consultation with experts. We also considered information submitted by the public in response to our petition findings. A draft status review report was then submitted to three independent peer reviewers; comments and information received from peer reviewers were addressed and incorporated as appropriate before finalizing the draft report. The orange clownfish status review report is available on our Web site (see **ADDRESSES** section). Below we summarize information from this report and the status of the species.

Status Review

Species Description

The orange clownfish, *A. percula,* is a member of the Family Pomacentridae. Two genera within the Family contain 28 species of clownfish (also known as anemonefish). The number of recognized clownfish species has evolved over time due to inconsistent recognition of natural hybrids and geographic color variants of previously described species as separate species in the literature (Allen, 1991; Fautin and Allen, 1992, 1997; Buston and Garcia, 2007; Ollerton *et al.,* 2007; Allen *et al.,* 2008; Thornhill, 2012; Litsios *et al.,* 2014; and Tao *et al.,* 2014). All clownfish have a mutualistic relationship with sea anemones and this relationship has facilitated the adaptive radiation and accelerated speciation of clownfish species (Litsios *et al.,* 2012).

Amphiprion percula is known by many common English names. These names include orange clownfish, clown anemonefish, percula clownfish, percula anemonefish, orange anemonefish, true percula clownfish, blackfinned clownfish, eastern

clownfish, eastern clown anemonefish, and orange-clown anemonefish.

The orange clownfish is bright orange with three thick white vertical bars. The anterior bar occurs just behind the eye, the middle bar bisects the fish and has a forward-projecting bulge, and the posterior bar occurs near the caudal fin. The white bars have a black border that varies in width. Although this describes the type specimen, some polymorphism, or occurrence of more than one form or morph, does occur with diverse geographic regional and local color forms, mostly in the form of variation in the width of the black margin along the white bars (Timm *et al.,* 2008; Militz, 2015). While there is no difference in color pattern between sexes, dimorphic variation, or differentiation between males and females of the same species, is present in size as females are larger than males (Fautin and Allen, 1992, 1997; Florida Museum of Natural History, 2005). Maximum length for this species is approximately 80 millimeters (mm) (Fautin and Allen, 1992, 1997), but individuals up to 110 mm in length have been reported (Florida Museum of Natural History, 2005). Standard length is reported as 46 mm for females and 36 mm for males (Florida Museum of Natural History, 2005). However, size alone cannot be used to identify the sex of an individual because individuals in different groups will vary in maximum and minimum size. The total length of a fish has been correlated with the diameter of its host anemone (Fautin, 1992), with larger anemones hosting larger clownfish.

The orange clownfish very closely resembles the false percula clownfish (*A. ocellaris*), and the two are considered sibling species. There are several morphological differences that may allow an observer, upon closer examination, to distinguish between the two species. While the orange clownfish has 9–10 dorsal spines, the false percula clownfish has 10–11 dorsal spines (Timm *et al.,* 2008), and the anterior part of the orange clownfish's dorsal fin is shorter than that of the false percula clownfish. In addition, the orange clownfish has a thick black margin around its white bars whereas the false percula clownfish often has a thin or even non-existent black margin, though this is not always the case. The orange clownfish has been described as more brilliant in color, and its orange iris gives the appearance of very small eyes while the iris of false percula clownfish is grayish-orange, thus giving the appearance of slightly larger eyes (Florida Museum of Natural History, 2005). Ecologically, both species prefer the same primary host anemone species (*Heteractis magnifica; Stichodactyla gigantean; S. mertensii*) (Fautin and Allen, 1992, 1997), though the orange clownfish prefers shallower waters than those of false percula clownfish (Timm *et al.,* 2008).

The orange clownfish and the false percula clownfish have an allopatric distribution, meaning their distributions do not overlap. The orange clownfish is found in the Indo-Pacific region of northern Queensland (Australia) and Melanesia; the false percula is found in the Andaman and Nicobar Islands in the Andaman Sea (east of India), Indo-Malayan Archipelago, Philippines, northwestern Australia, and the coast of Southeast Asia northwards to the Ryukyu Islands in the East China Sea (Fautin and Allen, 1992, 1997; Timm *et al.,* 2008). Genetically, the two species appear to have diverged between 1.9 and 5 million years ago (Nelson *et al.,* 2000; Timm *et al.,* 2008; Litsios *et al.,* 2012).

In the aquarium trade, the false percula clownfish is the most popular anemonefish and the orange clownfish is the second most popular (Animal-World, 2015). The two species are often mistaken for one another and misidentified in the aquarium trade. They are also often reported as a species complex (*i.e.,* reported as *A. ocellaris/percula*) in trade documentation and scientific research due to the difficulty in visually distinguishing between the two species.

Habitat

The orange clownfish is described as a habitat specialist due to its symbiotic association primarily with three species of anemone: *Heteractis crispa, H. magnifica,* and *Stichodactyla gigantea* (Fautin and Allen, 1992, 1997; Elliott and Mariscal, 1997a; Ollerton *et al.,* 2007), although the species has also been reported as associating with the anemones *S. mertensii* (Elliott and Mariscal, 2001) and *S. haddoni* (Planes *et al.,* 2009). The distribution of these suitable host anemone species essentially dictates the distribution of the orange clownfish within its habitat (Elliott and Mariscal, 2001). Anemone habitat for the orange clownfish, and thus the range of the orange clownfish, is spread throughout northern Queensland (Australia), the northern coast of West Papua (Indonesia), northern Papua New Guinea (including New Britain), the Solomon Islands, and Vanuatu (Rosenberg and Cruz, 1988; Fautin and Allen, 1992, 1997; De Brauwer, 2014).

Anemones and their symbiotic anemonefish inhabit coral reefs and nearby habitats such as lagoons and seagrass beds. Although Fautin and Allen (1992, 1997) estimate that as many anemone hosts and symbiotic fish live on sand flats or other substrate surrounding reefs as live on the reef itself, the symbiotic pairs are thought of as reef dwellers because most diving and observations occur on reefs. Both symbionts reside in shallow coastal waters primarily in depths of 1–12 meters (m) (though the anemones can be found in depths up to 50 m) and water temperatures ranging from 25–28 °C (77–82 °F) (Fautin and Allen, 1992, 1997; Randall *et al.* 1997).

Although anemonefishes have been the subject of considerable scientific research, less is known about the population dynamics or biology of the anemones that serve as their hosts. There are over 1,000 anemone species but only 10 of them are known to be associated with anemonefish. Anemones are able to reproduce both sexually and asexually, but it is unknown which form of reproduction is more common. Anemones are likely slow growing and very long lived, living decades to several centuries (Fautin, 1991; Fautin and Allen, 1992, 1997). To be a viable host for anemonefish, an anemone must be of a sufficient size to provide shelter and protection from predators.

Clownfishes, including the orange clownfish, are a unique group of fishes that can live unharmed among the stinging tentacles of anemones. A thick mucus layer cloaks the fish from detection and response by anemone tentacles (Rosenberg and Cruz, 1988; Elliott and Mariscal, 1997a, 1997b). The symbiosis between the orange clownfish and its host anemones serves as an effective anti-predation measure for both symbionts. Predators of both anemones and anemonefish are deterred by the anemone's stinging tentacles and by the presence of territorial clownfish. In return, anemonefish swim through, and create fresh water circulation for, the stationary anemone, allowing it to access more oxygenated water, speed up its metabolism, and grow faster (Szczebak *et al.,* 2013). Anemonefish also fertilize host anemones with their ammonia-rich waste (Roopin and Chadwick, 2009; Cleveland *et al.,* 2011), leading to increases in anemone growth and asexual reproduction (Holbrook and Schmitt, 2005).

Typically only one species of anemonefish occupies a single anemone at any given time due to niche differentiation, although this is not always the case. The orange clownfish is a highly territorial species, likely due to intense competition for limited resources, with niche differentiation

caused by the distribution, abundance, and recruitment patterns of competing species (Fautin and Allen, 1992, 1997; Elliott and Mariscal, 1997a, 2001; Randall *et al.,* 1997). Once anemonefishes settle into a host, they are unlikely to migrate between anemones (Mariscal, 1970; Elliott *et al.,* 1995).

Diet, Feeding, and Growth

Anemonefishes are omnivorous and feed on a variety of prey items consisting of planktonic algae and zooplankton, such as copepods and larval tunicates (Fautin and Allen, 1992, 1997). The orange clownfish also feeds on prey remnants left over from its host anemone's feeding activity as well as dead tentacles from its host (Fautin and Allen, 1992, 1997; Florida Museum of Natural History, 2005).

An anemone will typically host a female and male breeding pair and up to four other subordinate, non-breeding and non-related *A. percula* males (Buston, 2003a; Buston and Garcia, 2007; Buston *et al.,* 2007). Individuals rarely stray beyond the periphery of their anemone's tentacles to feed (Buston, 2003c). A size-based hierarchy develops within each group; the female is the largest (rank 1), the dominant male second largest (rank 2), and the non-breeding subordinate males get progressively smaller as you descend the hierarchy (ranks 3–6) (Allen, 1991). Subordinates tend to be 80 percent of the size of their immediate dominant in the hierarchy (Buston, 2003b; Buston and Cant, 2006). Subordinates likely regulate their growth to avoid coming into conflict with their immediate dominant, and thereby avoid eviction from the social group (Buston, 2003b; Buston and Wong, 2014). When a fish is removed from the hierarchical social group structure (due to mortality or collection), all smaller members grow rapidly, filling in the size gap, to the point that they are once again 80 percent the size of their immediate dominant (Fautin and Allen, 1992, 1997; Buston, 2003b).

Reproduction and Development

Spawning for orange clownfish can occur year-round due to perpetually warm waters within the species' range (Fautin and Allen, 1992, 1997). Spawning is also strongly correlated with the lunar cycle, with most nesting occurring when the moon is full or nearly so (Fautin and Allen, 1992, 1997).

Like all anemonefishes, all orange clownfish are born as males (Fautin and Allen, 1992, 1997). Females develop through protandrous hermaphroditism, or sex change from male to female. This occurs when the female and largest member of the group dies (or is otherwise removed) and the next largest male changes sex to become the dominant breeding female. The second largest male subsequently becomes the dominant male (Rosenberg and Cruz, 1988; Fautin and Allen 1992, 1997). Only the dominant pair contributes to the reproductive output of a group within an anemone. Non-breeders within the social group do not have an effect on the reproductive success of mating pairs (Buston, 2004; Buston and Elith, 2011).

Adult male and female orange clownfish form strong monogamous pair-bonds. Once eggs are laid, the male follows closely behind and fertilizes them externally. Clutch sizes vary widely between 100 to over 1000 eggs laid (Fautin and Allen, 1992, 1997; Dhaneesh *et al.,* 2009), with an average of 324 eggs ± 153 (mean ± one standard deviation) recorded in Madang Lagoon, Papua New Guinea (Buston and Elith, 2011), depending on fish size and previous experience. Larger and more experienced mating pairs will produce more eggs per clutch (Fautin and Allen, 1992, 1997; Buston and Elith, 2011; Animal-World, 2015), and can produce up to three clutches per lunar cycle (Gordon and Hecht, 2002; Buston and Elith, 2011).

After egg deposition and fertilization have finished, a 6–8 day incubation period begins, with developmental rate varying with temperature and oxygen content of the water (Dhaneesh *et al.,* 2009). Average hatch success recorded in Madang Lagoon, Papua New Guinea, was estimated at 87 percent (Buston and Elith, 2011). Upon hatching, larvae enter a pelagic phase and are likely engaged in active swimming and orientation, and also transported by ocean currents (Fautin and Allen, 1992, 1997; Leis *et al.,* 2011). The larval stage of the species ends when the larval anemonefish settles into a host anemone approximately 8–12 days after hatching (Fautin and Allen, 1992, 1997; Almany *et al.,* 2007; Buston *et al.,* 2007).

Anemonefish search for and settle into a suitable host anemone using a variety of cues. Embryos and newly hatched juveniles may learn cues from the host anemone where they hatched and respond to these imprinted cues when searching for suitable settlement locations (Fautin and Allen, 1992, 1997; Arvedlund *et al.,* 2000; Dixson *et al.,* 2014; Miyagawa-Kohshima, 2014; Paris *et al.,* 2013). Dixson *et al.* (2008, 2014) and Munday *et al.* (2009a) found that orange clownfish are responsive to olfactory cues such as leaf litter and tropical trees, a means of locating island reef habitats, when searching for a settlement site. Innate recognition is also used and refers to the ability of anemonefish to locate a suitable host without prior experience (Fautin and Allen, 1992, 1997; Miyagawa-Kohshima, 2014). Studies indicate that imprinting on anemone olfactory cues complements innate recognition, leading to rigid species-specific host recognition (Miyagawa-Kohshima, 2014).

Fish acclimation to a host anemone lasts anywhere from a few minutes to a few hours (Fautin and Allen, 1992, 1997; Arvedlund *et al.,* 2000) as a protective mucus coating develops on the anemonefish as a result of interaction with the host anemone tentacles (Davenport and Norris, 1958; Elliott and Mariscal, 1997a). Once acclimated, the mucus protection may disappear upon extended separation between host and fish. Continued contact with tentacles appears to reactivate the mucus coat (Arvedlund *et al.,* 2000). Coloration of anemonefish usually also begins during this anemone acclimation process (Elliott and Mariscal, 2001). Upon settlement, the entire metamorphosis from larva to juvenile takes about a day (Fautin and Allen, 1992, 1997).

Longevity and Resilience

Buston and Garcia (2007) studied a wild population of orange clownfish in Papua New Guinea and their results suggest that females can live up to 30 years in the wild. Although this life expectancy estimate has not been empirically proven through otolith examination, it is notably two times greater than the longevity estimated for any other coral reef damselfish and six times greater than the longevity expected for a fish that size (Buston and Garcia, 2007). Their results are consistent with the idea that organisms subjected to low levels of extrinsic mortality, like anemonefish, experience delayed senescence and increased longevity (Buston and Garcia, 2007).

Using a methodology designed to determine resilience to fishing impacts, Fishbase.org rates the orange clownfish as highly resilient, with an estimated minimum population doubling time of less than 15 months. Another analysis, using the Cheung *et al.* (2005) ''fuzzy logic'' method for estimating fish vulnerability to fishing pressure, assigned the species a low vulnerability score, with a level of 23 out of 100 (Fishbase.org, 2015).

Population Distribution, Abundance, and Structure

Clownfish first appeared and diversified in the Indo-Australian Archipelago (Litsios *et al.,* 2014). As previously mentioned, the orange clownfish is native to the Indo-Pacific region and range countries include northern Queensland (Australia), northern coast of West Papua (Indonesia), northern Papua New Guinea (including New Britain), the Solomon Islands, and Vanuatu (Rosenberg and Cruz, 1988; Fautin and Allen, 1992, 1997; De Brauwer, 2014).

The distribution of suitable host anemone species dictates the distribution of orange clownfish within its habitat (Elliott and Mariscal, 2001). The anemones *Heteractis crispa, H. magnifica,* and *S. gigantea* range throughout and beyond the orange clownfish's geographic extent. *Stichodactyla haddoni* occurs in Australia and Papua New Guinea, but has not yet officially been recorded in Vanuatu or the Solomon Islands, and *S. mertensii* officially has been recorded only from Australia within the orange clownfish's range (Fautin and Allen, 1992, 1997; Fautin, 2013). However, two recent observations extended the known distribution of *S. haddoni,* both northward and southward, indicating they have the ability to expand in range and facilitate the expanded occurrence of commensal species (Hobbs *et al.,* 2014; Scott *et al.,* 2014). Anecdotally, there are photo images and video footage of *S. haddoni* and *S. mertensii* in the Solomon Islands, Vanuatu, and Papua New Guinea (*e.g.,* Shutterstock, National Geographic, and Getty Images). Species experts, however, have not officially confirmed these reports.

Although geographically widespread, anemone species differ in their preferred habitat (*e.g.,* reef zonation, substrate, depth (Fautin, 1981)). Hattori (2006) found that *H. crispa* individuals were larger along reef edges and smaller in shallow inner reef flats. The larger anemones on reef edges experienced higher growth, probably because deeper (up to 4 m) reef edges provide more prey and lower levels of physiological stress. The author speculates that habitat and depth ideal for high anemone growth will vary by study site and occur at depths where there is a balance between available sunlight to allow for photosynthesis and low physiological stress, both of which are dependent on site-specific environmental conditions.

It is difficult to generalize the likely distribution, abundance, and trends of anemone hosts throughout *A. percula*'s range; these parameters are likely highly variable across the species' range. In an assessment done throughout the Great Barrier Reef, Australia, anemones, including those that host the orange clownfish, were quantified as ''common'' (Roelofs and Silcock, 2008). On the other hand, Jones *et al.* (2008) and De Brauwer *et al.* (in prep) note that anemones occur in relatively low densities throughout the Indo-Pacific. Because it is difficult to generalize the likely distribution, abundance, and trends of anemones, it is therefore difficult to generalize these same parameters for *A. percula* in coral reef environments throughout its range; it is likely to be variable and dependent on local environmental conditions.

We found no information on historical abundance or recent population trends for the orange clownfish throughout all or part of its range. We also found no estimate of the current species abundance. With no existing estimate of global abundance for the orange clownfish, we estimated, based on the best available information, a total of 13–18 million individuals for the species throughout its range. This estimate is derived from De Brauwer (2014) who determined an average density for the orange clownfish within its range from 658 surveys across 205 sites throughout the species' range (northern Papua New Guinea, Solomon Islands, Vanuatu, and northern Australia). He calculated the global estimated mean density at 0.09 fish per 250 m^2, or 360 fish per km^2. In order to extrapolate this average density to estimate abundance, we used two different estimates of coral reef area within the species' range. De Brauwer (2014) estimated 36,000 km^2 of coral reef area within the species' range based on Fautin and Allen (1992, 1997) and Spalding *et al.* (2001). We also used newer coral reef mapping data from Burke *et al.* (2011) resulting in an estimate of approximately 50,000 km^2 of coral reef area within the orange clownfish's range. We used both values to determine a range of estimated abundance (13–18 million) to reflect uncertainty. It is important to note that this may be an underestimate because it is based on coral reef area, which likely does not account for most of the non-reef area where the species occurs throughout its range.

As for spatial structure and connectivity, based on the best available information, we conclude that the species is likely to have highly variable small-scale connectivity among and between meta-populations, but unknown large-scale genetic structure across its entire range. In the absence of a broad-scale phylogeographic study for *A. percula,* we are left with small-scale meta-population connectivity studies as the best available information. Results from studies in Kimbe Bay, Papua New Guinea, an area known for its high diversity of anemones and anemonefish, indicate that *A. percula* larvae have the ability to disperse at least up to 35 km away from natal areas (Planes *et al.,* 2009). In addition, there is evidence that rates of self-recruitment are likely to be linked with not only pelagic larval duration, but also geographical isolation (Jones *et al.,* 2009; Pinsky *et al.,* 2012). Because of the size and distribution of *A. percula*'s range, there are likely areas of higher and lower connectivity throughout, linked with the variability in geographic isolation across locations, creating significant spatial structure. This is, however, speculative because no large-scale connectivity study has been conducted for this species.

Summary of Factors Affecting the Orange Clownfish

Available information regarding current, historical, and potential future threats to the orange clownfish was thoroughly reviewed in the status review report for the species (Maison and Graham, 2015). We summarize information regarding the 12 identified threats below according to the five factors specified in section 4(a)(1) of the ESA. See Maison and Graham (2015) for additional discussion of all ESA section 4(a)(1) threat categories.

Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Among the habitat threats affecting the orange clownfish, we analyzed anemone bleaching, anemone collection, and sedimentation and nutrient enrichment effects. We found the threats of anemone bleaching and anemone collection each to have a low likelihood of contributing significantly to extinction risk for the species now or in the foreseeable future. We found the threat of sedimentation and nutrient enrichment to have a low-to-medium likelihood, meaning it is possible but not necessarily probable, that this threat contributes or will contribute significantly to extinction risk for the species.

Evidence, while limited, indicates that thermally-induced bleaching can have negative effects on orange clownfish host anemones, which may lead to localized effects of unknown magnitude on the fish itself. Evidence thus far indicates high variability in the response of both anemones and anemonefish to localized bleaching events. Susceptibility to thermal stress

varies between different species of the same taxon and is often variable within individual species; as a result of habitat heterogeneity across a species' range, individuals of the same species may develop in very different environmental conditions. Hobbs *et al.* (2013) compiled datasets that were collected between 2005 and 2012 across 276 sites at 19 locations in the Pacific Ocean, Indian Ocean, and Red Sea to examine taxonomic, spatial, and temporal patterns of anemone bleaching. Their results confirm that bleaching has been observed in 7 of the 10 anemone species that host anemonefish (including 4 of the 5 orange clownfish host species), with anecdotal reports of bleaching in the remaining 3 host anemone species. In addition, they report anemone bleaching at 10 of 19 survey locations that are geographically widespread. Importantly, the authors report considerable spatial and inter-specific variation in bleaching susceptibility across multiple major bleaching events (Hobbs *et al.,* 2013). Over the entire timeframe and across all study areas, 3.5 percent of all anemones observed were bleached, although during major bleaching events, the percentage at a given study area ranged from 19–100 percent. At sites within the same study area, bleaching ranged between as much as 0 and 94 percent during a single bleaching event. To further highlight the variability and uncertainty associated with anemone bleaching susceptibility, Hobbs *et al.* (2013) report opposite patterns of susceptibility for the same two species at the same site during two different bleaching events. Additionally, the study reports decreased bleaching with increased depth in most of the major bleaching events, indicating that depth, in some cases as shallow as 7 m, offers a refuge from bleaching (Hobbs *et al.,* 2013). Some anemone species have even been reported from mesophotic depths, including one *A. percula* host species (*H. crispa*) (Bridge *et al.,* 2012). These depths likely serve as refugia from thermal stress. Although the capacity for acclimation or adaptation in anemones is unknown, evidence from one site indicated that prior bleaching history might influence subsequent likelihood of an anemone bleaching, as previously bleached individuals were less likely to bleach a second time (Hobbs *et al.,* 2013). It is also of note that, similar to corals, bleaching does not automatically lead to mortality for anemones. Hobbs *et al.* (2013) report variable consequences as a result of bleaching between and among species and locations in their assessment of bleaching for all anemone species that host anemonefish (including those that host orange clownfish); some species decreased in abundance and/or size after bleaching events, while others showed no effect and recovered fully.

When considering the effect of anemone bleaching into the foreseeable future, we evaluated the best available information on future projections of warming-induced bleaching events, but also considered the existing information on the effects of previous bleaching events on anemones. Evidence suggests that bleaching events will continue to occur and become more severe and more frequent over the next few decades (van Hooidonk, 2013). However, newer multivariate modeling approaches indicate that traditional temperature threshold models may not give an accurate picture of the likely outcomes of climate change for coral reefs, and effects and responses will be highly nuanced and heterogeneous across space and time (McClanahan *et al.,* 2015). Although observed anemone bleaching has thus far been highly variable during localized events, the overall effect of bleaching events on anemones globally (*i.e.,* overall proportion of observed anemones that have shown ill effects) has been of low magnitude at sites across their ranges, as only 3.5 percent of the nearly 14,000 observed anemones were recorded as bleached across 19 study sites and multiple major bleaching events (Hobbs *et al.,* 2013). In summary, there are a number of factors that, in combination, indicate that the orange clownfish is likely resilient to bleaching effects that may affect their hosts both now and in the foreseeable future. These factors include the low overall effect of anemone bleaching thus far; the high amount of variability in anemone susceptibility; the existence of depth refugia for anemones; the evidence of potential acclimation in some species; and the fact that the orange clownfish has been observed in the wild to associate with at least five different species of anemone, all of which have shown different levels of susceptibility to bleaching in different locations and over time. As such, we conclude that the threat of habitat loss due to anemone bleaching has a low likelihood of contributing significantly to extinction risk for the orange clownfish now or in the foreseeable future.

With regard to anemone collection, there is little information available on this threat to the orange clownfish globally. Thus far, there has been limited successful aquaculture of anemones for aquaria. Moe (2003) reports the results from a survey of hobbyists, scientists, and commercial breeders indicating several species have been successfully propagated (typically via asexual reproduction), but anemones typically thwart both scientific and hobbyist attempts at captive culture, especially on a large scale. This is primarily due to their slow growth and infrequent reproduction. While asexual propagation has been successful in some cases, no study has yet addressed the optimization of this practice (*e.g.,* determining the minimum size at which an anemone can be successfully propagated, the best attachment technique, etc.) (Olivotto *et al.* 2011). As such, the vast majority of anemone specimens in the trade are currently from wild collection. In the Queensland marine aquarium fishery, Roelofs and Silcock (2008) found that all anemone species had low vulnerability due to collection. While there was no information on anemone collection available from the Solomon Islands, Vanuatu, or Papua New Guinea (likely because these countries tend to focus on exporting fish vs. invertebrates), our assessment reveals that collection and export of aquarium reef species, including anemones, in these three countries is relatively small-scale at just a few sites scattered throughout large archipelagos. The industry appears limited by freight costs and other financial burdens (Kinch, 2008). As such, it seems unlikely that collection would expand to other areas within the species' range. There is no information to indicate that demand for wild harvested anemones will increase over the next few decades within the range of the orange clownfish. Several studies have provided valuable biological data on the reproductive biology (Scott and Harrison 2007a, 2009), embryonic and larval development (Scott and Harrison 2007b), and settlement and juvenile grow-out (Scott and Harrison 2008). Although speculative, scientists and hobbyists are likely to use this information to continue to engage in attempts to propagate anemones in captivity, which may lead to lower demand for wild capture if successful. While little information is available on the threat of anemone collection to *A. percula* globally, the aquarium trade collection information from countries within the species' range indicates that fisheries in general are relatively small scale, and tend to focus on fish rather than invertebrates for export. Because there is some uncertainty and a lack of specific information associated with this threat to the orange clownfish, we conclude that the threat of habitat loss from anemone collection poses a low (instead of very low) likelihood of

contributing significantly to the extinction risk for the orange clownfish, both now and in the foreseeable future.

Regarding the threat of sedimentation and nutrient enrichment to *A. percula's* habitat, organisms in coral reef ecosystems, including clownfish, are likely to experience continuing effects from anthropogenic sources of this threat at some level as economies continue to grow. Indeed, exposure of host anemones is likely to be variable across the range of *A. percula,* with effects being more acute in areas of high coastal development. There is very little information available regarding the susceptibility and exposure of anemones to sedimentation and nutrients. In the absence of this information, we consider it reasonable to assume that the susceptibility of corals as a direct result of their association with symbiotic algae (described above) is an indicator of the potential susceptibility of anemones, since they share a similar association with microscopic algal symbionts and because anemones are in the same phylum (Cnidaria) as corals and thus are biologically related. While information for anemones is sparse, we know that some coral species can tolerate complete burial in sediment for several days; however, those that are unsuccessful at removing sediment may be smothered, resulting in mortality (Nugues and Roberts, 2003). Sediment can also induce sub-lethal effects in corals, such as reductions in tissue thickness, polyp swelling, zooxanthellae loss, and excess mucus production (Rogers, 1990). In addition, suspended sediment can reduce the amount of light in the water column, making less energy available for photosynthesis (of symbiotic zooxanthellae) and growth. Again for corals, sedimentation and nutrient enrichment can have interactive effects with other stressors including disease and climate factors such as bleaching susceptibility and reduced calcification (Ateweberhan *et al.,* 2013; Suggett *et al.,* 2013).

In addition to the potential effects from sedimentation and nutrient enrichment to host anemones, there could be potential effects to *A. percula.* Wenger *et al.* (2014) found in a controlled experiment that suspended sediment increased pelagic larval duration for *A. percula.* A longer pelagic larval duration may reduce the number of larvae that make it to the settlement stage because of the high rate of mortality in the pelagic larval phase. Conversely, in this study longer pelagic larval durations led to larvae that were larger with better body condition, traits that may confer advantages during the first few days of settlement when mortality is still high for those that do recruit to settlement habitat. As such, the overall effect of increased sedimentation at the population level is hard to predict.

Land-based sources of pollution are of primary concern for nearshore marine habitats in areas where human populations live in coastal areas and engage in any or all of the following: Intensive farming and aquaculture, urbanization and industrialization, greater shipping traffic and fishing effort, and deforestation and nearshore development, all of which are growing in Southeast Asia (Todd *et al.,* 2010; Schneider *et al.,* 2015) and the Indo-Pacific (Edinger *et al.,* 1998; Edinger *et al.,* 2000). The range of *A. percula* is largely outside of areas that are experiencing the most rapid growth and industrialization, such as Indonesia and the Philippines. Throughout the range of *A. percula,* there are thousands of islands, many of which are uninhabited or have small, sparse human populations leading traditional lifestyles. These remote locations are unlikely to suffer from much exposure to increased sedimentation or nutrients. However, there is evidence that some of these remote and otherwise pristine areas in countries like Papua New Guinea and the Solomon Islands are targeted for intense or illegal logging and mining operations which may be causing degradation of the nearshore environment, even in remote and uninhabited areas (Seed, 1986; Kabutaulaka, 2005).

Efforts to specifically examine the direct and indirect effects of nutrients and sedimentation to the orange clownfish and its habitat throughout its range are lacking. Land-based sources of pollution on reefs act at primarily local and sometimes regional levels, with direct linkages to human population and land-use within adjacent areas. Orange clownfish occur mostly in shallow reef areas and rarely migrate between anemone habitats as adults; these are traits that may make this species more susceptible to land-based sources of pollution in populated areas than other, more migratory or deeper-ranging reef fish. To account for the uncertainty associated with the magnitude of this threat, and consider the species' traits that may increase its susceptibility and exposure, we conservatively conclude that there is a low-to-medium likelihood that the threat of sedimentation and nutrient enrichment is currently or will significantly contribute to extinction risk for the orange clownfish. Spanning the low and medium categories indicates that the threat is likely to affect the species negatively and may have visible consequences at the species level either now and/or in the future, but we do not have enough confidence in the available information to determine the negative effect is of a sufficient magnitude to significantly increase extinction risk.

Overutilization for Commercial, Recreational, Scientific or Educational Purposes

For the ESA factor of overutilization for commercial, recreational, scientific or educational purposes, we analyzed the threat of collection for the aquarium trade. We conclude that this threat has a low likelihood of having a significant effect on the species' risk of extinction now or in the foreseeable future.

It is estimated that 1.5–2 million people worldwide keep marine aquaria, including 600,000 households in the United States (U.S.) alone (Wabnitz *et al.,* 2003). Estimates place the value of the marine aquarium trade at approximately U.S. $200–330 million per year (Wabnitz *et al.,* 2003). The largest importers of coral reef fish, corals, and invertebrates for display in aquaria are the U.S., followed by the European Union, Japan, and China. The U.S. accounted for an average of 61 percent of global imports of marine aquarium species from 2000–2010 (Wood *et al.,* 2012). A tremendous diversity and volume of species are involved in the marine aquarium trade (Rhyne *et al.,* 2012). It is estimated that every year, approximately 14–30 million fish, 1.5 million live stony corals, and 9–10 million other invertebrates are removed from coral reef ecosystems across the world (Wood, 2001a,b; Wabnitz *et al.,* 2003; Tsounis *et al.,* 2010) although Rhyne *et al.* (2012) assert that the volume of marine fish has been overestimated. These include the trade in at least 1,802 species of fish, more than 140 species of corals, and more than 500 species of non-coral invertebrates (Wabnitz *et al.,* 2003; Rhyne *et al.,* 2012). Clownfish, specifically *A. ocellaris* and *A. percula,* are among the top five most imported and exported species of marine aquarium fish in the aquarium trade (Wabnitz *et al.,* 2003; Rhyne *et al.,* 2012).

Rhyne *et al.* (2012) reported a total of 400,000 individuals of the species complex *A. ocellaris/percula* were imported into the U.S. in 2005. Of note is that data for the two species were combined and reported for the species complex in this report due to common misidentification leading to the inability to separate them out in the import

records. More recently, the author provided NMFS with updated estimates based on newer data from 2008–2011, which indicate the number of *A. percula* alone imported into the U.S. was less than 50,000 per year (Szczebak and Rhyne, unpublished). Notably, this estimate does not distinguish between wild-caught and captively-propagated individuals from foreign sources. The Philippines and Indonesia account for 80 percent of *A. percula* imports into the United States according to the new species-specific information from Szczebak and Rhyne (unpublished data); however, these countries are outside the geographic range of *A. percula,* indicating that 80 percent or more of the imported individuals were likely propagated in captivity and not collected from the wild, or misidentified. Similarly, according to Tissot *et al.* (2010), the U.S. imports 50–70 percent of aquarium reef fish in the global trade. If we extrapolate the U.S. import estimate to infer global wild harvest for the aquarium trade, the number of globally traded wild *A. percula* in 2011 was likely closer to approximately 70,000–100,000 individuals, with as much as 80 percent potentially originating from aquaculture operations and not actually harvested from the wild (or misidentified if U.S. imports are considered representative of the global trade). If we conservatively assume that 100,000 orange clownfish are harvested from the wild annually (likely a vast over-estimate), this represents 0.0076 percent of our conservatively estimated wild global population size of 13–18 million individual *A. percula.*

Orange clownfish are currently collected at varying levels in three out of the four countries in which the species occurs. Papua New Guinea had a fishery for this species, but does not currently export for the aquarium trade. There is a small local aquarium industry, but collection for this purpose is likely minimal (Colette Wabnitz, pers. comm. 2015). Collection from the wild appears relatively limited in Vanuatu, the Solomon Islands, and Australia, according to U.S. import information. While *A. percula* are targeted in these aquarium fisheries, they are not the most sought after species in most cases.

Additionally, anemonefish were among the first coral reef fish raised in captivity throughout their entire life cycle and now represent one of the most well-known and well-developed captive breeding programs for marine fish (Dawes, 2003). While quantitative information is not currently available to estimate the number of *A. percula* that are propagated in captivity, clownfish are widely described among the industry as an easily cultured aquarium species. A survey of marine aquarium hobbyists in 2003 revealed that only 16 percent of respondents had no concern over whether they purchased wild vs. cultured organisms; the majority of respondents indicated a preference for purchasing captive bred specimens (Moe, 2003). A more recent study reports that 76 percent of respondents to the same question indicated they would preferentially purchase cultured animals and an additional 21 percent said it would depend on the price difference (Murray and Watson, 2014).

Considering the estimated proportion of the population harvested annually, the principles of fisheries management and population growth, the ease and popularity of captive propagation of the species, and the apparent consumer preference for captively-reared fish for home aquaria, we have determined that overutilization due to collection for the aquarium trade has a low likelihood of contributing significantly to the extinction risk of the orange clownfish now or in the foreseeable future.

Disease or Predation

We analyzed the threat of both disease and predation to the orange clownfish. We conclude that disease has a very low likelihood of having a significant effect on the species' risk of extinction now or in the foreseeable future. We conclude that predation has a low likelihood of having a significant effect on the species' risk of extinction now or in the foreseeable future.

The available information on disease in *A. percula* indicates that the spread of some diseases is of concern in captive culture facilities (Ganeshamurthy *et al.,* 2014; Siva *et al.,* 2014); however, there is no information available indicating that disease may be a concern in wild populations. Because this is a well-studied species in at least parts of its range, we find this compelling evidence that disease does not currently pose a significant threat to the species. We therefore conclude that the threat of disease has a very low likelihood of having a significant effect on the species' risk of extinction now or in the foreseeable future.

Orange clownfish, like many reef fish species, are most susceptible to natural predation during the egg, pelagic larvae, and settlement life stages. Natural mortality for juveniles and adults is low, ranging from 2 percent (Elliott and Mariscal, 2001) to ~7 percent for ranks 1–3 (dominant breeding pair and first subordinate male) and ~30 percent for ranks 4–6 (subsequent subordinate males) (Buston, 2003a). Shelter and protection from predators is one of the primary benefits conferred to post-settlement juvenile and adult orange clownfish by their symbiotic relationship with host anemones. We found no information to indicate elevated predation levels due to invasive species or other outside influences in any part of the species' range is a cause for concern. Moreover, we did not find any information to indicate that natural predation rates for the species are of a magnitude that would cause concern for their extinction risk now or in the foreseeable future.

There is some scientific evidence that indicates future levels of ocean acidification have the potential to negatively affect predator avoidance behavior for orange clownfish. However, it is unclear if or how those effects may manifest themselves in the wild over the expected timeframes of increasing acidification, and there is evidence that trans-generational acclimation will play a role in allowing populations to adapt over time. While the future effects of acidification are still unclear, we allow for the potential for effects to predator avoidance behavior from ocean acidification by concluding that the likelihood of predation significantly contributing to the extinction risk for the orange clownfish now or in the foreseeable future is low (instead of very low).

Inadequacy of Existing Regulatory Mechanisms

Because the only threat that has a low-to-medium likelihood (higher relative to all other threats which are low or very low) of significantly contributing to extinction risk for the orange clownfish is sedimentation and nutrient enrichment, we need only address the inadequacy of regulatory mechanisms that could alleviate this threat. A discussion of the adequacy of regulatory mechanisms for all other threats can be found in the Status Review Report for the Orange Clownfish (Maison and Graham 2015).

Based on the reasoning provided below, we conclude that the inadequacy of regulatory mechanisms addressing sedimentation and nutrient enrichment also has a low-to-medium likelihood of contributing to extinction risk, meaning that it is possible but not necessarily probable, that it contributes or will contribute significantly to extinction risk for the species. Spanning the low and medium categories indicates that the threat is likely to affect the species negatively and may have visible consequences at the species level either now and/or in the future, but we do not have enough confidence in the available

information to determine the negative effect is of a sufficient magnitude to significantly increase extinction risk.

Regulatory mechanisms for the four countries within *A. percula's* range that address land based-sources of pollution like sedimentation and nutrient enrichment are described in greater detail in the NMFS coral management report (NMFS, 2012b), but we summarize them here. In Papua New Guinea, most legislation does not specifically refer to marine systems, which has generated some uncertainty as to how it should be applied to coral reefs. Also, laws relevant to different sectors (*e.g.,* fisheries, mining, environmental protection) are not fully integrated, which has led to confusion over which laws have priority, who is responsible for management, and the rights of the various interest groups. In the Solomon Islands, the Fisheries Act of 1998 states that marine biodiversity, coastal and aquatic environments of the Solomon Islands shall be protected and managed in a sustainable manner and calls for the application of the precautionary approach to the conservation, management, and exploitation of fisheries resources in order to protect fisheries resources and preserve the marine environment (Aqorau, 2005). In Vanuatu, each cultural group has its own traditional approaches to management, which may include the establishment of MPAs, initiating taboo sites, or periodic closures. These traditional management schemes have been supplemented by various legislative initiatives, including the Foreshore Development Act, which regulates coastal development (Naviti and Aston, 2000). In Australia, *A. percula* occurs mostly, if not entirely, within the Great Barrier Reef Marine Park. In addition to the park, the Australian government has developed a National Cooperative Approach to Integrated Coastal Zone Management (Natural Resource Management Ministerial Council, 2006). In response to recent reports showing declining water quality within the marine park, the State of Queensland recently developed and published a Reef Water Quality Protection Plan, outlining actions to secure the health and resilience of the Great Barrier Reef and adjacent catchments (State of Queensland, 2013).

Under the discussion of ''Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range'' above, we evaluated the threat of sedimentation and nutrient enrichment on *A. percula* and determined that it has a low-to-medium likelihood of significantly contributing to extinction risk for the species now and in the foreseeable future. While some regulations exist to address land-based sources of pollution throughout *A. percula's* range, overall, there is little information available on the enforcement or effectiveness of these regulations. As such, it is difficult to determine the overall likelihood of the inadequacy of regulatory mechanisms contributing significantly to the extinction risk for this species. In analyzing whether regulatory mechanisms addressing this threat are adequate, we conclude, from what little information we could find, that although regulations do exist, there are varying levels of efficacy and enforcement, and this is an ongoing threat that is likely to increase as economies within the species' range continue to grow.

Marine protected areas are often categorized as conservation efforts but because they are almost always regulatory in nature (establishment and enforcement via regulations), in the context of an ESA listing determination we evaluate them here in the ''Inadequacy of Existing Regulatory Mechanisms'' section. Although we cannot determine the overall benefit to the species from the network of protected areas throughout its entire range, the existence and enforcement of a large number of MPAs throughout the species' range is likely to confer at least some benefit and is unlikely to contribute significantly to the extinction risk for the orange clownfish now or in the foreseeable future. There is a significant number of (MPAs) of varying degrees of size, management, and success that exist throughout *A. percula's* range, including at least 22 MPAs in Papua New Guinea, MPAs in all 9 provinces of the Solomon Islands, and over 55 MPAs in Vanuatu, and nearly all of *A. percula's* range in Australia is found within the Great Barrier Reef Marine National Park. While there are relatively little empirical data on the effectiveness of these particular MPAs other than for Australia, the general consensus is that these MPAs do provide some conservation benefits for marine species (Day, 2002; McClanahan *et al.,* 2006; McCook *et al.,* 2010). In Vanuatu, Hickey and Johannes (2002) report success of locally managed MPAs due to a variety of reasons, including enforcement. The authors report that there is an increasing use of state police to informally support decisions made by the village chiefs. Individuals who break these village taboos, including taboos relating to marine resource management activities, may be turned over to the police. More specifically regarding orange clownfish, findings suggest that the MPA network in Kimbe Bay, Papua New Guinea, might function to sustain resident orange clownfish populations both by local replenishment and through larval dispersal from other reserves (Almany *et al.,* 2007; Green *et al.,* 2009; Planes *et al.,* 2009; Berumen *et al.,* 2012).

Other Natural or Manmade Factors Affecting Continued Existence

Among the other natural or human factors affecting the orange clownfish, we analyzed the potential future physiological and behavioral effects of ocean acidification and ocean warming. The orange clownfish, along with several other pomacentrid species, has been the subject of several laboratory-based studies on both ocean acidification and ocean warming. The field of study is relatively new, but we conclude that the threats of physiological or behavioral effects from ocean acidification and ocean warming each have a low likelihood of having a significant effect on the species' risk of extinction now or in the foreseeable future.

Research thus far has focused on the effects of acidification on two aspects of physiology for *A. percula:* (1) Growth and development, and (2) sensory capabilities that affect behavior. In one study, increased acidification at levels expected to occur circa 2100 had no detectable effect on embryonic duration, egg survival, or size at hatching and, in fact, increased larval growth rate in *A. percula* (Munday *et al.,* 2009a). Similarly, there was no effect on otolith size, shape, symmetry, or elemental chemistry when *A. percula* larvae were reared at CO_2 levels predicted by the year 2100 (Munday *et al.,* 2011b).

When it comes to behavioral impairment, laboratory research has shown more consequential results regarding the potential effects of future ocean acidification. An elevated CO_2 environment can affect auditory sensory capabilities for juvenile *A. percula,* even in the absence of effects on otolith growth. This indicates other possible mechanisms for this interference, such as deterioration of neural transmitters or compromised processing of sensory information (Simpson *et al.,* 2011). Auditory sensory capabilities guide larval fish during settlement as nocturnal reef sounds promote settlement and daytime predator-rich noises discourage settlement (Simpson *et al.,* 2011).

Increased CO_2 levels may affect olfactory cues used by larval clownfish

to identify anemones and avoid predators. Larval clownfish use olfactory cues, such as odors from anemones, to locate suitable reef habitat for settlement (Munday *et al.,* 2009b). Larval *A. percula* reared at CO_2 levels comparable to those predicted by the end of this century showed no observable response to olfactory cues of different habitat types, whereas those reared in the control environment showed a strong preference for anemone olfactory cues over other habitat olfactory cues (Munday *et al.,* 2009b). Newly hatched *A. percula* larvae also innately detect predators using olfactory cues, and they retain this ability through settlement (Dixson *et al.,* 2010). When tested for behavioral responses to olfactory cues from predators, *A. percula* larvae raised in both the control environment (390 parts per million (ppm) CO_2) and the lower of the two intermediate environments tested (550 ppm CO_2) showed strong avoidance of predator cues. However, larvae reared at 700 ppm CO_2 showed variation in their responses, with half showing avoidance of predator cues and the other half showing preference for predator cues (Munday *et al.,* 2010). In this same study, larvae reared at 850 ppm showed strong preference for predator cues, indicating that 700 ppm may be a threshold at which adaptation is possible or natural selection will take effect because of the mixed responses to olfactory cues (Munday *et al.,* 2010). Additionally, Dixson *et al.* (2010) report that CO_2 exposure at the egg stage does not appear to affect olfactory sensory capabilities of hatched larvae, but these capabilities are affected when settlement stage larvae are exposed to elevated CO_2.

The results discussed above indicate that ocean acidification associated with climate change has the potential to affect behavioral responses of *A. percula* to certain cues during critical life stages. However, if or how these effects will manifest themselves at the population level in the natural environment requires an understanding of additional factors. All of the aforementioned authors acknowledge that the potential for acclimation or adaptation was not factored into their studies because it is generally unknown or hard to predict. Murray *et al.* (2014) assert that there is mounting evidence of an important but understudied link between parent and offspring generations, known as parental conditioning or trans-generational plasticity, which may comprise a short-term adaptation mechanism to environmental acidification. This type of plasticity describes the ability of the parental environment prior to fertilization to influence offspring reaction norms without requiring changes in DNA sequence (Salinas and Munch, 2012). Trans-generational plasticity in CO_2 resistance as a potential adaptation for coping with highly variable aquatic CO_2 environments may be common (Salinas and Munch, 2012; Dupont *et al.,* 2013). One recent study found that the effects associated with rearing larval clownfish (*A. melanopus*) at high CO_2 levels, including smaller length and mass of fish and higher resting metabolic rates, were absent or reversed when both parents and offspring were reared in elevated CO_2 levels (Miller *et al.,* 2012). These results show that non-genetic parental effects can have a significant influence on the performance of juveniles exposed to high CO_2 levels with the potential to fully compensate for the observed effects caused by acute (within generation) exposure to increased CO_2 levels (Miller *et al.,* 2012).

In addition to the potential for acclimation and trans-generational plasticity, it is difficult to interpret the results of laboratory studies of acute exposure in terms of what is likely to happen in the foreseeable future in the wild or to predict potential population level effects for a species. The acute nature of the exposure and acclimation in the studies above is noteworthy because most species will not experience changes in acidification so acutely in their natural habitats. Rather, they are likely to experience a gradual increase in average CO_2 levels over several generations, and therefore parental effects could be highly effective in moderating overall effects. Moreover, there is ample evidence that coral reef ecosystems naturally experience wide fluctuations in pH on a diurnal basis (Gagliano *et al.,* 2010; Gray *et al.,* 2012; Price *et al.,* 2012). Price *et al.* (2012) found that reefs experienced substantial diel fluctuations in temperature and pH similar to the magnitudes of warming and acidification expected over the next century. The pH of ocean surface water has decreased from an average of 8.2 to 8.1 since the beginning of the industrial era (IPCC, 2013). The pH of reef water can vary substantially throughout the day, sometimes reaching levels below 8.0 in the early morning due to accumulated respiration of reef organisms in shallow water overnight (Ohde and van Woesik, 1999; Kuffner *et al.,* 2007). Primary producers, including zooxanthellae in corals, uptake dissolved CO_2 and produce O_2 and organic matter during the day, while at night respiration invokes net CO_2 release into the surrounding sea water. In fact, Ohde and van Woesik (1999) found one site that fluctuated between pH 8.7 and 7.9 over the course of a single day.

Studies clearly show that in a controlled setting, an increased CO_2 environment can impair larval sensory capabilities that are required to make important decisions during critical life stages. However, a disconnect exists between these experimental results and what can be expected to occur in the wild over time, or even what is currently experienced on a daily basis on natural reefs. There is uncertainty associated with *A. percula's* likely level of exposure to this threat in the foreseeable future given the uncertainty in future ocean acidification rates and the heterogeneity of the species' habitat and current environmental conditions across its range. There is also evidence that susceptibility to acute changes in ocean pH may decrease or disappear over several generations. Even though projections for future levels of acidification go out to the year 2100, we do not consider the effects of this potential threat to be foreseeable over that timeframe due to the variable and uncertain nature of effects shown in laboratory studies versus what the species is likely to experience in nature over several generations. The best available information does not indicate that ocean acidification is currently creating an extinction risk for the species in the wild through effects to fitness of a significant magnitude. We therefore conclude that the threat of physiological effects from ocean acidification has a low likelihood of having a significant effect on the species' risk of extinction now or in the foreseeable future.

Regarding the threat of physiological and behavioral effects from ocean warming, the best available information does not indicate that ocean warming is currently creating an extinction risk for the orange clownfish in the wild through effects to fitness of a significant magnitude. In other words, the current magnitude of impact from ocean warming is likely not affecting the ability of the orange clownfish to survive to reproductive age, successfully find a mate, and produce offspring. While it has yet to be studied specifically for the orange clownfish, researchers have begun to explore the potential effect of increasing temperature on the physiology of other pomacentrid reef fish species. *Dascyllus reticulatus* adults exposed to a high temperature (32°C) environment in a laboratory setting displayed

significantly reduced swimming and metabolic performance (Johansen and Jones, 2011). Other results include reduced breeding success of *Acanthochromis polyacanthus* (Donelson *et al.,* 2010) and increased mortality rates among juvenile *Dascyllus aruanus* (Pini *et al.,* 2011) in response to increased water temperatures that may be experienced later this century. However, multiple references on the subject state that the effects of temperature changes appear to be species-specific (Nilsson *et al.,* 2009; Lo-Yat *et al.,* 2010; Johansen and Jones, 2011); therefore, these results are not easily applied to orange clownfish. With regard to ocean warming effects to respiratory and metabolic processes, Nilsson *et al.* (2009) and Johansen and Jones (2011) compared results of exposure to increased temperatures across multiple families or genera and species of reef fish. Both studies reported negative responses, but the magnitude of the effect varied greatly among closely related species and genera. As such, it is difficult to draw analogies to unstudied species like orange clownfish. As with acidification, Price *et al.* (2012) found that reefs currently already experience substantial diel fluctuations in temperature similar to the magnitude of warming expected over the next century. In addition, trans-generational plasticity in temperature-dependent growth was recently documented for two fish species, where offspring performed better at higher temperatures if the parents had experienced these temperatures as well (Donelson *et al.,* 2011; Salinas and Munch, 2012).

There is epistemic uncertainty associated with the threat of future ocean warming to orange clownfish. Susceptibility of reef fish that have been studied varies widely, but there is evidence that trans-generational plasticity may play a role in acclimation over time, at least for some species (Donelson *et al.,* 2011; Salinas and Munch, 2012). In addition, we cannot predict the exposure of the species to this threat over time given the uncertainty in future temperature predictions and the heterogeneity of the species' habitat and current environmental conditions across its range. Further, we do not have sufficient information to suggest future ocean warming will significantly affect the extinction risk for orange clownfish in the foreseeable future. Therefore, acknowledging these uncertainties, we conclude that the threat of ocean warming has a low likelihood of significantly contributing to extinction risk for *A. percula* now, or in the foreseeable future.

Extinction Risk Assessment

In assessing four demographic risks for the orange clownfish—abundance, growth rate/productivity, spatial structure/connectivity, and diversity—we determined that the likelihood of three of these risks individually contributing significantly to the extinction risk for the species both now and in the foreseeable future is low (abundance, growth rate/productivity, diversity), and unknown for the fourth (spatial structure/connectivity). On a local scale, spatial structure/connectivity does not appear to be a cause for concern for this species but, because global genetic structure is unknown, we cannot assign a likelihood that this factor is contributing significantly to extinction risk for *A. percula.*

We acknowledge that uncertainties exist regarding how these demographic risks may affect the species on an individual and population level. However, we conclude that the species' estimated wild abundance of 13–18 million individuals is at a level sufficient to withstand demographic stochasticity. Moreover, productivity appears to be at or above replacement levels, rates of dispersal and recruitment at the local scale appear sufficient to sustain meta-population structure (although global genetic structure is unknown), and species diversity may allow for trans-generational adaptation to long term, global environmental change. As such, even with acknowledgement of uncertainties, we conclude that these demographic risks have a low or unknown likelihood of contributing in a significant way to the extinction risk of the orange clownfish.

We also assessed 12 current and predicted threats to the species and determined that the likelihood of these individual threats contributing to the extinction risk of the species throughout its range vary between very low and low-to-medium (one threat was very low; nine threats were low; and two threats were low-to-medium). We again acknowledge uncertainties in predicting the breadth of the threats and the extent of the species' exposure and response, but we can assume that these threats are reasonably certain to occur at some magnitude. For some threats, such as anemone bleaching, evidence indicates these events will become more severe and more frequent over the next few decades (van Hooidonk *et al.,* 2013). However, anemone susceptibility and response is variable, and *A. percula* is known to associate with five anemone hosts, indicating that the species may be resilient to this threat. Additionally, the species may exhibit resiliency and adaptation to threats such as ocean acidification and ocean warming via trans-generational plasticity. While it is unknown how much adaptation the species will undergo, we anticipate such threats to occur gradually over space and time rather than acutely.

Of the 12 identified current and predicted threats, our two greatest concerns relate to the species' susceptibility and exposure to sedimentation and nutrients, as well as the inadequacy of regulatory mechanisms to address this threat, especially since juveniles and adults occur in shallow water and are non-migratory once they have settled into a host anemone. Therefore, we conservatively assigned a low-to-medium likelihood that both this threat and the inadequate regulatory mechanisms to address this threat may contribute significantly to the extinction risk for the orange clownfish.

Considering the demographic risks analysis (three low, one unknown) and the current and predicted threats assessment (one very low, nine low, two low-to-medium), we have determined that overall extinction risk for the orange clownfish is low, both now and in the foreseeable future. We recognize that some of the demographic risks and threats to the species may work in combination to produce cumulative effects. For example, increased ocean acidification may affect the olfactory and auditory sensory capabilities of the species and potentially affect predation rates; ocean warming may affect the aerobic capacity of the species or the rates of disease; and harvest of sea anemones may eliminate habitat that is essential for the species and potentially increase the likelihood of predation; and therefore, interactions within and among these threats may affect individuals of the species. However, despite our acknowledged uncertainties, even these synergistic effects that can be reasonably expected to occur from multiple threats and/or demographic risks are expected to be limited to cumulative effects on a local scale at most and not anticipated to rise to the level of significantly affecting the extinction risk for this species. While individuals may be affected, we do not anticipate the overlap of these threats to be widespread throughout the species' range at any given time because all threats are occurring and will continue to occur with significant variability over space and time. Therefore, we do not expect the species to respond to cumulative threats in a way that may

cause measurable effects at the population level.

Based on the species' exposure and response to threats, resilient life history characteristics, potential for trans-generational adaptive capabilities, and estimated global wild abundance of 13–18 million individuals, it is unlikely that these threats will contribute significantly to the extinction risk of the orange clownfish. Therefore, we conclude that the species is not endangered or threatened throughout its range.

Significant Portion of Its Range

Though we find that the orange clownfish is not in danger of extinction now or in the foreseeable future throughout its range, under the SPR Policy, we must go on to evaluate whether the species in in danger of extinction, or likely to become so in the foreseeable future, in a ''significant portion of its range'' (79 FR 37578; July 1, 2014).

The SPR Policy explains that it is necessary to fully evaluate a particular portion for potential listing under the ''significant portion of its range'' authority only if substantial information indicates that the members of the species in a particular area are likely *both* to meet the test for biological significance *and* to be currently endangered or threatened in that area. Making this preliminary determination triggers a need for further review, but does not prejudge whether the portion actually meets these standards such that the species should be listed. To identify only those portions that warrant further consideration, we will determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is endangered or threatened throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required (79 FR 37578, at 37586; July 1, 2014).

Thus, the preliminary determination that a portion may be both significant and endangered or threatened merely requires NMFS to engage in a more detailed analysis to determine whether the standards are actually met (79 FR 37578, at 37587). Unless both standards are met, listing is not warranted. The policy further explains that, depending on the particular facts of each situation, NMFS may find it is more efficient to address the significance issue first, but in other cases it will make more sense to examine the status of the species in the potentially significant portions first. Whichever question is asked first, an affirmative answer is required to proceed to the second question. *Id.* ''[I]f we determine that a portion of the range is not 'significant,' we will not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we will not need to determine if that portion is 'significant' '' (79 FR 37578, at 37587). Thus, if the answer to the first question is negative—whether that regards the significance question or the status question—then the analysis concludes and listing is not warranted.

Applying the policy to the orange clownfish, we first evaluated whether there is substantial information indicating that any particular portion of the species' range is ''significant.'' We considered the best available information on abundance, productivity, spatial distribution, and diversity in portions of the species' range in the Indo-Pacific Ocean. We did not find information indicating that any of these four factors show any type of spatial pattern that would allow for delineation of portions of the species' range in order to evaluate biological significance. The range of the species is somewhat restricted to the eastern-most portion of the coral triangle and northern Australia. Abundance and density of *A. percula* are highly variable throughout the species' range and are likely highest in Papua New Guinea. However, we do not have information on abundance and density in other portions of the species' range and were only able to estimate an overall global population size of 13–18 million (based on De Brauwer, 2014). We do not have information on historical abundance or recent population trends for the orange clownfish, nor can we estimate population growth rates in any particular portions of the species' range. The best available information on spatial distribution indicates that the orange clownfish likely has variable connectivity between and within meta-populations throughout its range. We do not have information on the global phylogeography of orange clownfish and cannot delineate any particular portion of the species' range that may be significant because of its spatial distribution or connectivity characteristics. Multiple reports of geographic color variations at sites in Papua New Guinea indicate there is genetic diversity at those sites. Levels of phenotypic and genetic diversity in other portions of the species' range are largely unknown. Based on their pelagic dispersal and variable levels of self-recruitment, orange clownfish are likely arranged in meta-population structures like the ones studied in Kimbe Bay, Papua New Guinea, throughout their geographic range, thus providing opportunity for genetic mixing.

After a review of the best available information, and because of the scale at which most of the information exists, there is no supportable way to evaluate demographic factors for any portions smaller than the entire population. We are unable to identify any particular portion of the species' range where its contribution to the viability of the species is so important that, without the members in the portion, the species would be at risk of extinction, or likely to become so in the foreseeable future, throughout all of its range. We find that there is no portion of the species' range that qualifies as ''significant'' under the SPR Policy, and thus our SPR analysis ends.

Determination

Based on our consideration of the best available information, as summarized here and in Maison and Graham (2015), we determine that the orange clownfish, *Amphiprion percula,* faces a low risk of extinction throughout its range both now and in the foreseeable future, and that there is no portion of the orange clownfish's range that qualifies as ''significant'' under the SPR Policy. We therefore conclude that listing this species as threatened or endangered under the ESA is not warranted. This is a final action, and, therefore, we do not solicit comments on it.

References

A complete list of all references cited herein is available at our Web site (see **ADDRESSES**).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (See NOAA Administrative Order 216–6).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 18, 2015.

Samuel D. Rauch III,

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

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DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0032]

Notice of Availability for a Finding of No Significant Impact for the Environmental Assessment Addressing the Upgrade and Storage of Beryllium at the DLA Strategic Materials Depot in Hammond, IN

AGENCY: Defense Logistics Agency (DLA), DoD.

ACTION: Notice of Availability (NOA) for a Finding of No Significant Impact (FONSI) for the Environmental Assessment (EA) Addressing the Upgrade and Storage of Beryllium at the DLA Strategic Materials Depot in Hammond, IN.

SUMMARY: On April 10, 2015, DLA published a NOA in the **Federal Register** (80 FR 19290) announcing the publication of the EA Addressing the Upgrade and Storage of Beryllium at the DLA Strategic Materials Depot in Hammond, IN. The EA was available for a 30-day public comment period that ended May 11, 2015. The EA was prepared as required under the National Environmental Policy Act (NEPA) of 1969. In addition, the EA complied with DLA Regulation 1000.22. No comments were received during the public comment period. This FONSI documents the decision of DLA to proceed with the Upgrade and Storage of Beryllium at the DLA Strategic Materials Depot in Hammond, IN. DLA has determined that the Proposed Action is not a major Federal action significantly affecting the quality of the human environment within the context of NEPA and that no significant impacts on the human environment are associated with this decision.

FOR FURTHER INFORMATION CONTACT: Ira Silverberg at 703–767–0705 during normal business hours Monday through Friday, from 8:00 a.m. to 4:30 p.m. (EST) or by email: *ira.silverberg@dla.mil.*

SUPPLEMENTARY INFORMATION: DLA completed an EA to address the potential environmental consequences associated with the proposed upgrade and storage of beryllium at the DLA Strategic Materials Depot in Hammond, IN. This FONSI incorporates the EA by reference and summarizes the results of the analyses in the EA.

Purpose and Need for Action: The purpose of the Proposed Action is to upgrade and store a portion of the existing U.S. National Defense Stockpile (NDS) of beryllium. DLA Strategic Materials has determined that a portion of the existing beryllium billets are not in forms readily useable by the U.S. Department of Defense (DoD) or its subcontractors in times of national emergency. The proposed upgrade would convert the existing beryllium billets into one or more final products that would meet current specifications for many modern DoD applications. The upgraded and converted beryllium is also expected to be applicable to these same manufacturing processes for the foreseeable future.

Proposed Action and Alternatives: Under the proposed action, the DLA Strategic Materials would have up to 20 tons (18,140 kg) of the existing NDS beryllium billets upgraded and converted at one or more off-site commercial facilities and then will return the converted beryllium to the Hammond Depot for continued safe and environmentally sound long-term storage.

Each crate containing a single beryllium billet would be removed from its storage location at the Hammond Depot by forklift and loaded onto a truck located adjacent to the storage structure. The truck would then transport the crate/billet to an off-site commercial facility where the upgrade and conversion process would occur. All such upgrade and conversion activities would be conducted at the off-site facilities in compliance with all applicable state, local and federal laws, regulations, requirements and permits. The upgraded billet would then be returned and received for storage at the Hammond Depot. DLA Strategic Materials expects to complete the beryllium upgrade and conversion portion of the Proposed Action within a five-year period and before the end of calendar year 2020.

Under the Proposed Action, long-term storage of the upgraded and converted forms of beryllium at the Hammond Depot would then continue after that date. A minimally intrusive inspection methodology would be employed by DLA Strategic Materials for the periodic, on-going quality surveillance of the upgraded and converted beryllium and to verify the continued integrity of the storage containers, the internal inert atmosphere status, and the product quality for the duration of the long-term storage period.

The proposed beryllium upgrade and conversion would result in the creation of forms of beryllium that are highly compatible with the inputs required for current and future manufacturing processes. The Proposed Action is also required to ensure that the installation is able to meet its current and future mission requirements.

Description of the No Action Alternative: Under the No Action Alternative, DLA would not upgrade the beryllium. The NDS beryllium stockpile would continue to be stored at the Hammond Depot in its current billet form. In the event the beryllium was needed to satisfy future critical U.S. security, military or aerospace uses, it would not be available in the forms required as input to current manufacturing processes, and the billets would likely require conversion at that time. DLA Strategic Materials has obtained estimates that it takes about 10 weeks to turn beryllium billets into powder. Hence, the usefulness of the beryllium in billet form would be questionable for any such future U.S. critical needs. The No Action Alternative would not meet the purpose of and need for the Proposed Action.

Potential Environmental Impacts: No significant effects on environmental resources would be expected from the Proposed Action. Potential insignificant, adverse effects on transportation, land use, water resources, and ecological resources, air quality, and waste management could be expected. No effects on environmental justice, cultural resources, noise, recreation, socioeconomics, or aesthetics would be expected. Details of the environmental consequences are discussed in the EA, which is hereby incorporated by reference.

Determination: Based on the analysis of the Proposed Action's potential impacts to the human environment from routine operations, it was concluded that the Proposed Action would produce no significant adverse impacts. Human environment was interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. No significant cumulative effects were identified. Implementation of the Proposed Action will not violate any Federal, state, or local laws. Based on the results of the analyses performed during preparation of the EA, Ms. Mary D. Miller, Director, DLA Installation

Support, concludes that the Upgrade and Storage of Beryllium at the DLA Strategic Materials Depot in Hammond, IN does not constitute a major Federal action significantly affecting the quality of the human environment within the context of NEPA. Therefore, an environmental impact statement for the Proposed Action is not required.

Dated: August 19, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–20810 Filed 8–21–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Acquisition University Board of Visitors; Notice of Federal Advisory Committee Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce a Federal Advisory Committee meeting of the Defense Acquisition University Board of Visitors. This meeting will be open to the public.

DATES: Wednesday, September 16, 2015, from 9:00 a.m. to 4:30 p.m.

ADDRESSES: DAU Headquarters, 9820 Belvoir Road, Fort Belvoir, VA 22060.

FOR FURTHER INFORMATION CONTACT: Barbara Dorer, Acting Protocol Director, DAU. Phone: 703–805–2777. Fax: 703–805–5940. Email: *barbara.dorer@dau.mil.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of this meeting is to report back to the Board of Visitors on continuing items of interest.

Agenda

9:00 a.m.—DAU Update
9:45 a.m.—Massive Open Online Courses
10:45 a.m.—Competencies versus Mental Models for Critical Thinking
12:00 p.m.—Working Lunch-Discussion
1:45 p.m.—Industry Understanding for the Acquisition Workforce
4:30 p.m.—Adjourn

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. However, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Barbara Dorer at 703–805–2777.

Written Statements: Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Defense Acquisition University Board of Visitors about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Defense Acquisition University Board of Visitors.

All written statements shall be submitted to the Designated Federal Officer for the Defense Acquisition University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration.

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Defense Acquisition University Board of Visitors until its next meeting.

Committee's Designated Federal Officer or Point of Contact: Ms. Christen Goulding, 703–805–5412, *christen.goulding@dau.mil.*

Dated: August 19, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–20814 Filed 8–21–15; 8:45 am]

BILLING CODE 5001–06–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting; September 15–16, 2015

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Tuesday, September 15, 2015. A business meeting will be held the following day on Wednesday, September 16, 2015. The hearing and business meeting are open to the public and will be held at the Chase Center on the Riverfront, Dravo Auditorium, 815 Justison Street, Wilmington, Delaware.

Public Hearing. The public hearing on September 15, 2015 will begin at 1:30 p.m. Hearing items will include: Draft dockets for the withdrawals, discharges and other water-related projects subject to the Commission's review; and a resolution adopting amendments to the *Administrative Manual—By-Laws, Management and Personnel* regarding electronic communications.

The list of projects scheduled for hearing, including project descriptions, will be posted on the Commission's Web site, *www.drbc.net,* in a long form of this notice at least ten days before the hearing date. Draft resolutions scheduled for hearing also will be posted at *www.drbc.net* ten or more days prior to the hearing.

Written comments on draft dockets and the resolution scheduled for hearing on September 15 will be accepted through the close of the hearing that day. After the hearing on all scheduled matters has been completed, and as time allows, an opportunity for open public comment, formerly referred to as ''public dialogue,'' will also be provided.

The public is advised to check the Commission's Web site periodically prior to the hearing date, as items scheduled for hearing may be postponed if additional time is deemed necessary to complete the Commission's review, and items may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public is also asked to be aware that project details commonly change in the course of the Commission's review, which is ongoing.

Public Meeting. The public business meeting on September 16, 2015 will begin at 1:30 p.m. and will include: Adoption of the Minutes of the Commission's June 10, 2015 business meeting, announcements of upcoming meetings and events, a report on hydrologic conditions, reports by the Executive Director and the Commission's General Counsel, a presentation by a representative from the Coalition for the Delaware River Watershed, and consideration of any items for which a hearing has been completed or is not required.

There will be no opportunity for additional public comment at the September 16 business meeting on items for which a hearing was completed on September 15 or a previous date. Commission consideration on September 16 of items for which the public hearing is closed may result in either approval of the item (by docket or resolution) as proposed, approval with changes, denial, or deferral. When the

Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date. Items heard during the June 9, 2015 Public Hearing on which the Commission has not yet acted include a proposed rule amending DRBC's *Administrative Manual Part III—Rules of Practice and Procedure* to provide for the One Process/One Permit Program.

Advance Sign-Up for Oral Comment. Individuals who wish to comment for the record at the public hearing on September 15 or to address the Commissioners informally during the open public comment portion of the meeting that day as time allows, are asked to sign up in advance by contacting Ms. Paula Schmitt of the Commission staff, at *paula.schmitt@drbc.nj.gov* or by phoning Ms. Schmitt at 609–883–9500 ext. 224.

Addresses for Written Comment. Written comment on items scheduled for hearing may be delivered by hand at the public hearing or in advance of the hearing, either: By hand, U.S. Mail or private carrier to: Commission Secretary, P.O. Box 7360, 25 State Police Drive, West Trenton, NJ 08628; by fax to Commission Secretary, DRBC at 609–883–9522; or by email (preferred) to *paula.schmitt@drbc.nj.gov.* If submitted by email in advance of the hearing date, written comments on a docket should also be sent to Mr. William Muszynski, Manager, Water Resources Management, at *william.muszynski@drbc.nj.gov.*

Accommodations for Special Needs. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Updates. Items scheduled for hearing are occasionally postponed to allow more time for the Commission to consider them. Other meeting items also are subject to change. Please check the Commission's Web site, *www.drbc.net,* closer to the meeting date for changes that may be made after the deadline for filing this notice.

Additional Information, Contacts. The list of projects scheduled for hearing, with descriptions, will be posted on the Commission's Web site, *www.drbc.net,* in a long form of this notice at least ten days before the hearing date. Draft dockets and resolutions for hearing items will be available as hyperlinks from the posted notice. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Carol Adamovic, 609–883–9500, ext. 249. For other questions concerning hearing items, please contact Project Review Section assistant Victoria Lawson at 609–883–9500, ext. 216.

Dated: August 18, 2015.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2015–20856 Filed 8–21–15; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0079]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NPEFS 2015–2017: Common Core of Data (CCD) National Public Education Financial Survey

AGENCY: Institute of Education Sciences (IES)/National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 23, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0079 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, (202) 502–7411.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: NPEFS 2015–2017: Common Core of Data (CCD) National Public Education Financial Survey.

OMB Control Number: 1850–0067.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 5,264.

Abstract: The National Public Education Financial Survey (NPEFS) is an annual collection of state-level finance data that has been included in the NCES Common Core of Data (CCD) since FY 1982 (school year 1981–82). NPEFS provides function expenditures by salaries, benefits, purchased services, and supplies, and includes federal, state, and local revenues by source. The NPEFS collection includes data on all state-run schools from the 50 states, the

District of Columbia, American Samoa, the Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands. NPEFS data are used for a wide variety of purposes, including to calculate federal program allocations such as states' ''average per-pupil expenditure'' (SPPE) for elementary and secondary education, certain formula grant programs (*e.g.* title I, part A of the Elementary and Secondary Education Act of 1965 (ESEA) as amended, Impact Aid, and Indian Education programs). Furthermore, other federal programs, such as the Educational Technology State Grants program (title II part D of the ESEA), the Education for Homeless Children and Youth Program under title VII of the McKinney-Vento Homeless Assistance Act, and the Teacher Quality State Grants program (title II part A of the ESEA) make use of SPPE data indirectly because their formulas are based, in whole or in part, on State title I part A allocations. This submission is to conduct the annual collection of state-level finance data for FY 2015–2017.

Dated: August 19, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–20821 Filed 8–21–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 16, 2015; 4:00 p.m.

ADDRESSES: Clark County Government Center, Pueblo Room, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 630–0522; Fax (702) 295–5300 or Email: *NSSAB@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Fiscal Year 2016 Work Plan Development
- Election of Officers
- Recommendation Development for Communication Improvement Opportunities (Work Plan Item #10)
- Recommendation Development for Transportation

Public Participation: The EM SSAB, Nevada, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Barbara Ulmer at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Barbara Ulmer at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments can do so during the 15 minutes allotted for public comments.

Minutes: Minutes will be available by writing to Barbara Ulmer at the address listed above or at the following Web site: *http://nv.energy.gov/nssab/MeetingMinutes.aspx.*

Issued at Washington, DC, on August 19, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015–20841 Filed 8–21–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–370–A]

Application to Export Electric Energy; Vitol Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Vitol Inc. (Applicant or Vitol)) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before September 23, 2015.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On December 13, 2010, DOE issued Order No. EA–370 to Vitol Inc., which authorized the Applicant to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authority expires on December 13, 2015. On August 6, 2015, Vitol filed an application with DOE for renewal of the export authority contained in Order No. EA–370 for an additional five-year term.

In its application, Vitol states that it does not own or operate any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that Vitol proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by Vitol have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC

Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning Vitol's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–370–A. An additional copy is to be provided directly to both Robert F. Viola, Vitol Inc., 1100 Louisiana Street, Suite 5500, Houston, TX 77002 and Catherine M. Krupka, Sutherland Asbill & Brennan LLP, 700 Sixth Street NW. Suite 700, Washington, DC 20001.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on August 18, 2015.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–20840 Filed 8–21–15; 8:45 am]

BILLING CODE 6450–01–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: RP15–1191–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Section 4(d) Rate Filing: Amendment to Neg Rate Agmt (Sequent 34693–36) to be effective 8/13/2015.
Filed Date: 8/13/15.
Accession Number: 20150813–5089.
Comments Due: 5 p.m. ET 8/25/15.

Docket Numbers: RP15–1192–000.
Applicants: Northern Natural Gas Company.
Description: Section 4(d) Rate Filing: 20150813 Carlton Filing to be effective 11/1/2015.
Filed Date: 8/13/15.
Accession Number: 20150813–5216.
Comments Due: 5 p.m. ET 8/25/15.

Docket Numbers: RP15–1193–000.
Applicants: Southern LNG Company, L.L.C.
Description: Section 4(d) Rate Filing: Conversion of Premier to DART to be effective 4/1/2016.
Filed Date: 8/14/15.
Accession Number: 20150814–5090.
Comments Due: 5 p.m. ET 8/26/15.

Docket Numbers: RP15–1194–000.
Applicants: Elba Express Company, L.L.C.
Description: Section 4(d) Rate Filing: Conversion of Premier to DART to be effective 4/1/2016.
Filed Date: 8/14/15.
Accession Number: 20150814–5097.
Comments Due: 5 p.m. ET 8/26/15.

Docket Numbers: RP15–1195–000.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing OPEN Project 9–15–2015 In-Service Compliance Filing—CP14–68 to be effective 9/15/2015.
Filed Date: 8/14/15.
Accession Number: 20150814–5181.
Comments Due: 5 p.m. ET 8/26/15.

Docket Numbers: RP15–1196–000.
Applicants: Texas Eastern Transmission, LP.
Description: Section 4(d) Rate Filing: OPEN Project 9–15–2015 In-Service Negotiated Rates Filing to be effective 9/15/2015.
Filed Date: 8/14/15.
Accession Number: 20150814–5185.
Comments Due: 5 p.m. ET 8/26/15.

Docket Numbers: RP15–1197–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Section 4(d) Rate Filing: Wheeling Service to be effective 10/1/2015.
Filed Date: 8/14/15.
Accession Number: 20150814–5223.
Comments Due: 5 p.m. ET 8/26/15.

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: RP15–1109–001.
Applicants: Gulf South Pipeline Company, LP.
Description: Compliance filing Compliance Filing in Docket No. RP15–1109–000 to be effective 7/1/2015.
Filed Date: 8/14/15.
Accession Number: 20150814–5093.
Comments Due: 5 p.m. ET 8/26/15.

Docket Numbers: RP15–1153–001.
Applicants: Gulf South Pipeline Company, LP.
Description: Tariff Amendment: Amendment to Filing in Docket No. RP15–1153–000 to be effective 8/1/2015.
Filed Date: 8/14/15.
Accession Number: 20150814–5099.
Comments Due: 5 p.m. ET 8/26/15.

Docket Numbers: RP15–673–001.
Applicants: Equitrans, L.P.
Description: Compliance filing Update LPS and LPS Form of Service Agreements—COMPLIANCE FILING to be effective 8/1/2015.
Filed Date: 8/14/15.
Accession Number: 20150814–5027.
Comments Due: 5 p.m. ET 8/26/15.

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: August 17, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20860 Filed 8–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–2470–000]

Longreach Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Longreach Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 7, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 18, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20854 Filed 8–21–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC15–13–000]

Commission Information Collection Activities (FERC–912); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

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–912, Cogeneration and Small Power Production, PURPA Section 210(m) Regulations for Termination or Reinstatement of Obligation to Purchase or Sell.

DATES: Comments on the collection of information are due October 23, 2015.

ADDRESSES: You may submit comments (identified by Docket No. [IC15–13–000]) 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/resources/guides/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 at (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket, or in viewing/downloading comments and issuances in this docket, may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–912, Cogeneration and Small Power Production, PURPA Section 210(m) Regulations for Termination or Reinstatement of Obligation to Purchase or Sell.

OMB Control No.: 1902–0237.

Type of Request: Three-year extension of the FERC–912 information collection requirements with no changes to the current reporting requirements.

Abstract: On 8/8/2005, the Energy Policy Act of 2005 (EPAct 2005) [1] was signed into law. Section 1253(a) of EPAct 2005 amends Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) by adding subsection ''(m),'' that provides, based on a specified showing, for the termination and subsequent reinstatement of an electric utility's obligation to purchase from, and sell energy and capacity to, qualifying facilities (QFs). 18 CFR 292.309–292.313 are the implementing regulations, and provide procedures for:

- An electric utility to file an application for the termination of its obligation to purchase energy and capacity from, or sell to, a QF; [2] and
- An affected entity or person to subsequently apply to the Commission for an order reinstating the electric utility's obligation to purchase energy and capacity from, or sell to, a QF.[3]

Type of Respondents: Electric utilities, principally.

Estimate of Annual Burden: [4] The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–912—COGENERATION AND SMALL POWER PRODUCTION, PURPA SECTION 210(m) REGULATIONS FOR TERMINATION OR REINSTATEMENT OF OBLIGATION TO PURCHASE OR SELL

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden and cost per response [5]	Total annual burden hours and total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Termination of obligation to purchase	5	1	5	12, $864	60, $4,320	$864

[1] Public Law 109–58, 119 Stat. 594 (2005).

[2] Contained within 18 CFR 292.310 and 292.312.

[3] Contained within 18 CFR 292.311 and 292.313.

[4] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC–912—COGENERATION AND SMALL POWER PRODUCTION, PURPA SECTION 210(m) REGULATIONS FOR TERMINATION OR REINSTATEMENT OF OBLIGATION TO PURCHASE OR SELL—Continued

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden and cost per response [5] (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Reinstatement of obligations to purchase	0	0	0	0, $0	0, $0	0
Termination of obligation to sell	0	0	0	0, $0	0, $0	0
Reinstatement of obligation to sell	0	0	0	0, $0	0, $0	0
Total					60, $4,320	864

[5] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $72.00 per Hour = Average Cost per Response. The hourly cost figure comes from the FERC average salary ($149,489/year). Commission staff believes the FERC average salary to be representative wage for industry respondents.

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: August 18, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20855 Filed 8–21–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9932–96–Region 10]

Proposed Issuance of the NPDES General Permit for Offshore Seafood Processors in Federal Waters off the Washington and Oregon Coast (Permit Number WAG520000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed issuance of NPDES general permit and request for public comment.

SUMMARY: The Director, Office of Water and Watersheds, EPA Region 10, is proposing to issue a general National Pollutant Discharge Elimination System (NPDES) permit for Offshore Seafood Processors discharging in Federal Waters off the coasts of Washington and Oregon, pursuant to the provisions of the Clean Water Act, 33 U.S.C. 1251, *et seq.* As proposed, the draft general permit authorizes the discharge of treated seafood processing wastes from facilities to Federal Waters of the contiguous zone and ocean.

DATES: The public comment period for the draft general permit will be from the date of publication of this Notice until October 8, 2015. Comments must be received or postmarked by no later than midnight Pacific Daylight Time on October 8, 2015. Persons wishing to request a public hearing should submit their written request by October 8, 2015.

ADDRESSES: Comments on the proposed general permit should be sent to Lindsay Guzzo, Office of Water and Watersheds; USEPA Region 10; 1200 6th Ave., Suite 900, OWW–191; Seattle, Washington 98101. Comments may also be received via electronic mail at *Guzzo.Lindsay@epa.gov.* A copy of the permit and other support documents can be found on the Region 10 Web site at *http://www.epa.gov/r10earth/waterpermits.htm.*

FOR FURTHER INFORMATION CONTACT: Lindsay Guzzo at *Guzzo.Lindsay@epa.gov* or (206) 553–0268. Requests may also be made to Audrey Washington at (206) 553–0523 or *Washington.Audrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public Comment

The draft general permit contains technology-based effluent limitations, administrative and monitoring requirements, as well as other standard conditions, prohibitions, and management practices. A fact sheet has been prepared which sets forth the principle factual, legal, policy, and scientific information considered in the development of the draft general permit. Copies of the draft general permit, fact sheet, Biological Evaluation, Essential Fish Habitat Assessment, and Ocean Discharge Criteria Evaluation are available online at *http://www.epa.gov/r10earth/waterpermits*.htm (click on draft permits, then Oregon and Washington), at the EPA Region 10 headquarters at the address listed above any time between 8:30 a.m. and 4:00 p.m., Monday through Friday, or mailed upon request. Interested persons may submit written comments to the attention of Lindsay Guzzo at the address above. All comments must include the name, address, and telephone number of the commenter, a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated.

After the expiration date of the Public Notice on October 8, 2015, the Director, Office of Water and Watersheds, EPA Region 10, will make a final determination with respect to issuance of the general permit. The proposed requirements contained in the draft general permit will become final upon issuance if no significant comments are received during the public comment period.

Public Hearing

Persons wishing to request a public hearing should submit their written request by October 8, 2015 stating the nature of the issues to be raised as well as the requester's name, address and telephone number to Lindsay Guzzo at the address above. If a public hearing is scheduled, notice will be published in the **Federal Register**. Notice will also be posted on the Region 10 Web site, and will be mailed to all interested persons receiving letters of the availability of the draft permit.

Endangered Species Act

Section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1531–1544, requires federal agencies to consult with the National Marine Fisheries Service

(NMFS) and the U.S. Fish and Wildlife Service (USFWS) if their actions have the potential to either beneficially or adversely affect any threatened or endangered species. To address these ESA requirements, and in support of the EPA's informal consultation with the Services, a Biological Evaluation (BE) was prepared to analyze these potential effects. The results of the BE concluded that discharges from Offshore Seafood Processing facilities will either have *no effect* or are *not likely to adversely affect* threatened or endangered species in the vicinity of the discharges. The fact sheet, the draft permits and the BE are being sent to the Services for review of consistency with those programs established for the conservation of endangered and threatened species. Any additional comments or conservation recommendations received from the Services regarding threatened or endangered species will be considered prior to issuance of the general permit.

Magnuson-Stevens Fishery Conservation and Management Act Section 305(b) of the Magnuson-Stevens Act [16 U.S.C. 1855(b)] requires federal agencies to consult with NOAA Fisheries when any activity proposed to be permitted, funded, or undertaken by a federal agency may have an adverse effect on designated Essential Fish Habitat (EFH) as defined by the Act. To address the requirements of the Magnuson-Stevens Act, the EPA prepared an EFH Assessment concluding that offshore seafood processors operations may adversely affect essential fish habitat. However, the EPA expects that effects on essential fish habitat, while possible, are likely to be limited in extent for several reasons. For more information please see the Biological Evaluation/EFH assessment. Any additional comments or conservation recommendations received from NOAA Fisheries regarding EFH will be considered prior to issuance of the general permit.

Executive Order 12866

The Office of Management and Budget (OMB) exempts this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

Paperwork Reduction Act

The EPA has reviewed the requirements imposed on regulated facilities in the draft general permit and finds them consistent with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* a federal agency must prepare an initial regulatory flexibility analysis ''for any proposed rule'' for which the agency ''is required by section 553 of the Administrative Procedure Act (APA), or any other law, to publish general notice of proposed rulemaking.'' The RFA exempts from this requirement any rule that the issuing agency certifies ''will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The EPA has concluded that NPDES general permits are permits, not rulemakings, under the APA and thus not subject to APA rulemaking requirements or the FRA.

Dated: August 14, 2015.

Daniel D. Opalski,

Director, Office of Water and Watersheds, Region 10.

[FR Doc. 2015–20902 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0269; FRL 9929–63–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects (Renewal)'' (EPA ICR No. 2130.05, OMB Control No. 2060–0561) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is approved through August 31, 2015. Public comments were previously requested via the **Federal Register** (80 FR 9454) on February 23, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public.

DATES: Additional comments may be submitted on or before September 23, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2007–0269, to (1) EPA online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Astrid Larsen, Transportation and Climate Division, State Measures and Transportation Planning Center, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4812; fax number: 734–214–4052; email address: *larsen.astrid@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported transportation activities are consistent with the purpose of the State Air Quality Implementation plan (SIP). Transportation activities include transportation plans, Transportation Improvement Programs (TIPs), and federally funded or approved highway or transit projects. Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant National Ambient Air Quality Standards (NAAQS) or interim milestones. Transportation conformity applies under EPA's conformity regulations at

40 CFR part 93, subpart A, to areas that are designated nonattainmentand to those redesignated to attainment after 1990 for the following transportation-related criteria pollutants: Ozone, particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide (CO), and nitrogen dioxide (NO_2). The EPA published the original transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published several revisions. EPA develops the conformity regulations in coordination with the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA). The federal government needs information collected under these regulations to ensure that metropolitan planning organization (MPO) and federal transportation actions are consistent with state air quality goals.

Form Numbers: None.

Respondents/affected entities: Metropolitan Planning Organizations (MPOs), local transit agencies, state departments of transportation, and state and local air quality agencies.

Respondent's obligation to respond: Mandatory (Clean Air Act section 176(c) ((42 U.S.C. 7506(c)) and 40 CFR parts 51 and 93).

Estimated number of respondents: 126 (total).

Frequency of response: Annually, occasionally.

Total estimated burden: 60,548 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $3,596,553 (per year), includes zero annualized capital or operation & maintenance costs.

Changes in the estimates: There is a decrease of 27,856 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to an adjustment in project level conformity, decreased transportation conformity analysis, and a transition from MOVES2010 to MOVES 2014.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015–20786 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0528; FRL–9932–98–ORD]

Board of Scientific Counselors (BOSC); Homeland Security Subcommittee Public and Closed Meeting—August 2015

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the U.S. Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) Homeland Security Subcommittee.

DATES: The meeting will be held on Tuesday, August 25, 2015, from 8:00 a.m. to 5:00 p.m., Wednesday, August 26, 2015, from 8:00 a.m. to 5:00 p.m. and will continue on Thursday, August 27, 2015, from 8:00 a.m. until 3:30 p.m. The meeting will be closed to the public Tuesday, August 25, 2015, from 1:30 p.m. to 2:30 p.m. All times noted are Eastern Time and are approximate. Attendees should register by August 17, 2015 at the Eventbrite Web site: *https://www.eventbrite.com/e/us-epa-bosc-homeland-security-subcommittee-meeting-tickets-17369165642.* Requests for the draft agenda or for submitting written comments will be accepted up to August 21, 2015.

ADDRESSES: The meeting will be held at the EPA's Andrew W. Breidenbach Environmental Research Center, 26 Martin Luther King Drive, Cincinnati, Ohio. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2015–0528, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* Send comments by electronic mail (email) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2015–0528.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2015–0528.
- *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC) Homeland Security Subcommittee Docket, Mail Code: 2822T, 1301 Constitution Ave. NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–ORD–2015–0528.
- *Hand Delivery or Courier:* Deliver comments to: EPA Docket Center (EPA/DC), Room 3334, William Jefferson Clinton West Building, 1301 Constitution Ave. NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2015–0528. *Note:* this is not a mailing address. 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–ORD–2015–0528. 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 *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means 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 *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 including. 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/dockets/.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Board of Scientific Counselors (BOSC) Homeland Security Subcommittee Docket, EPA/DC, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading

Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer (DFO) via mail at: Tom Tracy, Mail Code 8104R, Office of Science Policy, Office of Research and Development, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; via phone/voice mail at: (202) 564–6518 or via email at: *tracy.tom@epa.gov.*

SUPPLEMENTARY INFORMATION: *General Information:* A portion of the meeting is closed to the public pursuant to E.O. 13526—Classified National Security Information sections 1.4(e) ''scientific, technological or economic matters relating to national security'' and section 1.4(g) ''vulnerabilities or capabilities of systems, installations, infrastructures, projects or plans, or protection services relating to the national security.'' Because a portion of the meeting involves matters that are classified in accordance with E.O. 13526, this session is exempt from public disclosure pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and section (c)(1) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(1). Therefore, the meeting will be closed to the public on Tuesday, August 25, 2015, from approximately 1:30 p.m. to 2:30 p.m.

Any member of the public interested in receiving a draft agenda, attending the meeting, or making a presentation at the meeting may contact Tom Tracy, the DFO, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. Members of the public wishing to provide comment in person should register by August 17, 2015, via the Eventbrite Web site noted above and contact the DFO directly.

Written Statements: Written statements for the public meeting should be received by the DFO via email at the contact information listed above by August 21, 2015. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS Power Point, or Rich Text format.

Oral Statements: In general, each individual making an oral presentation at the public meeting will be limited to a total of three minutes. Each person making an oral statement should also consider providing written comments so that the points presented orally can be expanded upon in writing. Interested parties should contact Tom Tracy, DFO, in writing (preferably via email) at the contact information noted above by August 17, 2015, to be placed on the list of public speakers for the BOSC meeting.

For security purposes, all attendees must provide their names to the DFO and register online at: *https://www.eventbrite.com/e/us-epa-bosc-homeland-security-subcommittee-meeting-tickets-17369165642* by August 17, 2015, and must go through a metal detector, sign in with the security desk, and show government-issued photo identification to enter the building. Attendees are encouraged to arrive at least 15 minutes prior to the start of the meeting to allow sufficient time for security screening. Proposed agenda items for the meeting include, but are not limited to, the following: Overview of materials provided to the subcommittee, overview of ORD's Homeland Security program, poster session, and subcommittee discussion.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Tom Tracy at (202) 564–6518 or *tracy.tom@epa.gov.* To request accommodation of a disability, please contact Tom Tracy, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Dated: August 6, 2015.

Fred S. Hauchman,

Director, Office of Science Policy.

[FR Doc. 2015–20901 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9022–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www2.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements

Filed 08/10/2015 Through 08/14/2015

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20150225, Final, FRA, FL, All Aboard Florida Intercity Passenger Rail Project, Orlando to Miami, Florida, *Review Period Ends:* 09/23/2015, *Contact:* John Winkle 202–493–6067.

EIS No. 20150226, Final, USFS, MT, Divide Travel Plan, *Review Period Ends:* 09/23/2015, *Contact:* Erin Fryer 406–495–3863.

EIS No. 20150227, Final, USFWS, CO, San Luis Valley National Wildlife Refuge Complex, *Review Period Ends:* 09/23/2015, *Contact:* Laurie Shannon 303–236–4317.

EIS No. 20150228, Draft Supplement, GSA, VA, The Federal Bureau of Investigation Central Records Complex, *Comment Period Ends:* 10/08/2015, *Contact:* Courtenay Hoernemann 215–446–4710.

EIS No. 20150229, Final, USFS, MT, Stonewall Vegetation Project, *Review Period Ends:* 09/23/2015, *Contact:* David Shanley-Dillman 406–731–5329.

EIS No. 20150230, Draft, BLM, NV, Coeur Rochester Mine Plan of Operations Amendment 10 Project (POA10), *Comment Period Ends:* 10/08/2015, *Contact:* Kathleen Rehberg 775–623–1500.

EIS No. 20150231, Draft, USACE, CT, Programmatic—Long Island Sound Dredged Material Management Plan, *Comment Period Ends:* 10/08/2015, *Contact:* Meghan Quinn 978–318–8179.

EIS No. 20150232, Draft, APHIS, PRO, Programmatic—Carcass Management During a Mass Animal Health Emergency, *Comment Period Ends:* 10/20/2015, *Contact:* Samantha Floyd 301–851–3053.

EIS No. 20150233, Final, FERC, LA, Lake Charles Liquefaction Project, *Review Period Ends:* 09/23/2015, *Contact:* Shannon Crosley 202–502–8853.

EIS No. 20150234, Draft, BLM, UT, Moab Master Leasing Plan and Draft Resource Management Plan Amendments, *Comment Period Ends:* 11/19/2015, *Contact:* Brent Northrup 435–259–2151.

EIS No. 20150235, Final, USFS, CO, Chimney Rock National Monument Management Plan, *Review Period Ends:* 10/19/2015, *Contact:* Sara Brinton 970–264–1532.

EIS No. 20150236, Draft Supplement, Caltrans, CA, State Route 79 Realignment Project: Domenigoni Parkway to Gilman Springs Road, *Comment Period Ends:* 10/08/2015, *Contact:* Aaron Burton 909–383–2841.

Draft Supplement, NRC, NV, Supplement to the U.S. Department of Energy's Environmental Impact

Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada,Draft Report for Comment (NUREG–2184), *Comment Period Ends:* 10/20/2015, *Contact:* Christine Pineda 301–415–6789. Prepared in accordance with NWPA § 114 and 10 CFR 51.109, which describe the NRC's NEPA process for its review of the proposed geologic repository at Yucca Mountain, Nevada.

Amended Notices

EIS No. 20150088, Draft, USMC, Other, Commonwealth of the Northern Mariana Islands (CJMT) Joint Military Training, *Comment Period Ends:* 10/01/2015, *Contact:* Lori Robertson 808–472–1409. Revision to FR Notice Published 07/31/2015; Extending the Comment Period from 08/17/2015 to 10/01/2015.

Dated: August 18, 2015.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2015–20728 Filed 8–21–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0065]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before October 23, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0065.

Title: Applications for New Authorization or Modification of Existing Authorization Under Part 5 of the FCC Rules-Experimental Radio Service.

Form Number: FCC Form 442.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions, and Individuals or household.

Number of Respondents: 495 respondents; 560 responses.

Estimated Time per Response: 4 hours.

Frequency of Response: On occasion reporting requirements; Recordkeeping requirements; and third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4, 302, 303, 307 and 306 of the Communications Act of 1934, as amended.

Total Annual Burden: 3,049 hours.

Total Annual Cost: $41,600.

Nature and Extent of Confidentiality: There is no need for confidentiality, except for personally identifiable information individuals may submit, which is covered by a system of records, FCC/OET–1, ''Experimental Radio Station License Files,'' 71 FR 17234, April 6, 2006.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB), after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting a revision (there has been a program change in the reporting, recordkeeping requirements and/or third party disclosure requirements, the number of respondents increased from 400 to 495, therefore, the annual burden hours increased from 2,240 to 3,049 and the cost has also increased from $32,400.00 to $41,600).

On January 31, 2013, the Commission adopted a Report and Order, in ET Docket No. 10–236 and 06–155; FCC 13–15, which updates Part 5 of the CFR—''Experimental Radio Service'' (ERS). The Commission's recent Report and Order revises and streamlines rules under for the Experimental Radio Service (ERS).[1] These rule changes update procedures used to obtain and use an experimental license.

The new rules provide additional license categories to potential licensees. The new license categories are:

- *Program Experimental Radio License*—This type of license is issued to qualified institutions to conduct an ongoing program of research and experimentation under a single experimental authorization. Program experimental radio licenses are available to colleges, universities, research laboratories, manufacturers of radio frequency equipment, manufacturers that integrate radio frequency equipment into their end products, and medical research institutions.
- *Medical Program Experimental Radio License*—This type of license is issued to hospitals and health care institutions that demonstrate expertise in testing and operation of experimental medical devices that use wireless telecommunications technology or communications functions in clinical trials for diagnosis, treatment, or patient monitoring.
- *Compliance Testing Experimental Radio License*—This type of license will

[1] *See* In the Matter of Promoting Expanded Opportunities for Radio Experimentation and Market Trials Under Part 5 of the Commission's Rules and Streamlining Other Related Rules, ET Docket No. 10–236; 2006 Biennial Review of Telecommunications Regulations—Part 2, Administered by the Office of Engineering and Technology (OET), ET Docket No. 06–155; 28 FCC Rcd 758 (2013), FCC 13–15.

be issued to laboratories recognized by the FCC to perform:

(i) Product testing of radio frequency equipment, and

(ii) Testing of radio frequency equipment in an Open Area Test Site.

To accomplish this transition, the Commission will updates the current ''Experimental Licensing Radio'' electronic filing system. The existing ELS Form 442 interface will require modification; and the ELS database will require modification to facilitate inter-operability with the new ELS notification Web site. There will are new screen shots for the Web site/licensees. Office of Engineering and Technology Web site *http://www.fcc.gov/els.*

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary.

[FR Doc. 2015–20799 Filed 8–21–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012067–012.

Title: U.S. Supplemental Agreement to HLC Agreement.

Parties: BBC Chartering Carriers GmbH & Co. KG and BBC Chartering & Logistic GmbH & Co. KG, as a single member; Chipolbrok (Chinese-Polish Joint Stock Shipping Company); Hanssy Shipping Pte. Ltd.; Hyundai Merchant Marine Co., Ltd.; Industrial Maritime Carriers, L.L.C.; Nordana Line A/S; Rickmers-Linie GmbH & Cie. KG.; and Safmarine MPV N.V.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

Synopsis: The amendment deletes Big Lift Shipping, B.V. as a party to the worldwide HLC Agreement.

Agreement No.: 012067–013.

Title: U.S. Supplemental Agreement to HLC Agreement.

Parties: BBC Chartering Carriers GmbH & Co. KG and BBC Chartering & Logistic GmbH & Co. KG, as a single member; Chipolbrok (Chinese-Polish Joint Stock Shipping Company); Hanssy Shipping Pte. Ltd.; Hyundai Merchant Marine Co., Ltd.; Industrial Maritime Carriers, L.L.C.; Nordana Line A/S; Rickmers-Linie GmbH & Cie. KG.; and Safmarine MPV N.V.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

Synopsis: The amendment deletes K/S Combi Lift as a party to the worldwide HLC Agreement and replaces it with J. Poulsen Shipping A/S.

Agreement No.: 012067–014.

Title: U.S. Supplemental Agreement to HLC Agreement.

Parties: BBC Chartering Carriers GmbH & Co. KG and BBC Chartering & Logistic GmbH & Co. KG, as a single member; Chipolbrok (Chinese-Polish Joint Stock Shipping Company); Hanssy Shipping Pte. Ltd.; Hyundai Merchant Marine Co., Ltd.; Industrial Maritime Carriers, L.L.C.; Nordana Line A/S; Rickmers-Linie GmbH & Cie. KG.; and Safmarine MPV N.V.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

Synopsis: The amendment would add MACS Maritime Carrier Shipping GmbH & Co. as a party to the U.S. Agreement.

By Order of the Federal Maritime Commission.

Dated: August 19, 2015.

Karen V. Gregory,

Secretary.

[FR Doc. 2015–20859 Filed 8–21–15; 8:45 am]

BILLING CODE 6730–01–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 September 18, 2015.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *First York Ban Corp.,* York, Nebraska; to acquire 100 percent of the voting shares of Guide Rock State Bank, Guide Rock, Nebraska.

Board of Governors of the Federal Reserve System, August 19, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–20843 Filed 8–21–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 152 3193]

SteriMed Medical Waste Solutions; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 16, 2015.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/sterimedconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''SteriMed Medical Waste Solutions—Consent Agreement; File No. 152 3193'' on your comment and file your comment online at *https://*

ftcpublic.commentworks.com/ftc/sterimedconsent by following the instructions on the Web-based form. If you prefer to file your comment on paper, write ''SteriMed Medical Waste Solutions—Consent Agreement; File No. 152 3193'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Emily Robinson, FTC Southwest Region, ((214) 979–9386), 1999 Bryan Street, Suite 2150, Dallas, TX 75201.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 17, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 16, 2015. Write ''SteriMed Medical Waste Solutions—Consent Agreement; File No. 152 3193'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/sterimedconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''SteriMed Medical Waste Solutions—Consent Agreement; File No. 152 3193'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 16, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to SteriMed Medical Waste Solutions.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that SteriMed Medical Waste Solutions made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (''EU'') (''U.S.-EU Safe Harbor Framework'' or ''Safe Harbor Framework''). The Safe Harbor Framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the Safe Harbor Framework, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public Web site, *www.export.gov/safeharbor,* where it posts the names of companies that have self-certified to the Safe Harbor Framework. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their status as ''current'' members of the Safe Harbor Framework.

SteriMed Medical Waste Solutions develops and manufactures on-site chemical-based medical waste processors. According to the Commission's complaint, since at least January 2015, SteriMed Medical Waste Solutions set forth on its Web site, *http://www.sterimedsystems.com/privacy.html,* privacy policies and statements about its practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework.

The Commission's complaint alleges that SteriMed Medical Waste Solutions falsely represented that it was a participant in the U.S.-EU Safe Harbor Framework when, in fact, SteriMed Medical Waste Solutions was never a participant in the Safe Harbor Framework. Commerce has never included the company on its public Web site.

Part I of the proposed order prohibits SteriMed Medical Waste Solutions from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires SteriMed Medical Waste Solutions to retain documents relating to its compliance with the Order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures the notification to the FTC of changes in corporate status. Part V mandates that SteriMed Medical Waste Solutions submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–20800 Filed 8–21–15; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 152 3140]

Jubilant Clinsys, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 16, 2015.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/jubilantclinsysconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Jubilant Clinsys, Inc.—Consent Agreement; File No. 152 3140'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/jubilantclinsysconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Jubilant Clinsys, Inc.—Consent Agreement; File No. 152 3140'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Monique F. Einhorn, ((202) 326–2575), Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 17, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 16, 2015. Write ''Jubilant Clinsys, Inc.—Consent Agreement; File No. 152 3140'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion,

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/jubilantclinsysconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write ''Jubilant Clinsys, Inc.—Consent Agreement; File No. 152 3140'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 16, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to Jubilant Clinsys, Inc. (''Jubilant Clinsys'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that Jubilant Clinsys made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (''EU'') (''U.S.-EU Safe Harbor Framework''). The U.S.-EU Safe Harbor Framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the U.S.-EU Safe Harbor Framework, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public Web site, *www.export.gov/safeharbor,* where it posts the names of companies that have self-certified to the U.S.-EU Safe Harbor Framework. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their status as ''current'' members of the U.S.-EU Safe Harbor Framework.

Jubilant Clinsys is a research organization that provides pharmaceutical, biotechnology and medical device companies with services in support of drug and device development. According to the Commission's complaint, Jubilant Clinsys has set forth on its Web site, *http://www.clinsys.com/index.php?option=com_content&view=article&id=8&Itemid=19,* privacy policies and statements about its practices, including statements related to its participation in the U.S–EU Safe Harbor Framework.

The Commission's complaint alleges that Jubilant Clinsys falsely represented that it was a ''current'' participant in the U.S.-EU Safe Harbor Framework when, in fact, from November 2012 through April 2015, Jubilant Clinsys was not a ''current'' participant in the U.S.-EU Safe Harbor Framework. The Commission's complaint alleges that in November 2007, Jubilant Clinsys submitted its self-certification to the U.S.-EU Safe Harbor Framework. Jubilant Clinsys did not renew its self-certification in November 2012 and Commerce subsequently updated Jubilant Clinsys' status to ''not current'' on its public Web site. In May 2015, Jubilant Clinsys removed its Safe Harbor representation from its Web site privacy policy.

Part I of the proposed order prohibits Jubilant Clinsys from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Jubilant Clinsys to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that Jubilant Clinsys submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–20805 Filed 8–21–15; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 152 3184]

Contract Logix, LLC; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 16, 2015.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/contractlogixconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section

below. Write ''Contract Logix, LLC—Consent Agreement; File No. 152 3184'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/contractlogixconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Contract Logix, LLC—Consent Agreement; File No. 152 3184'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ruth Yodaiken, ((202) 326–2127), Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 17, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 16, 2015. Write ''Contract Logix, LLC—Consent Agreement; File No. 152 3184'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR § 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/contractlogixconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write ''Contract Logix, LLC—Consent Agreement; File No. 152 3184'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 16, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to Contract Logix, LLC (''Contract Logix'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that the company made to consumers concerning its participation in the Safe Harbor privacy Framework agreed upon by the U.S. and the European Union (''EU'') (''U.S.-EU Safe Harbor Framework''). The U.S.-EU Safe Harbor Framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the U.S.-EU Safe Harbor Framework, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public Web site, *www.export.gov/safeharbor,* where it posts the names of companies that have self-certified to the Safe Harbor Framework. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

status as current members of the Safe Harbor Framework.

Contract Logix describes its business as providing contract management software and associated services. According to the Commission's complaint, the company has set forth on its Web site, *www.contractlogix.com,* privacy policies and statements about its practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework.

The Commission's complaint alleges that Contract Logix falsely represented that it was a ''current'' participant in the U.S.-EU Safe Harbor Framework when, in fact, from August 2012 until May 2015, Contract Logix was not a ''current'' participant in the U.S.-EU Safe Harbor Framework. The company's predecessor in interest had submitted its self-certification to the U.S.-EU Safe Harbor Framework, but that self-certification had lapsed. Commerce subsequently updated the company's status to ''not current'' on its public Web site.

Part I of the proposed order prohibits Contract Logix from making misrepresentations about its membership in any privacy or security program sponsored by the government or any self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Contract Logix to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that Contract Logix submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–20803 Filed 8–21–15; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 152 3137]

Pinger, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 16, 2015.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/pingerconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Pinger, Inc.—Consent Agreement; File No. 152 3137'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/pingerconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Pinger, Inc.—Consent Agreement; File No. 152 3137'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Monique Einhorn, Bureau of Consumer Protection ((202) 326–2575), 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis To Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 17, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 16, 2015. Write ''Pinger, Inc.—Consent Agreement; File No. 152 3137'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/pingerconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Pinger, Inc.—Consent Agreement; File No. 152 3137'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 16, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to Pinger, Inc. (''Pinger'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that Pinger made to consumers concerning its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union (''EU'') and the U.S. and Switzerland (collectively, ''Safe Harbor Frameworks''). The Safe Harbor Frameworks allow U.S. companies to transfer data outside the EU and Switzerland consistent with EU and Swiss law. To join the Safe Harbor Frameworks, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission and Switzerland as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public Web site, *www.export.gov/safeharbor,* where it posts the names of companies that have self-certified to the Safe Harbor Frameworks. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their status as ''current'' members of the Safe Harbor Frameworks.

Pinger develops apps for mobile phones and tablets. According to the Commission's complaint, Pinger has set forth on its Web site, *www.pinger.com/content/company/privacypolicy.html,* privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor Frameworks.

The Commission's complaint alleges that Pinger falsely represented that it was a ''current''' participant in the Safe Harbor Frameworks when, in fact, from March 2014 until April 2015, Pinger was not a ''current''' participant in the Safe Harbor Frameworks. The Commission's complaint alleges that in March 2011, Pinger submitted its self-certification to the Safe Harbor Frameworks. Pinger did not renew its self-certification in March 2014 and Commerce subsequently updated Pinger's status to ''not current'' on its public Web site. In May 2015, Pinger recertified with Commerce and is now a current participant in the Safe Harbor Frameworks.

Part I of the proposed order prohibits Pinger from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Pinger to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that Pinger submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. 2015–20809 Filed 8–21–15; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 152 3201]

One Industries Corp.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 16, 2015.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/oneindustriesconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''One Industries Corp.—Consent Agreement; File No. 152 3201'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/oneindustriesconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''One Industries Corp.—Consent Agreement; File No. 152 3201'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission,

Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Emily B. Robinson, ((214) 979–9386), Federal Trade Commission, Southwest Region, 1999 Bryan Street, Suite 2150, Dallas, TX 75201.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 17, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 16, 2015. Write ''One Industries Corp.—Consent Agreement; File No. 152 3201'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which * * * is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/oneindustriesconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''One Industries Corp.—Consent Agreement; File No. 152 3201'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 16, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to One Industries Corp. (''One Industries'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that One Industries made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (''EU'') (''U.S.-EU Safe Harbor Framework'' or ''Safe Harbor Framework''). The Safe Harbor Framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the Safe Harbor Framework, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public Web site, *www.export.gov/safeharbor,* where it posts the names of companies that have self-certified to the Safe Harbor Framework. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their status as ''current'' members of the Safe Harbor Framework.

One Industries sells of motocross-related gear, graphic kits, and clothing worldwide. According to the Commission's complaint, since at least January 2015, One Industries Corp. set forth on its Web site, *http://oneindustries.com/privacy,* privacy policies and statements about its practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework.

The Commission's complaint alleges that One Industries Corp. falsely represented that it was a participant in the U.S.-EU Safe Harbor Framework when, in fact, One Industries Corp. was never a participant in the Safe Harbor Framework. Commerce has never included the company on its public Web site.

Part I of the proposed order prohibits One Industries Corp. from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires One Industries Corp. to retain documents relating to its compliance with the Order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures the notification to the FTC of changes in corporate status. Part V mandates that One Industries Corp. submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–20808 Filed 8–21–15; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 152 3187]

IOActive, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 16, 2015.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/ioactiveconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''IOActive, Inc.—Consent Agreement; File No. 152 3187'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/ioactiveconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''IOActive, Inc.—Consent Agreement; File No. 152 3187'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ruth Yodaiken, ((202) 326–2127), Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 17, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 16, 2015. Write ''IOActive, Inc.—Consent Agreement; File No. 152 3187'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/ioactiveconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''IOActive, Inc.—Consent Agreement; File No. 152 3187'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 16, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to IOActive, Inc. (''IOActive'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that the company made to consumers concerning its participation in the Safe Harbor privacy Framework agreed upon by the U.S. and the European Union (''EU'') (''U.S.-EU Safe Harbor Framework''). The U.S.-EU Safe Harbor Framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the U.S.-EU Safe Harbor Framework, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public Web site, *www.export.gov/safeharbor,* where it posts the names of companies that have self-certified to the Safe Harbor Framework. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their status as current members of the Safe Harbor Framework.

IOActive provides security consulting services. According to the Commission's complaint, the company has set forth on its Web site, *www.ioactive.com/privacy-policy.html,* privacy policies and statements about its practices, including statements related to its participation in the U.S-EU Safe Harbor Framework.

The Commission's complaint alleges that IOActive falsely represented that it was a current participant in the U.S.-EU Safe Harbor Framework when, in fact, from May 2012 until May 2015, IOActive was not a ''current'' participant in the U.S.-EU Safe Harbor Framework. The Commission's complaint alleges that in May 2009, IOActive submitted self-certification to the U.S.-EU Safe Harbor Framework and and its status was changed to ''current'' on Commerce's Web site. IOActive did not renew its self-certification in May 2012 and Commerce subsequently updated IOActive's status to ''not current'' on its public Web site.

Part I of the proposed order prohibits IOActive from making misrepresentations about its membership in any privacy or security program sponsored by the government or any self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires IOActive to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that IOActive submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–20807 Filed 8–21–15; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 152 3199]

Just Bagels Manufacturing, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 16, 2015.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/justbagelsconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Just Bagels Manufacturing, Inc.—Consent Agreement; File No. 152 3199'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/justbagelsconsent* by following the instructions on the Web-based form. If you prefer to file your comment on paper, write ''Just Bagels Manufacturing, Inc.—Consent Agreement; File No. 152 3199'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Emily B. Robinson, ((214) 979–9386), Federal Trade Commission, Southwest Region, 1999 Bryan Street, Suite 2150, Dallas, TX 75201.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned

consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis To Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 17, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 16, 2015. Write ''Just Bagels Manufacturing, Inc.—Consent Agreement; File No. 152 3199'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/justbagelsconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Just Bagels Manufacturing, Inc.—Consent Agreement; File No. 152 3199'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 16, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to Just Bagels Manufacturing, Inc. (''Just Bagels Manufacturing'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that Just Bagels Manufacturing made to consumers concerning its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union (''EU'') and the U.S. and Switzerland (collectively, Safe Harbor Frameworks''). The Safe Harbor Frameworks allow U.S. companies to transfer data outside the EU and Switzerland consistent with EU and Swiss law. To join the Safe Harbor Frameworks, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission and Switzerland as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public Web site, *www.export.gov/safeharbor,* where it posts the names of companies that have self-certified to the Safe Harbor Frameworks. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their status as ''current'' members of the Safe Harbor Frameworks.

Just Bagels Manufacturing is a wholesale bagel manufacturer that distributes bagels to restaurants, hotels, supermarkets, retail stores, airlines, and schools around the United States. According to the Commission's complaint, since at least January 2015, Just Bagels Manufacturing set forth on its Web site, *http://www.justbagels.com/privacypolicy/,* privacy policies and statements about its practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

The Commission's complaint alleges that Just Bagels Manufacturing falsely represented that it was a participant in the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework when, in fact, Just Bagels Manufacturing was never a participant in the Safe Harbor Frameworks. Commerce has never included the company on its public Web site.

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Part I of the proposed order prohibits Just Bagels Manufacturing from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Just Bagels Manufacturing to retain documents relating to its compliance with the Order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures the notification to the FTC of changes in corporate status. Part V mandates that Just Bagels Manufacturing submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–20806 Filed 8–21–15; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 152 3138]

NAICS Association, LLC; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 16, 2015.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/naicsconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''NAICS Association, LLC—Consent Agreement; File No. 152 3138'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/naicsconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''NAICS Association, LLC—Consent Agreement; File No. 152 3138'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Monique F. Einhorn, ((202) 326–2575), Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 17, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 16, 2015. Write ''NAICS Association, LLC—Consent Agreement; File No. 152 3138'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/naicsconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''NAICS Association, LLC—Consent Agreement; File No. 152 3138'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 16, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to NAICS Association, LLC. (''NAICS'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that NAICS made to consumers concerning its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union (''EU'') and the U.S. and Switzerland (collectively, ''Safe Harbor Frameworks''). The Safe Harbor Frameworks allow U.S. companies to transfer data outside the EU and Switzerland consistent with EU and Swiss law. To join the Safe Harbor Frameworks, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission and Switzerland as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public Web site, *www.export.gov/safeharbor,* where it posts the names of companies that have self-certified to the Safe Harbor Frameworks. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their status as ''current'' members of the Safe Harbor Frameworks.

NAICS provides services to assist companies in working with or understanding NAICS (''North American Industry Classification System'') and SIC (''Standard Industry Classification'') system codes. According to the Commission's complaint, NAICS has set forth on its Web site, *http://www.naics.com/privacy-policy/,* privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor Frameworks.

The Commission's complaint alleges that NAICS falsely represented that it was a ''current'' participant in the Safe Harbor Frameworks when, in fact, from February 2014 until April 2015, NAICS was not a ''current'' participant in the Safe Harbor Frameworks. The Commission's complaint alleges that in February 2013, NAICS submitted its self-certification to the Safe Harbor Frameworks. NAICS did not renew its self-certification in February 2014 and Commerce subsequently updated NAICS's status to ''not current'' on its public Web site.

Part I of the proposed order prohibits NAICS from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires NAICS to retain documents relating to its compliance with the order for a five-year period.

Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that NAICS submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–20804 Filed 8–21–15; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 152 3185]

Forensics Consulting Solutions, LLC; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 16, 2015.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/forensicsconsultingconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Forensics Consulting Solutions, LLC—Consent Agreement; File No. 152 3185'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/forensicsconsultingconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Forensics Consulting Solutions, LLC—Consent Agreement; File No. 152 3185'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ruth Yodaiken, ((202) 326–2127), Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned

consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 17, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 16, 2015. Write ''Forensics Consulting Solutions, LLC—Consent Agreement; File No. 152 3185'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/forensicsconsultingconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Forensics Consulting Solutions, LLC—Consent Agreement; File No. 152 3185'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 16, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to Forensics Consulting Solutions, LLC (''Forensics Consulting Solutions'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that the company made to consumers concerning its participation in the Safe Harbor privacy Framework agreed upon by the U.S. and the European Union (''EU'') (''U.S.-EU Safe Harbor Framework''). The U.S.-EU Safe Harbor Framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the U.S.-EU Safe Harbor Framework, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public Web site, *www.export.gov/safeharbor,* where it posts the names of companies that have self-certified to the Safe Harbor Framework. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their status as current members of the Safe Harbor Framework.

Forensics Consulting Solutions describes itself as an electronic discovery consulting firm. According to the Commission's complaint, the company has set forth on its Web site, *www.aboutfcs.com/security-privacy,* privacy policies and statements about its practices, including statements related to its participation in the U.S-EU Safe Harbor Framework.

The Commission's complaint alleges that Forensics Consulting Solutions falsely represented that it was a ''current'' participant in the U.S.-EU Safe Harbor Framework when, in fact, from August 2012 until May 2015, Forensics Consulting Solutions was not a ''current'' participant in the U.S.-EU Safe Harbor Framework. The Commission's complaint alleges that in August 2009, Forensics Consulting Solutions submitted its self-certification to the U.S.-EU Safe Harbor Framework and its status was listed as ''current'' on Commerce's Web site. Forensics Consulting Solutions did not renew its self-certification in August 2012 and

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Commerce subsequently updated Forensics Consulting Solutions' status to ''not current'' on its public Web site. In May 2015, Forensics Consulting Solutions recertified with Commerce and is now a current participant in the U.S–EU Safe Harbor Framework.

Part I of the proposed order prohibits Forensics Consulting Solutions from making misrepresentations about its membership in any privacy or security program sponsored by the government or any self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Forensics Consulting Solutions to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that Forensics Consulting Solutions submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–20802 Filed 8–21–15; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–15–0604; Docket No. CDC–2015–0067]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection entitled *School-Associated Violent Deaths Surveillance System (SAVDSS).* CDC will use the information to continue the ongoing surveillance of school-associated violent deaths (SAVD), to track and monitor the extent of school-associated violence.

DATES: Written comments must be received on or before October 23, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2015–0067 by any of the following methods:

Federal eRulemaking Portal: Regulation.gov. Follow the instructions for submitting comments.

Mail: Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. 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.

Proposed Project

The School-Associated Violent Death Surveillance System (SAVD)—Revision (OMB# 0920–0604, expiration 04/30/2016)—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

School-associated violence, particularly homicides and suicides that occur in schools, has been a significant public concern for several years. Despite the important role of schools as a setting for violence research and prevention interventions, relatively little scientific or systematic work has been conducted to describe the nature and level of fatal violence associated with schools. Public health and education officials have had to rely on limited local studies and estimated numbers to describe the extent of school-associated violent death. As a result, the U.S. Department of Education (DOE) requested assistance from the Division of Violence

Prevention (DVP)/NCIPC in establishing an ongoing SAVD in the United States with the goal of tracking and monitoring the extent of this problem on an ongoing basis. The SAVD surveillance system remains the only systematic effort to document school-associated violent deaths on a national basis. Data from the SAVD surveillance system are intended to contribute to the understanding of fatal violence associated with schools, guide further research in the area, and help direct ongoing and future prevention programs.

The data collection methodology involves investigators reviewing public records and published press reports concerning each SAVD. For each identified case, investigators will interview an investigating law enforcement official and a school official who are knowledgeable about the case in question. Researchers will request information on both the victim and alleged offender(s)—including demographic data, their academic and criminal records, and their relationship to one another. They will also collect data on the time and location of the death; the circumstances, motive, and method of the fatal injury; and the security and violence prevention activities in the school and community where the death occurred, before and after the fatal injury event. Additionally, CDC will obtain law enforcement reports on each case.

The study population will include the victims and offenders from all identified events in which there was a school-associated violent death in the U.S.

The surveillance system will continue to contribute to the understanding of fatal violence associated with schools, guide further research in the area, and help direct ongoing and future prevention programs. Data collected through the surveillance system will be reviewed and used by CDC, the DOE, the US Department of Justice, and other outside agencies and organizations.

OMB approval is requested for three years for a revision of the currently approved information collection. The only cost to respondents will be time spent on the telephone responding to the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours (in hrs.)
Law Enforcement Officer	Law Enforcement Interview Tool	35	1	65/60	38
School Official	School Official Interview Tool	35	1	65/60	38
Total					76

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director,Centers for Disease Control and Prevention.

[FR Doc. 2015–20813 Filed 8–21–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–FY–15BBV; Docket No. CDC–2015–0066]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection entitled ''Screening and Counseling of Male EVD Survivors to Reduce Risk of Sexually Transmitting Ebola Virus in Guinea''. This activity will collect information on participants' laboratory results and sexual activity prior to and during participation in the screening program.

DATES: Written comments must be received on or before October 23, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2015–0066 by any of the following methods:

- *Federal eRulemaking Portal: Regulation.gov*. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. 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.

Proposed Projects

Screening and Counseling of Male EVD Survivors to reduce Risk of Sexually Transmitting Ebola Virus in Guinea—New—Center for Global Health (CGH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Much progress has been made in the year since the CDC first responded to the Ebola outbreak in West Africa, but the agency's efforts must continue until there are zero new cases of Ebola virus disease (EVD). In order to reach the international goal of zero new EVD cases in 2015, the agency must intensify its efforts to identify and prevent every potential route of human disease transmission and to understand the most current community barriers to reaching that final goal.

''Screening and Counseling of Male EVD Survivors to reduce Risk of Sexually Transmitting Ebola Virus in Guinea'' will inform male Ebola infection survivors ≥15 years of age of Ebola virus detected in their semen through voluntary laboratory testing performed in Guinea. Participants for the semen testing program will be recruited by trained study staff from Ebola treatment units (ETUs) and survivor registries in Guinea. Participants will be followed up at study sites in government hospitals.

Specimens will be tested for Ebola Virus ribonucleic acid (RNA) by reverse transcription polymerase chain reaction test (RT–PCR). Semen specimens will be collected and tested every two weeks until two consecutive negative RT–PCR results are obtained.

Participants will be asked follow-up questions until their semen specimens test negative twice consecutively. They will receive tokens of appreciation for their participation at the initial visit and again at every subsequent follow-up visit and a supply of condoms.

A trained study data manager will collect test results for all participants in a laboratory results form. Results and analyses are needed to update relevant counseling messages and recommendations from the Guinea Ministry of Health, World Health Organization, and CDC.

This program will provide the information that is critical to the development of public health measures, such as recommendations about sexual activity and approaches to evaluation of survivors to determine whether they can safely resume sexual activity. These approaches in turn are expected to reduce the risk of Ebola resurgence and mitigate stigma for thousands of survivors. The information is likewise critical to reducing the risk that Ebola would be introduced in a location that has not previously been affected.

CGH requests a three-year approval for this information collection. Each semen-testing program time burden is 2,067 hours which is incurred by 1,000 participants. There are no other costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Male Ebola Survivors ≥15 years old	Baseline Questionnaire	1,000	1	20/60	334
Male Ebola Survivors ≥15 years old	Follow-up Questionnaire	1,000	8	10/60	1,334
Male Ebola Survivors ≥15 years old	Consent Form	1,000	1	2/60	34
Total					1,702

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–20812 Filed 8–21–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–15–15AMG]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted 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 notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

FoodNet Population Survey—Existing Collection In Use Without an OMB Control Number—National Center for Emerging and Zoonotic Infectious Diseases, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Foodborne illnesses represent a significant public health burden in the United States. It is estimated that each year, 48 million Americans (1 in 6) become ill, 128,000 are hospitalized, and 3,000 die as the result of a foodborne illness. Since 1996, the Foodborne Diseases Active Surveillance Network (FoodNet) has conducted active population-based surveillance for *Campylobacter, Cryptosporidium, Cyclospora, Listeria, Salmonella,* Shiga toxin-producing *Escherichia coli* O157 and non-O157, *Shigella, Vibrio,* and *Yersinia* infections. Data from FoodNet serve as the nation's ''report card'' on food safety by monitoring progress toward CDC Healthy People 2020 objectives.

Evaluation of efforts to control foodborne illnesses can only be done effectively if there is an accurate estimate of the total number of illness that occur and if these estimates are recalculated and monitored over time. Total burden estimates of begin with an accurate and reliable estimate of the number of acute gastrointestinal illness episodes that occur in the general community. To more precisely estimate this and to describe the frequency of important exposures associated with illness, FoodNet created the Population Survey.

The FoodNet Population Survey is a survey of persons residing in the surveillance area. Data are collected on the prevalence and severity of acute gastrointestinal illness in the general population, describe common symptoms associated with diarrhea, and determine the proportion of persons with diarrhea who seek medical care. The survey also collects data on exposures (*e.g.* food, water, animal contact) commonly associated with foodborne illness. Information about food exposures in the general public has proved invaluable during outbreak investigations. The ability to compare exposures reported by outbreak cases to the 'background' exposure in the general population allows investigators to more quickly pinpoint a source and enact control measures. To date, five 12-month cycles of the survey have been completed without an existing OMB number: 1996–1997, 1998–1999, 2000–2001, 2002–2003, and 2006–2007. Data has been shared with participating state health departments and multiple programs at CDC, is available to the public through a summary report posted to the FoodNet Web site, and also available via individual data requests. More than two dozen manuscripts highlighting population survey data have been published. We seek to continue this important work.

The total annual burden is 6,000 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
U.S. General Population	Population Survey	18,000	1	20/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–20811 Filed 8–21–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10185, CMS–10261 and CMS–10561]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by September 23, 2015.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 or, Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Part D Reporting Requirements and Supporting Regulations; *Use:* To ensure quality provision of the Medicare Prescription Drug Benefit to beneficiaries, the collected information will serve as an integral resource for oversight, monitoring, compliance, and auditing activities. Sponsors should retain documentation and data records related to their data submissions. Data will be validated, analyzed, and utilized for trend reporting. For CY 2016 reporting, the following sections will be reported and collected at the Contract-level or Plan-level: (1) Enrollment and disenrollment, (2) retail, home infusion, and long-term care pharmacy access, (3) medication therapy management programs, (4) grievances, (5) coverage determinations and redeterminations, (6) long term care utilization, (7) employer/union sponsored sponsors, and (8) plan oversight of agents. *Form Number:* CMS–10185 (OMB control number 0938–0992); *Frequency:* Annually and semi-annually; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 694; *Total Annual Responses:* 6,875; *Total Annual Hours:* 10,865. (For policy questions regarding this collection contact Chanelle Jones at 410–786–8008).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Part C Medicare Advantage Reporting Requirements and Supporting Regulations; *Use:* There are a number of information users of Part C reporting data, including our central and regional office staff that use this information to monitor health plans and to hold them accountable for their performance, researchers, and other government agencies such as the Government Accounting Office. Health plans can use this information to measure and benchmark their performance. *Form Number:* CMS–10261 (OMB control number 0938–1054); *Frequency:* Annually and semi-annually; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 561; *Total Annual Responses:* 3,508; *Total Annual Hours:* 201,503. (For policy questions regarding this collection contact Terry Lied at 410–786–8973).

3. *Type of Information Collection Request:* New collection (Request for new OMB control number); *Title of Information Collection:* Essential Community Provider Data Collection to Support QHP Certification for PY 2017; *Use:* For plan years beginning on or after January 1, 2017, Health and Human Services (HHS) intends to collect more complete provider data for inclusion on the HHS Essential Community Provider (ECP) list to ensure a more accurate reflection of the universe of qualified available ECPs in a given service area that can be counted toward an issuer's satisfaction of the ECP standard. The HHS will collect data on qualified and available ECPs from providers. Providers will submit an ECP petition to be added to the HHS ECP list or provide required missing data fields to remain on the list. The degree of provider participation in this data collection effort through the ECP provider petition will help inform HHS's future proposals for counting issuers' ECP write-ins toward satisfaction of the ECP standard. *Form Number:* CMS–10561 (OMB control number: 0938–New); *Frequency:* Annually; *Affected Public:* Private sector (Business or other for-profits and Not-for-profit Institutions); *Number of Respondents:* 31,634; *Total Annual Responses:* 31,634; *Total Annual Hours:* 53,491. (For policy questions regarding this collection contact Deborah Hunter at 410–786–0625.)

Dated: August 18, 2015.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–20787 Filed 8–21–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Notice of Intent To Award a Single Source Non-Competing Continuation Cooperative Agreement for two Alzheimer's Disease Supportive Services Program (ADSSP) Projects

Program Name: Alzheimer's Disease Supportive Services Program.

Award Amount: $625,809.

Project Period: September 30, 2015 through September 29, 2016.

Award Type: Cooperative Agreement.

Statutory Authority: Public Law 78–410: 42 U.S.C. 280c–3. It was amended by Public Law 101–557 and by Public Law 105–392.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.051.

Program Description

The Administration for Community Living (ACL) is announcing its intent to award single source non-competing continuation cooperative agreements to two Alzheimer's Disease Supportive Services Program (ADSSP) projects. Resources dedicated to the ADSSP grant program are restricted to the support of grants to states designed to expand the availability of dementia-capable support services for persons with Alzheimer's disease and related dementias (ADRD), their families and caregivers.

There are currently 15 active ADSSP grantees engaged in the development of dementia-capable systems in their state to support individuals with ADRD and their caregivers. ACL will provide additional resources to support the expansion of promising program activities under existing ADSSP projects in the states of Minnesota and Ohio. Both the Minnesota and Ohio grantees are engaged in projects that are building the dementia-capability of their state systems that merit expansion. The state of Minnesota will expand on their existing program efforts to build strong linkages between a Health Care Partner (HCP) and Community Based Organizations (CBO). The state of Ohio will expand on their existing ADSSP project goal to enrich the lives of veterans suffering from cognitive and physical challenges and their caregivers by expanding Ohio's Music & Memory[SM] program living in their homes and communities.

Justification: ACL is committed to the success, continued expansion and sustainability of ADSSP projects. Each of the identified existing cooperative agreement projects has components within them from which the communities that they serve will benefit and merit uninterrupted expansion. To ensure uninterrupted continuation toward achieving and exceeding their goals and objectives and expansion of program efforts, ACL plans to issue one-year non-competing awards to both the Minnesota Board on Aging and the Ohio Department on Aging.

I. Agency Contact

For further information or comments regarding this action, contact Erin Long, U.S. Department of Health and Human Services, Administration for Community Living, Administration on Aging, Washington, DC 20201; telephone (202) 357–3448; fax (202) 357–3549; email *Erin.Long@acl.hhs.gov.*

Dated: August 11, 2015.

Kathy Greenlee,

Assistant Secretary for Aging.

[FR Doc. 2015–20796 Filed 8–21–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0229]

Use of Rare Pediatric Disease Priority Review Voucher; Approval of a Drug Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the recent approval of a drug product under an application for which the sponsor redeemed a rare pediatric disease priority review voucher. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to redeem priority review vouchers submitted by sponsors of product applications that might otherwise not qualify for priority review. These vouchers entitle the holder of such a voucher to priority review of a single human drug application submitted under the FD&C Act or the Public Health Service Act. FDA has approved PRALUENT (alirocumab), manufactured by Sanofi-Aventis U.S. Inc., under a priority review.

FOR FURTHER INFORMATION CONTACT: Larry Bauer, Rare Diseases Program, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4842, FAX: 301–796–9858, email: *larry.bauer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing the recent approval of a drug product under an application for which the sponsor redeemed a rare pediatric disease priority review voucher. Under section 529 of the FD&C Act (21 U.S.C. 360ff), added by FDASIA, FDA will grant a priority review for a new drug or biological product application that redeems a priority review voucher, even if that product might not otherwise qualify for a priority review. FDA has recently approved PRALUENT (alirocumab), manufactured by Sanofi-Aventis U.S. Inc., under a priority review. PRALUENT (alirocumab) is indicated as an adjunct to diet and maximally tolerated statin therapy for the treatment of adults with heterozygous familial hypercholesterolemia or clinical atherosclerotic cardiovascular disease, who require additional lowering of low-density lipoprotein cholesterol.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *http://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.*

For further information about PRALUENT (alirocumab), go to the Drugs@FDA Web site at *http://www.accessdata.fda.gov/scripts/cder/drugsatfda/index.cfm.*

Dated: August 19, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–20833 Filed 8–21–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–2489]

Receipt of Notice That a Patent Infringement Complaint Was Filed Against a Biosimilar Applicant

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing notice that an applicant for a proposed biosimilar product notified FDA that a patent infringement action was filed in connection with the applicant's biologics license application (BLA). Under the Public Health Service Act (PHS Act), an applicant for a proposed biosimilar product or interchangeable product must notify FDA within 30 days after the applicant was served with a complaint in a patent infringement action described under the PHS Act. FDA is required to publish notice of the complaint in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Daniel Orr, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6208, Silver Spring, MD 20993–0002, 240–402–0979, *daniel.orr@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Biologics Price Competition and Innovation Act of 2009 (BPCI Act) was enacted as part of the Patient Protection and Affordable Care Act (Pub. L. 111–148) on March 23, 2010. The BPCI Act amended the PHS Act and created an abbreviated licensure pathway for biological products shown to be biosimilar to, or interchangeable with, an FDA-licensed biological reference product. Section 351(k) of the PHS Act (42 U.S.C. 262(k)), added by the BPCI Act, describes the requirements for a BLA for a proposed biosimilar product or a proposed interchangeable product (351(k) BLA). Section 351(l) of the PHS Act, also added by the BPCI Act, describes certain procedures for exchanging patent information and resolving patent disputes between a 351(k) BLA applicant and the holder of the BLA reference product. If a 351(k) applicant is served with a complaint for

a patent infringement described in section 351(l)(6) of the PHS Act, the applicant is required, under section 351(l)(6)(C) of the PHS Act, to provide the FDA with notice and a copy of the complaint within 30 days of service. FDA is required to publish notice of a complaint received under section 351(l)(6)(C) of the PHS Act in the **Federal Register**.

FDA has received notice of the following complaint under section 351(l)(6)(C) of the PHS Act:

Janssen Biotech, Inc., et. al. v. *Celltrion Healthcare Co., Ltd., et al.,* 15–cv–10698 (D. Mass., filed March 6, 2015).

FDA has only a ministerial role in publishing notice of a complaint received under section 351(l)(6)(C) of the PHS Act, and does not perform a substantive review of the complaint.

Dated: August 17, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–20780 Filed 8–21–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Science Board to the Food and Drug Administration; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public, via Webcast.

Name of Committee: Science Board to the Food and Drug Administration (Science Board).

General Function of the Committee: The Science Board provides advice to the Commissioner of Food and Drugs and other appropriate officials on specific, complex scientific and technical issues important to the FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice to the Agency on keeping pace with technical and scientific developments including in regulatory science, input into the Agency's research agenda, and on upgrading its scientific and research facilities and training opportunities. It will also provide, where requested, expert review of Agency sponsored intramural and extramural scientific research programs.

Date and Time: The meeting will be held on September 15, 2015, from 4 p.m. until 5:30 p.m.

Location: This meeting will take place via Webcast. To access the link for the Webcast check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link. Information regarding special accommodations due to a disability may be accessed at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

Contact Person: Rakesh Raghuwanshi, Office of the Chief Scientist, Office of the Commissioner, Food and Drug Administration, Bldg. 1, Rm. 3309, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–4769, *rakesh.raghuwanshi@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The Science Board will be provided with a report from the Science Looking Forward subcommittee.

FDA intends to make background material available to the public no later than 2 business days before the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 8, 2015. Oral presentations from the public will be scheduled between approximately 4:30 p.m. and 5:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 1, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 2, 2015.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Rakesh Raghuwanshi at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 18, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–20820 Filed 8–21–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0564]

Agency Information Collection Activities; Proposed Collection; Comment Request; Dietary Supplement Labeling Requirements and Recommendations Under the Dietary Supplement and Nonprescription Drug Consumer Protection Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the

Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the information collection provisions of the Dietary Supplement and Nonprescription Drug Consumer Protection Act (the DSNDCPA) and the guidance document entitled, ''Guidance for Industry: Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.''

DATES: Submit either electronic or written comments on the collection of information by October 23, 2015.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, we are publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, we invite comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Dietary Supplement Labeling Requirements and Recommendations Under the Dietary Supplement and Nonprescription Drug Consumer Protection Act

OMB Control Number 0910–0642—Extension

In 2006, the Dietary Supplement and Nonprescription Drug Consumer Protection Act (the DSNDCPA) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) with respect to serious adverse event reporting for dietary supplements and nonprescription drugs marketed without an approved application. The DSNDCPA also amended the FD&C Act to add section 403(y) (21 U.S.C. 343(y)), which requires the label of a dietary supplement marketed in the United States to include a domestic address or domestic telephone number through which the product's manufacturer, packer, or distributor may receive a report of a serious adverse event associated with the dietary supplement.

In the **Federal Register** of September 1, 2009 (74 FR 45221), we announced the availability of a guidance document entitled ''Guidance for Industry: Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' The guidance document contains questions and answers related to the labeling requirements in section 403(y) of the FD&C Act and provides guidance to industry on the use of an explanatory statement before the domestic address or telephone number. The guidance document provides our interpretation of the labeling requirements for section 403(y) of the FD&C Act and our views on the information that should be included on the label. We believe that the guidance will enable persons to meet the criteria for labeling that are established in section 403(y) of the FD&C Act.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Domestic address or phone number labeling requirement (21 U.S.C. 343(y))	1,700	3.27	5,560	0.2 (12 minutes)	1,112
FDA recommendation for label statement explaining purpose of domestic address or phone number	1,700	3.27	5,560	0.2 (12 minutes)	1,112
Total					2,224

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The labeling requirements of section 403(y) of the FD&C Act became effective on December 22, 2007, although we exercised enforcement discretion until September 30, 2010, to enable all firms to meet the labeling requirements for dietary supplements. At this time, therefore, we expect that all labels required to include the domestic address or telephone number pursuant to section 403(y) of the FD&C Act have been revised accordingly. Thus our current burden estimate for this information collection applies only to new product labels.

In row 1 of table 1 we estimate the total annual hourly burden necessary to comply with the requirement under section 403(y) of the FD&C Act to be 1,112 hours. Using historical A.C. Nielson Sales Scanner Data, we estimate the number of dietary supplement stock keeping units for which product sales are greater than zero to be 55,600. Assuming that the flow of new products is 10 percent per year, then each year approximately 5,560 new dietary supplement products are projected to enter the market. Estimating that there are 1,700 dietary supplement manufacturers, re-packagers, re-labelers, and holders of dietary supplements subject to the information collection requirement (using the figure 1,460 as provided in our final rule of June 25, 2007 (72 FR 34752), on the ''Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements,'' and factoring for a 2 percent annual growth rate), we calculate an annual disclosure burden of 3.27 disclosures (labels) per firm. Last, we expect that firms prepare the required labeling for their products in a manner that takes into account at one time all information required to be disclosed and therefore believe that less than 0.2 hours (12 minutes) per product label would be expended to fulfill this requirement.

In row 2 of table 1 we estimate the total burden associated with the recommendation to include an explanatory statement on dietary supplement product labels letting consumers know the purpose of the domestic address or telephone number to be 1,112 hours. Based upon our knowledge of food and dietary supplement labeling, we estimate it would require less than 0.2 hours (12 minutes) per product label to include such a statement.

Dated: August 17, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–20760 Filed 8–21–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Surrogate Endpoints for Clinical Trials in Kidney Transplantation; Notice of Public Workshop; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of Monday, August 3, 2015 (80 FR 45999). The document announced a public workshop entitled ''Surrogate Endpoints for Clinical Trials in Kidney Transplantation.'' The document was published without the email address and fax number in the *Contact Person* section and without the option for email or phone registration in the *Registration* section. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Ramou Pratt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6193, Silver Spring, MD 20993–0002, 301–796–3928 or 301–796–1600, FAX: 301–595–7993, *endpoints@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2015–18911, appearing on page 45999 in the **Federal Register** of Monday, August 3, 2015, the following corrections are made:

1. On page 45999, in the first column, the *Contact Person* section is corrected to read: ''*Contact Person:* Ramou Pratt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6193, Silver Spring, MD 20993–0002, 301–796–3928 or 301–796–1600, FAX: 301–595–7993, *endpoints@fda.hhs.gov.*''

2. On page 45999, in the second column, the *Registration* section is corrected to read: ''*Registration:* Email, fax, or phone your registration information (including name, title, firm name, address, telephone and fax numbers) to Ramou Pratt (see *Contact Person*) by September 25, 2015. Registration is free for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space-available basis beginning at 8 a.m.

If you need special accommodations because of a disability, please contact Ramou Pratt (see *Contact Person*) at least 7 days in advance.''

Dated: August 19, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–20832 Filed 8–21–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0302–60D]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

Agency Information Collection Request. 60-Day Public Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Proposed Project: Medical Reserve Corps Unit Profile and Reports (Revision)—OMB No. 0990–0302—Office of the Secretary/Office of the Assistant Secretary for Health/Office of the Surgeon General/Division of Civilian Volunteer Medical Reserve Corps (OS/OASH/OSG/DCVMRC) is changed to Office of the Secretary/Office of the Assistant Secretary for Preparedness and Response/Office of Emergency Management/Division of the Civilian Volunteer Medical Reserve Corps this reorganization was effective as of 26 November 2014 as published in the **Federal Register** [FR Doc. 2014–28030 Filed 11–25–14; 8:45am].

Abstract: Medical Reserve Corps units are currently located in almost 1,000 communities across the United States,

and represent a resource of more than 205,000 volunteers. In order to continue supporting the MRC units in communities across the United States, and to continue planning for future emergencies that are national in scope, detailed information about the MRC units, including unit demographics, contact information (regular and emergency), volunteer numbers, and information about activities is needed by the Division of Civilian Volunteer Medical Reserve Corps (DCVMRC). MRC Unit Leaders are asked to update this information on the MRC Web site at least quarterly, and to participate in a Technical Assistance Assessment at least annually. The MRC unit data collected has expanded to include a self-assessment tool for use by unit leaders to aid in developing their MRC unit. This OMB revision request is for 3 years.

ESTIMATED ANNUALIZED BURDEN TABLE

Collection tool	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Unit Profile	MRC Unit Leader	1,000	4	30/60	2,000
TA Assessment	MRC Unit Leader	1,000	1	1	1,000
Factors for Success	MRC Unit Leader	1,000	4	30/60	2,000
Unit Activity Reporting	MRC Unit Leader	1,000	4	15/60	1,000
Total					6,000

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2015–20848 Filed 8–21–15; 8:45 am]

BILLING CODE 4150–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice To Propose the Redesignation of the Service Delivery Area for the Wampanoag Tribe of Gay Head (Aquinnah)

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: This notice advises the public that the Indian Health Service (IHS) proposes to expand the geographic boundaries of the Service Delivery Area for the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts. The Aquinnah service delivery area is currently comprised of members of the Tribe residing in Martha's Vineyard, Dukes County in the State of Massachusetts.

The Bureau of Indian Affairs (BIA) recognized the Wampanoag Tribe of Gay Head on February 10, 1987. Martha's Vineyard, Dukes County was designated as the Aquinnah service delivery area in the Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987, Public Law 100–95.

DATES: Comments must be submitted September 23, 2015.

ADDRESSES: Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a Comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Betty Gould, Regulations Officer, Indian Health Service, 801 Thompson Avenue, TMP STE 450, Rockville, Maryland 20852.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the above address.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to the address above. If you intend to deliver your comments to the Rockville address, please call telephone number (301) 443–1116 in advance to schedule your arrival with a staff member.

Comments will be made available for public inspection at the Rockville address from 8:30 a.m. to 5:00 p.m., Monday–Friday, two weeks after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Carl Harper, Director, Office of Resource Access and Partnerships, Indian Health Service, 801 Thompson Avenue, Suite 360, Rockville, Maryland 20852. Telephone 301/443–2694 (This is not a toll free number).

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment.

Background: The IHS currently provides services under regulations codified at 42 CFR part 136, subparts A through C. Subpart C defines a Contract Health Service Delivery Area (CHSDA), now known as a Purchased/Referred Care (PRC) Service Delivery Area, as the geographic area within which PRC will be made available by the IHS to members of an identified Indian community who reside in the area. Residence in a PRC service delivery area by a person who is within the scope of the Indian health program, as set forth in 42 CFR 136.12, creates no legal entitlement to PRC but only potential eligibility for services. Services needed but not available at an IHS/Tribal facility are provided under the PRC program depending on the availability of funds, the person's relative medical priority, and the actual availability and accessibility of alternate resources in accordance with the regulations.

As applicable to the Tribes, these regulations provide that, unless otherwise designated, a PRC service delivery area shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation. (42 CFR 136.22(a)(6) (2014)). The regulations also provide that after consultation with the Tribal governing body or bodies on those reservations included within the PRC service delivery area, the Secretary may from time to time, redesignate areas within the United States for inclusion in or exclusion from a PRC service delivery area. The regulations require that certain criteria must be considered before any redesignation is made. The criteria are as follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the Tribal governing body has determined that Indians residing in

the area near the reservation are socially and economically affiliated with the Tribes;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of PRC.

Additionally, the regulations require that any redesignation of a PRC service delivery area must be made in accordance with the Administrative Procedures Act (5 U.S.C. 553). In compliance with this requirement, we are publishing this proposal and requesting public comments.

The Tribe's PRC Service Delivery Area is currently defined, both administratively and statutorily, as consisting only of Martha's Vineyard, Dukes County. The Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987 provides, among other items, that ''[f]or the purpose of eligibility for Federal services made available to members of federally recognized Indian tribes, because of their status as Indians, members of this tribe residing on Martha's Vineyard, Massachusetts, shall be deemed to be living on or near an Indian reservation.'' 25 U.S.C. .l771i; see also 75 FR 20608 (Apr. 20, 2010). Because the statute defines which members of the Tribe live ''on or near [the] reservation'' for purposes of all Federal services for which that consideration is relevant, this eligibility definition applies to PRC. IHS adopted the Congressionally-defined service delivery area for the purposes of administering benefits under the IHS PRC program via an IHS Director Decision memo on October 14, 1987. Thus, members of the Tribe who reside outside of Martha's Vineyard, Dukes County do not reside within the Aquinnah's PRC service delivery area and are currently not eligible for PRC from the Aquinnah.

Historically, IHS has established and maintained service delivery areas in accordance with Congressional intent, as evidenced by geographically designated areas identified in recognition or settlement acts, such as Public Law 100–95. Indeed, IHS has said that with respect to the Aquinnah Tribe, the Secretary's discretion to redesignate the Tribe's PRC service delivery area is superseded by the geographic limitation in the Tribe's Settlement Act of 1987, and accordingly, in a December 2, 2011 letter to the Tribe, IHS declined Aquinnah's proposal to serve non-resident members residing outside of Dukes County, Massachusetts, through its PRC program. At the insistence of the Tribe, IHS has reevaluated the Agency's position.

While IHS does not intend to abandon its historic practice, IHS has reviewed the Aquinnah's request and believes that unique circumstances are present that warrant expanding the Aquinnah PRC service delivery area beyond the limits identified by Congress in Public Law 100–95. These unique circumstances include the factors identified by the BIA in recognizing the Aquinnah prior to the enactment of Public Law 100–95, IHS's prior decision to provide sanitation services to Aquinnah members residing on the mainland outside of the existing PRC service delivery area, Dukes County's status as an island and the significant number of Tribal members that reside permanently off of the island but continue to maintain close economic and social ties with the Aquinnah. The BIA recognized the Aquinnah Tribe as an Indian Tribe eligible for Federal benefits on February 10, 1987, pursuant to a notice published in the **Federal Register**. See 52 FR 4193. As part of its findings, BIA concluded ''that the [Aquinnah] have an extensive and interrelated communication network connecting those Wampanoag members in Gay Head and elsewhere on Martha's Vineyard with each other and with those members living off-island.'' The BIA further concluded that the Tribal government ''maintained political influence and/or authority over both its resident and non-resident members.''

In 1997, IHS authorized sanitation services to non-resident members of the Aquinnah Tribe residing in the counties of Barnstable, Bristol, Norfolk, Plymouth and Dukes Counties in the State of Massachusetts, specifically finding that the service area for sanitation facilities construction was not limited to the Tribal health program service area (Dukes County).

Finally, Aquinnah has a significant number of members who are not residents of Dukes County. According to Tribal estimates, 268 enrolled Aquinnah members are non-residents who remain actively involved with the Tribe, reside in Barnstable, Bristol, Norfolk, Plymouth and Suffolk Counties and are not currently eligible for PRC care. Aquinnah provides limited direct services to its Tribal members by operating a small clinic in Dukes County that is open once or twice a month. To access direct care services, non-residents must travel over one and a half hours via ferry and car to receive the health care offered at the clinic. As a consequence, most non-residents do not seek care on the island.

Accordingly, the purpose of this **Federal Register** notice is to notify the public of the proposal to expand the Aquinnah service delivery area to include Barnstable, Bristol, Norfolk, Plymouth and Suffolk Counties in the State of Massachusetts. The proposed notice will expand their current service delivery area which incorporates Martha's Vineyard, Dukes County in the State of Massachusetts to include Barnstable, Bristol, Norfolk, Plymouth and Suffolk Counties in the State of Massachusetts.

Under 42 CFR 136.23 those otherwise eligible Indians who do not reside on a reservation but reside within a PRC service delivery area must be either members of the Tribe or maintain close economic and social ties with the Tribe. In this case, in applying the aforementioned PRC service delivery area redesignation criteria required by operative regulations (43 FR 34654), the following findings are made:

1. By expanding, the Tribe estimates the current eligible population will be increased by 268.

2. The Tribe has determined that these 268 individuals are socially and economically affiliated with the Tribe.

3. The expanded area including Barnstable, Bristol, Norfolk, Plymouth, and Suffolk Counties in the State of Massachusetts are across the Bay from Martha's Vineyard, Dukes County, Massachusetts.

4. Generally, the Tribal members located in these counties currently do not use the Indian health system for their health care needs. The Tribe will use its existing Federal allocation for PRC funds to provide services to the expanded population. No additional financial resources will be allocated by IHS to the Tribe to provide services to Tribal members residing in these counties nor should this expansion be construed to have any present or future effect on the allocation of resources between Mashpee Wampanoag Tribe and Aquinnah.

PURCHASED/REFERRED CARE SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS

Tribe/Reservation	County/State
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona.	Pinal, AZ.
Alabama-Coushatta Tribes of Texas	Polk, TX.[1]
Alaska	Entire State.[2]
Arapahoe Tribe of the Wind River Reservation, Wyoming	Hot Springs, WY, Fremont, WY, Sublette, WY.
Aroostook Band of Micmacs	Aroostook, ME.[3]
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.	Daniels, MT, McCone, MT, Richland, MT, Roosevelt, MT, Sheridan, MT, Valley, MT.
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin.	Ashland, WI, Iron, WI.
Bay Mills Indian Community, Michigan	Chippewa, MI.
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana	Glacier, MT, Pondera, MT.
Brigham City Intermountain School Health Center, Utah	[4]
Burns Paiute Tribe	Harney, OR.
California	Entire State, except for the counties listed in the footnote.[5]
Catawba Indian Nation	All Counties in SC,[6] Cabarrus, NC, Cleveland, NC, Gaston, NC, Mecklenburg, NC, Rutherford, NC, Union, NC.
Cayuga Nation	Allegany, NY,[7] Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren, PA.
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota.	Corson, SD, Dewey, SD, Haakon, SD, Meade, SD, Perkins, SD, Potter, SD, Stanley, SD, Sully, SD, Walworth, SD, Ziebach, SD.
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana	Chouteau, MT, Hill, MT, Liberty, MT.
Chitimacha Tribe of Louisiana	St. Mary Parish, LA.
Cocopah Tribe of Arizona	Yuma, AZ, Imperial, CA.
Coeur D'Alene Tribe	Benewah, ID, Kootenai, ID, Latah, ID, Spokane, WA, Whitman, WA.
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California.	La Paz, AZ, Riverside, CA, San Bernardino, CA, Yuma, AZ.
Confederated Salish and Kootenai Tribes of the Flathead Reservation	Flathead, MT, Lake, MT, Missoula, MT, Sanders, MT.
Confederated Tribes and Bands of the Yakama Nation	Klickitat, WA, Lewis, WA, Skamania, WA,[8] Yakima, WA.
Confederated Tribes of Siletz Indians of Oregon	Benton, OR,[9] Clackamas, OR, Lane, OR, Lincoln, OR, Linn, OR, Marion, OR, Multnomah, OR, Polk, OR, Tillamook, OR, Washington, OR, Yam Hill, OR.
Confederated Tribes of the Chehalis Reservation	Grays Harbor, WA, Lewis, WA, Thurston, WA.
Confederated Tribes of the Colville Reservation, Washington	Chelan, WA,[10] Douglas, WA, Ferry, WA, Grant, WA, Lincoln, WA, Okanogan, WA, Stevens, WA.
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians	Coos, OR,[11] Curry, OR, Douglas, OR, Lane, OR, Lincoln, OR.
Confederated Tribes of the Goshute Reservation, Nevada and Utah	Nevada, Juab, UT, Toole, UT.
Confederated Tribes of the Grand Ronde Community of Oregon	Polk, OR,[12] Washington, OR, Marion, OR, Yamhill, OR, Tillamook, OR, Multnomah, OR.
Confederated Tribes of the Umatilla Indian Reservation	Umatilla, OR, Union, OR.
Confederated Tribes of the Warm Springs Reservation of Oregon	Clackamas, OR, Jefferson, OR, Linn, OR, Marion, OR, Wasco, OR.
Coquille Indian Tribe	Coos, OR, Curry, OR, Douglas, OR, Jackson, OR, Lane, OR.
Coushatta Tribe of Louisiana	Allen Parish, LA, Elton, LA.[13]
Cow Creek Band of Umpqua Tribe of Indians	Coos, OR,[14] Deshutes, OR, Douglas, OR, Jackson, OR, Josephine, OR, Klamath, OR, Lane, OR.
Cowlitz Indian Tribe	Clark, WA, Cowlitz, WA, King, WA, Lewis, WA, Pierce, WA, Skamania, WA, Thurston, WA, Columbia, OR,[15] Kittitas, WA, Wahkiakum, WA.
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota	Brule, SD, Buffalo, SD, Hand, SD, Hughes, SD, Hyde, SD, Lyman, SD, Stanley, SD.
Crow Tribe of Montana	Big Horn, MT, Carbon, MT, Treasure, MT,[16] Yellowstone, MT, Big Horn, WY, Sheridan, WY.
Eastern Band of Cherokee Indians	Cherokee, NC, Graham, NC, Haywood, NC, Jackson, NC, Swain, NC.
Flandreau Santee Sioux Tribe of South Dakota	Moody, SD.
Forest County Potawatomi Community, Wisconsin	Forest, WI, Marinette, WI, Oconto, WI.
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana.	Blaine, MT, Phillips, MT.
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon.	Nevada, Malheur, OR.
Fort McDowell Yavapai Nation, Arizona	Maricopa, AZ.
Fort Mojave Indian Tribe of Arizona, California and Nevada	Nevada, Mohave, AZ, San Bernardino, CA.
Gila River Indian Community of the Gila River Indian Reservation, Arizona.	Maricopa, AZ, Pinal, AZ.
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan	Antrim, MI,[17] Benzie, MI, Charlevoix, MI, Grand Traverse, MI, Leelanau, MI, Manistee, MI.
Hannahville Indian Community, Michigan	Delta, MI, Menominee, MI.
Haskell Indian Health Center	Douglas, KS.[18]
Havasupai Tribe of the Havasupai Reservation, Arizona	Coconino, AZ.
Ho-Chunk Nation of Wisconsin	Adams, WI,[19] Clark, WI, Columbia, WI, Crawford, WI, Dane, WI, Eau Claire, WI, Houston, MN, Jackson, WI, Juneau, WI, La Crosse, WI, Marathon, WI, Monroe, WI, Sauk, WI, Shawano, WI, Vernon, WI, Wood, WI.
Hoh Indian Tribe	Jefferson, WA.

PURCHASED/REFERRED CARE SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS—Continued

Tribe/Reservation	County/State
Hopi Tribe of Arizona	Apache, AZ, Coconino, AZ, Navajo, AZ.
Houlton Band of Maliseet Indians	Aroostook, ME.[20]
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona	Coconino, AZ, Mohave, AZ, Yavapai, AZ.
Iowa Tribe of Kansas and Nebraska	Brown, KS, Doniphan, KS, Richardson, NE.
Jamestown S'Klallam Tribe	Clallam, WA, Jefferson, WA.
Jena Band of Choctaw Indians	Grand Parish, LA,[21] LaSalle Parish, LA, Rapides Parish, LA.
Jicarilla Apache Nation, New Mexico	Archuleta, CO, Rio Arriba, NM, Sandoval, NM.
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona.	Coconino, AZ, Mohave, AZ, Kane, UT.
Kalispel Indian Community of the Kalispel Reservation	Pend Oreille, WA, Spokane, WA.
Kewa Pueblo, New Mexico	Sandoval, NM, Santa Fe, NM.
Keweenaw Bay Indian Community, Michigan	Baraga, MI, Houghton, MI, Ontonagon, MI.
Kickapoo Traditional Tribe of Texas	Maverick, TX.[22]
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Brown, KS, Jackson, KS.
Klamath Tribes	Klamath, OR.[23]
Koi Nation of Northern California (formerly known as Lower Lake Rancheria, California).	Lake, CA, Sonoma, CA.[24]
Kootenai Tribe of Idaho	Boundary, ID.
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin.	Sawyer, WI.
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin.	Iron, WI, Oneida, WI, Vilas, WI.
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan	Gogebic, MI.
Little River Band of Ottawa Indians, Michigan	Kent, MI,[25] Muskegon, MI, Newaygo, MI, Oceana, MI, Ottawa, MI, Manistee, MI, Mason, MI, Wexford, MI, Lake, MI.
Little Traverse Bay Bands of Odawa Indians, Michigan	Alcona, MI,[25] Alger, MI, Alpena, MI, Antrim, MI, Benzie, MI, Charlevoix, MI, Cheboygan, MI, Chippewa, MI, Crawford, MI, Delta, MI, Emmet, MI, Grand Traverse, MI, Iosco, MI, Kalkaska, MI, Leelanau, MI, Luce, MI, Mackinac, MI, Manistee, MI, Missaukee, MI, Montmorency, MI, Ogemaw, MI, Oscoda, MI, Otsego, MI, Presque Isle, MI, Schoolcraft, MI, Roscommon, MI, Wexford, MI.
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota	Brule, SD, Buffalo, SD, Hughes, SD, Lyman, SD, Stanley, SD.
Lower Elwha Tribal Community	Clallam, WA.
Lower Sioux Indian Community in the State of Minnesota	Redwood, MN, Renville, MN.
Lummi Tribe of the Lummi Reservation	Whatcom, WA.
Makah Indian Tribe of the Makah Indian Reservation	Clallam, WA.
Mashantucket Pequot Tribe	New London, CT.[26]
Mashpee Wampanoag Tribe	Barnstable, MA, Bristol, MA, Norfolk, MA, Plymouth, MA, Suffolk, MA.[27]
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan	Allegan, MI,[28] Barry, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI.
Menominee Indian Tribe of Wisconsin	Langlade, WI, Menominee, WI, Oconto, WI, Shawano, WI.
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico	Chaves, NM, Lincoln, NM, Otero, NM.
Miccosukee Tribe of Indians	Broward, FL, Collier, FL, Miami-Dade, FL, Hendry, FL.
Minnesota Chippewa Tribe, Minnesota Bois Forte Band (Nett Lake)	Itasca, MN, Koochiching, MN, St. Louis, MN.
Minnesota Chippewa Tribe, Minnesota Fond du Lac Band	Carlton, MN, St. Louis, MN.
Minnesota Chippewa Tribe, Minnesota Grand Portage Band	Cook, MN.
Minnesota Chippewa Tribe, Minnesota Leech Lake Band	Beltrami, MN, Cass, MN, Hubbard, MN, Itasca, MN.
Minnesota Chippewa Tribe, Minnesota Mille Lacs Band	Aitkin, MN, Kanebec, MN, Mille Lacs, MN, Pine, MN.
Minnesota Chippewa Tribe, Minnesota White Earth Band	Becker, MN, Clearwater, MN, Mahnomen, MN, Norman, MN, Polk, MN.
Mississippi Band of Choctaw Indians	Attala, MS, Jasper, MS,[29] Jones, MS, Kemper, MS, Leake, MS, Neshoba, MS, Newton, MS, Noxubee, MS,[29] Scott, MS,[30] Winston, MS.
Mohegan Tribe of Indians of Connecticut	Fairfield, CT, Hartford, CT, Litchfield, CT, Middlesex, CT, New Haven, CT, New London, CT, Tolland, CT, Windham, CT.
Muckleshoot Indian Tribe	King, WA, Pierce, WA.
Narragansett Indian Tribe	Washington, RI.[31]
Navajo Nation, Arizona, New Mexico & Utah	Apache, AZ, Bernalillo, NM, Cibola, NM, Coconino, AZ, Kane, UT, McKinley, NM, Montezuma, CO, Navajo, AZ, Rio Arriba, NM, Sandoval, NM, San Juan, NM, San Juan, UT, Socorro, NM, Valencia, NM.
Nevada	Entire State.[32]
Nez Perce Tribe	Clearwater, ID, Idaho, ID, Latah, ID, Lewis, ID, Nez Perce, ID.
Nisqually Indian Tribe	Pierce, WA, Thurston, WA.
Nooksack Indian Tribe	Whatcom, WA.
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.	Big Horn, MT, Carter, MT,[33] Rosebud, MT.
Northwestern Band of Shoshoni Nation	Box Elder, UT.[34]
Nottawaseppi Huron Band of the Potawatomi, Michigan	Allegan, MI,[35] Barry, MI, Branch, MI, Calhoun, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI.
Oglala Sioux Tribe	Bennett, SD, Cherry, NE, Custer, SD, Dawes, NE, Fall River, SD, Jackson, SD,[36] Mellete, SD, Pennington, SD, Shannon, SD, Sheridan, NE, Todd, SD.

PURCHASED/REFERRED CARE SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS—Continued

Tribe/Reservation	County/State
Ohkay Owingeh, New Mexico	Rio Arriba, NM.
Oklahoma	Entire State.[37]
Omaha Tribe of Nebraska	Burt, NE, Cuming, NE, Monona, IA, Thurston, NE, Wayne, NE.
Oneida Nation of New York	Chenango, NY, Cortland, NY, Herkimer, NY, Madison, NY, Oneida, NY, Onondaga, NY.
Oneida Tribe of Indians of Wisconsin	Brown, WI, Outagamie, WI.
Onondaga Nation	Onondaga, NY.
Paiute Indian Tribe of Utah	Iron, UT,[38] Millard, UT, Sevier, UT, Washington, UT.
Pascua Yaqui Tribe of Arizona	Pima, AZ.[39]
Passamaquoddy Tribe	Aroostook, ME,[40 41] Washington, ME.
Penobscot Nation	Aroostook, ME,[40] Penobscot, ME.
Poarch Band of Creeks	Baldwin, AL,[42] Elmore, AL, Escambia, AL, Mobile, AL, Monroe, AL, Escambia, FL.
Pokagon Band of Potawatomi Indians, Michigan and Indiana	Allegan, MI,[43] Berrien, MI, Cass, MI, Elkhart, IN, Kosciusko, IN, La Porte, IN, Marshall, IN, St. Joseph, IN, Starke, IN, Van Buren, MI.
Ponca Tribe of Nebraska	Boyd, NE,[44] Burt, NE, Charles Mix, SD, Douglas, NE, Hall, NE, Holt, NE, Knox, NE, Lancaster, NE, Madison, NE, Platte, NE, Pottawattomie, IA, Sarpy, NE, Stanton, NE, Wayne, NE, Woodbury, IA.
Port Gamble S'Klallam Tribe	Kitsap, WA.
Prairie Band of Potawatomi Nation	Jackson, KS.
Prairie Island Indian Community in the State of Minnesota	Goodhue, MN.
Pueblo of Acoma, New Mexico	Cibola, NM.
Pueblo of Cochiti, New Mexico	Sandoval, NM, Santa Fe, NM.
Pueblo of Isleta, New Mexico	Bernalillo, NM, Torrance, NM, Valencia, NM.
Pueblo of Jemez, New Mexico	Sandoval, NM.
Pueblo of Laguna, New Mexico	Bernalillo, NM, Cibola, NM, Sandoval, NM, Valencia, NM.
Pueblo of Nambe, New Mexico	Santa Fe, NM.
Pueblo of Picuris, New Mexico	Taos, NM.
Pueblo of Pojoaque, New Mexico	Rio Arriba, NM, Santa Fe, NM.
Pueblo of San Felipe, New Mexico	Sandoval, NM.
Pueblo of San Ildefonso, New Mexico	Los Alamos, NM, Rio Arriba, NM, Sandoval, NM, Santa Fe, NM.
Pueblo of Sandia, New Mexico	Bernalillo, NM, Sandoval, NM.
Pueblo of Santa Ana, New Mexico	Sandoval, NM.
Pueblo of Santa Clara, New Mexico	Los Alamos, NM, Sandoval, NM, Santa Fe, NM.
Pueblo of Taos, New Mexico	Colfax, NM, Taos, NM.
Pueblo of Tesuque, New Mexico	Santa Fe, NM.
Pueblo of Zia, New Mexico	Sandoval, NM.
Puyallup Tribe of the Puyallup Reservation	King, WA, Pierce, WA, Thurston, WA.
Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona.	Yuma, AZ, Imperial, CA.
Quileute Tribe of the Quileute Reservation	Clallam, WA, Jefferson, WA.
Quinault Indian Nation	Grays Harbor, WA, Jefferson, WA.
Rapid City, South Dakota	Pennington, SD.[45]
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin	Bayfield, WI.
Red Lake Band of Chippewa Indians, Minnesota	Beltrami, MN, Clearwater, MN, Koochiching, MN, Lake of the Woods, MN, Marshall, MN, Pennington, MN, Polk, MN, Roseau, MN.
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota	Bennett, SD, Cherry, NE, Gregory, SD, Lyman, SD, Mellette, SD, Todd, SD, Tripp, SD.
Sac & Fox Nation of Missouri in Kansas and Nebraska	Brown, KS, Richardson, NE.
Sac & Fox Tribe of the Mississippi in Iowa	Tama, IA.
Saginaw Chippewa Indian Tribe of Michigan	Arenac, MI,[46] Clare, MI, Isabella, MI, Midland, MI, Missaukee, MI.
Saint Regis Mohawk Tribe	Franklin, NY, St. Lawrence, NY.
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona.	Maricopa, AZ.
Samish Indian Nation	Clallam, WA,[47] Island, WA, Jefferson, WA, King, WA, Kitsap, WA, Pierce, WA, San Juan, WA, Skagit, WA, Snohomish, WA, Whatcom, WA.
San Carlos Apache Tribe of the San Carlos Reservation, Arizona	Apache, AZ, Cochise, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Pinal, AZ.
San Juan Southern Paiute Tribe of Arizona	Coconino, AZ, San Juan, UT.
Santee Sioux Nation, Nebraska	Bon Homme, SD, Knox, NE.
Sauk-Suiattle Indian Tribe	Snohomish, WA, Skagit, WA.
Sault Ste. Marie Tribe of Chippewa Indians, Michigan	Alger, MI,[48] Chippewa, MI, Delta, MI, Luce, MI, Mackinac, MI, Marquette, MI, Schoolcraft, MI.
Seminole Tribe of Florida	Broward, FL, Collier, FL, Miami-Dade, FL, Glades, FL, Hendry, FL.
Seneca Nation of Indians	Allegany, NY, Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren, PA.
Shakopee Mdewakanton Sioux Community of Minnesota	Scott, MN.
Shinnecock Indian Nation	Nassau, NY,[49] Suffolk, NY.
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation	Pacific, WA.
Shoshone Tribe of the Wind River Reservation, Wyoming	Hot Springs, WY, Fremont, WY, Sublette, WY.

PURCHASED/REFERRED CARE SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS—Continued

Tribe/Reservation	County/State
Shoshone-Bannock Tribes of the Fort Hall Reservation	Bannock, ID, Bingham, ID, Caribou, ID, Lemhi, ID,[50] Power, ID.
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada	Nevada, Owyhee, ID.
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota.	Codington, SD, Day, SD, Grant, SD, Marshall, SD, Richland, ND, Roberts, SD, Sargent, ND, Traverse, MN.
Skokomish Indian Tribe	Mason, WA.
Skull Valley Band of Goshute Indians of Utah	Tooele, UT.
Snoqualmie Indian Tribe	King, WA,[51] Snohomish, WA, Pierce, WA, Island, WA, Mason, WA.
Sokaogon Chippewa Community, Wisconsin	Forest, WI.
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado	Archuleta, CO, La Plata, CO, Montezuma, CO, Rio Arriba, NM, San Juan, NM.
Spirit Lake Tribe, North Dakota	Benson, ND, Eddy, ND, Nelson, ND, Ramsey, ND.
Spokane Tribe of the Spokane Reservation	Ferry, WA, Lincoln, WA, Stevens, WA.
Squaxin Island Tribe of the Squaxin Island Reservation	Mason, WA.
St. Croix Chippewa Indians of Wisconsin	Barron, WI, Burnett, WI, Pine, MN, Polk, WI, Washburn, WI.
Standing Rock Sioux Tribe of North & South Dakota	Adams, ND, Campbell, SD, Corson, SD, Dewey, SD, Emmons, ND, Grant, ND, Morton, ND, Perkins, SD, Sioux, ND, Walworth, SD, Ziebach, SD.
Stillaguamish Tribe of Indians of Washington	Snohomish, WA.
Stockbridge Munsee Community, Wisconsin	Menominee, WI, Shawano, WI.
Suquamish Indian Tribe of the Port Madison Reservation	Kitsap, WA.
Swinomish Indian Tribal Community	Skagit, WA.
Tejon Indian Tribe	Kern, CA.[52]
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota	Dunn, ND, Mercer, ND, McKenzie, ND, McLean, ND, Mountrail, ND, Ward, ND.
Tohono O'odham Nation of Arizona	Maricopa, AZ, Pima, AZ, Pinal, AZ.
Tonawanda Band of Seneca	Genesee, NY, Erie, NY, Niagara, NY.
Tonto Apache Tribe of Arizona	Gila, AZ.
Trenton Service Unit, North Dakota and Montana	Divide, ND,[53] McKenzie, ND, Williams, ND, Richland, MT, Roosevelt, MT, Sheridan, MT.
Tulalip Tribes of Washington	Snohomish, WA.
Tunica-Biloxi Indian Tribe	Avoyelles, LA, Rapides, LA.[54]
Turtle Mountain Band of Chippewa Indians of North Dakota	Rolette, ND.
Tuscarora Nation	Niagara, NY.
Upper Sioux Community, Minnesota	Chippewa, MN, Yellow Medicine, MN.
Upper Skagit Indian Tribe	Skagit, WA.
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah	Carbon, UT, Daggett, UT, Duchesne, UT, Emery, UT, Grand, UT, Rio Blanco, CO, Summit, UT, Uintah, UT, Utah, UT, Wasatch, UT.
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.	Apache, AZ, La Plata, CO, Montezuma, CO, San Juan, NM, San Juan, UT.
Wampanoag Tribe of Gay Head (Aquinnah)	Dukes, MA,[55] Barnstable, MA, Bristol, MA, Norfolk, MA, Plymouth, MA, Suffolk, MA.[56]
Washoe Tribe of Nevada & California	Nevada, California except for the counties listed in footnote.
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona	Apache, AZ, Coconino, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Navajo, AZ.
Wilton Rancheria, California	Sacramento, CA.[57]
Winnebago Tribe of Nebraska	Dakota, NE, Dixon, NE, Monona, IA, Thurston, NE, Wayne, NE, Woodbury, IA.
Yankton Sioux Tribe of South Dakota	Bon Homme, SD, Boyd, NE, Charles Mix, SD, Douglas, SD, Gregory, SD, Hutchinson, SD, Knox, NE.
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.	Yavapai, AZ.
Yavapai-Prescott Indian Tribe	Yavapai, AZ.
Ysleta Del Sur Pueblo of Texas	El Paso, TX.[1]
Zuni Tribe of the Zuni Reservation, New Mexico	Apache, AZ, Cibola, NM, McKinley, NM, Valencia, NM.

[1] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for ''members of the Tribe'' by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

[2] Entire State of Alaska is included as a CHSDA by regulation (42 CFR 136.22(a)(1)).

[3] Aroostook Band of Micmacs was recognized by Congress on November 26, 1991, through the Aroostook Band of Micmac Settlement Act. Aroostook County, ME, was defined as the SDA.

[4] Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility rather than the eligibility regulations. Historically services have been provided at Brigham City Intermountain School Health Center, Utah (Pub. L. 88–358).

[5] Entire State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura, is designated a CHSDA (25 U.S.C. 1680).

[6] The counties were recognized after the January 1984 CHSDA FRN was published, in accordance with P.L. 103–116, Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, dated October 27, 1993.

[7] There is no reservation for the Cayuga Nation; the service delivery area consists of those counties identified by the Cayuga Nation.

[8] Skamania County, WA, has historically been a part of the Yakama Service Unit population since 1979.

[9] In order to carry out the Congressional intent of the Siletz Restoration Act, Pub. L. 95–195, as expressed in H. Report No. 95–623, at page 4, members of the Confederated Tribes of Siletz Indians of Oregon residing in these counties are eligible for contract health services.

[10] Chelan County, WA, has historically been a part of the Colville Service Unit population since 1970.

[11] Pursuant to Pub. L. 98–481 (H. Rept. No. 98–904), Coos, Lower Umpqua and Siuslaw Restoration Act, members of the Tribe residing in these counties were specified as eligible for Federal services and benefits without regard to the existence of a Federal Indian reservation.

[12] The Confederated Tribes of Grand Ronde Community of Oregon were recognized by Pub. L. 98–165 which was signed into law on November 22, 1983, and provides for eligibility in these six counties without regard to the existence of a reservation.

[13] The CHSDA for the Coushatta Tribe of Louisiana was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(6)) to include city limits of Elton, LA.

[14] Cow Creek Band of Umpqua Tribe of Indians recognized by Pub. L. 97–391, signed into law on December 29, 1983. House Rept. No. 97–862 designates Douglas, Jackson, and Josephine Counties as a service area without regard to the existence of a reservation. The IHS later administratively expanded the CHSDA to include the counties of Coos, OR, Deshutes, OR, Klamath, OR, and Lane, OR.

[15] The Cowlitz Indian Tribe was recognized in July 2002 as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638. The CHSDA was administratively expanded to included Columbia County, OR, Kittitas, WA, and Wahkiakum County, WA, as published at 67884 FR December 21, 2009.

[16] Treasure County, MT, has historically been a part of the Crow Service Unit population.

[17] The counties listed have historically been a part of the Grand Traverse Service Unit population since 1980.

[18] Haskell Indian Health Center has historically been a part of Kansas Service Unit since 1979. Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility rather than the eligibility regulations. Historically services have been provided at Haskell Indian Health Center (H. Rept. No. 95–392).

[19] CHSDA counties for the Ho-Chunk Nation of Wisconsin were designated by regulation (42 CFR 136.22(a)(5)). Dane County, WI, was added to the reservation by the Bureau of Indian Affairs in 1986.

[20] Public Law 97–428 provides that any member of the Houlton Band of Maliseet Indians in or around the Town of Houlton shall be eligible without regard to existence of a reservation.

[21] The Jena Band of Choctaw Indian was Federally acknowledged as documented at 60 FR 28480, May 31, 1995. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[22] Kickapoo Traditional Tribe of Texas, formerly known as the Texas Band of Kickapoo, was recognized by Pub. L. 97–429, signed into law on January 8, 1983. The Act provides for eligibility for Kickapoo Tribal members residing in Maverick County without regard to the existence of a reservation.

[23] The Klamath Indian Tribe Restoration Act (Pub. L. 99–398, Sec. 2(2)) states that for the purpose of Federal services and benefits ''members of the tribe residing in Klamath County shall be deemed to be residing in or near a reservation''.

[24] The Koi Nation of Northern California, formerly known as the Lower Lake Rancheria, was reaffirmed by the Secretary of the Bureau of Indian Affairs on December 29, 2000. The counties listed were designated administratively as the SDA, to function as a PRC SDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Pub. L. 93–638.

[25] The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act recognized the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Pursuant to Pub. L. 103–324, Sec. 4(b) the counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[26] Mashantucket Pequot Indian Claims Settlement Act, Pub. L. 98–134, signed into law on October 18, 1983, provides a reservation for the Mashantucket Pequot Indian Tribe in New London County, CT.

[27] The Mashpee Wampanoag Tribe was recognized in February 2007, as documented at 72 FR 8007, February 22, 2007. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[28] The Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan was recognized in October 1998, as documented at 63 FR 56936, October 23, 1998. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[29] Members of the Mississippi Band of Choctaw Indians residing in Jasper and Noxubee Counties, MS, are eligible for contract health services; these two counties were inadvertently omitted from 42 CFR 136.22.

[30] Scott County, MS, has historically been a part of the Choctaw Service Unit population since 1970.

[31] The Narragansett Indian Tribe was recognized by Pub. L. 95–395, signed into law September 30, 1978. Lands in Washington County, RI, are now Federally restricted and the Bureau of Indian Affairs considers them as the Narragansett Indian Reservation.

[32] Entire State of Nevada is included as a CHSDA by regulation (42 CFR 136.22 (a)(2)).

[33] Carter County, MT, has historically been a part of the Northern Cheyenne Service Unit population since 1979.

[34] Land of Box Elder County, Utah, was taken into trust for the Northwestern Band of Shoshoni Nation in 1986.

[35] The Nottawaseppi Huron Band of the Potawatomi, Michigan, formerly known as the Huron Band of Potawatomi, Inc., was recognized in December 1995, as documented at 60 FR 66315, December 21, 1995. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[36] Washabaugh County, SD, merged and became part of Jackson County, SD, in 1983; both were/are CHSDA counties for the Oglala Sioux Tribe.

[37] Entire State of Oklahoma is included as a CHSDA by regulation (42 CFR 136.22 (a)(3)).

[38] Paiute Indian Tribe of Utah Restoration Act, Pub. L. 96–227, provides for the extension of services for the Paiute Indian Tribe of Utah to these four counties without regard to the existence of a reservation.

[39] Legislative history (H.R. Report No. 95–1021) to Pub. L. 95–375, Extension of Federal Benefits to Pascua Yaqui Indians, Arizona, expresses congressional intent that lands conveyed to the Pascua Yaqui Tribe of Arizona pursuant to Act of October 8, 1964. (Pub. L. 88–350) shall be deemed a Federal Indian Reservation.

[40] The Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420; H. Rept. 96–1353) includes the intent of Congress to fund and provide contract health services to the Passamaquoddy Tribe and the Penobscot Nation.

[41] The Passamaquoddy Tribe has two reservations. The PRC SDA for the Passamaquoddy Tribe of Indian Township, ME, is Aroostook County, ME, and Washington County, ME. The PRC SDA for the Passamaquoddy Tribe of Pleasant Point, ME, is Washington County, ME, south of State Route.

[42] Counties in the Service Unit designated by Congress for the Poarch Band of Creek Indians (see H. Rept. 98–886, June 29, 1984; Cong. Record, October 10, 1984, Pg. H11929).

[43] Pub. L. 103–323 restored Federal recognition to the Pokagon Band of Potawatomi Indians, Michigan and Indiana, in 1994 and identified counties to serve as the SDA.

[44] The Ponca Restoration Act, Pub. L. 101–484, recognized members of the Ponca Tribe of Nebraska in Boyd, Douglas, Knox, Madison or Lancaster counties of Nebraska or Charles Mix county of South Dakota as residing on or near a reservation. Pub. L. 104–109 made technical corrections to laws relating to Native Americans and added Burt, Hall, Holt, Platte, Sarpy, Stanton, and Wayne counties of Nebraska and Pottawatomie and Woodbury counties of Iowa to the Ponca Tribe of Nebraska SDA.

[45] Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations. Historically services have been provided at Rapid City (S. Rept. No. 1154, FY 1967 Interior Approp. 89th Cong. 2d Sess.).

[46] Historically part of Isabella Reservation Area for the Saginaw Chippewa Indian Tribe of Michigan and the Eastern Michigan Service Unit population since 1979.

[47] The Samish Indian Tribe Nation was Federally acknowledged in April 1996 as documented at 61 FR 15825, April 9, 1996. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[48] CHSDA counties for the Sault Ste. Marie Tribe of Chippewa Indians, Michigan, were designated by regulation (42 CFR 136.22(a)(4)).

[49] The Shinnecock Indian Nation was Federally acknowledged in June 2010 as documented at 75 FR 34760, June 18, 2010. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[50] Lemhi County, ID, has historically been a part of the Fort Hall Service Unit population since 1979.

[51] The Snoqualmie Indian Tribe was Federally acknowledged in August 1997 as documented at 62 FR 45864, August 29, 1997. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[52] On December 30, 2011 the Office of Assistant Secretary—Indian Affairs reaffirmed the Federal recognition of the Tejon Indian Tribe. The county listed was designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[53] The Secretary acting through the Service is directed to provide contract health services to Turtle Mountain Band of Chippewa Indians that reside in Trenton Service Unit, North Dakota and Montana, in Divide, Mackenzie, and Williams counties in the state of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the state of Montana (Sec. 815, Pub. L. 94–437).

[54] Rapides County, LA, has historically been a part of the Tunica Biloxi Service Unit population since 1982.

[55] According to Pub. L. 100–95, Sec. 12, members of the Wampanoag Tribe of Gay Head (Aquinnah) residing on Martha's Vineyard are deemed to be living on or near an Indian reservation for the purposes of eligibility for Federal services.

[56] The counties listed are designated administratively as the SDA, to function as a PRC SDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Pub. L. 93–638.

[57] The Wilton Rancheria, California had Federal recognition restored in July 2009 as documented at 74 FR 33468, July 13, 2009. Sacramento County, CA, was designated administratively as the SDA, to function as a CHSDA. Sacramento County was not covered when Congress originally established the State of California as a CHSDA excluding certain counties including Sacramento County (25 U.S.C. 1680).

Dated: August 17, 2015.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. 2015–20781 Filed 8–21–15; 8:45 am]

BILLING CODE 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: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Mechanisms of Sensory, Perceptual, and Cognitive Processes Study Section.

Date: September 30–October 1, 2015.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Motivated Behavior Study Section.

Date: October 1, 2015.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Nicholas Gaiano, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892–7844, 301–435–1033, *gaianonr@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurotoxicology and Alcohol Study Section.

Date: October 5, 2015.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 18, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–20752 Filed 8–21–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; P01 Teleconference Review.

Date: September 22, 2015.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 5B01, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Dennis E. Leszczynski, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6884, *leszczyd@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and

Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 18, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–20753 Filed 8–21–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, Office of Science Policy, Office of Biotechnology Activities; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the meeting of the National Science Advisory Board for Biosecurity (NSABB).

Name of Committee: National Science Advisory Board for Biosecurity.

Date: September 28, 2015.

Time: 8:30 a.m.–4:00 p.m. Eastern.

Agenda: Presentations and discussions regarding: (1) NSABB deliberations towards the development of draft recommendations on a conceptual approach to the evaluation of proposed gain-of-function (GOF) studies involving pathogens with pandemic potential; (2) progress report on the conduct of risk and benefit assessments of GOF studies; (3) ethical, legal, and policy issues relevant to the conduct and oversight of GOF studies; and (4) other business of the Board.

Place: National Institutes of Health, Building 31, 6th Floor, C Wing, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

Contact Person: Carolyn Mosby, NSABB Program Assistant, NIH Office of Biotechnology Activities, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892, (301) 435–5504, *carolyn.mosby@nih.gov.*

Under authority 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established the National Science Advisory Board for Biosecurity (NSABB) to provide advice regarding federal oversight of dual use research—defined as legitimate biological research that generates information and technologies that could be misused to pose a biological threat to public health and/or national security. The NSABB is currently charged with providing formal recommendations to the United States Government on a conceptual approach to the evaluation of proposed gain-of-function studies.

The meeting will be open to the public and will also be webcast as space will be limited. Persons planning to attend or view via the webcast may pre-register online using the link provided below or by calling Palladian Partners, Inc. (Contact: Maegen Currie at 301–650–8660). Online and telephone registration will close at 12:00 p.m. Eastern on September 25, 2015. After that time, attendees may register onsite on the day of the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate these requirements upon registration on or prior to September 25.

Please Note: The meeting agenda and links to the online registration and webcast will be available at: *http://osp.od.nih.gov/office-biotechnology-activities/biosecurity/nsabb/nsabb-meetings-and-conferences.* Please check this Web site for updates.

Public Comments: Time will be allotted on the agenda for oral public comments. Any member of the public interested in presenting comments relevant to the mission of the NSABB should indicate so upon registration. Sign-up for oral comments will be limited to one per person or organization representative per comment period, with individual presentations time-limited to facilitate broad input from multiple speakers. In the event that time does not allow for all attendees interested in presenting oral comments to do so at the meeting, any interested person may file written comments with the Board via an email sent to *nsabb@od.nih.gov* or by regular mail sent to the Contact Person listed on this notice. In addition, any interested person may submit written comments to the NSABB at any time via either of these methods. Written statements should include the name, address, telephone number and when applicable, the professional affiliation of the interested person. Comments received by 5:00 p.m. Eastern on September 22, 2015 will be relayed to the Board prior to the NSABB meeting. Any written comments received after the deadline will be provided to the Board either before or after the meeting, depending on the volume of comments received and the time required to process them in accordance with privacy regulations and other applicable Federal policies.

Please Note: In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Please visit the *NIH Visitor Security* page for important security and campus access information.

Dated: August 18, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–20815 Filed 8–21–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel.

Date: September 24, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 602, 6701 Democracy Blvd., Bethesda, MD 20892.

Contact Person: Guo He Zhang, Mph, Ph.D., Scientific Review Officer, Scientific Review Branch, Natl Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892, *zhanggu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 18, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–20816 Filed 8–21–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2015–0695; OMB Control Number 1625–0061]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision of a currently approved collection: 1625–0061, Commercial Fishing Industry Vessel Safety Regulations. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before October 23, 2015.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2015–0695] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICR(s) are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn Paperwork Reduction Act Manager, US Coast Guard, 2703 Martin Luther King Jr Ave. SE., STOP 7710, Washington DC 20593–7710.

For Further Information: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents. Contact Ms. Cheryl Collins, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval of revisions of the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2015–0695], and must be received by October 23, 2015. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2015–0695], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type ''USCG–2015–0695'' in the ''Search'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Search'' box insert ''USCG–2015–0695'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in 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 a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

1. *Title:* Commercial Fishing Industry Vessel Safety Regulations.

OMB Control Number: 1625–0061.

Summary: This information collection is intended to improve safety on board vessels in the commercial fishing industry. The requirements apply to those vessels and to seamen on them.

Need: Under the authority of 46 U.S.C. 6104, the U.S. Coast Guard has promulgated regulations in 46 CFR part 28 to reduce the unacceptably high level of fatalities and accidents in the commercial fishing industry. The rules allowing the collection also provide a means of verifying compliance and enhancing safe operation of fishing vessels.

Forms: None.

Respondents: Owners, agents, individuals-in-charge of commercial fishing vessels, and insurance underwriters.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 6,787 hours to 6,617 hours a year due to a decrease in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: August 14, 2015.

Thomas P. Michelli,

U. S. Coast Guard, Deputy Chief Information Officer.

[FR Doc. 2015–20867 Filed 8–21–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2015–0690; OMB Control Number 1625–0015]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision of a currently approved collection: 1625–0015, Bridge Permit Application Guide (BPAG). Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before October 23, 2015.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2015–0690] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICR(s) are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn Paperwork Reduction Act Manager, US Coast Guard, 2703 Martin Luther King Jr Ave. SE., Stop 7710, Washington DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents. Contact Ms. Cheryl Collins, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public participation and request for comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise these ICRs or decide not to seek approval of revisions of the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2015–0690], and must be received by October 23, 2015. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting comments

If you submit a comment, please include the docket number [USCG–2015–0690], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the

comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2015–0690'' in the ''Search'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Search'' box insert ''USCG–2015–0690'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in 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 a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

1. *Title:* Bridge Permit Application Guide (BPAG).

OMB Control Number: 1625–0015.

Summary: This collection of information is a request for a bridge permit submitted as an application for approval by the Coast Guard of any proposed bridge project. An applicant must submit to the Coast Guard a letter of application along with letter-size drawings (plans) and maps showing the proposed project and its location.

Need: 33 U.S.C. 401, 91, and 525 authorize the Coast Guard to approve plans and locations for all bridges and causeways that go over navigable waters of the United States.

Forms: None.

Respondents: Public and private owners of bridges over navigable waters of the United States.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 10,760 hours to 12,354 hours a year due to an increase in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: August 14, 2015.

Thomas P. Michelli,

U.S. Coast Guard, Deputy Chief Information Officer.

[FR Doc. 2015–20877 Filed 8–21–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4239–DR; Docket ID FEMA–2015–0002]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–4239–DR), dated August 12, 2015, and related determinations.

DATES: *Effective date:* August 12, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 12, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe storms, tornadoes, straight-line winds, flooding, landslides, and mudslides during the period of July 11–20, 2015, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Lai Sun Yee, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Kentucky have been designated as adversely affected by this major disaster:

Carter, Johnson, Rowan, and Trimble Counties for Individual Assistance.

Bracken, Breathitt, Carroll, Carter, Clay, Cumberland, Elliott, Estill, Fleming, Floyd, Henry, Jackson, Johnson, Knott, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Magoffin, Menifee, Montgomery, Morgan, Nicholas, Owsley, Perry, Robertson, Rockcastle, Rowan, Spencer, Trimble, Washington, and Wolfe Counties for Public Assistance.

All areas within the Commonwealth of Kentucky are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora

Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–20889 Filed 8–21–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4238–DR; Docket ID FEMA–2015–0002]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–4238–DR), dated August 7, 2015, and related determinations.

DATES: *Effective Date:* August 7, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 7, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Missouri resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of May 15 to July 27, 2015, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Missouri have been designated as adversely affected by this major disaster:

Adair, Andrew, Atchison, Audrain, Barry, Bates, Benton, Buchanan, Caldwell, Chariton, Christian, Clark, Clay, Clinton, Cole, Crawford, Dade, Dallas, Daviess, DeKalb, Douglas, Gentry, Harrison, Henry, Hickory, Holt, Jefferson, Johnson, Knox, Laclede, Lafayette, Lewis, Lincoln, Linn, Livingston, McDonald, Macon, Maries, Marion, Miller, Moniteau, Monroe, Montgomery, Morgan, Osage, Ozark, Perry, Pettis, Pike, Platte, Polk, Putnam, Ralls, Ray, Ste. Genevieve, Saline, Schuyler, Scotland, Shannon, Shelby, Stone, Sullivan, Taney, Texas, Washington, Webster, Worth, and Wright Counties for Public Assistance.

All areas within the State of Missouri are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–20910 Filed 8–21–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee management; notice of Federal advisory committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will meet via conference call on September 9, 2015. The meeting will be open to the public.

DATES: The TMAC will meet via conference call on Wednesday, September 9, 2015 from 11:00 a.m.–1:00 p.m. and 3:00 p.m.–5:00 p.m., Eastern Daylight Savings Time (EDT). Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance at the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT** below as soon as possible. Members of the public who wish to dial in for the meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (attention Mark Crowell) by 11 p.m. EDT on Friday, August 28, 2015.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated meeting materials will be available at *www.fema.gov/TMAC* for review by Sunday, August 30, 2015. Written comments to be considered by the committee at the time of the meeting must be submitted and received by Friday, August 28, 2015, identified by Docket ID FEMA–2014–0022, and submitted by one of the following methods:

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

• *Email:* Address the email TO: *FEMA-RULES@fema.dhs.gov* and CC: *FEMA-TMAC@fema.dhs.gov.* Include the docket number in the subject line of the message. Include name and contact detail in the body of the email.

• *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW., Room 8NE., Washington, DC 20472–3100.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. *Docket:* For docket access to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held on September 9, 2015, from 4:15–4:30 p.m. Speakers are requested to limit their comments to no more than two minutes. The public comment period will not exceed 15 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by close of business on Friday, August 28, 2015.

FOR FURTHER INFORMATION CONTACT: Mark Crowell, Designated Federal Officer for the TMAC, FEMA, 1800 South Bell Street Arlington, VA 22202, telephone (202) 646–3432, and email *mark.crowell@fema.dhs.gov.* The TMAC Web site is: *http://www.fema.gov/TMAC.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

As required by the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) How to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an annual report to the FEMA Administrator that contains: (1) A description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

The TMAC must also develop recommendations on how to ensure that flood insurance rate maps incorporate the best available climate science to assess flood risks and ensure that FEMA uses the best available methodology to consider the impact of the rise in sea level and future development on flood risk. The TMAC must collect these recommendations and present them to the FEMA Administrator in a future conditions risk assessment and modeling report. Further, in accordance with the *Homeowner Flood Insurance Affordability Act of 2014,* the TMAC must develop a review report related to flood mapping in support of the National Flood Insurance Program (NFIP).

Agenda: On September 9, 2015, the TMAC members will present and deliberate on draft narrative and proposed recommendations concerning (1) the flood hazard mapping process and product, and (2) future conditions methods and considerations that will be incorporated into both the 2015 Annual Report and Future Conditions Report. A brief public comment period will take place prior to the end of the meeting, and before any voting on recommendations that takes place before the full TMAC. In addition, the TMAC members will identify and coordinate next steps of TMAC report development. The full agenda and related briefing materials will be posted for review by September 2, 2015, at *http://www.fema.gov/TMAC.*

Dated: August 19, 2015.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–20884 Filed 8–21–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4219–DR; Docket ID FEMA–2015–0002]

West Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of West Virginia (FEMA–4219–DR), dated May 14, 2015, and related determinations.

DATES: *Effective Date:* August 5, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Regis L. Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Kari Suzann Cowie as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–20885 Filed 8–21–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4230–DR; Docket ID FEMA–2015–0002]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–4230–DR), dated July 20, 2015, and related determinations.

DATES: *Effective Date:* August 10, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 20, 2015.

Harvey and Pawnee Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–20887 Filed 8–21–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4225–DR; Docket ID FEMA–2015–0002]

Nebraska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–4225–DR), dated June 25, 2015, and related determinations.

DATES: Effective Date: August 14, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 25, 2015.

Adams, Arthur, Box Butte, Clay, Dawes, Fillmore, Hamilton, Hayes, Johnson, Nemaha, Pawnee, Richardson, Seward, Sioux, Wayne and York Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–20905 Filed 8–21–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4210–DR; Docket ID FEMA–2015–0002]

West Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of West Virginia (FEMA–4210–DR), dated March 31, 2015, and related determinations.

DATES: *Effective Date:* August 5, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Regis L. Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Kari Suzann Cowie as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–20891 Filed 8–21–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4229–DR; Docket ID FEMA–2015–0002]

Colorado; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Colorado (FEMA–4229–DR), dated July 16, 2015, and related determinations.

DATES: Effective Date: August 12, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Colorado is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 16, 2015.

Adams, Boulder, Denver, and Park Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–20886 Filed 8–21–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5835–N–11]

60-Day Notice of Proposed Information Collection: Builder's Certification of Plans, Specifications and Site

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 23, 2015,

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Elissa Saunders, Director, Office of Single Family Program Development, 451 7th Street SW., Washington, DC 20410; email Ada Bohorfoush *ada.l.bohorfoush@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Saunders.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Builder's Certification of Plans, Specifications, and Site.

OMB Approval Number: 2502–0496.

Type of Request: Revision.

Form Number: HUD 92541.

Description of the need for the information and proposed use: Builders use the form to certify that the property does not have adverse conditions and is not located in a special flood hazard area. The certification is necessary so that HUD does not insure a mortgage on property that poses a risk to the health and safety of the occupant.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 38,035.

Estimated Number of Responses: 60,000.

Frequency of Response: On Occasions.

Average Hours per Response: .1.

Total Estimated Burdens: 4,500 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 13, 2015.

Janet M. Golrick,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner,

[FR Doc. 2015–20823 Filed 8–21–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5851–N–02]

Rental Assistance Demonstration (RAD)—Alternative Requirements or Waivers: Waiving the Minimum Rent and Security Deposit Requirements for the Housing Authority of Baltimore City's Specified RAD Projects

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The Rental Assistance Demonstration (RAD) statute gives HUD authority to establish waivers and alternative requirements. This notice advises that HUD is waiving, for the Housing Authority of Baltimore City (HABC), minimum rent and security deposit requirements governing project-based assistance with respect to an identified portfolio that includes projects converting assistance under RAD. These waivers are necessary to ensure that HABC can successfully operate these properties in accordance with the terms and conditions required under a consent decree from a fair housing case. Without these waivers, HABC would not be able to effectively operate the converted properties, as they have been operated under the consent decree, after their conversion under the RAD program.

DATES: *Effective Date:* September 3, 2015.

FOR FURTHER INFORMATION CONTACT: Thomas R. Davis, Director, Office of Recapitalization, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–7000; telephone number 202–708–0001 (this is not a toll-free number). Hearing- and speech-impaired persons may access these numbers through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Action

On July 2, 2013, HUD issued PIH Notice 2012–32 Rev–1 (as corrected by the technical correction issued February 6, 2014) (''RAD Notice Rev–1''), which superseded PIH Notice 2012–32. RAD Notice Rev–1 is found at the following URL: *http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-32rev1.pdf.* RAD Notice Rev–1, at section 1.9, paragraph F, entitled ''Portfolio Awards,'' also sets forth a new option of a ''portfolio award,'' which allows public housing agencies (PHAs) to apply for RAD conversions affecting a group of projects. This type of award is meant to enable PHAs to create a comprehensive revitalization plan for multiple buildings they oversee. HABC has submitted an application for a portfolio award under RAD, and seeks to convert assistance from public housing to Section 8 Project-Based Rental Assistance (PBRA). While HUD has published a second revision of the RAD Notice (PIH Notice 2012–32 Rev–2), HABC has applied for a portfolio award under the terms and conditions of RAD Notice Rev–1.

The RAD statute (Pub. L. 112–55, approved November 18, 2011, as amended) [1] gives HUD authority to waive or specify alternative requirements for various provisions of the law upon a finding that such waivers or alternative requirements are necessary for the effective conversion of assistance under RAD. In order to utilize this authority, the RAD statute requires HUD to publish by notice in the **Federal Register** any waiver or alternative requirement, no later than 10 days before the effective date of such notice. This notice meets this publication requirement.

HABC is subject to certain restrictions on their programs pursuant to *Bailey* v. *Housing Authority of Baltimore City* and subsequent extensions, amendments, and other agreements with the plaintiffs of such case and the Department of Justice (collectively referred to herein as the ''Bailey Consent Decree''). In order for the covered project to comply with the Bailey Consent Decree requirements, residents of the projects for which HABC intends to convert assistance under RAD must retain the rights, privileges, and benefits that are provided to public housing residents. The PBRA regulations relating to minimum rent and security deposit payments differ from public housing requirements. 24 CFR 5.630(a)(3) establishes a minimum rent requirement of $25 for the PBRA program. 24 CFR 880.608(a) mandates that the owner of the converted unit require each family to pay a security deposit in an amount ''equal to one month's Total Tenant Payment or $50, whichever is greater.''

Therefore, in order to continue its compliance with the Bailey Consent Decree, HABC has requested, and HUD has granted, alternative requirements to the regulations above to permit a minimum rent amount of $0 and to allow the owners of units with converted assistance the ability to require each family to pay a security deposit equal to the lesser of either one month's rent or $50. HUD has determined that the requested waivers and alternative requirements are necessary for the effective conversion of assistance under RAD of the properties contemplated under the HABC portfolio award.

Dated: August 13, 2015.

Edward L. Golding,

Principal Deputy Assistant, Secretary for Housing.

Approved on August 14, 2015.

Nani A. Coloretti,

Deputy Secretary.

[FR Doc. 2015–20826 Filed 8–21–15; 8:45 am]

BILLING CODE P

[1] The RAD statutory requirements were amended by the Consolidated Appropriations Act, 2014 (Pub. L. 113–76, signed January 17, 2014) (2014 Appropriations Act) and the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235, signed December 16, 2014) (2015 Appropriations Act). The statutory provisions of the 2012 Appropriations Act pertaining to RAD, as amended, are referred to as the RAD Statute in this notice.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N138; FXES11130000–156–FF08E00000]

Endangered and Threatened Wildlife and Plants; Recovery Plans for the Pallid Manzanita and the Baker's Larkspur

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of documents.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of final recovery plans for two plants, the pallid manzanita and the Baker's larkspur. The recovery plan for pallid manzanita includes recovery objectives and criteria, and specific actions necessary to achieve removal of the species from the Federal Lists of Endangered and Threatened Wildlife and Plants. The recovery plan for Baker's larkspur includes downlisting objectives and criteria, and specific actions necessary to reclassify the species from endangered to threatened on the Federal Lists of Endangered and Threatened Wildlife and Plants.

ADDRESSES: You may obtain copies of the recovery plans from our Web site at *http://www.fws.gov/endangered/species/recovery-plans.html.* Alternatively, you may contact the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825 (telephone 916–414–6700).

FOR FURTHER INFORMATION CONTACT: Jennifer Norris, Field Supervisor, at the above street address or telephone number (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria specified in section 4(a)(1) of the Act. The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

The purpose of a recovery plan is to provide a framework for the recovery of species so that protection under the Act is no longer necessary. A recovery plan includes scientific information about the species and provides criteria that enable us to gauge whether downlisting or delisting the species may be warranted. Furthermore, recovery plans help guide our recovery efforts by describing actions we consider necessary for each species' conservation and by estimating time and costs for implementing needed recovery measures.

Section 4(f) of the Act requires us to provide an opportunity for public review and comment prior to finalization of recovery plans, including revisions to such plans. We made the draft recovery plan for pallid manzanita available for public comment from March 3, 2014, through June 2, 2014 (79 FR 11816). We made the draft recovery plan for Baker's larkspur available for public comment from January 13, 2015, through March 16, 2015 (80 FR 1659). We did not receive comments during the public comment periods for either of the draft recovery plans.

Recovery Plan for Pallid Manzanita (*Arctostaphylos pallida*)

Species' History

We listed pallid manzanita throughout its entire range on April 22, 1998 (63 FR 19842). The species is endemic to the San Francisco East Bay, and currently consists of two naturally occurring populations and an out-planted population, totaling 1,353 mature plants. Pallid manzanita requires frequent summertime fog, and, as a component of the maritime chaparral vegetation type, it occurs on relatively cool, moist, and stable sites in close proximity to the San Francisco Bay. It is highly shade intolerant and adapted to a particular fire regime. The species requires fire for natural seed germination; however, too frequent a fire regime, one that depletes the soil seed bank before enough seeds have become deeply buried enough in the soil to withstand fire, represents a significant threat to the species. Approximately one-third of all plants occur within the backyards of homeowners, and almost all individuals occur in close proximity to human-built structures. These plants represent an extreme wildfire hazard to human-built structures, and have been targeted for removal to reduce the threat of wildfire. Finally, an incurable and virulent nonnative pathogen, *Phytophthora cinnamomi,* has been identified as killing pallid manzanita plants at two locations.

Recovery Plan Goals

The ultimate goal of this recovery plan is to recover pallid manzanita so that it can be delisted. To meet the recovery goal, the following objectives have been identified:

1. Minimize the spread of *Phytophthora cinnamomi.*
2. Treat stands infected with *Phytophthora cinnamomi.*
3. Manage native and nonnative vegetation that shades pallid manzanita.
4. Expand existing stands.
5. Establish additional stands.
6. Ensure stands are protected from incompatible uses and incompatible wildfire fuels-reduction activities.

As pallid manzanita meets reclassification and recovery criteria, we will review its status and consider it for removal from the Federal Lists of Endangered and Threatened Wildlife and Plants.

Recovery Plan for Baker's Larkspur (*Delphinium bakeri*)

Species' History

We listed Baker's larkspur throughout its entire range on January 26, 2000 (65 FR 4156). The species is endemic to Marin and Sonoma Counties, California, and is currently known from one small historical occurrence along Marshall-Petaluma Road in west Marin County. The remaining historical occurrence of Baker's larkspur occurs on decomposed shale in the mixed woodland plant community at an elevation range of 295 feet (ft) (90 meter (m)) to 672 ft (205 m) in moderately moist, shaded conditions on a shallow veneer of soil along an extensive north-facing slope. These habitat requirements limit the availability of suitable reintroduction sites with appropriate habitat conditions and compatible land use. Although habitat conversion and road maintenance were historically responsible for decreasing numbers, those threats have been curtailed. Because of the extreme range restriction of this already-narrow endemic, and its small population size, the plant is highly vulnerable to extinction from random events, including wildfire, herbivory, disease and pest outbreaks, and human disturbance.

Recovery Plan Goals

The goal of this recovery plan is to improve the status of Baker's larkspur so that it can be downlisted. Due to the current lack of information about the species' biology and habitat requirements, the magnitude of current threats, and the precarious environment where the single historical population of the species persists, we are unable to determine appropriate delisting criteria; therefore, we focus on meeting the goal of downlisting. To meet the recovery goal of downlisting, the following objectives have been identified:

1. Expand the existing populations of Baker's larkspur and establish additional self-sustaining populations of Baker's larkspur throughout its known ecological and geographical range, while preserving extant genetic diversity.

2. Ensure existing and future populations are protected from incompatible uses, such as road maintenance.

3. Reduce herbivory by slugs, snails, and gophers to the point that it does not affect the species at a population level.

As Baker's larkspur meets reclassification criteria, we will review its status and consider it for downlisting on the Federal Lists of Endangered and Threatened Wildlife and Plants.

Authority

We developed our recovery plan under the authority of section 4(f) of the Act, 16 U.S.C. 1533(f). We publish this notice under section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Polly Wheeler,

Acting Regional Director, Pacific Southwest Region.

[FR Doc. 2015–20846 Filed 8–21–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2015–N167]; [FXIA16710900000–156–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before September 23, 2015.

ADDRESSES: Brenda Tapia, U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2281; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

Endangered Species

Applicant: San Diego Zoo, San Diego, CA PRT–68861B

The applicant requests a permit to export one male yellow-footed rock wallaby (*Petrogale xanthopus xanthopus*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Wildlife Conservation Society, Bronx, NY PRT–61690B

The applicant requests a permit to export biological samples derived from captive-bred Bengal tigers (*Panthera tigris tigris*) for the purpose of scientific research.

Applicant: Jolly, William, Lafayette, GA PRT–59794B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Radiated tortoise (*Astrochelys radiata*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: U.S. Geological Survey, San Diego, CA; PRT–66618B

The applicant requests a permit to import biological samples from individual wild Fiji crested iguana (*Brachylophus vitiensis*), banded iguana (*Brachylophus bulabula*), and Fiji banded iguana (*Brachylophus fasciatus*) for scientific research purposes from National Trust of Fiji Islands, Suva, Fiji. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Utica Zoo, Utica, NY; PRT–669467

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Golden lion tamarin (*Leontopithecus rosalia*), golden-headed tamarin (*Leontopithecus chrysomelas*), cottontop tamarin (*Saguinus oedipus*), tiger (*Panthera tigris*), Lar gibbon (*Hylobates lar*), ring-tailed lemur (*Lemur catta*), Hartmann's mountain zebra (*Equus zebra hartmannae*), urial (*Ovis orientalis ophion*) white-naped crane (*Grus vipio*), and Chinese alligator (*Alligator sinensis*). This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Robert Winstead, Sandia, TX; PRT–72286B

Applicant: Jeffery Palmer, Mapleton, CO; PRT–72842B

Applicant: Andrew Wood, Chico, CA; PRT–73008B

Applicant: William Mathers, Littletown, PA; PRT–73254B

Applicant: John Justus, Lewisville, TX; PRT–68941B

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2015–20788 Filed 8–21–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD/AAKC001030/ A0A501010.999900 253G]

Renewal of Agency Information Collection for Bureau of Indian Education Collection Activities; Request for Comments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for the Tribal Colleges and Universities Application for Grants, authorized by OMB Control Number 1076–0018, and the Tribal Colleges and Universities Annual Report Form, authorized by OMB Control Number 1076–0105. Both of these information collections expire November 30, 2015.

DATES: Submit comments on or before October 23, 2015.

ADDRESSES: You may submit comments on the information collection to Juanita Mendoza, Acting Chief of Staff, Bureau of Indian Education, 1849 C Street NW., MIB—Mail Stop 4657, Washington, DC 20240; email *Juanita.Mendoza@bie.edu.*

FOR FURTHER INFORMATION CONTACT: Juanita Mendoza, (202) 208–3559.

SUPPLEMENTARY INFORMATION:

I. Abstract

Each tribally-controlled college or university requesting financial assistance under the Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended, 25 U.S.C. 1801 *et seq.* (Act) is required by 25 U.S.C. 1807(a) and 25 CFR 41.8 to provide information for the purpose of securing a grant. Similarly, each tribally-controlled college or university that receives financial assistance under the Act is required by 25 U.S.C. 1808(c)(1) and 25 CFR 41.9 to provide a report on the use of funds received.

II. Request for Comments

The BIA requests your comments on these collections concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0018.

Title: Tribal Colleges and Universities Application for Grants Form.

Brief Description of Collection: Collection of the information is mandatory under the Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended, 25 U.S.C. 1801 *et seq.,* for the respondent to receive or maintain a benefit.

Type of Review: Extension without change of a currently approved collection.

Respondents: Tribal college and university administrators.

Number of Respondents: 26 per year, on average.

Total Number of Responses: 26 per year, on average.

Frequency of Response: Annually.

Estimated Time per Response: 1 hour.

Estimated Total Annual Hour Burden: 26 hours.

Estimated Total Annual Non-Hour Dollar Cost: $0.

* * * * *

OMB Control Number: 1076–0105.

Title: Tribal Colleges and Universities Annual Report Form.

Brief Description of Collection: Collection of the information is mandatory under the Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended, 25 U.S.C. 1801 *et seq.,* for the respondent to receive or maintain a benefit.

Type of Review: Extension without change of a currently approved collection.

Respondents: Tribal college and university administrators.

Number of Respondents: 26 per year, on average.

Total Number of Responses: 26 per year, on average.

Frequency of Response: Annually.

Estimated Time per Response: 3 hours.

Estimated Total Annual Hour Burden: 78 hours.

Estimated Total Annual Non-Hour Dollar Cost: $0.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2015–20817 Filed 8–21–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON05000 L16100000.DT0000]

Notice of Availability of Record of Decision for the White River Field Office Oil and Gas Development Resource Management Plan Amendment, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) and Approved Resource Management Plan (RMP) Amendment for Oil and Gas Development in the White River Field Office (WRFO). The planning are is located in Rio Blanco, Moffat, and Garfield Counties, Colorado. The Colorado State Director signed the ROD on August 20, 2015, which

constitutes the final decision of the BLM and makes the Approved RMP Amendment effective immediately.

ADDRESSES: Copies of the ROD/Approved RMP Amendment are available upon request from the Field Manager, White River Field Office, Bureau of Land Management, 220 East Market Street, Meeker, CO 81641 or via the Internet at *http://www.blm.gov/co/st/en/fo/wrfo.html.*

FOR FURTHER INFORMATION CONTACT: Heather Sauls, Planning and Environmental Coordinator; telephone 970–878–3855; White River Field Office, 220 East Market Street, Meeker, CO 81641; email *hsauls@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The WRFO has worked with the public, interest groups, stakeholders, cooperating agencies, tribes, the Northwest Colorado Resource Advisory Council, and neighboring BLM offices for the past nine years through the oil and gas amendment development process. The result is an Approved RMP Amendment for oil and gas development that seeks to provide for a level of oil and gas development that is appropriate to the Nation's energy needs in a responsible manner of multiple use that maintains the ecological integrity of the area and important natural, cultural, social and historical values.

Included as part of the RMP Amendment is the Dinosaur Trail Master Leasing Plan (MLP), which will minimize the impacts from oil and gas exploration and development to important natural resources and areas in that portion of the planning area, including the Dinosaur National Monument, Areas of Critical Environmental Concern (ACECs), and Wilderness Study Areas (WSAs), . Impacts will be minimized by managing leasing opportunities in a phased approach and imposing controlled surface use stipulations for visual resources, night skies, and soundscapes.

While the WRFO Approved RMP Amendment for Oil and Gas Development contains some conservation management measures for Greater Sage-Grouse habitat, the Northwest Colorado BLM Greater Sage-Grouse Plan Amendment and Environmental Impact Statement (EIS) fully analyzed applicable Greater Sage-Grouse conservation measures, including measures effecting lands within the WFRO. The BLM expects to make a comprehensive set of decisions for managing Greater Sage-Grouse on lands administered by the WRFO in the Record of Decision for the Northwest Colorado Greater Sage-Grouse Plan Amendment. That decision will amend the 1997 WRFO RMP, as needed, including any of the changes made to the 1997 WRFO as part of this Approved RMP Amendment for Oil and Gas Development. In the interim, leasing in Greater Sage-Grouse habitat will continue to be deferred until a final decision has been made on the Northwest Colorado Greater Sage-Grouse Plan Amendment. The BLM initiated scoping for the RMP Amendment in 2006 and collected information and public input via public meetings in order to develop the Draft RMP Amendment/Environmental Impact Statement (EIS) in August 2012. Based on public and agency comments, the BLM developed the Proposed RMP Amendment by combining various elements of all the alternatives considered in the Draft RMP Amendment/EIS. The BLM published the Proposed RMP Amendment/Final EIS on March 27, 2015 (80 FR 16424), and made it available for a 30-day public protest period. During the protest period for the Proposed RMP Amendment/Final EIS, the BLM received 11 protest letters on a variety of issues. From those protest letters, the BLM granted in part one protest regarding the requirement in BLM's ACEC Manual that the BLM conduct a timely evaluation of ACEC nominations. As explained in the ROD, the BLM will evaluate these nominated areas to determine whether they satisfy the relevance and importance criteria consistent with BLM's planning regulations and provide temporary (interim) management for those areas found to meet the criteria. The BLM included a timeline for conducting these evaluations in the ROD. The BLM also made minor editorial modifications to the Approved RMP Amendment to provide further clarification of some of the decisions.

BLM regulations also require a 60-day Governor's Consistency Review period for the Proposed RMP Amendment/Final EIS to review consistency with approved state or local plans, policies, or programs. The Governor did not identify any inconsistencies with approved state or local plans, policies, or programs.

Management decisions outlined in the Approved RMP Amendment apply only to oil and gas exploration and development activities on BLM-administered lands in the WRFO Planning Area and do not address other resources or resource allocations, or authorize development of those resources. Approximately 1.7 million acres of Federal oil and gas mineral estate is open to leasing and would be subject to lease stipulations and other management actions developed during this planning effort (*i.e.,* BLM-leasable acres not associated with WSAs or surface estate managed by the National Park Service or U.S. Forest Service). Major decisions include adopting the Dinosaur Trail MLP; using thresholds to promote clustered development to allow for year-round drilling while reducing habitat loss due to behavioral avoidance by big game; using a tiered approach to managing lands with wilderness characteristics and identifying specific success criteria for reclamation.

The Approved RMP Amendment does not include implementation decisions that would be appealable to the Interior Board of Land Appeals under 43 CFR part 4, subpart E.

Authority: 40 CFR 1506.6.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2015–20882 Filed 8–21–15; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN03900 L17110000.DU0000.15X]

Notice of Intent To Amend the Resource Management Plan for the Headwaters Forest Reserve, California, and Prepare an Associated Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Arcata Field Office, Arcata, California, intends to prepare a Resource Management Plan (RMP) amendment with an associated Environmental Assessment (EA) for the Headwaters Forest Reserve and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues. As the Headwaters Forest Reserve is jointly managed by the BLM and the California Department of Fish and Wildlife

(CDFW), the BLM and CDFW intend to concurrently prepare a negative declaration under the California Environmental Quality Act (CEQA).

DATES: This notice initiates the public scoping process for the RMP amendment with an associated EA. Comments on issues may be submitted in writing until September 23, 2015. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media, newspapers and the BLM Web site at: *http://www.blm.gov/ca/st/en/fo/arcata/headwaters.html.* In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to the Headwaters Forest Reserve Resource Management Plan Amendment/EA by any of the following methods:

- *Email: headwaters@blm.gov.*
- *Fax:* 707–825–2301.
- *Mail:* 1695 Heindon Road, Arcata, CA 95521.

Documents pertinent to this proposal may be examined at the Arcata Field Office, 1695 Heindon Road, Arcata, CA.

FOR FURTHER INFORMATION CONTACT: Benjamin Blom, Headwaters Manager, 707–825–2300; 1695 Heindon Road, Arcata, CA 95521, *bblom@blm.gov.* Contact Mr. Blom to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339, to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Arcata Field Office, Arcata, California, intends to prepare an RMP amendment with an associated EA for the Headwaters Forest Reserve, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. As the Headwaters Forest Reserve is jointly managed by the BLM and the CDFW, the BLM and CDFW intend to concurrently prepare an EA under NEPA and a negative declaration under CEQA. The planning area is located in Humboldt County, California, and encompasses approximately 7,500 acres of public land. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the plan amendment area have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders. The issues include forest ecology, fuels, and wildlife habitat. Preliminary planning criteria are that: The plan amendment will focus exclusively on forest restoration and related programs in the Headwaters Forest Reserve; the plan amendment will be compatible with the existing plans and policies of local, State, and Federal agencies with an interest in the Headwaters Forest Reserve; the plan amendment will be consistent with the State of California Ecological Reserve Regulations; and that all proposed management actions and alternatives will consider current scientific information, research and technology, and inventory and monitoring information. You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating are invited to participate in the scoping process and, if eligible, may request or be asked by the BLM to participate in the development of the environmental analysis as a cooperating agency. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the Draft Plan Amendment/EA as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: forest ecology, wildlife biology, fire and fuels management, fish biology, geology, botany, and hydrology.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Thomas Pogacnik,

Deputy State Director.

[FR Doc. 2015–20711 Filed 8–21–15; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC 00900.L16100000.DP0000, MO#4500082592]

Notice of Public Meeting, Dakotas Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management

Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Dakotas Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Dakotas Resource Advisory Council meeting will be held on September 9, 2015 in Dickinson, North Dakota. When determined, the meeting place and time will be announced in a news release.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, Montana 59301; (406) 233–2831; *mjacobse@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–677–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior through the BLM on a variety of planning and management issues associated with public land management in North and South Dakota. At this meeting, topics will include: an Eastern Montana/Dakotas District report, North Dakota and South Dakota Field Office manager reports, Fort Meade trail work report, Lead shooting range report, Sturgis Rally briefing, individual RAC member reports and other issues the council may raise. All meetings are open to the public and the public may present written comments to the council. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as provided above.

Authority: 43 CFR 1784.4–2

Diane M. Friez,

Eastern Montana/Dakotas District Manager.

[FR Doc. 2015–20838 Filed 8–21–15; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON03000 L16100000.DR0000 15x]

Notice of Availability of the Record of Decision for the Grand Junction Field Office Approved Resource Management Plan/Final Environmental Impact Statement, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Approved Resource Management Plan (RMP) for the Grand Junction Field Office (GJFO) located in Mesa, Garfield, Montrose, and Rio Blanco counties, Colorado. The Colorado State Director signed the ROD on August 24, 2015, which constitutes the final decision of the BLM and makes the Approved RMP effective immediately.

ADDRESSES: Copies of the ROD and Approved RMP are available upon request from the Field Manager, GJFO, BLM, 2815 H Road, Grand Junction, CO 81506 or via the Internet at *http://www.blm.gov/co/st/en/fo/gjfo/rmp/rmp.html* under the ''RMP Documents'' link. Copies of the ROD and Approved RMP are available for public inspection at the GJFO (see address above) and the Mesa County libraries in Grand Junction, Collbran, De Beque, Fruita and Gateway, Colorado.

FOR FURTHER INFORMATION CONTACT: Christina Stark, Planning and Environmental Coordinator; telephone 970–244–3027; GJFO (see address above); email *cstark@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The GJFO has worked cooperatively with the public, interest groups, stakeholders, cooperating agencies, Native American tribes, the Northwest Colorado Resource Advisory Council, the Environmental Protection Agency, U.S. Forest Service, U.S. Fish and Wildlife Service, and neighboring BLM offices for the past seven years developing the approved RMP. The result is an Approved RMP that seeks to provide a balance between the protection, restoration and enhancement of natural and cultural values, while allowing resource use and development in existing or reasonable locations. Goals and objectives focus on environmental, economic and social outcomes achieved by strategically addressing demands across the landscape. Management direction is broad to accommodate a variety of values and uses. Management decisions outlined in the Approved RMP apply only to BLM-managed surface lands (approximately 1,061,400 acres) and BLM-managed Federal mineral estate (approximately 1,231,300 acres) that lies beneath BLM-managed surface lands, and lands managed by other Federal, State, and private owners, including National Forest System lands.

The Approved RMP will replace the 1987 Grand Junction Resource Area RMP. The Approved RMP outlines goals, objectives, management actions and allowable uses for resources and land uses including, but not limited to: Air, soil, water, upland and riparian vegetation, fish and wildlife, cultural and paleontological resources, visual resources, recreation, livestock grazing, energy development, minerals, forestry and realty.

The BLM initiated scoping for the RMP revision in 2008 and collected information and public input via public meetings in order to develop the Draft RMP/Environmental Impact Statement (EIS), which was published in December 2012. Based on public and agency comments, the BLM developed the Proposed RMP by combining various elements of all the alternatives considered in the Draft RMP/EIS.

The BLM published the Proposed RMP/Final EIS on April 10, 2015, and made it available for a 30-day public protest period. During the protest period for the Proposed RMP/Final EIS, the BLM received 19 protests on a variety of issues. Following the protest resolution, the BLM made minor editorial modifications to the Approved RMP to provide further clarification on some of the decisions being made. The BLM dismissed all protests.

The BLM regulations also require a 60-day Governor's Consistency Review period for the Proposed RMP/Final EIS to ensure consistency with officially approved or adopted state or local government plans, policies or programs. The Governor did not identify any inconsistencies as part of this review.

While the Approved RMP contains some conservation management measures for the Greater Sage-Grouse habitat, final decisions on how to manage Greater Sage-Grouse habitat within the GJFO administrative

boundaries will be made in the Record of Decision for the Northwest Colorado Greater Sage-Grouse Plan Amendment and EIS. The Northwest Colorado Greater Sage-Grouse Plan Amendment and EIS will fully analyze applicable Greater Sage-Grouse conservation measures, consistent with BLM Instruction Memorandum No. 2012–044. The BLM expects to make a comprehensive set of decisions for managing Greater Sage-Grouse on lands administered by the GJFO in the ROD for the Northwest Colorado Greater Sage-Grouse Plan Amendment. That decision will amend the Approved RMP. In the interim, leasing in Greater Sage-Grouse habitat will continue to be deferred until a final decision has been made on the Northwest Colorado Greater Sage-Grouse Plan Amendment.

The Approved RMP includes some implementation decisions, which are displayed and numbered as implementation decisions in the Approved RMP. Implementation decisions are generally appealable to the Interior Board of Land Appeals under 43 CFR 4.410. For example, the decisions designating routes of travel are implementation decisions and are appealable under 43 CFR part 4. The route decisions are displayed as an attachment to Appendix M of the Approved RMP. Any party adversely affected by the route designations may appeal within 30 days of publication of this Notice of Availability pursuant to 43 CFR, part 4, subpart E. The appeal should state the specific route(s), as identified in Appendix M of the Approved RMP, on which the decision is being appealed. The appeal must be filed with the Grand Junction Field Manager at the address listed above. Please consult the appropriate regulations (43 CFR, part 4, subpart E) for further appeal requirements.

Authority: 40 CFR 1506.6.

Gregory P. Shoop,

BLM Colorado Associate State Director.

[FR Doc. 2015–20706 Filed 8–21–15; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM006200 L99110000.EK0000 XXX L4053RV]

Notice of Final Action: Crude Helium Sale and Auction for Fiscal Year 2016 Delivery

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior (Secretary), through the Bureau of Land Management (BLM) New Mexico State Office, is issuing this Final Notice to conduct a sale and auction from the Federal Helium Program, administered by the BLM New Mexico Amarillo Field Office. The BLM will use the sale and auction process outlined in this Notice for the sale and auction that the Helium Stewardship Act of 2013 (HSA) requires the BLM to conduct during fiscal year (FY) 2015 for delivery in FY 2016. This action takes into consideration public comments received as a result of the Notice of Proposed Action published in the **Federal Register** on June 12, 2015.

DATES: This Notice is effective on August 24, 2015.

FOR FURTHER INFORMATION CONTACT: Robert Jolley, Amarillo Field Manager, at 806–356–1002. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. The FIRS is available 24 hours a day, 7 days a week, to leave a message. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

A. Purpose and Background

In October 2013, Congress passed the HSA (Pub. L. 113–40). The HSA requires the Department of the Interior, through the BLM Director, to offer for sale and auction annually a portion of the helium reserves owned by the United States and stored underground in the Cliffside Gas Field, near Amarillo, Texas (50 U.S.C. 167d(b)). On July 22, 2014, the BLM published a ''Final Notice for Implementation of Helium Stewardship Act Sales and Auctions'' in the **Federal Register**, (79 FR 42808) (2014 Final Notice). The 2014 Final Notice contained information about the HSA, definitions of terms used in the Notice, the reasons for the action, and a process for conducting the auctions and sales in FY 2014. The 2014 Final Notice is available at the BLM helium operations Web site at: *http://www.blm.gov/nm/helium.*

The BLM published a ''Notice of Proposed Action: Crude Helium Sale and Auction for Fiscal Year 2016 Delivery'' in the **Federal Register** on June 12, 2015 (80 FR 33548). The BLM requested comments regarding elements of the FY 2016 sale and auction. These elements included:

a. The process for arriving at the price for helium to be sold at the Phase B auction and sale, as described in section 1.01 of this Notice;

b. The format of the auction, as described in section 1.04 of this Notice;

c. Who will be allowed to purchase helium in the FY 2016 Phase B sale, as described in section 2.01 of this Notice; and

d. The process for allocating helium for the FY 2016 Phase B sale, as described in section 2.02 of this Notice.

A summary of changes made as a result of those comments is provided below:

SUMMARY OF CHANGES

Affected text	Explanation of change
Volumes Offered in the FY 2016 Helium Auction and Sale.	Added non-allocated and adjusted sale volumes.
Section 1.01	Added the additional three criteria from the statute regarding pricing.
Section 1.03	The BLM set the auction date as August 26, 2015, with auction results published on the BLM Web site on August 27, 2015; the BLM set the sale date for September 1, 2015.
Section 2.01	The BLM re-instituted the non-allocated sale.
Section 2.02	Added explanation for decision to reinstitute non-allocated sale.
Section 2.03	Added information on how FY 2016 Phase B sale will be allocated among those participating in the non-allocated sale.

B. Public Comment: Analysis of Comments and Changes

In response to the invitation in the Notice of Proposed Action, six commenters, who are refiners and non-refiners, submitted 22 comments totaling 8 pages. The BLM developed a table of comments and responses, which is available for public review at: *www.blm.gov/nm/Helium2016.* Based upon the comments received, the BLM has revised the process for the FY 2016 sale and auction.

C. Volumes Offered in the FY 2016 Helium Auction and Sale

Table 1 identifies the volumes to be offered for auction and sale in FY 2015 for FY 2016 delivery.

TABLE 1—PROJECTED VOLUMES FOR PHASE B AUCTION AND SALES FOR FY 2016 DELIVERY

Fiscal year (FY)	Forecasted production capability (NITEC Study)	In-kind sales (sales to Federal users)	Total remaining production available for sale/auction or delivery	Volume available for auction	Previously sold in FY 2014 Advanced sale	Volume available for non-allocated sale	Volume available for sale
	MMcf *	MMcf	MMcf	MMcf	MMcf	MMcf	MMcf
FY 2016 **	1,310	160	1,150	*** 300	**** 250	85	515

* MMcf means one million cubic feet of gas measured at standard conditions of 14.65 per square inch atmosphere (psia) and 60 degrees Fahrenheit.
** Delivery for FY 2016 sales and auctions will be subject to a new storage contract beginning October 1, 2015.
*** 25% of total production capacity after deducting In-Kind (rounded).
**** In accordance with the HSA, 250 MMcf of FY 2016 volumes were offered in FY 2014.

D. FY 2016 Helium Auction

1.01 What is the minimum FY 2016 Phase B auction price and the FY 2016 Phase B sales price, and how were those prices determined? The minimum FY 2016 Phase B auction price is $100 per Mcf (one thousand cubic feet of gas measured at standard conditions of 14.65 psia and 60 degrees Fahrenheit). The BLM established the minimum auction price and will calculate the FY 2016 Phase B sale price using four criteria established in the HSA, in the following priority: (A) The sale price of crude helium in auctions held by the Secretary; (B) Price recommendations and disaggregated data from a qualified, independent third party who has no conflict of interest, who shall conduct a confidential survey of qualifying domestic helium transactions; (C) The volume-weighted average price of all crude helium and pure helium purchased, sold, or processed by persons in all qualifying domestic helium transactions; and (D) The volume-weighted average cost of converting gaseous crude helium into pure helium.

The BLM will announce the FY2016 Phase B sale price after the auction has concluded and the BLM completes its analysis of the auction information. The BLM will post the crude helium price for the FY2016 Phase B sale, effective October 1, 2015.

1.02 What will happen to the helium offered but not sold in the helium auction? Any volume of helium offered, but not sold in the FY 2016 Phase B auction, will be added to the 600 MMcf available for sale and will be offered for sale in the FY 2016 Phase B sale.

1.03 When will the sale and auction take place? The BLM intends to offer helium for FY 2016 according to the following schedule:

August 26, 2015—FY 2016 Phase B helium auction held in Amarillo, Texas

August 27, 2015—FY 2016 Phase B helium auction results published on the BLM Web site

September 1, 2015—Phase B Helium Sale

September 30, 2015—Revenues from auction and sale due to the BLM

1.04 What is the auction format? The auction will be a live auction, held in the main conference room of the Amarillo Field Office at 1:00 p.m. central time, on August 26, 2015. The address is 801 South Fillmore, Suite 500, Amarillo, TX 79101. Anyone meeting the HSA definition of a qualified bidder may participate in the auction. The logistics for the auction and the pre-bid qualification form is included in a document entitled Auction Guide at *www.blm.gov/nm/helium2016.* Questions related to the auction can be submitted by phone to the BLM at 806–356–1001.

1.05 Who is qualified to purchase helium at the Phase B auction? Only qualified bidders, as defined in 50 U.S.C. 167(9), may participate in and purchase helium at the Phase B auction. The BLM will make the final determination of who is a qualified bidder using the HSA's definition of a qualified bidder, regardless of whether or not that person was previously determined to be a qualified bidder.

1.06 How many helium lots does the BLM anticipate offering at the FY 2016 Phase B auction? The BLM anticipates auctioning 300 MMcf in a total of 18 lots for FY 2016. The lots would be divided as follows:

(8) lots of 25 MMcf each;
(5) lots of 15 MMcf each; and
(5) lots of 5 MMcf each.

1.07 What must I do to bid at auction? The BLM has described the live auction procedures, including detailed bidding instructions and pre-bid registration requirements, in a document entitled FY 2016 Helium Auction Notice and Guide at *www.blm.gov/nm/helium2016.*

1.08 When will helium that is purchased at sale or won at auction be available in the purchaser's storage account? The BLM will transfer the volumes purchased in the FY 2016 Phase B auction and sale to the buyer's storage accounts beginning on the first day of the month following receipt of payment.

E. FY 2016 Phase B Helium Sale

2.01 Who will be allowed to purchase helium in the FY 2016 Phase B sale? The Phase B crude helium sale will be separated into two distinct portions, a non-allocated portion and an allocated portion. The non-allocated portion will be ten percent of the total amount offered for sale for FY2016 and will be available to those storage contract holders, as of August 31, 2015, who do not have ability to accept delivery of crude helium from the Federal Helium Pipeline (as defined in 50 U.S.C. 167(2)). The allocated portion will be ninety percent of the total amount offered for sale for FY2016 and will be available to any person (including individuals, corporations, partnerships, or other entities) with the ability to accept delivery of crude helium from the Federal Helium

Pipeline (as defined in 50 U.S.C. 167(2)).

2.02 Why did the BLM re-institute the non-allocated sale? The BLM specifically requested information regarding who will be allowed to purchase helium in the FY 2016 Phase B sale in the draft **Federal Register** notice. Based on comments received, the BLM determined that a non-allocated sale would increase participation in the Federal Helium Program and maximize the total financial return to the taxpayer.

2.03 How will helium sold in the FY2016 Phase B sale be allocated among those participating in the non-allocated sale? The non-allocated sale will be made available to all qualified entities not eligible to participate in the allocated sales. The minimum volume that can be requested is 1 MMcf. The total volume available for the non-allocated portion of the sale is 85 MMcf. Any volumes not sold at auction will be distributed between the non-allocated (10 percent) and the allocated sale (90 percent). Any volumes not purchased at the non-allocated sale will be sold in the allocated sale. A hypothetical example is provided in a document entitled ''Hypothetical example of how the FY 2016 Phase B Non-Allocated Sale would be conducted'' at *www.blm.gov/nm/helium2016.*

2.04 How will the helium sold in the FY 2016 Phase B sale be allocated among the persons to accept delivery of crude helium from the Federal Helium Pipeline? Any person desiring to participate in the allocated portion of the FY 2016 Phase B sale needs to report its excess refining capacity and operational capacity by August 14, 2015, using the Excess Refining Capacity form, which can be downloaded at *http://www.blm.gov/nm/heliumreporting*, or in a link entitled ''Required Forms for Helium Reporting'' at *www.blm.gov/nm/helium2016.* Each person participating in the sale will then be allocated a proportional share based upon that person's operational capacity. A hypothetical example is provided in a document entitled ''Hypothetical Example of how the FY 2016 Phase B Allocated Sale would be conducted'' at *www.blm.gov/nm/helium2016.*

2.05 How does a person apply for access to the Federal Helium Pipeline for the purpose of taking crude helium? The steps for taking crude helium are provided in the BLM's Helium Operations Web site in a document entitled ''How to Set Up a Storage Account and Pipeline Access'' at *http://www.blm.gov/nm/helium2016.* Reporting forms show the due dates for each report, and can be found in a document entitled ''Required Forms for Helium Reporting'' at *www.blm.gov/nm/helium2016.* The length of time required to apply for and obtain access to the Federal Helium Pipeline will vary based on the person's plans for plant construction, pipeline metering installation, and other variables. The BLM is available to provide technical assistance and information, including contact information for applying for access and information about any applicable National Environmental Policy Act requirements.

2.06 What will happen if one or more persons request an amount other than the person's share of the volume offered for either the allocated or the non-allocated sale? If one or more persons request less than their share(s), any other person(s) who request(s) more than their share(s) will be allowed to purchase the excess volume based on the proportionate shares of operational capacity of all persons requesting more than their initial shares.

2.07 What will happen if the total amount requested by persons is less than the 515 MMcf offered in the FY 2016 Phase B allocated sale? Any excess volume not sold in the FY 2016 Phase B allocated sale may be available for future sale or auction.

F. Delivery of Helium in FY 2016

3.01 When will I receive the helium that I purchase in a sale or win based on a successful auction bid? Helium purchased at the FY 2016 sale or won at the FY 2016 auction will be delivered starting October 1, 2015, in accordance with the crude helium storage contract. The intent is to ensure delivery of all helium purchased at sale or won at auction up to the BLM's production capability for the year.

3.02 How will the BLM prioritize delivery? The HSA gives priority to Federal In-Kind helium (*i.e.*, helium sold to Federal users) (50 U.S.C. 167d(b)(1)(D)) and (b)(3)). After meeting that priority, the BLM will make delivery on a reasonable basis, as described in the crude helium storage contract, to ensure storage contract holders who have purchased or won helium at auction have the opportunity during the year to have that helium produced or refined in monthly increments.

G. Background documents

Supplementary documents referenced in this Notice are available at the BLM helium operations Web site at: *http://www.blm.gov/nm/helium2016*, and include the following:

a. The HSA (50 U.S.C. 167);
b. Proposed Notice, June 22, 2015;
c. Consolidated Comment Sheet from Proposed Notice;
d. FY 2016 Helium Auction Notice and Guide;
e. Table of Projected Volumes for Sales and Auctions for Delivery for FY 2017–FY 2021 (informational);
f. Hypothetical example of how the FY 2016 Phase B Allocated Sale would be conducted (informational);
g. Hypothetical example of how the FY 2016 Phase B Non-Allocated Sale would be conducted (informational);
h. Schedule for Helium Auction and Sale;
i. How to Set Up a Storage Account and Pipeline Access;
j. 2011 Reference Helium Storage Contract (informational); and
k. Required Forms for Helium Reporting.

Authority: The HSA of 2013, Public Law 113–40, codified to various sections in 50 U.S.C. 167–167q.

Corey Grant,

Acting State Director.

[FR Doc. 2015–20861 Filed 8–19–15; 4:15 pm]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD01000 L12100000.MD0000 15XL1109AF]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council (DAC) to the Bureau of Land Management (BLM), U.S. Department of the Interior, will participate in a field tour of BLM-administered public lands on Friday, September 11, 2015 from 8:00 a.m. to 5:00 p.m. and will meet in formal session on Saturday, September 12, 2015, from 8:00 a.m. to 5:00 p.m. at the Hilton San Diego Mission Valley, 901 Camino Del Rio South, San Diego, CA 92108. Agenda for the Saturday meeting will include updates by council members, the BLM California Desert District Manager, five Field Managers, and council subgroups. The focus topic for the meeting will be the South Coast Resource Management Plan/Acquisitions. Final agendas for the Friday field trip and the Saturday public meeting will be posted on the DAC Web page at *http://www.blm.gov/ca/st/en/info/rac/dac.html* when finalized.

SUPPLEMENTARY INFORMATION: All DAC meetings are open to the public. Public

comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment is made available by the council chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the Saturday meeting is tentatively scheduled from 8:00 a.m. to 5:00 p.m., the meeting could conclude prior to 5:00 p.m. should the council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Stephen Razo, BLM California Desert District External Affairs, (951) 697–5217. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal hours.

Dated: August 11, 2015.

Teresa A. Raml,

California Desert District Manager.

[FR Doc. 2015–20836 Filed 8–21–15; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–18935; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before July 25, 2015. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 8, 2015. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 29, 2015.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Maricopa County

Cisney, George E., House, (Nineteenth-Century Residential Buildings in Phoenix MPS), 916 E. McKinley St., Phoenix, 15000567

Pima County

Catalina Foothills Estates Apartments, 2600 E. Skyline Dr., Tucson, 15000568

Tucson Community Center Historic District, 180–260 S. Church Ave., Tucson, 15000569

CALIFORNIA

Orange County

San Diego Gas and Electric San Juan Capistrano Substation, 31050 Camino Capistrano, San Juan Capistrano, 15000570

FLORIDA

Manatee County

Curry Houses Historic District, 4th Ave. E. between 12th & 14th Sts. E., Bradenton, 15000571

MARYLAND

Prince George's County

Peace Cross, Annapolis Rd. & Baltimore Ave., Bladensburg, 15000572

MISSOURI

Vernon County

Prairie View Stock Farm, Cty. Rd. WW, Rich Hill, 15000573

MONTANA

Yellowstone County

McMullen Hall, 1500 University Dr., Billings, 15000574

NORTH CAROLINA

Madison County

Mars Hill Commercial Historic District, 15 College, 2–14, 18, 24–26, 28–30, 32–34, 9, 15–25 S. Main & 10, 14, 16–20 N. Main Sts., Mars Hill, 15000575

OKLAHOMA

Adair County

KCS Railway Depot, 1 S. US 59, Stilwell, 15000577

Garfield County

Fuksa Portion of the Chisholm Trail Roadbed, Address Restricted, Bison, 15000578

Pushmataha County

Baggs, James Martin, Log Barn, W. side of Cty. Rd. N4480, Pickens, 15000579

Seminole County

Seminole Municipal Building, 401 N. Main St., Seminole, 15000580

Tulsa County

Sally Ann Apartments, 1309, 1311, 1313, 1310, 1312, 1314 S. Jackson Ave., Tulsa, 15000581

VERMONT

Washington County

Jones—Pestle Farmstead, (Agricultural Resources of Vermont MPS), 339 Bridge St., Waitsfield, 15000582

Windham County

Houghtonville Historic District, Houghtonville, Stagecoach & Cabell Rds., Grafton, 15000583

In the interest of preservation, a three day comment period has been requested for the following resource:

OHIO

Pickaway County

Circleville High School, 520 S. Court St., Circleville, 15000576

A request for removal has been made for the following resource:

ARIZONA

Maricopa County

Cisney, C. W., House, (Nineteenth-Century Residential Buildings in Phoenix MPS), 2011 W. Madison St., Phoenix, 94001527

[FR Doc. 2015–20783 Filed 8–21–15; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR02800000, 15XR0687ND, RX.18527914.2050100]

Notice To Extend the Public Comment Period for the Bay Delta Conservation Plan/California WaterFix, Sacramento, CA; Partially Recirculated Draft Environmental Impact Report/ Supplemental Draft Environmental Impact Statement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation is extending the comment period on the Bay Delta Conservation Plan/California WaterFix (BDCP/CWA), Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS). In response to public requests, the comment period is being extended for an additional 60 days.

DATES: Comments on the RDEIR/SDEIS must be received or postmarked by 5 p.m. Pacific Time on October 30, 2015.

ADDRESSES: To view or download the RDEIR/SDEIS, or for a list of locations to view hardbound copies, go to *www.baydeltaconservationplan.com.*

You may submit written comments by one of the following methods:

1. By email: Submit comments to *BDCPComments@icfi.com.*

2. By hard-copy: Submit comments by U.S. mail, to BDCP/WaterFix Comments, P.O. Box 1919, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Banonis, Bureau of Reclamation, (916) 930–5676.

SUPPLEMENTARY INFORMATION: On July 10, 2015, the Notice of Availability for this document was announced in the **Federal Register** (80 FR 39797) and the original 45-day public comment period was to close on August 31, 2015 based on when EPA announced the availability of the BDCP/CWA RDEIR/SDEIS (80 FR 42491). In response to requests from the public, the comment period is being extended for an additional 60 days. The comment period will now officially close on October 30, 2015, at 5 p.m. Pacific Time.

Background

For background information, see the July 10, 2015, **Federal Register** notice (80 FR 39797).

Public Comments

Submitting comments to the email and hard-copy addresses identified in the **ADDRESSES** section of this notice will constitute effective filing of the California Environmental Quality Act comments on the EIR portion of the RDEIR/SDEIS. The Bureau of Reclamation is furnishing this notice to allow other agencies and the public an extended opportunity to review and comment on these documents. All comments received will become part of the public record for this action.

Public Disclosure

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

Dated: *July 29, 2015.*

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 2015–20839 Filed 8–21–15; 8:45 am]

BILLING CODE 4332–90—P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–964]

Certain Windscreen Wipers and Components Thereof Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 20, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Trico Products Corporation of Rochester Hills, Michigan. Supplements to the complaint were filed on July 31, August 10, and August 17, 2015. The complaint as supplemented alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain windscreen wipers and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,836,925 (''the '925 patent'') and U.S. Patent No. 6,799,348 (''the '348 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *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*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 17, 2015, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain windscreen wipers and components thereof by reason of infringement of one or more of claims 1, 7, 8, 14, and 15 of the '925 patent and claims 1 and 10 of the '348 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Trico Products Corporation, 3255 West Hamlin Road, Rochester Hills, MI 48309.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Valeo North America, Inc., 150 Stephenson Highway, Troy, MI 48083.

Delmex de Juarez S. de R.L. de C.V., Avenida de las Torres y calle Intermex #1681, Parque Industrial Intermex, Cd. Juarez, Chihuahua 32640, Mexico.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.
Issued: August 18, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–20797 Filed 8–21–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–530 (Final)]

Supercalendered Paper From Canada; Scheduling of the Final Phase of a Countervailing Duty Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–530 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of supercalendered paper from Canada, provided for in subheading 4802.61.30 of the Harmonized Tariff Schedule of the United States preliminarily determined by the Department of Commerce to be subsidized.[1]

DATES: *Effective Date:* August 3, 2015.

FOR FURTHER INFORMATION CONTACT: Chris Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. 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.*

SUPPLEMENTARY INFORMATION:

Background. The final phase of this investigation is being scheduled, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Canada of supercalendered paper. The investigation was requested in a petition filed on February 26, 2015, by The Coalition for Fair Paper Imports which consists of Madison Paper Industries, Madison, ME and Verso Corporation, Memphis, TN.

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigation and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as supercalendered paper (''SC paper''). SC paper is uncoated paper that has undergone a calendering process in which the base sheet, made of pulp and filler (typically, but not limited to, clay, talc, or other mineral additive), is processed through a set of supercalenders, a supercalender, or a soft nip calender operation. The scope of this investigation covers all SC paper regardless of basis weight, brightness, opacity, smoothness, or grade, and whether in rolls or in sheets. Further, the scope covers all SC paper that meets the scope definition regardless of the type of pulp fiber or filler material used to produce the paper. Specifically excluded from the scope are imports of paper printed with final content of printed text or graphics.

parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on October 7, 2015, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on October 22, 2015, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 15, 2015. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on October 20, 2015, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is October 15, 2015. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 29, 2015. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before October 29, 2015. On November 10, 2015, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 13, 2015, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: August 19, 2015.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–20864 Filed 8–21–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–776–779 (Third Review)]

Preserved Mushrooms from Chile, China, India, and Indonesia; Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930, that revocation of the antidumping duty orders on preserved mushrooms from Chile, China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), instituted these reviews on March 2, 2015 (80 FR 11221) and determined on June 5, 2015 that it would conduct expedited reviews (80 FR 38464, July 6, 2015).

The Commission made these determinations pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on August 14, 2015. The views of the Commission are contained in USITC Publication 4557 (August 2015), entitled *Preserved Mushrooms from Chile, China, India, and Indonesia: Investigation Nos. 731–TA–776–779 (Third Review).*

By order of the Commission.

Issued: August 19, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–20863 Filed 8–21–15; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] All six Commissioners voted in the affirmative.

DEPARTMENT OF JUSTICE

[OMB Number 1140–0095]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Office of Human Resources and Professional Development Student and Supervisor Training Validation Surveys

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 23, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact James Scott, Chief, Talent Planning and

Analytics Branch at *James.Scott@atf.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;

• Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection 1140–0095:

1. *Type of Information Collection:* Revision of an existing collection.

2. *The Title of the Form/Collection:* Office of Human Resources and Professional Development Student and Supervisor Training Validation Surveys.

3. *The 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: State, Local, or Tribal Government.

Other: Federal Government.

Abstract: Collection of this information will help ATF determine whether the training program is consistently meeting objectives and impacting the performance of the individuals in their work place.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 100 respondents will take 10 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 17 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: August 18, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–20765 Filed 8–21–15; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0052]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Strategic Planning Environmental Assessment Outreach

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 23, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jacqueline Pitts, Office of Strategic Management, 99 New York Avenue NE., Washington, DC 20226.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection 1140–0052

1. *Type of Information Collection:* Extension of an existing collection without change.

2. *The Title of the Form/Collection:* Strategic Planning Environmental Assessment Outreach.

3. *The 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: Not-for-profit institutions, Federal Government, State, Local, or Tribal Government.

Abstract: The Office of Strategic Management at ATF will use the information to help identify and validate the agency's internal strengths and weaknesses.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,500 respondents will take 18 minutes to complete the questionnaire.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 450 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: August 18, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–20763 Filed 8–21–15; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0329]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection: Office of Justice Programs Solicitation Template

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Office for Victims of Crime, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 23, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Maria Swineford, (202) 616–0109, Office of Audit, Assessment, and Management, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531 or *maria.swineford@usdoj.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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Office of Justice Programs Solicitation Template.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* N/A. Office of Audit, Assessment, and Management.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The primary respondents are state agencies, tribal governments, local governments, colleges and universities, non-profit organizations, for-profit organizations, and faith-based organizations. The purpose of the solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes requirements for eligibility; instructs an applicant on the necessary components of an application under a specific program (*e.g.,* project activities, project abstract, project timeline, proposed budget, etc.); outlines program evaluation and performance measures; explains selection criteria and the review process; and provides registration dates, deadlines, and instructions on how to apply within the designated application system.

This collection is also incorporating the previously approved collection for the OJP (1121–0021 Capability Questionnaire) retitled Financial Management and system of internal controls questionnaire.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that information will be collected annually from approximately 18,604 applicants. Annual cost to the respondents is based on the number of hours involved in preparing and submitting a complete application package.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this application is 349,288 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: August 19, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–20866 Filed 8–21–15; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0074]

Agency Information Collection Activities; Proposed eCollection eComments Requested; List of Responsible Persons

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 23, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christopher Reeves, Chief, Federal Explosives Licensing Center at *Christopher.R.Reeves@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection 1140–0074:

1. *Type of Information Collection:* Extension of an existing collection without change.

2. *The Title of the Form/Collection:* List of Responsible Persons.

3. *The 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: Individuals or households.

Other: Business or other for-profit.

Abstract: All persons holding ATF explosives licenses or permits must report any change in responsible persons or employees authorized to possess explosive materials to ATF. Such report must be submitted within 30 days of the change and must include appropriate identifying information for each responsible person.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 50,000 respondents will take 1 hour twice a year to complete the report.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 100,000 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: August 18, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–20764 Filed 8–21–15; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0097]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Supplemental Information on Water Quality Considerations

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 23, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christopher Reeves, Chief, Federal Explosives Licensing Center at *FELC@atf.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;

• Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection 1140–0097

1. *Type of Information Collection:* Extension of an existing collection without change.

2. *The Title of the Form/Collection:* Supplemental Information on Water Quality Considerations.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 5000.30.

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: ATF collects this data for the purpose of identifying waste product(s) generated as a result of explosives operations, the disposal of the products into navigable waters, and if there is any adverse impact on the environment. The information may be disclosed to other Federal, State, and local law enforcement and regulatory personnel to verify information on the form and to aid in the enforcement of environmental laws.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 680 respondents will take 30 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 340 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: August 18, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–20766 Filed 8–21–15; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11696]

Notice of Proposed Exemption Involving Deutsche Bank AG (Deutsche Bank or the Applicant); Located in Frankfurt, Germany

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed temporary exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed temporary individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code of 1986, as amended (the Code). The proposed exemption, if granted, would affect the ability of certain entities with specified relationships to Deutsche Bank to continue to rely upon the relief provided by Prohibited Transaction Class Exemption 84–14.

DATES: *Effective Date:* If granted, this proposed exemption will be effective for a period of nine months, beginning on the date (the Conviction Date) that a judgment of conviction against Deutsche Securities Korea Co. (Deutsche Securities Korea Co. or DSK) is entered in Seoul Central District Court, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation.

DATES: Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department within seven days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. A request for a hearing can be requested by any interested person who may be adversely affected by an exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

All written comments and requests for a public hearing concerning the proposed exemption should be directed to the following addresses: Office of Exemption Determinations, Employee Benefits Security Administration, Suite 400, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Application No. D–11696. Interested persons may also submit comments and/or hearing requests to EBSA via email to *moffitt.betty@dol.gov,* by FAX to (202) 219–0204, or online through *http://www.regulations.gov.* Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW., Washington, DC 20210.

Warning: All comments received will be included in the public record 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 or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA 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 record and made available on the Internet.

FOR FURTHER INFORMATION CONTACT: Scott Ness, telephone (202) 693–8561, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: If this proposed exemption is granted, the Department will require certain asset managers with specified relationships to Deutsche Bank to satisfy additional conditions designed to protect affected ERISA-covered plans and IRAs in order to rely on the relief provided by Prohibited Transaction Class Exemption 84–14 (49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010)), in light of a judgment of conviction, in Seoul Central District Court, against Deutsche Securities Korea Co. on September 3, 2015, for spot/futures-linked market price manipulation. The proposed exemption has been requested by Deutsche Bank pursuant to section 408(a) of the ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 672 (2006), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. Accordingly, this notice of proposed exemption is being issued solely by the Department.

The Department is proposing this temporary exemption to protect plans that are managed by asset managers affiliated with DSK (the DB QPAMs), from incurring the costs and expenses that would likely arise if such managers are unable to rely on the relief provided by PTE 84–14 as of the Conviction Date, which is expected to be September 3, 2015. In this regard, Section I(g) of PTE 84–14 precludes a person who may otherwise meet the definition of a QPAM from relying on the relief

provided by that class exemption if that person or its ''affiliate'' has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described therein. This exemption, if granted, preserves the ability of DB QPAMs to continue to rely on the relief provided by PTE 84–14, notwithstanding a criminal conviction of DSK for market manipulation, for a period of nine months beginning on the Conviction Date, as long as the conditions herein are met.

Following Deutsche Bank's submission of Exemption Application D–11696, which is the subject of this proposed exemption (the First Request), Deutsche Bank made a separate exemption request, in Exemption Application D–11856 (the Second Request). The Second Request seeks exemptive relief for DB QPAMs to continue to rely on PTE 84–14 for a period of ten years, notwithstanding both: The criminal conviction of DSK for market manipulation; and the criminal conviction of a Deutsche Bank affiliate, DB Group Services UK Limited, for one count of wire fraud in connection with its alleged role in manipulating LIBOR.

The Department has tentatively denied the Second Request, upon initially determining that the exemption sought is not in the interest of affected plans and IRAs, and not protective of those plans and IRAs. Fiduciaries of plans and IRAs with assets managed by a DB QPAM should be aware that if the Department makes a final decision not to propose the Second Request, the DB QPAMs will be unable to rely on the relief set forth in PTE 84–14 upon the earlier of the day that follows the nine month term of this exemption, if granted, or the date any of the conditions herein are not met. The Department notes that Deutsche Bank has requested a conference to afford Deutsche Bank the opportunity to provide additional information in connection with its request. The Department notes further that the Department may change its position based on this additional information, or upon additional analysis. This temporary exemption, if granted, requires, among other things, that each DB QPAM agree not to restrict the ability of each ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM, with certain limited exceptions.

Summary of Facts and Representations

Background

1. Deutsche Bank AG (together with its current and future affiliates, Deutsche Bank or the Applicant) is a German banking corporation and a commercial bank. Deutsche Bank, with and through its affiliates, subsidiaries, and branches, provides globally a wide range of banking, fiduciary, recordkeeping, custodial, brokerage and investment services to, among others, corporations, institutions, governments, employee benefit plans, government retirement plans and private investors. Deutsche Bank had €68.4 billion in total shareholders' equity and €1,709 billion in total assets as of December 31, 2014.[1]

2. Deutsche Securities Korea Co. (DSK), an indirect wholly-owned subsidiary of Deutsche Bank, is a broker-dealer organized in Korea and supervised by the Financial Supervisory Service in Korea. The Absolute Strategy Group (ASG) of Deutsche Bank's Hong Kong Branch (DB HK) conducts index arbitrage trading for proprietary accounts in Asian markets, including Korea.

The Applicant represents that index arbitrage trading is a trading strategy through which an investor such as Deutsche Bank seeks to earn a return by identifying and exploiting a difference between the value of futures contracts in respect of a relevant equity index and the spot value of the index, as determined by the current market price of the constituent stocks. For instance, where the futures contracts are deemed to be overpriced by reference to the spot value of the index (*i.e.,* if the premium is sufficiently large), then the trader may take a long position in the physical stock and a corresponding short position in the futures or options. The combined position is described as hedged. Since the trader has a long position in one market and a short position in the other market, the profit from one (stocks) will be offset by the loss in the other (futures). The trader is largely indifferent to market direction.

The Applicant represents that ASG pursued an index arbitrage trading strategy in various Asian markets, including Korea. In Korea, the index arbitrage position involved the Korean Composite Stock Price Index (KOSPI 200 Index), which reflects stocks commonly traded on the Korea Exchange (KRX).

3. On November 11, 2010, ASG unwound an arbitrage position on the KOSPI 200 Index through DSK. The ''unwind'' included a sale of $2.1 billion worth of stocks in the KRX during the final 10 minutes of trading (*i.e.,* the closing auction period) and comprised 88% of the volume of stock traded during this period. This large volume sale contributed to a drop of the KOSPI 200 Index by 2.7%.

Prior to the unwinding, but after the decision to unwind was made, ASG had taken certain derivative positions, including put options on the KOSPI 200 Index. Thus, ASG earned a profit when the KOSPI 200 Index declined as a result of the unwind trades (the derivative positions and unwind trades cumulatively referred to as the Trades). DSK had also purchased put options on that day that resulted in it earning a profit as a result of the drop of the KOSPI 200 Index. The aggregate amount of profit earned from such Trades was approximately $40 million, which, as discussed below, Deutsche Bank subsequently disgorged.

4. The Seoul Central District Prosecutor's Office (the Korean Prosecutors) alleges that the Trades constitute spot/futures-linked market manipulation, a criminal violation under Korean securities law. In this regard, the Korean Prosecutors allege that ASG unwound its cash position of certain securities listed on the KRX(spot) through DSK, and caused a fluctuation in the market price of securities related to exchange-traded derivatives (the put options) for the purpose of gaining unfair profit from such exchange-traded derivatives. On August 19, 2011, the Korean Prosecutors indicted DSK and four individuals on charges of stock market manipulation to gain unfair profits.[2] Two of the individuals, Derek Ong and Bertrand Dattas, worked for ASG at DB HK. Mr. Ong was a Managing Director and head of ASG, with power and authority with respect to the KOSPI 200 Index arbitrage trading conducted by Deutsche Bank. Mr. Dattas served as a Director of ASG and was responsible for the direct operations of the KOSPI 200 Index arbitrage trading. Philip Lonergan, the third individual, was employed by Deutsche Bank Services (Jersey) Limited. At the time of the transaction, Mr. Lonergan was seconded to DB HK and served as Head of Global Market Equity, Trading and Risk. Mr. Lonergan served as Mr. Ong's regional superior and was in charge of risk management

[1] The Applicant represents that its audited financial statements are expressed in Euros and are not converted to dollars.

[2] Specifically, the charges allege that DSK violated certain provisions of Articles 176, 443, and 448 of the Financial Investment Services and Capital Markets Act (FSCMA) and the individuals violated certain provisions of Articles 176, 443, and 447 of the FSCMA.

for his team. The fourth individual charged, Do-Joon Park, was employed by DSK, serving as a Managing Director of Global Equity Derivatives (GED) at DSK and was in charge of the index arbitrage trading using DSK's book that had been integrated into and managed by ASG. Mr. Park was also a de facto chief officer of equity and derivative product operations of DSK.

The Korean Prosecutors' case against DSK is based on Korea's criminal vicarious liability provision, under which DSK may be held vicariously liable for an act of its employee (*i.e.,* Mr. Park) if it failed to exercise due care in the appointment and supervision of its employees.[3] The trial commenced proceedings in January 2012 in Seoul Central District Court (the Court), and a guilty verdict is expected to occur on September 3, 2015.[4] In this regard, it is expected that, on that date, the Court will enter its judgment against the defendants, thereby convicting DSK of such crimes (the Conviction).

Failure To Comply With Section I(g) of PTE 84–14 and Proposed Relief

5. PTE 84–14 is a class exemption that permits certain transactions between a party in interest with respect to an employee benefit plan and an investment fund in which the plan has an interest and which is managed by a ''qualified professional asset manager'' (QPAM), if the conditions of the exemption are satisfied. These conditions include Section I(g), which precludes a person who may otherwise meet the definition of a QPAM from relying on the relief provided by PTE 84–14 if that person or its ''affiliate'' [5] has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described therein.[6] As noted in the preamble to the proposed class exemption, a QPAM, and those who may be in a position to influence its policies, are expected to maintain a high standard of integrity.[7]

6. The Applicant represents that certain current and future ''affiliates'' of DSK, as that term is defined in section VI(d) of PTE 84–14, may act as QPAMs in reliance on the relief provided in PTE 84–14 (these entities are collectively referred to as the ''DB QPAMs''). The DB QPAMs are currently comprised of several wholly-owned direct and indirect subsidiaries of Deutsche Bank including: (1) Deutsche Investment Management Americas, Inc.; (2) Deutsche Bank Securities Inc., which is a dual-registrant with the SEC under the Advisers Act as an investment adviser and broker-dealer; (3) RREEF America L.L.C., a Delaware limited liability company and investment adviser registered with the SEC under the Advisers Act; (4) Deutsche Bank Trust Company Americas, a corporation organized under the laws of the State of New York and supervised by the New York State Department of Financial Services, a member of the Federal Reserve and an FDIC-insured bank; (5) Deutsche Bank National Trust Company, a national banking association, organized under the laws of the United States and supervised by the Office of the Comptroller of the Currency, and a member of the Federal Reserve; (6) Deutsche Bank Trust Company, NA, a national banking association, organized under the laws of the United States and supervised by the OCC; (7) Deutsche Alternative Asset Management (Global) Limited, a London-based investment adviser registered with the SEC under the Advisers Act; (8) Deutsche Investments Australia Limited, a Sydney, Australia-based investment adviser registered with the SEC under the Advisers Act; (9) DeAWM Trust Company (DTC), a limited purpose trust company organized under the laws of New Hampshire and subject to supervision of the New Hampshire Banking Department; and the four following entities which currently do not rely on PTE 84–14 for the management of any ERISA plan or IRA assets, but may in the future: (10) Deutsche Asset Management (Hong Kong) Ltd.; (11) Deutsche Asset Management International GmbH; (12) DB Investment Managers, Inc.; and (13) Deutsche Bank AG, New York Branch.

Deutsche Bank notes that discretionary asset management services are provided to ERISA plans, IRAs and others under the following Asset & Wealth Management business lines, each of which may be served by one or more of the DB QPAMs: (1) Wealth Management—Private Client Services ($104.7 million in ERISA assets, and $469.7 million in IRA assets); (2) Wealth Management—Private Bank ($67.6 million in ERISA assets, $153.1 million in IRA assets and $2 million in ERISA-like assets); (3) Active Management ($271.4 million in ERISA assets); (4) Alternative and Real Assets ($757.9 million in ERISA assets); (5) Alternatives & Fund Solutions (no current ERISA or IRA assets); and (6) Passive Management (no current ERISA or IRA assets). In addition, according to Deutsche Bank, the Alternatives and Real Assets business manages, on a discretionary basis, $6.2 billion in governmental plan assets, most of which are contractually subject to ERISA standards. Finally, DTC manages the DWS Stock Index Fund, a collective investment trust with $192 million in assets as of March 31, 2015. The Applicant represents that none of the DB QPAMs are subsidiaries of DSK, and that, with the exception of Deutsche Bank AG (the corporate parent to all the aforementioned entities), DSK is not a subsidiary of any of the DB QPAMs.

7. Pursuant to Section I(g) of PTE 84–14, to the extent the Conviction occurs on September 3, 2015, as expected, the DB QPAMs will no longer be able to rely on PTE 84–14 as of that date. Therefore, the Applicant has requested an exemption to enable the DB QPAMs to continue to rely on the exemptive relief provided by PTE 84–14, notwithstanding the Conviction and its resultant failure to satisfy Section I(g) of PTE 84–14.[8]

Remedial Measures To Address Criminal Conduct of DSK

8. The Applicant represents that it has voluntarily disgorged its profits generated from exercising derivative positions and put options in connection with the activity associated with the impending Conviction. DSK also suspended its proprietary trading from April 2011 to 2012, and thereafter DSK could only engage in some proprietary trading (but not index arbitrage

[3] Article 448 of the FSCMA allows for charges against an employer stemming from vicarious liability for the actions of its employees.

[4] The Applicant notes that the hearing during which the guilty verdict is expected to occur is scheduled for September 4, 2015 in Korea, but because of time zone differences, the hearing will be on September 3, 2015 in United States time zones.

[5] Section VI(d) of PTE 84–14 defines the term ''affiliate'' for purposes of Section I(g) as ''(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who- (A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.''

[6] For purposes of Section I(g) of PTE 84–14, a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether that judgment stands on appeal.

[7] See 47 FR 56945 at 56946.

[8] The Applicant represents that there is an ongoing regulatory investigation into the matter in Hong Kong, but the Applicant is not aware of any indication that this investigation is leading to potential criminal indictments in Hong Kong.

trading).[9] Further, in response to the actions of the Korean Prosecutors, Deutsche Bank enhanced its compliance measures and implemented additional measures in order to ensure compliance with applicable laws in Korea and Hong Kong, as well as within other jurisdictions where the Applicant conducts business.

The Applicant states further that Mr. Ong and Mr. Dattas were terminated for cause by DB HK on December 6, 2011, and Mr. Lonergan was terminated on January 31, 2012. John Ripley, a New York-based employee of Deutsche Bank Securities Inc. who was not indicted, was also terminated in October 2011.[10] In addition, Mr. Park was suspended for six months due to Korean administrative sanctions, and remains on indefinite administrative leave. As discussed below, this proposed exemption, if granted, is only available to the extent that no individual involved with the spot/futures-linked market manipulation activities that led to the Conviction is employed by a DB QPAM.

Statutory Findings—In the Interests of Affected Plans and IRAs

9. Deutsche Bank states that, in the absence of exemptive relief, affected ERISA-covered Plans and IRAs may incur substantial harm, because such Plans and IRAs will immediately lose their ability to use their chosen investment managers for transactions otherwise covered by PTE 84–14. In this regard, according to Deutsche Bank, Plans and IRAs would incur costs in searching for new managers, issuing requests for proposals (for which consultants could charge between $15,000 and $40,000 for the strategies offered by the DB QPAMs), conducting due diligence (including meetings with potential managers and credit analysts), seeking investment committee approvals and negotiating and/or drafting new investment management agreements, investment guidelines and related trading documentation with broker-dealers and other counterparties. Deutsche Bank suggests that the selection of new managers could potentially take several months or longer, resulting in a number of collateral costs including the opportunity costs of missed investments, lower returns from investing in cash pending long term reinvestment, fewer trading counterparties and more limited or costly temporary investment alternatives.

Deutsche Bank represents that ERISA plans and IRAs would also incur direct transaction costs in liquidating and reinvesting their portfolios, ranging from 2.5 to 25 basis points (excluding core real estate), resulting in approximately $5 to $7 million in expenses. Further, the Applicant states that an unplanned liquidation of the Alternatives and Real Assets business' direct real estate portfolios may result in portfolio discounts of 10–20% of gross asset value, along with 30 to 100 basis points in direct transaction costs, resulting in an estimated total cost to plan investors of between $281 million and $723 million, depending on the liquidation period.

Upon considering Deutsche Bank's representations, the Department has tentatively determined that the proposed exemption is in the interest of affected plans and IRAs.

Statutory Findings—Protective of the Rights of Participants of Affected Plans and IRAs

10. The Department has also tentatively determined that the proposed exemption contains safeguards that are sufficient to protect affected plans and IRAs. Many of these conditions are directed at the DB QPAMs; however, additional conditions are imposed on Deutsche Bank, and others are directed at DSK. Regarding the conditions in this exemption aimed at the DB QPAMs, each DB QPAM must immediately develop, implement, maintain, and follow robust written policies (the Policies) and training requirements (the Training). The Policies, which are described in more detail in the operative language of the proposed exemption below, are generally designed to, among other things: ensure the independence of the DB QPAMs from Deutsche Bank and its other affiliates such as DSK; require the strict legal compliance of the DB QPAMs with ERISA, the Code and the prohibited transaction rules; ensure truthfulness and transparency with respect to statements made by DB QPAMs to regulators; and ensure compliance with the terms of this exemption, if granted. The Training, which is also described in more detail in the operative language of the proposed exemption below, is designed to cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions of this exemption, and prompt reporting of wrongdoing.

In order to verify the DB QPAMs' compliance with the Policies and Training requirements of the proposed exemption, and the conditions for relief, each DB QPAM will be subject to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of, and compliance with, the Policies and Training, and the conditions for relief described herein. Furthermore, to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, each DB QPAM and, if applicable, Deutsche Bank, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems, business records, transactional data, workplace locations, training materials, and personnel. The auditor's engagement shall specifically require the auditor to determine whether each DB QPAM has developed, implemented, maintained, and followed Policies in accordance with the conditions of this exemption and developed and implemented the Training, as required herein, and it shall specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training.

Furthermore, for each audit, the auditor shall issue a written report (the Audit Report) to Deutsche Bank and the DB QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report shall include the auditor's specific determinations regarding: The adequacy of, and compliance with, the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of the respective DB QPAM's noncompliance with the written Policies and Training described above. Furthermore, any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective DB QPAM shall be promptly addressed by such DB QPAM, and any actions taken by such DB QPAM to address such recommendations shall be included in an addendum to the Audit Report. The auditor is required to notify the

[9] The Applicant notes that DSK was never permitted to trade on behalf of Deutsche Bank.

[10] According to the Korean prosecutors, Mr. Ripley served as a Head of Global ASG of Deutsche Bank, AG, and was a functional superior to Mr. Ong. Mr. Ripley was suspected of having advised to unwind all the KOSPI 200 index arbitrage trading for the purpose of management of the ending profits and losses of Global ASK and approved Mr. Ong's request to establish the speculative positions in the course of the unwinding. Though the Korean prosecutors named Mr. Ripley as a suspect, he was not named in the August 19, 2011, Writ of Indictment.

respective DB QPAM of any instances of noncompliance identified by the auditor. The General Counsel or one of the three most senior executive officers of the DB QPAM to which the Audit Report applies must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; addressed, corrected, or remedied any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Moreover, an executive officer of Deutsche Bank must review the Audit Report for each DB QPAM and certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.

The DB QPAMs are required to give the Department copies of the Audit Report, any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, if granted, and any engagement agreement entered into with any other entities retained in connection with such QPAM's compliance with the Training or Policies conditions of this exemption, no later than three (3) months after the date of the Conviction (and one month after the execution of any agreement thereafter). Furthermore, the DB QPAMs are required to give the Department copies of the auditor's workpapers upon request. In addition, Deutsche Bank must notify the Department at least 30 days prior to any substitution of the auditor, and must demonstrate to the Department's satisfaction that the replacement auditor is independent of Deutsche Bank, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption.

Under the terms of the exemption, if granted, the DB QPAMs must also agree to certain terms and undertakings with each ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, including, generally: (1) Compliance with ERISA and the Code and avoidance of non-exempt prohibited transactions; (2) not to waive, limit, or qualify certain liabilities of the DB QPAM; (3) not to require indemnification of the DB QPAM for violating ERISA or engaging in prohibited transactions; and (4) with minor exceptions, not to restrict the ability of ERISA-covered plan or IRA clients to terminate or withdraw from their arrangement with the DB QPAM or, to impose any fees, penalties, or charges for such termination or withdrawal. Each DB QPAM will provide a notice describing the above-described terms and undertakings to each such ERISA-covered plan or IRA within two (2) months of the date of publication of a notice of exemption in the **Federal Register**, if granted.

Under the terms of this proposed exemption, each DB QPAM must: Maintain records necessary to demonstrate that the conditions herein have been met, for six (6) years following the date of any transaction for which such DB QPAM relies upon the relief in the exemption, if granted; comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) that is attributable to the Conviction; ensure that none of the individuals that engaged in the conduct that led to the Conviction are employed by the DB QPAM; and provide a notice of the proposed exemption, and if granted, a notice of final exemption, along with a separate summary (which has been submitted to the Department) describing the facts that led to the Conviction, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84–14 to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a DB QPAM, or the sponsor of an investment fund in any case where a DB QPAM acts only as a sub-advisor to the investment fund.

Lastly, regarding the DB QPAMs, relief under this exemption, if granted, is only available to the extent: Such QPAMs, including their officers, directors, agents other than Deutsche Bank, and employees, did not know of, have reason to know of, or participate in the criminal conduct of DSK that is the subject of the Conviction; any failure of those QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction; such QPAMs did not directly receive compensation in connection with, the criminal conduct that is the subject of the Conviction; and none of those QPAMs used its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA and managed by such DB QPAM to enter into any transaction with DSK, or engage DSK to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption. However, a DB QPAM will not fail to meet the terms of this exemption solely because a different DB QPAM fails to satisfy the conditions for relief under this exemption described in Sections I(d), (e), (f), (g), (h), and (k).

Regarding conditions herein directed at Deutsche Bank, prior to engaging in a transaction covered by this exemption, if granted, Deutsche Bank must have previously disgorged all of its profits generated from exercising derivative positions and put options in connection with the activity associated with the impending Conviction. Deutsche Bank must also impose internal procedures, controls, and protocols on DSK designed to reduce the likelihood of any recurrence of the conduct that is the subject of the Conviction, to the extent permitted by local law.

Regarding conditions herein aimed at DSK, DSK may not provide fiduciary services to ERISA-covered Plans or IRAs, or otherwise exercise discretionary control over plan assets. Further, none of the DB QPAMs may be subsidiaries of DSK, and DSK may not be a subsidiary of any of the DB QPAMs. Finally, the criminal conduct of DSK that is the subject of the Conviction must not have directly or indirectly involved the assets of any plan subject to Part 4 of Title I of ERISA or section 4975 of the Code.

Statutory Findings—Administratively Feasible

11. The Applicant represents that the proposed exemption is administratively feasible. The Applicant represents that the requested exemption does not require the Department's oversight of the Conviction described herein because DSK does not provide any fiduciary or QPAM services to ERISA-covered plans and IRAs and that no ERISA or IRA assets were involved in the Conviction.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within two days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner agreed upon by the Applicant and the Department. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within seven days of the

publication of the notice of proposed exemption in the **Federal Register**.

All comments will be made available to the public. *Warning:* If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the ERISA, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the ERISA; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the ERISA and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of the exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[11]

Section I: Covered Transactions

If the proposed exemption is granted, the DB QPAMs (as defined in Section (II(b)) shall not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption (PTE) 84–14,[12] notwithstanding the Conviction (as defined in Section II(a)),[13] provided that the following conditions are satisfied:

(a) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK that is the subject of the Conviction;

(b) Any failure of the DB QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(c) The DB QPAMs did not directly receive compensation in connection with, the criminal conduct that is the subject of the Conviction;

(d) A DB QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA and managed by such DB QPAM to enter into any transaction with DSK or engage DSK to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e)(1) Each DB QPAM immediately develops, implements, maintains, and follows written policies (the Policies) requiring and reasonably designed to ensure that: (i) The asset management decisions of the DB QPAM are conducted independently of Deutsche Bank's management and business activities; (ii) the DB QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (iii) the DB QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iv) any filings or statements made by the DB QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; (v) the DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; (vi) the DB QPAM complies with the terms of this exemption, if granted; and (vii) any violations of or failure to comply with items (ii) through (vi) are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant DB QPAM (or their functional equivalent), the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of Deutsche Bank; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of Deutsche Bank or beneficially owned by an employee of Deutsche Bank or its affiliates, such fiduciary does not need to be independent of Deutsche Bank; DB QPAMs will not be treated as having

[11] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[12] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[13] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including income tax evasion and conspiracy or attempt to commit income tax evasion.

failed to develop, implement, maintain, or follow the Policies, provided that they correct any instances of noncompliance promptly when discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that they adhere to the reporting requirements set forth in this item (vii);

(2) Each DB QPAM immediately develops and implements a program of training (the Training), conducted at least annually for relevant DB QPAM asset management, legal, compliance, and internal audit personnel; the Training shall be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this exemption, (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing;

(f)(1) Each DB QPAM submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of, and compliance with, the Policies and Training described herein; the audit requirement must be incorporated in the Policies. The audit must cover the 9 month period during which this proposed exemption, if granted, is effective, and must be completed no later than three (3) months after the period to which the audit applies;

(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each DB QPAM and, if applicable, Deutsche Bank, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems, business records, transactional data, workplace locations, training materials, and personnel;

(3) The auditor's engagement shall specifically require the auditor to determine whether each DB QPAM has developed, implemented, maintained, and followed Policies in accordance with the conditions of this exemption and developed and implemented the Training, as required herein;

(4) The auditor's engagement shall specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training;

(5) For each audit, the auditor shall issue a written report (the Audit Report) to Deutsche Bank and the DB QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report shall include the auditor's specific determinations regarding the adequacy of, and compliance with, the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of the respective DB QPAM's noncompliance with the written Policies and Training described in paragraph (e) above. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective DB QPAM shall be promptly addressed by such DB QPAM, and any actions taken by such DB QPAM to address such recommendations shall be included in an addendum to the Audit Report. Any determinations by the auditor that the respective DB QPAM has implemented, maintained, and followed sufficient Policies and Training shall not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the DB QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the DB QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption, and not solely on evidence that demonstrates that the DB QPAM has not violated ERISA;

(6) The auditor shall notify the respective DB QPAM of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel or one of the three most senior executive officers of the DB QPAM to which the Audit Report applies certifies in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; addressed, corrected, or remedied any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) An executive officer of Deutsche Bank reviews the Audit Report for each DB QPAM and certifies in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each DB QPAM provides its certified Audit Report to the Department's Office of Exemption Determinations (OED), 200 Constitution Avenue NW., Suite 400, Washington DC 20210, no later than 30 days following its completion, and each DB QPAM makes its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such DB QPAM;

(10) Each DB QPAM and the auditor will submit to OED (A) any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, and (B) any engagement agreement entered into with any other entities retained in connection with such QPAM's compliance with the Training or Policies conditions of this exemption, no later than three (3) months after the date of the Conviction (and one month after the execution of any agreement thereafter);

(11) The auditor shall provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: The audit plan, audit testing, identification of any instances of noncompliance by the relevant DB QPAM, and an explanation of any corrective or remedial actions taken by the applicable DB QPAM; and

(12) Deutsche Bank must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until Deutsche Bank demonstrates to the Department's satisfaction that such new auditor is independent of Deutsche Bank, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption;

(g) With respect to each ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees: (1) To comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions that are not otherwise exempt; (2) not to waive, limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the DB QPAM for violating ERISA or engaging in prohibited transactions, except for

violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such restrictions are applied consistently and in like manner to all such investors; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Within two (2) months of the date of publication of a notice of exemption in the **Federal Register**, if granted, each DB QPAM will provide a notice to such effect to each ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services;

(h) Each DB QPAM will maintain records necessary to demonstrate that the conditions of this exemption, if granted, have been met, for six (6) years following the date of any transaction for which such DB QPAM relies upon the relief in the exemption; and

(i) The DB QPAMs comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) that is attributable to the Conviction;

(j) The DB QPAMs will not employ any of the individuals that engaged in the spot/futures-linked market manipulation activities that led to the Conviction;

(k) The DB QPAMs will provide a notice of the proposed exemption, and if granted, a notice of final exemption, along with a separate summary describing the facts that led to the Conviction as well as a statement that Deutsche Bank has made a separate exemption request, in application D–11856, in connection with the potential conviction of DB Group Services UK Limited for one count of wire fraud in connection with DB Group Services UK Limited's role in manipulating LIBOR, which has been submitted to the Department, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84–14 to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a DB QPAM, or the sponsor of an investment fund in any case where a DB QPAM acts only as a sub-advisor to the investment fund;

(l) Deutsche Bank disgorged all of its profits generated by the spot/futures-linked market manipulation activities of DSK personnel that led to the Conviction;

(m) Deutsche Bank imposes internal procedures, controls, and protocols on DSK designed to reduce the likelihood of any recurrence of the conduct that is the subject of the Conviction, to the extent permitted by local law;

(n) DSK has not, and will not, provide fiduciary or QPAM services to ERISA-covered Plans or IRAs, and will not otherwise exercise discretionary control over plan assets;

(o) No DB QPAM is a subsidiary of DSK, and DSK is not a subsidiary of any DB QPAM;

(p) The criminal conduct of DSK that is the subject of the Conviction did not directly or indirectly involve the assets of any plan subject to Part 4 of Title I of ERISA or section 4975 of the Code; and

(q) A DB QPAM will not fail to meet the terms of this exemption solely because a different DB QPAM fails to satisfy the conditions for relief under this exemption described in Sections I(d), (e), (f), (g), (h), (i), and (k).

Section II: Definitions

(a) The term ''Conviction'' means the judgment of conviction against DSK to be entered on or about September 3, 2015, in Seoul Central District Court, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation;

(b) The term ''DB QPAM'' means a ''qualified professional asset manager'' (as defined in section VI(a) [14] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which DSK is a current or future ''affiliate'' (as defined in section VI(d) of PTE 84–14); and

(c) The term ''DSK'' means Deutsche Securities Korea Co., a South Korean ''affiliate'' of Deutsche Bank (as defined in section VI(c) of PTE 84–14).

Signed at Washington, DC, this 19th day of August, 2015.

Lyssa Hall,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2015–20852 Filed 8–21–15; 8:45 am]

BILLING CODE 4510–29–P

[14] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Labor Exchange Reporting System

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Labor Exchange Reporting System,'' 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 September 23, 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=201508-1205-008* (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–ETA, 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 Labor Exchange Reporting System information collection. A State submits quarterly performance data for Wagner-Peyser Act funded public labor exchange services through Form-ETA 9002 reports and for Veterans' Employment and Training Services (VETS)-funded labor exchange services through Form VETS–200 reports. Employment and Training (ET) Handbook No. 406 contains the report forms and provides instructions for completing these reports. ET Handbook No. 406 contains a total of eight reports (Forms ETA 9002–A, B, C, D, E, F and Forms-VETS 200–A, B, C). The various versions of Forms ETA–9002 and VETS–200 reports collect data on individuals who receive core employment and workforce information services through the public labor exchange and VETS-funded labor exchange of the states' One-Stop delivery systems. Respondents are State governments and grantees and individuals providing information used by a State in preparing reports. Selected standardized information pertaining to customers in Wagner-Peyser Act programs are collected and reported for the purposes of general program oversight, evaluation, and performance assessment. The Wagner-Peyser Act authorizes this information collection. *See* 29 U.S.C. 49.

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 1205–0240.

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 June 11, 2015 (80 FR 33292).

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 1204–0240. 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–ETA.

Title of Collection: Labor Exchange Reporting System.

OMB Control Number: 1205–0240.

Affected Public: Individuals or Households and State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 16,878,232.

Total Estimated Number of Responses: 33,756,788.

Total Estimated Annual Time Burden: 461,050 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: August 17, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–20777 Filed 8–21–15; 8:45 am]

BILLING CODE 4910–FN–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs is soliciting comments concerning its proposal to extend OMB approval of the information collection: Request for Employment Information (CA–1027). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 23, 2015.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW., Room S–3201, Washington, DC 20210, telephone/fax (202) 354–9647, Email *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background: Payment of compensation for partial disability to injured Federal workers is required by 5 U.S.C. 8106. That section also requires the Office of Workers' Compensation Programs (OWCP) to obtain information regarding a claimant's earnings during a period of eligibility to compensation. The CA–1027, Request for Employment Information, is the form used to obtain information for an individual who is

employed by a private employer. This information is used to determine the claimant's entitlement to compensation benefits. This information collection is currently approved for use through January 31, 2016.

II. Review Focus: The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the approval for the extension of this currently approved information collection in order to determine a claimant's eligibility for compensation benefits.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Request for Employment Information.

OMB Number: 1240–0047.

Agency Number: CA–1027.

Affected Public: Business or other for-profit.

Total Respondents: 154.

Total Annual Responses: 154.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 39.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $80.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 18, 2015.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2015–20779 Filed 8–21–15; 8:45 am]

BILLING CODE 4510–CH–P

NUCLEAR REGULATORY COMMISSION

[IA–14–039; NRC–2013–0208]

In the Matter of Dr. Bradley D. Bastow

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a Confirmatory Order to Dr. Bradley D. Bastow, as an individual, to confirm his agreement to no longer serve as a radiation safety officer. The order stems from commitments made by Dr. Bastow following an NRC inspection and subsequent predecisional enforcement conference.

DATES: *Effective Date:* See attachment.

ADDRESSES: Please refer to Docket ID NRC–2013–0208 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0208. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For questions about this Order, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Kenneth Lambert, Region III, U.S. Nuclear Regulatory Commission, Lisle, Illinois 60532; telephone: 630–810–4376, email: *Kenneth.Lambert@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Lisle, IL this 4th day of August, 2015.

For the Nuclear Regulatory Commission.

Cynthia D. Pederson,

Regional Administrator.

Attachment—Confirmatory Order Modifying License

United States of America

Nuclear Regulatory Commission

In the Matter of, Bradley D. Bastow, D. O.
IA–14–039

Confirmatory Order

I

Bradley D. Bastow, D. O., (licensee) is the holder of Materials License No. 21–32316–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30 on April 20, 2001, and renewed on December 7, 2011. The license authorizes the operation of Bradley D. Bastow, D. O., at his place of business (Cardiology II, P.C.), in accordance with conditions specified therein. It further specifies that the radiation safety officer (RSO) for the license will be Bradley D. Bastow, D. O. (Dr. Bastow). The licensee's facility is located in South Haven, Michigan.

This Confirmatory Order is the result of an agreement reached with Dr. Bastow during discussions on September 23 and October 23, 2014.

II

On February 28, and April 3, 2012, the U.S. Nuclear Regulatory Commission (NRC) conducted a special inspection at the licensee's facility in South Haven, Michigan, with continued in-office review through May 24, 2012. The NRC Office of Investigations (OI) began an investigation on April 2, 2012, into several of the issues identified during the inspection. OI completed its investigation on January 31, 2013. The details of the inspection were documented in NRC Inspection Report No. 03035710/2012001(DNMS) issued on December 19, 2012, and the results of the OI investigation were documented in a letter dated April 18, 2013, which identified 14 apparent violations. The April 18, 2013, letter offered the licensee the opportunity to

provide a written response, attend a predecisional enforcement conference, or attend an alternative dispute resolution (ADR) session.

One apparent violation identified by the NRC involved the RSO's (i.e., Dr. Bastow's) failure to ensure radiation safety activities were conducted in accordance with licensee-approved procedures and regulatory requirements. Specifically, the NRC identified several radiation safety violations, including the failure to conduct radiation surveys, calibrate radiation detection instrumentation, provide and process radiation monitoring devices to individuals, and conduct source leak tests and inventories. These apparent violations occurred, in part, due to Dr. Bastow not performing his duties as the RSO.

On July 1, 2013, the licensee and the NRC met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. At the ADR session, a preliminary agreement was reached and, on September 3, 2013, a Confirmatory Order (EA–13–025) was issued to Bradley D. Bastow, D. O., as the licensee.

On March 27, April 21, April 24, and May 5, 2014, the NRC performed inspections at the licensee's facility in South Haven, Michigan, in part, to verify compliance with the Confirmatory Order issued on September 3, 2013. The NRC also performed continued in-office review through June 20, 2014, to evaluate additional information not available during the onsite inspections. During the inspections, apparent violations of NRC requirements were identified, including a number of apparent violations of the Confirmatory Order. On July 30, 2014, the NRC provided the licensee with an inspection report detailing the results of the inspection. In the accompanying cover letter, the NRC requested that the licensee attend a Predecisional Enforcement Conference (PEC) to discuss the inspection results.

The NRC identified violations of the Confirmatory Order that were attributable to Dr. Bastow's activities as the RSO. For example, the violations involved the failure to repair or replace radiation detection instrumentation and to ensure that the instrumentation was calibrated and operable, the failure to shadow a radiation safety officer, and the failure to maintain complete and accurate documents. The violations continued to indicate that Dr. Bastow was not adequately fulfilling his duties as the RSO.

On September 19, 2014, the licensee, its attorney and the NRC met in a transcribed PEC. During the meeting, the licensee's attorney described the corrective actions taken and the issues where the licensee disagreed with the NRC's conclusions. Based on information gathered during the inspections and information provided during and after the PEC, the NRC made a determination that a Severity Level III problem existed and issued a Notice of Violation and Proposed Imposition of Civil Penalty to Bradley D. Bastow, D. O. (licensee) on November 6, 2014.

In a letter dated, September 19, 2014 (ML14279A119), Dr. Bastow requested that the facility's license be amended to standby status and that no activities involving nuclear stress testing will be conducted. On October 7, 2014, the NRC amended the license to possession and storage in standby.

III

Following the PEC, on September 23, 2014, during a telephone call with the NRC, the licensee's attorney agreed that Dr. Bastow would commit to no longer being RSO. This statement was confirmed in a letter from the licensee dated September 19, 2014, and received by the NRC on September 26, 2014 (ML14279A119).

On October 23, 2014, during a telephone call with the NRC, Dr. Bastow verbally agreed with the issuance of a Confirmatory Order to articulate that commitment. On April 17, 2015, Dr. Bastow consented to issuing this Confirmatory Order with the commitments, as described in Section V below. Dr. Bastow further agreed that this Confirmatory Order is to be effective 30 days after issuance and that he has waived his right to a hearing.

IV

Since the individual has agreed to take additional actions to address NRC concerns, as set forth in Section III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that Dr. Bastow's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Dr. Bastow's commitments be confirmed by this Confirmatory Order. Based on the above and Dr. Bastow's consent, this Confirmatory Order is effective 30 days after issuance of the Confirmatory Order.

V

Accordingly, pursuant to Sections 81,161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 30,

IT IS HEREBY ORDERED THAT:

1. Beginning on the effective date of this Order (*i.e.*, September 3, 2015), Dr. Bastow is prohibited from serving as an RSO, including an assistant or associate RSO, while in NRC jurisdiction. This includes working as an RSO; being listed as an RSO on a license; and performing any RSO duties for any licensee while in NRC jurisdiction, including activities under an Agreement State license while working under reciprocity. This prohibition does not prevent Dr. Bastow from serving as an authorized user.
2. No later than the effective date of this Order, Dr. Bastow must:
   a. Inform the NRC, in writing, that he is not listed as RSO (or assistant or associate RSO) on any license (other than 21–32316–01).

   OR

   b. If Dr. Bastow is currently involved with any licensee (other than license 21–32316–01) in NRC-licensed activities as an RSO or assistant or associate RSO:
      (1) Provide a copy of this Order to that licensee, and remind them of their obligation to obtain a new RSO and amend their NRC license to replace Dr. Bastow as RSO and
      (2) Provide, in writing, to the NRC, the license number, licensee name, address and telephone number, of each licensee.
3. Prior to returning license 21–32316–01 to active status, Dr. Bastow will identify a new individual to replace Dr. Bastow as RSO and inform the NRC in writing by submitting a license amendment request.
4. At any time after the effective date of this Order, Dr. Bastow may file a written request with the NRC that this Order be rescinded, such that he could again serve as an RSO in NRC jurisdiction. Such a request shall include the following:
   a. Dr. Bastow will provide written documentation of satisfactory completion of an in-person 40-hour medical RSO training class.
      (1) The training class completion date will be after the effective date of this Order;
      (2) The written documentation will include completion date, provider name and contact information,

instructor name, and class agenda/outline;

(3) The documentation must demonstrate that the training covered the following topics: (a) radiation physics and instrumentation; (b) radiation protection; (c) mathematics pertaining to the use and measurement of radioactivity; (d) radiation biology; and (e) radiation dosimetry.

b. Dr. Bastow will provide written documentation that he met with and observed (*i.e.,* ''shadowed'') an RSO who oversees a nuclear medical program for a minimum of 24 working hours (3 working days).

(1) The completion date will be after the effective date of this Order.

(2) The ''shadowing'' effort must, at a minimum, cover the following topics via observation or discussion with the RSO:

(a) Shipping, receiving, and performing related radiation surveys;

(b) Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;

(c) Securing and controlling byproduct material;

(d) Using administrative controls to avoid mistakes in the administration of byproduct material;

(e) Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;

(f) Using emergency procedures to control byproduct material; and

(g) Disposing of byproduct material.

(3) The written documentation must include a letter written, dated, and signed by the ''shadowed'' RSO that:

(a) Confirms that the ''shadowed'' RSO was, for the entire ''shadow'' period, listed as an RSO for an NRC or Agreement State medical use license and had oversight of a medical use program authorized for 35.100 and 35.200; and lists the license number;

(b) Confirms all topics from Item b.2 above were covered and satisfactorily completed during the effort, and provides the approximate number of hours spent on each topic;

(c) Attests to the ''shadowed'' RSO's assessment of Dr. Bastow's competency to function independently as an RSO for a medical use license for 35.100 and 35.200 medical uses.

(d) The written documentation will include a statement written, dated, and signed by Dr. Bastow articulating the insights that he gained by the effort.

c. Dr. Bastow shall provide the NRC with a written document describing in detail his understanding of his requirements and responsibilities as an RSO and containing his acknowledgment of these requirements and responsibilities. This document will include a statement of Dr. Bastow's commitment to compliance with regulatory requirements, including providing complete and accurate information, and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

5. All information provided to NRC pursuant to this section shall be provided in writing and addressed and mailed to Cynthia D. Pederson, Regional Administrator, Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532, with a copy also mailed to Dr. Patricia K. Holahan, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

6. This Order shall be effective 30 days (*i.e.,* September 3, 2015), after issuance and shall remain in effect until the conditions specified above have been met and the NRC determines, in writing, that the Order is rescinded.

VI

Any person adversely affected by this Confirmatory Order, other than Dr. Bastow, may request a hearing within 30 days of the issuance date of this Confirmatory Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's e-filing rule (72 FR 49139; August 28, 2007), as amended by 77 FR 46562; August 3, 2012, (codified in pertinent part at 10 CFR part 2, subpart C). The e-filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of e-filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to: (1) Request a digital (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the e-submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* System requirements for accessing the e-submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's e-filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the e-filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then

submit a request for hearing or petition for leave to intervene through the EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's e-filing system. To be timely, an electronic filing must be submitted to the e-filing system no later than 11:59 p.m. Eastern Time (ET) on the due date. Upon receipt of a transmission, the e-filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The e-filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the e-filing system.

A person filing electronically using the NRC's adjudicatory e-filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8:00 a.m. and 8:00 p.m., ET, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using e-filing, may require a participant or party to use e-filing if the presiding officer subsequently determines that the reason for granting the exemption from use of e-filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, participants are requested not to include copyrighted materials in their submission, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application.

If a person other than Dr. Bastow requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue a separate Order designating the time and place of any hearings, as appropriate. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be effective and final 30 days after issuance of the Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

Dated at Lisle, Illinois this 4th day of August, 2015.

For the Nuclear Regulatory Commission.

Cynthia D. Pederson,

Regional Administrator.

[FR Doc. 2015–20874 Filed 8–21–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382; License No. NPF–38; NRC–2014–0258]

In the Matter of Entergy Louisiana, LLC; Waterford Steam Electric Station, Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct and indirect transfer of license; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order to permit the direct transfer of Facility Operating License No. NPF–38 for Waterford Steam Electric Station, Unit 3 (Waterford), to a newly formed limited liability company named Entergy Louisiana, LLC. The new owner licensee has the same name as the previous owner licensee. In addition, the applicants requested the NRC's consent to approve an associated indirect license transfer of Waterford to the extent that such indirect transfer would be affected by a new intermediary holding company. Entergy Corporation will remain as the ultimate parent company, but a new intermediate company, Entergy Utility Holding Company, LLC, a Texas limited liability company, will be the direct parent company of the newly formed Entergy Louisiana, LLC.

DATES: The Order was issued on August 14, 2015, and is effective for one year.

ADDRESSES: Please refer to Docket ID NRC–2014–0258 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0258. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then

select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Alan B. Wang, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1445; email: *Alan.Wang@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland this 14 day of August, 2015.

For the Nuclear Regulatory Commission.

A. Louise Lund,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Order Approving Direct and Indirect Transfers of License United States of America Nuclear Regulatory CommissionIn the Matter of Entergy Louisiana, LLC; Waterford Steam Electric Station, Unit 3 Docket No. 50–382, License No. NPF–38Order Approving Direct and Indirect Transfers of License

I

Entergy Louisiana, LLC (ELL) and Entergy Operations, Inc. (EOI) (the licensees), are co-holders of Facility Operating License (FOL) No. NPF–38 for the Waterford Steam Electric Station, Unit 3 (Waterford). ELL is the licensed owner, and EOI is licensed operator and is authorized to possess, use, and operate Waterford, which is located in St. Charles Parish, Louisiana.

Entergy Gulf States Louisiana, L.L.C. (EGSL) and EOI (the licensees), are co-holders of FOL No. NPF–47 for the River Bend Station, Unit No. 1 (RBS). EGSL is the licensed owner, and EOI is the licensed operator and is authorized to possess, use, and operate RBS which is located in West Feliciana Parish, Louisiana.

II

By application dated June 10, 2014, as supplemented by letters dated October 9, 2014, December 31, 2014, and January 30, 2015, EOI requested on behalf of itself, ELL, EGSL, and their parent companies (together, the Applicants), under Section 50.80, ''Transfer of licenses,'' of Title 10 of the *Code of Federal Regulations* (10 CFR), that the U.S. Nuclear Regulatory Commission (NRC) consent to the direct transfers of the operating licenses for Waterford and RBS to a new limited liability company named Entergy Louisiana, LLC. The newly formed company has maintained the same name as the current owner of Waterford; Entergy Louisiana, LLC. (To distinguish between the two companies, ''ELL'' will only be used when referencing the current owner of Waterford.) In addition, the Applicants requested the NRC's consent to the associated indirect license transfers of RBS and Waterford due to the creation of a new intermediary holding company. The license transfers are necessary to support the corporate reorganization to permit the combination of the assets and liabilities of two utility operating companies, which are subsidiaries of Entergy Corporation (Entergy). Entergy will remain as the ultimate parent company, but a new intermediate company, Entergy Utility Holding Company, LLC, a Texas limited liability company, will become the direct parent company of the newly formed Entergy Louisiana, LLC. When the transactions are completed, the newly formed Entergy Louisiana, LLC will acquire 100 percent ownership of RBS and Waterford. EOI will remain responsible for the operation and maintenance of RBS and Waterford. The transaction will also result in the transfer of the general license for the Waterford independent spent fuel storage installation held by the Applicants under 10 CFR Part 50.

No physical changes to the Waterford facility or operational changes are being proposed in the application.

Approval of the direct and indirect license transfers of the FOLs was requested by EOI, acting on behalf of ELL, as well as their parent companies and itself. A notice entitled, ''River Bend Station, Unit 1, and Waterford Steam Electric Station, Unit 3; Consideration of Approval of Transfer of License and Conforming Amendment,'' was published in the **Federal Register** on December 3, 2014 (79 FR 71803). The NRC has received two comments from the public. No hearing requests or petitions to intervene were received.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information in the licensees' application, and other information before the Commission, relying upon the representations and agreements contained in the application, the NRC staff has determined that the newly formed Entergy Louisiana, LLC, is qualified to acquire and directly hold the ownership interest under FOL No. NPF–38 for Waterford as described in the application, and has further determined that both the direct and indirect transfers of control of the subject license, as described in the application, are otherwise consistent with the applicable provisions of law, regulations, and orders issued by the NRC, pursuant thereto, subject to the conditions set forth below.

The findings set forth above are supported by a safety evaluation dated August 14, 2015.

III

Accordingly, under Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Sections 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application for the direct and indirect license transfers related to the proposed corporate restructuring, in connection with the merger of EGSL and ELL is approved, subject to the following condition:

1. Before completion of the proposed transaction, Entergy Operations, Inc. shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that the newly formed Entergy Louisiana, LLC has obtained the appropriate amount of insurance required of the licensees under 10 CFR Part 140, ''Financial Protection Requirements and Indemnity Agreements,'' of the Commission's regulations.

It is further ordered that after receipt of all required regulatory approvals of the proposed direct transfer action, EOI shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt, and of the date of closing, no later than 1 business day before the closing of the direct transfer. Should the proposed direct transfer not be completed within 1 year of this Order's date of issuance, this Order shall become null and void. However, upon written application and good cause shown, such date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated June 10, 2014 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML14161A698), as supplemented by letters dated October 9, 2014, December 31, 2014, and January 30, 2015 (ADAMS

Accession Nos. ML15154B588, ML14365A404, and ML15030A495, respectively), and the safety evaluation dated the same date as this Order (ADAMS Accession No. ML15138A440), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by email to *PDR.Resource@nrc.gov.*

Dated at Rockville, Maryland this 14 day of August 2015.

For the Nuclear Regulatory Commission.

William M. Dean,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–20869 Filed 8–21–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0081]

Information Collection: NRC Form 790 Classification Record

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''NRC Form 790 Classification Record.''

DATES: Submit comments by October 23, 2015. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0081. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Tremaine Donnell, Office of Information Services, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, Office of Information Services, 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–2015–0081 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–2015–0081. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2015–0081.
- *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. ML15161A453. The supporting statement is available in ADAMS under Accession No. ML15161A448.
- *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 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

Please include Docket ID NRC–2015–0081 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 790, ''Classification Record.''
2. *OMB approval number:* 3150–0052.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 790.
5. *How often the collection is required or requested:* On occasion.
6. *Who will be required or asked to respond:* NRC licensees, licensees' contractors, and certificate holders who classify and declassify NRC information.
7. *The estimated number of annual responses:* 1,500 annual responses.
8. *The estimated number of annual respondents:* Three annual respondents (two NRC licensees and one licensee's contractor).
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 125 hours.

10. *Abstract:* Completion of the NRC Form 790 is a mandatory requirement for NRC licensees, licensees' contractors, and certificate holder who classify and declassify NRC information in accordance with Executive Order 13526, ''Classified National Security Information,'' the Atomic Energy Act, and implementing directives.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 18th day of August 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–20824 Filed 8–21–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458; License No. NPF–47; NRC–2014–0258]

In the Matter of Entergy Gulf States Louisiana, LLC; River Bend Station, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct and indirect transfer of license; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order to permit the direct transfer of Facility Operating License No. NPF–47 for River Bend Station, Unit 1 (RBS), to a new limited liability company named Entergy Louisiana, LLC. The applicants have also requested approval of a conforming amendment to reflect the change in the owner licensee for RBS, from Entergy Gulf States Louisiana, LLC, to the newly formed Entergy Louisiana LLC. In addition, the applicants requested the NRC's consent to approve an associated indirect license transfer of RBS to the extent such would be affected by a new intermediary holding company. Entergy Corporation will remain as the ultimate parent company, but a new intermediate company, Entergy Utility Holding Company, LLC, a Texas limited liability company, will be the direct parent company of the newly formed Entergy Louisiana, LLC.

DATES: The Order was issued on August 14, 2015, and is effective for one year.

ADDRESSES: Please refer to Docket ID NRC–2014–0258 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0258. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Alan B. Wang, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1445; email: *Alan.Wang@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland this 14 day of August, 2015.

For the Nuclear Regulatory Commission.

A. Louise Lund,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Order Approving Direct and Indirect Transfers of License and Conforming Amendment

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of Entergy Gulf States Louisiana, L.L.C.; River Bend Station, Unit 1 Docket No. 50–458, License No. NPF–47 Order Approving Direct and Indirect Transfers of License and Conforming Amendment

I.

Entergy Gulf States Louisiana, L.L.C. (EGSL) and Entergy Operations, Inc. (EOI) (the licensees), are co-holders of Facility Operating License (FOL) No. NPF–47 for the River Bend Station, Unit 1 (RBS). EGSL is the licensed owner, and EOI is the licensed operator and is authorized to possess, use, and operate RBS, which is located in West Feliciana Parish, Louisiana.

Entergy Louisiana, LLC (ELL) and EOI (the licensees), are co-holders of FOL No. NPF–38 for the Waterford Steam Electric Station, Unit 3 (Waterford). ELL is the licensed owner, and EOI is the licensed operator and is authorized to possess, use, and operate Waterford, which is located in St. Charles Parish, Louisiana.

II.

By application dated June 10, 2014, as supplemented by letters dated October 9, 2014, December 31, 2014, and January 30, 2015, EOI requested on behalf of itself, EGSL, ELL, and their parent companies (together, the Applicants), under Section 50.80, ''Transfer of licenses,'' of Title 10 of the *Code of Federal Regulations* (10 CFR), that the U.S. Nuclear Regulatory Commission (NRC) consent to the direct transfers of control of the operating licenses for RBS and Waterford to a new limited liability company named Entergy Louisiana, LLC. The Applicants also requested approval of a conforming amendment to reflect the change in the ownership for RBS from EGSL to the newly formed Entergy Louisiana, LLC. In addition, the Applicants requested the NRC's consent to the associated indirect license transfers of RBS and Waterford due to the creation of a new intermediary holding company. The license transfers are necessary to support the corporate reorganization to permit the combination of the assets and liabilities

of two utility operating companies which are subsidiaries of Entergy Corporation (Entergy). Entergy will remain as the ultimate parent company, but a new intermediate company, Entergy Utility Holding Company, LLC, a Texas limited liability company, will become the direct parent company of the newly formed Entergy Louisiana, LLC. When the transactions are completed, the newly formed Entergy Louisiana, LLC will acquire 100 percent ownership of RBS and Waterford. EOI will remain responsible for the operation and maintenance of RBS and Waterford. The transaction will also result in the transfer of the general license for the RBS independent spent fuel storage installation held by the Applicants under 10 CFR part 50.

No physical changes to the RBS facility or operational changes are being proposed in the application.

Approval of the direct and indirect transfers of the FOLs was requested by EOI, acting on behalf of EGSL, as well as their parent companies and itself. A notice entitled, ''River Bend Station, Unit 1, and Waterford Steam Electric Station, Unit 3; Consideration of Approval of Transfer of License and Conforming Amendment,'' was published in the **Federal Register** on December 3, 2014 (79 FR 71803). The NRC has received two comments from the public. No hearing requests or petitions to intervene were received.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information in the licensees' application, and other information before the Commission, relying upon the representations and agreements contained in the application, the NRC staff has determined that the newly formed Entergy Louisiana, LLC is qualified to acquire and directly hold the ownership interest under FOL No. 47 for RBS, as described in the application, and has further determined that both the direct and indirect transfers of control of the subject license, as described in the application, are otherwise consistent with the applicable provisions of law, regulations, and orders issued by the NRC, pursuant thereto, subject to the conditions set forth below.

The application also requests approval of a conforming amendment to FOL No. NPF–47 for RBS. The RBS amendment replaces references to EGSL, the current licensed owner, with Entergy Louisiana, LLC. The change does no more than accurately reflect the approved transfer action. The conforming amendment involves no safety questions and is administrative in nature. The NRC has determined that the proposed amendment is acceptable.

The findings set forth above are supported by a safety evaluation dated August 14, 2015.

III.

Accordingly, under Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Sections 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application for the direct and indirect license transfers related to the proposed corporate restructuring, in connection with the merger of EGSL and ELL, is approved, subject to the following condition:

1. Before completion of the proposed transaction, Entergy Operations, Inc. shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that the newly formed Entergy Louisiana, LLC has obtained the appropriate amount of insurance required of the licensees under 10 CFR part 140, ''Financial Protection Requirements and Indemnity Agreements,'' of the Commission's regulations.

IT IS FURTHER ORDERED that after receipt of all required regulatory approvals of the proposed direct transfer action, EOI shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt, and of the date of closing, no later than 1 business day before the closing of the direct transfer. Should the proposed direct transfer not be completed within 1 year of this Order's date of issuance, this Order shall become null and void. However, upon written application and good cause shown, such date may be extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated June 10, 2014 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML14161A698), as supplemented by letters dated October 9, 2014, December 31, 2014, and January 30, 2015 (ADAMS Accession Nos. ML15154B588, ML14365A404, and ML15030A495, respectively), and the safety evaluation dated the same date as this Order (ADAMS Accession No. ML15138A440), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by email to *PDR.Resource@nrc.gov.*

Dated at Rockville, Maryland this 14 day of August 2015.

For the Nuclear Regulatory Commission.

William M. Dean,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–20868 Filed 8–21–15; 08:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0001]

Sunshine Act Meeting Notice

DATE: August 24, 31, September 7, 14, 21, 28, 2015.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of August 24, 2015

There are no meetings scheduled for the week of August 24, 2015.

Week of August 31, 2015—Tentative

There are no meetings scheduled for the week of August 31, 2015.

Week of September 7, 2015—Tentative

Tuesday, September 8, 2015

9:30 a.m. Briefing on Project AIM 2020 (Public Meeting); (Contact: Karen Fitch: 301–415–7358).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, September 10, 2015

9:30 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9).

Week of September 14, 2015—Tentative

There are no meetings scheduled for the week of September 14, 2015.

Week of September 21, 2015—Tentative

Thursday, September 24, 2015

9:30 a.m. Strategic Programmatic Overview of the New Reactors Business Line (Public Meeting); (Contact: Donna Williams: 301–415–1322).

Week of September 28, 2015—Tentative

Monday, September 28, 2015

NRC All Employees Meeting (Public Meeting), Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852.

Thursday, October 1, 2015

Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Spent Fuel Storage and Transportation Business Lines (Public Meeting), (Contact: Damaris Marcano: 301–415–7328).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Glenn Ellmers at 301–415–0442 or via email at *Glenn.Ellmers@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: August 20, 2015.

Glenn Ellmers,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2015–21055 Filed 8–20–15; 4:15 pm]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding 3 Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

Title and Purpose of information collection: Railroad Separation Allowance or Severance Pay Report; OMB 3220–0173.

Section 6 of the Railroad Retirement Act provides for a lump-sum payment to an employee or the employee's survivors equal to the Tier II taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits toward retirement. The lump-sum is not payable until retirement benefits begin to accrue or the employee dies. Also, Section 4(a–1)(iii) of the Railroad Unemployment Insurance Act provides that a railroad employee who is paid a separation allowance is disqualified for unemployment and sickness benefits for the period of time the employee would have to work to earn the amount of the allowance. The reporting requirements are specified in 20 CFR 209.14.

In order to calculate and provide payments, the Railroad Retirement Board (RRB) must collect and maintain records of separation allowances and severance payments which were subject to Tier II taxation from railroad employers. The RRB uses Form BA–9, Report of Separation Allowance or Severance Pay, to obtain information from railroad employers concerning the separation allowances and severance payments made to railroad employees and/or the survivors of railroad employees. Employers currently have the option of submitting their reports on paper Form BA–9, (or in like format) on a CD–ROM disk, or by File Transfer Protocol (FTP), or secure Email. Completion is mandatory. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (80 FR 23307 on April 27, 2015) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Railroad Separation Allowance or Severance Pay Report.

OMB Control Number: 3220–0173.

Form(s) submitted: BA–9.

Type of request: Revision of currently approved collection.

Affected public: Private Sector; Businesses or other for profits.

Abstract: Section 6 of the Railroad Retirement Act provides for a lump-sum payment to an employee or the employee's survivor equal to the Tier II taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits toward retirement. The collection obtains information concerning the separation allowances and severance payments paid from railroad employers.

Changes proposed: The RRB proposes the implementation of an Internet equivalent version of Form BA–9 that can be submitted through the RRB's Employer Reporting System (ERS).

The burden estimate for the ICR is as follows:

Form number	Annual responses	Time (minutes)	Burden (hours)
BA–9 (Paper)	100	76	127
BA–9 (Internet)	215	15	54
BA–9 (CD–ROM)	10	76	13
BA–9 (secure Email)	25	76	32

Form number	Annual responses	Time (minutes)	Burden (hours)
BA–9 (FTP)	10	76	13
Total	360		239

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.*

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2015–20851 Filed 8–21–15; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75717; File No. SR–BYX–2015–35]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.22 To Describe the Market Data Product BYX Book Viewer

August 18, 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 August 7, 2015, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.22 to describe a market data product known as BYX Book Viewer.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add language to Rule 11.22 describing a market data product known as BYX Book Viewer. The proposal memorializes in the Exchange's rules a data feed that is currently available through the Exchange's public Web site free of charge. BYX Book Viewer is a data feed that disseminates, on a real-time basis, the aggregated two-side quotations for up to five (5) price levels for all displayed orders for securities traded on the Exchange and for which the Exchanges reports quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan. BYX Book Viewer also contains the last ten (10) trades including time of trade, price and share quantity. BYX Book Viewer is currently available via *www.batstrading.com* without charge. The Exchange will file a separate proposed rule change with the Commission proposing fees to be charged for certain types of access to BYX Book Viewer as of September 1, 2015.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of BYX Book Viewer. The Exchange also believes this proposal is consistent with section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with an alternative for receiving market data as requested by market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed. The proposed rule change would benefit investors by facilitating their prompt access to real-time depth-of-book information contained in BYX Book Viewer. The proposed rule change also removes impediments to and perfect the mechanism of a free and open market and a national market system by memorializing in the Exchange's rules a data feed that is currently available through the Exchange's public Web site free of charge.

The Exchange also believes that the proposed rule change is consistent with section 11(A) of the Act[8] in that it supports (i) fair competition among

[5] The Exchange understands that its affiliated exchanges intend to file identical proposed rule changes to adopt rules and fees for the Book Viewer data feed with the Commission. The Exchange's affiliates are EDGA Exchange, Inc., EDGX Exchange, Inc. and BATS Exchange, Inc.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78k–1.

brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[9] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. BYX Book Viewer is accessed and subscribed to on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and subscribers can discontinue use at any time and for any reason.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[10]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

In addition, BYX Book Viewer removes impediments to and perfects the mechanism of a free and open market and a national market system because BYX Book Viewer provides investors with alternative market data and competes with similar market data product currently offered by the New York Stock Exchange, Inc. (''NYSE'') and the Nasdaq Stock Market LLC (''Nasdaq'').[11] The provision of new options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[12] BYX Book Viewer is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is not intended to address any competitive issues, but rather to memorialize in the Exchange's rules a data feed that is currently available through the Exchange's public Web site free of charge. Nonetheless, the Exchange believes that the proposal will promote competition by the Exchange offering a service similar to that offered by the NYSE and Nasdaq.[13] Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. Therefore, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under section 19(b)(3)(A) of the Act[14] and paragraph (f)(6) of Rule 19b–4 thereunder.[15] The proposed rule change effects a change that: (A) Does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BYX–2015–35 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 No. SR–BYX–2015–35. This file number

[9] *See* 17 CFR 242.603.

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

[11] *See* Nasdaq Rule 7023(a)(1)(C) (describing Nasdaq TotalView is a depth-of-book data feed that includes all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center). *See also* Nasdaq Book Viewer, a description of which is *available at https://data.nasdaq.com/Book* Viewer.aspx (last visited July 29, 2015). *See* NYSE OpenBook *available at http://www.nyxdata.com/openbook* (last visited July 29m 2015) (providing real-time view of the NYSE limit order book). *See e.g.,* Securities Exchange Act Release No. 71775 (March 24, 2014), 79 FR 17627 (March 28, 2014) (SR–CBOE–2014–021) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the CBSX BBO Data Feed and the New CBSX Book Depth Data Feed).

[12] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[13] *See supra* note 11.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4.

[16] The Exchange has fulfilled this requirement.

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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BYX–2015–35 and should be submitted on or before September 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20793 Filed 8–21–15; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75721; File No. SR–NYSE–2015–35]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Amending Certain of Its Disciplinary Rules To Facilitate the Reintegration of Certain Regulatory Functions From Financial Industry Regulatory Authority, Inc.

August 18, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 5, 2015, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On August 14, 2015, the exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain of its disciplinary rules to facilitate the reintegration of certain regulatory functions from Financial Industry Regulatory Authority, Inc. (''FINRA''). This Amendment No. 1 supersedes the original filing in its entirety. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend certain of its disciplinary rules to permit the reintegration of certain regulatory functions from FINRA as of January 1, 2016.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Background of Proposed Rule Change

On June 14, 2010, the NYSE, NYSE Regulation, Inc. (''NYSE Regulation''),[4] and FINRA entered into a Regulatory Services Agreement (''RSA''), whereby FINRA was retained to perform the market surveillance and enforcement functions that had previously been performed by NYSE, through its wholly-owned subsidiary NYSE Regulation. Pursuant to the RSA, FINRA has been performing Exchange enforcement-related regulatory services, including investigating and enforcing violations of Exchange rules, and conducting disciplinary proceedings arising out of such enforcement actions, including those relating to NYSE-only rules and against dual members and non-FINRA members. To facilitate FINRA's performance of these functions, the Exchange amended its rules to provide that Exchange rules that refer to NYSE Regulation or its staff, Exchange staff, and Exchange departments should be understood to also refer to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the RSA.[5]

In 2013, the Exchange adopted new disciplinary rules that are, with certain exceptions, substantially the same as the text of the FINRA Rule 8000 Series and Rule 9000 Series, which set forth rules for conducting investigations and enforcement actions.[6] Those rules were implemented on July 1, 2013[7] and, among other things: (1) Identify FINRA's Department of Enforcement and Department of Market Regulation as the departments permitted to commence disciplinary proceedings, when authorized by FINRA's Office of Disciplinary Affairs (''ODA''); (2)

[4] NYSE Regulation, a not-for-profit subsidiary of the Exchange, performs the Exchange's regulatory functions pursuant to a delegation agreement. *See* note 7 [sic], *infra.* The Exchange recently filed to, among other things, terminate the delegation agreement, establish a regulatory oversight committee (''ROC'') as a committee of the board of directors of the Exchange, and reintegrate its regulatory and market functions. *See* Release No. 75288 (June 24, 2015), 80 FR 37316 (June 30, 2015) (SR–NYSE–2015–27) (the ''NYSE ROC Filing''). The amendments proposed herein are consistent with, and not dependent on approval of, the NYSE ROC Filing.

[5] *See* Rule 0. Notwithstanding the RSA, the Exchange retains ultimate legal responsibility for, and control of, the Exchange's regulatory functions performed by FINRA. *See* Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729 (June 28, 2010) (SR–NYSE–2010–46).

[6] *See* Securities Exchange Act Release Nos. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR–NYSE–2013–02), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR–NYSE–2013–49).

[7] *See* NYSE Information Memorandum 13–8 (May 24, 2013).

identify ODA as the office permitted to accept or reject a letter of acceptance, waiver, and consent (''AWC'') or minor rule violation plan letter on behalf of the Board; and (3) identify ODA as the office permitted to accept or reject an offer of settlement if not opposed by FINRA's Department of Enforcement or Department of Market Regulation. Those rules do not, however, specify whether Exchange staff or departments, or staff of the Exchange's wholly-owned subsidiary NYSE Regulation, to which the Exchange currently delegates certain regulatory functions,[8] may perform the functions described in the rules.

In October 2014, the Exchange announced that, upon expiration of the current RSA on December 31, 2015, certain market surveillance, investigation and enforcement functions performed on behalf of the Exchange would be reintegrated.[9] Accordingly, effective January 1, 2016, the Exchange will perform certain of the market surveillance, investigation and enforcement functions FINRA was retained to perform in 2010. The proposed changes to the disciplinary rules in the present filing are necessary to permit the Exchange to perform certain regulatory functions currently performed on the Exchange's behalf by FINRA.

The Exchange proposes the following changes to facilitate the reintegration of certain regulatory functions from FINRA by providing that investigative and enforcement functions of the Exchange under the Rule 8000 and 9000 Series would be performed by personnel and departments reporting to the Chief Regulatory Officer of the Exchange [10] or by FINRA personnel and departments:

(1) Amend Rule 9120 to include two new defined terms: ''Enforcement,'' referring to any department reporting to the CRO of the Exchange with responsibility for investigating or imposing sanctions on a member organization or covered person, in addition to FINRA's departments of Enforcement and Market Regulation; and ''Regulatory Staff,'' referring to any officer or employee reporting directly or indirectly to the CRO of the Exchange, in addition to FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 and 9000 Series;
(2) amend Rules 9120, 9131, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9551, 9552, 9554, 9556, 9810, 9820 and 9830 to replace references to Exchange and FINRA departments and personnel with references to ''Enforcement'' and ''Regulatory Staff'';
(3) amend Rules 8210 and 9110 to provide that in performing functions under the disciplinary code, the CRO and Regulatory Staff shall function independently of the commercial interests of the Exchange and of the member organizations;
(4) amend Rules 9141 and 9242 to prohibit former Regulatory Staff from appearing in a proceeding under the Rule 9000 Series and from providing expert testimony in a proceeding under the Rule 9000 Series within one year of termination, respectively;
(5) amend Rules 9211, 9216 and 9270 to provide that the CRO would be responsible for authorizing complaints; approving letters of acceptance, waiver, and consent; approving minor rule violation plan letters; and approving offers of settlement in place of FINRA's ODA; and
(6) amend Rules 476, 8120, 9001, 9110, 9217, 9232, 9310 and 9810 to make certain technical changes and correct a typographical error.

The Exchange proposes that the changes described herein would be operative on January 1, 2016, following the reintegration of certain regulatory functions from FINRA as described below.

Replacement of References To Exchange and FINRA Departments and Personnel With References to Enforcement and Regulatory Staff

The Exchange proposes to amend Rules 9120, 9131, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9551, 9552, 9554, 9556, 9810, 9820 and 9830 to replace references to Exchange and FINRA departments and personnel with references to the defined terms ''Enforcement'' and ''Regulatory Staff.''

The proposed amendments would allow disciplinary actions to be investigated and prosecuted on the Exchange's behalf by officers or employees reporting to the CRO beginning on January 1, 2016, while still enabling FINRA staff to continue to perform investigative and disciplinary activities that FINRA is authorized to perform on the Exchange's behalf.

More specifically, the Exchange proposes to make the following amendments:

- Rule 9120 (Definitions) sets forth the definitions applicable to the disciplinary code. The Exchange proposes to add definitions of ''Enforcement,'' referring to any department reporting to the CRO of the Exchange with responsibility for investigating or imposing sanctions on a member organization or covered person, in addition to FINRA's departments of Enforcement and Market Regulation; and ''Regulatory Staff,'' referring to any officer or employee reporting, directly or indirectly, to the CRO of the Exchange, in addition to FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 and 9000 Series.[11]

The Exchange also proposes to delete the definitions of ''Head of Enforcement'' (Rule 9120(q)) and ''Head of Market Regulation'' (Rule 9120(r)), which refer to the FINRA department heads.[12]

Similarly, the Exchange proposes to replace the reference to the ''Department of Enforcement or the Department of Market Regulation'' in Rule 9120(y) (definition of the term ''Party'') with ''Enforcement.'' The Exchange further proposes to streamline the definition of ''Interested Staff'' (Rule 9120(u)) to eliminate references to Exchange and FINRA departments and staff, and provide that ''Interested Staff'' under any proceeding brought under the Code

[8] The Exchange currently delegates to NYSE Regulation certain responsibilities and functions of the Exchange, including taking ''action to assure compliance with the rules, interpretations, policies and procedures of [the Exchange], the federal securities laws, or other laws, rules and regulations that [the Exchange] has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary and other programs.'' Delegation Agreement by and among New York Stock Exchange LLC, NYSE Regulation, Inc. and NYSE Market, Inc. (the ''Delegation Agreement''), Section II, A.2. The Exchange, however, retains ultimate responsibility for such delegated responsibilities and functions. *See* Securities Exchange Act Release No. 53382, 71 FR 11251, 11264 (February 27, 2006) (SR–NYSE–2005–77). Actions taken by NYSE Regulation pursuant to delegated authority remain subject to review, approval or rejection by the board of directors of the Exchange. The one exception is that actions taken by NYSE Regulation upon review of disciplinary decisions by the NYSE Regulation board of directors is not subject to review, approval or rejection by the Exchange and constitutes a final action of the Exchange. *See* Delegation Agreement, Section I. The Exchange is not proposing in this filing any changes to its rules that impact the review of disciplinary decisions by the NYSE Regulation board of directors.

[9] It is anticipated that FINRA, under a new RSA currently being negotiated, would continue to conduct, *inter alia,* the registration, testing and examination of broker-dealer members of the Exchange, and certain cross-market surveillance and related investigation and enforcement activities.

[10] NYSE Regulation staff report to the Chief Executive Officer of NYSE Regulation, who is also the Chief Regulatory Officer (''CRO'') of the Exchange.

[11] Certain rules in the Rule 8000 and 9000 Series currently refer to ''Exchange staff,'' a term which includes NYSE employees, NYSE Regulation staff that administers rules under the Delegation Agreement, and authorized FINRA staff pursuant to Rules 0 and 1. The proposed definition of ''Regulatory Staff'' provides that for purposes of the Rule 8000 Series and Rule 9000 Series (except for Rule 9557), the term ''Exchange staff'' shall have the same meaning as ''Regulatory Staff.''

[12] The Exchange also proposes to delete the definition of ODA (Rule 9120(v)) and replace all references to ODA in the Exchange's rules with ''CRO,'' for the reasons discussed in ''Substitution of CRO for ODA in Rules 9211, 9216 and 9270,'' *infra.*

of Procedure means Regulatory Staff or Exchange staff who (i) report, directly or indirectly, to any Enforcement employee, or to the head of any department or office that issues a notice or decision or is designated as a Party under the Rule 9000 Series, (ii) directly participated in the authorization or initiation of a complaint or proceeding, or (iii) directly participated in the proceeding, or directly participated in an examination, investigation, prosecution, or litigation related to a proceeding, as well as any person(s) who supervise such staff. Thus, as in the current definition, the new definition of ''Interested Staff'' in a particular matter encompasses supervisory personnel up to the most senior level, including the CRO, when staff reporting to such supervisory personnel directly participated in the matter.

Finally, the Exchange proposes to renumber the remaining definitions in Rule 9120.

• Rule 9131 (Service of Complaint) provides that the ''Department of Enforcement or the Department of Market Regulation'' shall serve a complaint on both a party and counsel for a party. The Exchange proposes to replace these references with ''Enforcement.'' The proposed change would enable Enforcement to serve disciplinary complaints beginning January 1, 2016.

• Rule 9146 (Motions) governs motion practice under the disciplinary rules. The Exchange proposes to amend Rule 9146(k)(1) to replace a reference to the ''Department of Enforcement and the Department of Market Regulation and other Exchange staff'' with ''Regulatory Staff.'' The Exchange also proposes to replace a reference to ''Exchange staff'' in subsection (k)(2) with ''Regulatory Staff.'' The proposed changes would identify the staff that may receive or use documents subject to a protective order.

• Rule 9211 (Authorization of Complaint) sets forth the process for authorizing issuance of a complaint against a member organization or covered person. The Exchange proposes to replace references to the ''Department of Enforcement or the Department of Market Regulation'' with ''Enforcement'' in Rules 9211(a)(1) and (a)(2). The Exchange proposes to add the phrase ''has reason to believe'' in subsection (a)(1) with reference to Enforcement to make the construction consistent with other disciplinary rules (*e.g.,* Rule 9216). The proposed change would enable the Exchange, in addition to FINRA, to authorize and issue disciplinary complaints beginning January 1, 2016. As discussed below, the Exchange also proposes to amend Rule 9211 to provide that the Exchange's CRO would authorize issuance of a complaint.

• Rule 9212 (Complaint Issuance) sets forth the requirements of the complaint. In subsection (a)(1), the Exchange proposes to delete the first sentence as redundant, and to delete two references to ''Department of Enforcement or the Department of Market Regulation.'' The proposed change would permit ''authorized Enforcement staff'' to sign a complaint that would be served by ''Enforcement.''

The Exchange also proposes to replace ''Department of Enforcement or the Department of Market Regulation'' with ''Enforcement'' in Rule 9212(a)(2) to permit, in addition to the relevant FINRA departments, any department reporting to the CRO that meets the definition of ''Enforcement'' to propose a hearing location or that the Chief Hearing Officer select a Floor-Based Panelist as provided for therein.

Similarly, the Exchange proposes to replace ''Department of Enforcement or the Department of Market Regulation'' with ''Enforcement'' in Rule 9212(b) and Rule 9212(c)(1) and (2) to enable any department reporting to the CRO that meets the definition of ''Enforcement,'' in addition to the relevant FINRA departments, to amend and withdraw complaints.

• Rule 9213(a) (Assignment of Hearing Officer) provides for the appointment of a Hearing Officer and Panelists by the Chief Hearing Officer as soon as practicable after the filing of a complaint by the ''Department of Enforcement or the Department of Market Regulation.'' The Exchange proposes to replace this reference with ''Enforcement'' to include complaints filed by any department reporting to the CRO that meets the definition of ''Enforcement,'' in addition to the relevant FINRA departments.

• Rule 9215(f) (Answer to Complaint) sets forth the requirements for answering a complaint. The Exchange proposes to replace ''Department of Enforcement or the Department of Market Regulation'' with ''Enforcement'' in Rule 9215(f) to enable any department reporting to the CRO that meets the definition of ''Enforcement,'' in addition to the relevant FINRA departments, to send a second notice if a respondent does not file an answer or timely respond to the complaint.

• Rule 9216(a) (Acceptance, Waiver, and Consent Procedures) sets forth the procedures by which a respondent can execute an AWC letter prior to the issuance of a complaint. Under the current rule, FINRA's Department of Enforcement or Department of Market Regulation prepares and requests that a member organization or covered person execute an AWC letter, and ''Exchange staff'' may determine the effective date of sanctions unless the letter states otherwise. The Exchange proposes to replace ''Department of Enforcement or the Department of Market Regulation'' in Rule 9216(a)(1) with ''Enforcement'' to permit any department reporting to the CRO that meets the definition of ''Enforcement,'' in addition to the relevant FINRA departments, to prepare and request execution of AWC letters. The Exchange also proposes to replace ''Exchange staff'' with ''Regulatory Staff'' to identify the staff that may determine the effective date of sanctions.

Rule 9216(b) (Procedure for Violation Under Plan Pursuant to SEA Rule 19d–1(c)(2)) sets forth the procedures for executing a minor rule violation plan letter.[13] Under the current rule, FINRA's Department of Enforcement or Department of Market Regulation may prepare and request that a member organization or covered person execute a minor rule violation plan letter, and ''Exchange staff'' may determine the effective date of sanctions unless the letter states otherwise. The Exchange proposes to replace references to ''the Department of Enforcement or the Department of Market Regulation'' in Rule 9216(b)(1) with ''Enforcement'' so that any department reporting to the CRO that meets the definition of ''Enforcement,'' in addition to FINRA, may prepare and request such letters. The Exchange also proposes to replace ''Exchange staff'' with ''Regulatory Staff'' to identify the staff that may determine the effective date of sanctions.

• Rule 9251 (Inspection and Copying of Documents in Possession of Staff) requires that documents prepared or obtained in connection with an investigation be made available to a respondent. The Exchange proposes to amend subsections (a) (documents that must be made available for inspection and copying), (b) (documents withheld from inspection and copying), (c) (list of documents withheld), (d) (timing of inspection and copying), and (g) (failure to make documents available) to replace references to ''the Department of Enforcement or the Department of Market Regulation'' with ''Enforcement'' to bring departments reporting to the CRO that meet the definition of

[13] A minor rule violation plan letter under the Exchange's rules permits a fine not to exceed $2,500 and/or a censure to be imposed with respect to certain specifically enumerated rules. *See* Rules 9216(b)(1) and 9217.

''Enforcement'' within the scope of this rule.

• Rule 9253 (Production of Witness Statements) sets forth the procedures for filing motions to obtain witness statements. The Exchange proposes to amend Rule 9253(a) and (b) to replace ''Department of Enforcement or the Department of Market Regulation'' with ''Enforcement'' to bring departments reporting to the CRO that meet the definition of ''Enforcement'' within the scope of this Rule.

• Rule 9264 (Motion for Summary Disposition) sets forth the procedures for filing summary disposition motions. The Exchange proposes to replace ''Department of Enforcement or the Department of Market Regulation'' with ''Enforcement'' to bring departments reporting to the CRO that meet the definition of ''Enforcement'' within the scope of this Rule.

• Rule 9269 (Default Decisions) sets forth the process for issuance and review of default decisions. The Exchange proposes to replace ''Department of Enforcement or the Department of Market Regulation'' in subsection (a)(2) with ''Enforcement'' in order to bring departments reporting to the CRO that meet the definition of ''Enforcement'' within the scope of this Rule. The Exchange also proposes to replace ''Exchange staff'' with ''Regulatory Staff'' in subsection (d) to identify the staff that may determine the effective date of certain sanctions.

• Rule 9270 (Settlement Procedure) governs offers of settlement. The Exchange proposes to replace ''the Department of Enforcement or the Department of Market Regulation'' in subsections (e) and (f) with ''Enforcement'' in order to permit a department reporting to the CRO that meets the definition of ''Enforcement'' to consider offers of settlement by respondents. The Exchange also proposes to replace ''Exchange staff'' with ''Regulatory Staff'' in subsection (c)(5) to identify the staff that may determine the effective date of sanctions when provided in an offer of settlement.[14]

• Rule 9551 (Failure to Comply with Public Communication Standards) governs expedited proceedings relating to a member organization's departure from the public communication standards of Rule 2210. The Exchange proposes to replace ''Exchange staff'' with ''Regulatory Staff'' to identify the staff that initiates and otherwise participates in such proceedings.

• Rule 9552 (Failure to Provide Information or Keep Information Current) sets forth procedures for expedited proceedings relating to a member organization or covered person's failure to provide information or keep information current. The Exchange proposes to replace ''Exchange staff'' with ''Regulatory Staff'' to identify the staff that initiates and otherwise participates in such proceedings.

• Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution) governs expedited proceedings relating to noncompliance with an arbitration award, settlement agreement, or restitution order. The Exchange proposes to replace ''Exchange staff'' with ''Regulatory Staff'' to identify the staff that initiates and otherwise participates in such proceedings.

• Rule 9556 (Failure to Comply with Temporary and Permanent Cease and Desist Orders) governs expedited proceedings relating to noncompliance with a temporary or permanent cease and desist order. The Exchange proposes to replace ''Exchange staff'' with ''Regulatory Staff'' to identify the staff that initiates and otherwise participates in such proceedings.

• Rule 9810 (Initiation of Proceeding) sets forth procedures for initiating temporary cease and desist proceedings. The Exchange proposes to replace ''Department of Enforcement or the Department of Market Regulation'' with ''Enforcement'' in the title and the text of the rule to permit a department reporting to the CRO that meets the definition of ''Enforcement'' to initiate such proceedings.

• The Exchange proposes to replace references to ''Department of Enforcement or the Department of Market Regulation'' with ''Enforcement'' in Rule 9820 (Appointment of Hearing Officer and Hearing Panel), which governs the appointment of Hearing Officers and Panelists for temporary cease and desist proceedings, to bring departments reporting to the CRO that meet the definition of ''Enforcement'' within the scope of this Rule.

• Rule 9830 (Hearing) sets forth hearing procedures for temporary cease and desist proceedings. The Exchange proposes to amend Rule 9830(b) and (h) to replace ''Department of Enforcement or the Department of Market Regulation'' with ''Enforcement'' to permit service of a notice in a temporary cease and desist proceeding on a department reporting to the CRO that meets the definition of ''Enforcement,'' and to describe available remedies in the event Enforcement fails to appear at a hearing.

Independence of the CRO and Staff in the Disciplinary Process

The Exchange proposes to amend Rules 8210 and 9110 to add rule text providing that in performing functions under the disciplinary code, the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange and the commercial interests of the member organizations. This requirement is already being met and is consistent with longstanding policies and practices at the Exchange. The proposed change would also be consistent with rules currently in effect for the equities and options markets of the Exchange's affiliate NYSE Arca, Inc., and would reflect the Exchange's ongoing commitment to performing its regulatory functions under its disciplinary rules in an independent and impartial manner.[15]

One Year Revolving Door Restriction and Prohibition on Serving as Expert Witness

Rule 9141 governs appearances in a proceeding. The Exchange proposes to amend Rule 9141 by adding a new section (c) that would prohibit former Regulatory Staff from making an appearance before an Adjudicator on behalf of any other person in any proceeding under the Rule 9000 Series within one year immediately following termination of employment with the Exchange or FINRA. The rule text is broader than FINRA's counterpart rule in that it covers not only former FINRA staff but also former Regulatory Staff that reported to the CRO, and covers both officers and employees. The rule text is otherwise substantially the same as the text of FINRA Rule 9141(c), which the Exchange declined to adopt in 2013.[16] At the time, the Exchange did not believe it was necessary to bar former employees from such appearances because its employees were not conducting disciplinary functions and their appearance would not create the same type of potential conflict of interest. Once Regulatory Staff reporting to the CRO again directly perform market surveillance, investigation and enforcement functions following expiration of the current RSA, that would no longer be the case and the Exchange therefore believes that such a prohibition would help prevent

[14] As discussed below, the Exchange further proposes to amend Rule 9270 to have certain offers of settlement submitted to the CRO and not ODA.

[15] *See* Arca Equities Rule 10.2(a); Arca Options Rule 10.2(a).

[16] *See* Securities Exchange Act Release No. 69045, 78 FR at 15395 n.14.

potential conflicts or appearance of conflicts of interest.

Similarly, the Exchange proposes to amend Rule 9242, which governs pre-hearing submissions, to add a new section (b) prohibiting former Regulatory Staff from providing expert testimony on behalf of any other person in any proceeding under the Rule 9000 Series within one year immediately following termination of employment with the Exchange or FINRA. The Exchange also proposes that nothing in proposed Rule 9242(b) would prohibit former Regulatory Staff from testifying as a witness on behalf of the Exchange or FINRA. The rule text is broader than FINRA's counterpart rule in that it covers not only former FINRA staff but also former Regulatory Staff that reported to the CRO, and covers both officers and employees. The rule text is otherwise substantially the same as the text of FINRA Rule 9242(b), which the Exchange declined to adopt in 2013 for the same reasons it did not adopt the one year prohibition of FINRA Rule 9141(c). Given the Exchange's anticipated resumption of certain regulatory functions, the Exchange believes that a prohibition on former Regulatory Staff providing expert testimony would help prevent potential conflicts or appearance of conflicts of interest. The Exchange also believes that, consistent with FINRA Rule 9242(b), permitting a former Regulatory Staff member to testify as a witness on behalf of the Exchange does not pose potential conflicts of interest.

Substitution of CRO for ODA in Rules 9211, 9216 and 9270

The Exchange proposes that the CRO rather than FINRA's ODA would be responsible for: (1) Authorizing issuance of a complaint; (2) accepting or rejecting AWC letters and minor rule violation plan letters; and (3) accepting or rejecting uncontested offers of settlement.

The Exchange believes that providing for the CRO to authorize issuance of complaints and approve settlements would be consistent with the Exchange's reintegration of regulatory functions and the rules of other SROs.[17] The proposed change is also consistent with certain powers the CRO currently has under the disciplinary rules.[18] Moreover, as noted above, by rule the CRO would be required to operate independently of the commercial interests of the Exchange and of member organizations.

To accomplish these changes, the Exchange proposes to amend Rules 9211, 9216 and 9270 as follows:

- Rule 9211(a)(1) and (a)(2) would be amended to replace ''Office of Disciplinary Affairs'' with ''CRO.'' This proposed change would identify the CRO rather than ODA as being responsible for authorizing Enforcement to issue a complaint.
- Rule 9216(a)(3) and (a)(4) would be amended to replace references to ''Office of Disciplinary Affairs'' with ''CRO.'' The proposed change would permit the CRO to accept or reject an AWC letter and, if accepted, to be deemed final.
- Rule 9216(a)(4) would be amended to provide that if the CRO rejects an AWC letter, the Exchange may take other appropriate disciplinary action with respect to the alleged violation or violations. This is consistent with the current rule as it relates to an AWC letter that is rejected by FINRA's ODA.
- Rule 9216(b)(3) and (b)(4) would be amended to replace ''Office of Disciplinary Affairs'' with ''CRO.'' This proposed change would allow an executed minor rule violation plan letter to be submitted to the CRO, which, on behalf of the SRO Board, may accept or reject it. If accepted, it would be deemed final; if the CRO rejects the letter, the Exchange may take other appropriate disciplinary action with respect to the alleged violation or violations. This is consistent with the current rule as it relates to a minor rule violation plan letter that is accepted or rejected by ODA.
- Finally, Rule 9270(e), (f), (h), and (j) would also be amended to replace ''Office of Disciplinary Affairs'' with ''CRO.'' The proposed change to subsection (f) would provide that uncontested offers of settlement would be transmitted to the CRO and, if accepted under proposed Rule 9270(f)(3), would be issued and become final. Under proposed Rule 9270(h), if the CRO does not accept an uncontested offer of settlement, the respondent would be notified in writing and the offer of settlement and proposed order of acceptance would be deemed withdrawn.[19] Under proposed Rule 9270(j), an offer of settlement rejected by the CRO would not prejudice a respondent and would not be introduced into evidence in connection with the determination of the issues involved in the pending complaint or in any other proceeding. This is consistent with the current rule as it relates to an offer of settlement that is not accepted by ODA.

Miscellaneous Amendments to Rules 476, 8120, 9001, 9110, 9217, 9232, 9310 and 9810

The Exchange proposes several miscellaneous amendments to make certain technical changes and correct a typographical error.

First, the Exchange proposes to insert a reference to the Rule 8000 Series in Rule 476 in order to clarify that both the Rule 8000 Series and the Rule 9000 Series would apply to proceedings for which no Charge Memorandum was filed with the hearing board under Rule 476(d) prior to July 1, 2013 and for which no written Stipulation and Consent was submitted to a Hearing Officer prior to July 1, 2013.[20] The Exchange proposes the same change to Rule 9001, which specifies the effective date of the Rule 9000 Series.

Second, the Exchange proposes to delete the last sentence in Rule 476 as obsolete. By its terms, that sentence relates only to orders issued on or before July 1, 2013.

Third, the Exchange proposes to add a reference to the term ''Regulatory Staff'' in Rule 8120, because, as set forth above, that new defined term is referenced in certain proposed changes to the Rule 8000 Series.

Fourth, the Exchange proposes to delete the last sentence in Rule 9110(c) as obsolete.

[17] *See e.g.,* BATS Exchange Rules 8.4 and 8.8; Chicago Stock Exchange Article 12, Rules 1(b) and (d) (providing that the CRO shall direct written charges and approve or reject offers of settlement). The International Securities Exchange (''ISE''), Miami International Securities Exchange (''MIAX'') and BOX Options Exchange (''BOX'') also provide that complaints are to be approved by the CRO. Each also requires offers of settlement to be authorized by the CRO if a hearing panel has not yet been appointed, and requires letters of consent to be authorized by the CRO and approved by a business conduct committee. *See* ISE Rules 1603, 1604 and 1609; MIAX Rules 1003, 1004 and 1009; BOX Rules 12030, 12040 and 12090.

[18] In adopting FINRA's disciplinary rules, the Exchange provided that the CRO, rather than FINRA's CEO, would authorize the initiation of temporary cease and desist proceedings and the initiation of suspension or cancellation proceedings for a violation of a temporary cease and desist order. The Exchange also retained the ability of the CRO to resolve certain procedural matters in connection with settlements under Rule 9270(d). *See* Securities Exchange Act Release No. 69045, 78 FR at 15394, 15398–15400 & n.24.

[19] Because the Exchange does not have sanction guidelines, the CRO, Hearing Panel, or Extended Hearing Panel, as applicable, would consider Exchange precedent or such other precedent as it deemed appropriate in determining whether or not to accept a settlement offer under Rule 9270. *See* Securities Exchange Act Release No. 68678 at 43 n.38 (January 16, 2013), 78 FR 5213 at 5229 n.39 (January 24, 2013) (SR–NYSE–2013–02).

[20] Rule 476 is the Exchange's legacy disciplinary rule that applies to a Charge Memorandum filed under Rule 476(d) prior to July 1, 2013 or for which a written Stipulation and Consent was submitted prior to July 1, 2013. *See* Securities Exchange Act Release Nos. 68678, 78 FR at 5213 and 69045, 78 FR at 15394.

Fifth, the Exchange proposes to correct a typographical error in Rule 9217, which sets forth the rules eligible for minor rule plan fines, by adding a dash in the rule text describing Rule 123C.

Sixth, the Exchange proposes to amend Rule 9232(b), which governs appointment of panelists, to provide that the Board shall from time to time appoint a Hearing Board as set forth in the rule. Under the current rule, the Chairman of the Board, subject to Board approval, has this responsibility. The Exchange believes that because the approval of the Board is required for appointment of the Hearing Board, it is not necessary to specify that the Chairman of the Exchange Board would appoint the Hearing Board subject to such approval.

Seventh, the Exchange proposes two [sic] technical, clarifying amendments to Rule 9310. The Exchange proposes to amend Rule 9310 to provide that none of the persons referenced in the Rule, *i.e.,* Board directors, members of the Committee for Review, and the parties, may request Board review of a decision concerning an Exchange member that is an affiliate. Under the current Rule, only the parties are prohibited from requesting Board review of a decision in such circumstances.[21]

Finally, the Exchange proposes to add the phrase ''Service and Filing of Notice'' to the title of Rule 9810(a) in order to identify the subject matter covered by the rule.

2. Statutory Basis

The Exchange believes that 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, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(7) of the Act,[24] in particular, in that it provides fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(3) of the Act,[25] in particular, in that it supports the fair representation of members in the administration of the Exchange's affairs.

The Exchange believes that eliminating references to FINRA departments and replacing them with ''Enforcement,'' a new defined term that includes any department reporting to the CRO of the Exchange with responsibility for investigating or imposing sanctions on a member organization or covered person, in addition to FINRA's departments of Enforcement and Market Regulation, in Rules 9120, 9131, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9810, 9820 and 9830 would facilitate the Exchange's ability to directly conduct investigations and bring disciplinary actions for matters it will be conducting after the reintegration of certain functions next year. The Exchange believes that defining ''Regulatory Staff'' as including any officer or employee reporting directly or indirectly to the CRO of the Exchange in addition to FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 and 9000 Series, in Rules 9120, 9146, 9216, 9269, 9270, 9551, 9552, 9554, and 9556 would similarly facilitate the Exchange's ability to directly conduct investigations and bring disciplinary actions, as well as FINRA.

Because the substance of the rules would remain unchanged, the Exchange believes that the proposed change would provide fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof. Further, removing references to Exchange and FINRA offices and departments in the Exchange's Rules that are unnecessary in light of Rule 0 removes impediments to and perfects a national market system because it would reduce potential confusion that may result from retaining different designations in the Exchange's rulebook. Removing potentially confusing conflicting designations would also further the goal of transparency and add consistency to the Exchange's Rules.

The Exchange believes that adding rule text to Rules 8210 and 9110 stating that the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange and the commercial interests of member organizations in performing functions under the disciplinary rules would further ensure the integrity and independence of the disciplinary process and further provide fair procedures for the disciplining of members and persons associated with members. For the same reasons, addition of the proposed rule text would protect investors and the public interest and would therefore be consistent with Section 6(b)(5) of the Exchange Act.

The Exchange believes that prohibiting former Regulatory Staff from representing respondents and providing expert testimony in Exchange disciplinary matters within one year immediately following termination of employment would provide greater harmonization between Exchange and FINRA rules of similar purpose. As previously noted, the proposed rule text is based on FINRA's current rule text, which already has been approved by the Commission. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange also believes that making the CRO responsible for authorizing complaints and approving AWC letters, minor rule violation plan letters and offers of settlement in place of FINRA's ODA is fair and reasonable, and provides adequate procedural protections. In particular, requiring approval of complaints and settlements by an independent CRO will serve as an appropriate check on the authority of the investigative and enforcement staff at both the Exchange and FINRA to bring and resolve such actions.

Further, the Exchange believes that by having decisions regarding initiating and resolving formal disciplinary actions and resolving minor rule violations made by an individual with the most direct expertise relevant to the NYSE's markets,[26] the proposal promotes efficiency and consistency and aligns the Exchange's process with other SROs. As noted above, the proposed change is consistent with the reintegration of regulatory functions by the Exchange and the practices at other

[21] A decision with respect to an Exchange member that is an affiliate of the Exchange constitutes final Exchange disciplinary action pursuant to SEC Rule 19d–1(c)(1) and may not be reviewed by the Board. *See* Rule 9268(e)(2).

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b)(7).

[25] 15 U.S.C. 78f(b)(3).

[26] *See, e.g.,* Securities Exchange Act Release No. 69045, 78 FR at 15401.

SROs where CROs authorize issuance of complaints and approve settlements.

Finally, making technical amendments and correcting a typographical error in Rules 476, 8120, 9001, 9110, 9217, 9232, 9310 and 9810 removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having incorrect or redundant material in the Exchange's rulebook. The Exchange believes that eliminating incorrect or redundant material would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such references will also remove impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rulebook. The Exchange believes that eliminating incorrect or redundant material would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such references will also further the goal of transparency and add clarity to the Exchange's rules.

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 proposed rule change is not intended to address competitive issues but rather to enable the Exchange to directly investigate and initiate disciplinary actions following and facilitate the reintegration of certain regulatory functions from FINRA.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2015–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2015–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2015–35, and should be submitted on or before September 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20792 Filed 8–21–15; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75723; File No. SR–BATS–2015–60]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

August 18, 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 August 7, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c) (''Fee Schedule'') to remove fees for BATS Investor Pro and BATS Investor RT, as the Exchange will no longer make these products available as of August 29, 2015.

The text of the proposed rule change is available at the Exchange's Web site

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

at *www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to remove fees for BATS Investor Pro and BATS Investor RT, as the Exchange will no longer make these products available as of August 29, 2015. The Exchange currently maintains a revenue sharing program with Interactive Data Corporation, acting by and through its division, Interactive Data Desktop Solutions, and its subsidiary, Interactive Data Online Properties, Inc. (collectively ''IDC''), whereby the Exchange has agreed to make available, through IDC, private labeled versions of IDC's Market–Q and LiveCharts products (the ''Revenue Sharing Program'').[6] Pursuant to an agreement (the ''Agreement'') between IDC and the Exchange, Market–Q has been marketed by the Exchange under the private label name ''BATS Investor Pro'' and LiveCharts has been marketed by the Exchange under the private label name ''BATS Investor RT'' (BATS Investor Pro and BATS Investor RT, collectively, the ''Private Labeled Products''). Under the Agreement, the current price schedule charges subscribers a monthly fee of $125.00 for BATS Investor Pro and a monthly fee of $24.95 for BATS Investor RT.[7]

Pursuant to and in accordance with the terms and conditions of the Agreement, on July 24, 2015, the Exchange provided written notice of termination of the Agreement to IDC, effective as of August 29, 2015. Therefore, inclusion of the Private Labeled Products within Exchange's Fee Schedule would no longer serve any legitimate purpose upon the Revenue Sharing Program being terminated by the Exchange. The Exchange is terminating the Revenue Share Program with IDC due to lack of interest from data recipients for the Private Labeled Products. Currently, there are no active clients for either Private Labeled Product.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on August 31, 2015.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6 of the Act,[8] in general, and furthers the objectives of section 6(b)(4),[9] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities because it would delete fees for products that are to be discontinued by the Exchange, thereby eliminating investor confusion. In addition, the Exchange has no subscribers to either of the Private Labeled Products, neither of the Private Labeled Products is a core product offering by the Exchange, and the Exchange is not required by the Act to offer such products. The proposed rule change will not permit unfair discrimination among customers, brokers, or dealers because the Private Labeled Products will no longer be offered by the Exchange.

Lastly, the Exchange also believes that the proposed amendment to its Fee Schedule is reasonable and non-discriminatory because it will apply uniformly to all members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed amendments to its Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will terminate the Revenue Sharing Program with IDC, as well as the fees for the products offered thereunder from its fee schedule, effective as of August 29, 2015, and is not designed to have a competitive impact. Therefore, the Exchange does not believe the proposed rule change will have any effect on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[10] and paragraph (f) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BATS–2015–60 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–BATS–2015–60. 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

[6] *See* Securities Exchange Act Release Nos. 70264 (August 27, 2013), 78 FR 54338 (September 3, 2013) (SR–BATS–2013–045); *and* 70687 (October 15, 2013), 78 FR 62921 (October 22, 2013) (SR–BATS–2013–055).

[7] Under the Agreement, IDC determines the price schedule for the Private Labeled Products, and has the right to change the price schedule at any time in its sole discretion upon prior notice to BATS; provided, however, that such changes to the price schedule do not become effective unless and until the applicable fees set forth in the price schedule have been filed with and/or approved by the Commission through a proposed rule change submitted by the Exchange in accordance with the Act.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2015–60, and should be submitted on or before September 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20790 Filed 8–21–15; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75722; File No. SR–NYSEARCA–2015–70]

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 To Modify the Credits the Exchange Provides for Routing Certain Orders to the New York Stock Exchange LLC

August 18, 2015.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 3, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (''Fee Schedule'') to modify the credits the Exchange provides for routing certain orders to the New York Stock Exchange LLC (''NYSE''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to modify the Tier 1 and Tier 2 credits the Exchange provides for routing PO+ Orders[4] to the NYSE and make corresponding changes in the Basic Rate pricing.

A PO+ Order is designed to route to the primary listing market of the security underlying the order (*i.e.,* NYSE, NASDAQ, etc.) immediately upon arrival and the order therefore does not rest on the Exchange's order book. Because PO+ Orders do not rest on the Exchange's book, the Exchange charges fees or provides credits for those orders based on the fees or credits of the destination primary listing market, which are the fees and credits that the Exchange is charged by the primary listing market that receives the order.

In a recent rule filing, the NYSE modified its fee structure for equities transaction by decreasing the level of rebate that it provides to its members that provide liquidity from $0.0015 per share to $0.0014 per share.[5] In order to maintain the same relationship between the rate that the Exchange charges for a PO+ Order and the rebate provided by the destination venue, the Exchange is also amending the per share credit for PO+ Orders routed to the NYSE that provide liquidity to the NYSE to $0.0014 per share. The Exchange proposes corresponding changes to the Basic Rate pricing section of the Fee Schedule.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes to routing credits for PO+ Orders that provide liquidity to the NYSE are reasonable because the Exchange's credits for routing an order that does not rest on the Exchange's order book, but rather is designed to route to the primary listing market on arrival, are closely related to the NYSE's rebates for its members for providing liquidity, and the proposed change is consistent with the recent change to the NYSE Price List to lower its rebate for providing liquidity. While the proposed change would result in a decrease in the per share credit for PO+ Orders routed to the NYSE that provide liquidity to the NYSE, the rebate that the Exchange would provide to ETP Holders is competitive with the rate that NYSE provides to its members for providing liquidity and would maintain the same relationship between the rebate provide

[4] A PO+ Order is a Primary Only Order (*i.e.,* a market or limit order that is to be routed to the primary market) that is entered for participation in the primary market, other than for participation in the primary market opening or primary market re-opening. *See* NYSE Arca Equities Rule 7.31(f)(1)(C).

[5] *See* Securities Exchange Act Release No. 75353 (July 2, 2015), 80 FR 39468 (July 9, 2015) (SR–NYSE–2015–30).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

by the venue to which the PO+ Order is routed and the fees charged by the Exchange for such orders. Further, the proposed change is equitable and not unfairly discriminatory because the rebate would apply uniformly across pricing tiers and all similarly situated ETP Holders would be subject to the same credit.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[8] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the routing credits would not place a burden on competition because the Exchange is maintaining the existing relationship between the rebate provided by the Exchange for PO+ Order that are routed to the NYSE that provide liquidity on the NYSE and the rebate the NYSE provides to its members that provide liquidity.[9]

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that this proposal promotes a competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)[10] of the Act and subparagraph (f)(2) of Rule 19b–4[11] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)[12] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2015–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2015–70. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2015–70 and should be submitted on or before September 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

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BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b)(8).

[9] *See supra* note 5.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(2)(B).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75724; File No. SR–CME–2015–015]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Listing Schedule for the Urea (Granular) FOB US Gulf Coast Swaps (Clearing Only) Contract

August 18, 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 August 10, 2015, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by CME. CME filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(ii) thereunder,[4] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME is proposing to expand the listing schedule for the Urea (Granular) FOB US Gulf Coast Swaps (Clearing Only) contract listed on The Board of Trade of the City of Chicago, Inc. (''CBOT'') designated contract market, which is available for submission for clearing via CME ClearPort. More specifically, the CME ClearPort listing schedule as of August 17, 2015 will be amended from 12 consecutive calendar months to 24 consecutive calendar months. CME has determined that the amended listing schedule is more conducive to the needs of market participants. The text of the proposed rule change is below. Italicized text indicates additions; bracketed text indicates deletions.

* * * * *

Product title	*DCM: CBOT Rulebook chapter*	*Clearing code*	*Current CME ClearPort listing schedule*	*CME ClearPort listing schedule as of August 17, 2015*
Urea (Granular) FOB US Gulf Swaps (Clearing Only)	*45*	*UFN*	[12 consecutive calendar months].	*24 consecutive calendar months.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission (''CFTC'') and operates a substantial business clearing futures and swaps contracts subject to the jurisdiction of the CFTC. CME is proposing to expand the listing schedule for the Urea (Granular) FOB US Gulf Coast Swaps (Clearing Only) contract listed on the CBOT designated contract market, which is available for submission for clearing via CME ClearPort. More specifically, the CME ClearPort listing schedule as of August 17, 2015 will be amended from 12 consecutive calendar months to 24 consecutive calendar months. CME has determined that the amended listing schedule is more conducive to the needs of market participants.

* * * * *

A summary of the amendments to the Urea (Granular) FOB US Gulf Coast Swaps (Clearing Only) contract's listing schedule is set forth in the following table:

Product title	DCM: CBOT Rulebook chapter	Clearing code	Current CME ClearPort listing schedule	CME ClearPort listing schedule as of August 17, 2015
Urea (Granular) FOB US Gulf Swaps (Clearing Only)	45	UFN	12 consecutive calendar months.	24 consecutive calendar months

* * * * *

The proposed rule changes that are described in this filing are limited to CME's business as a derivatives clearing organization clearing products under the exclusive jurisdiction of the CFTC. CME has not cleared security based swaps and does not plan to and therefore the proposed rule changes do not impact CME's security-based swap clearing business in any way. The proposed changes would become effective immediately. CME notes that it has also submitted the proposed rule changes that are the subject of this filing to its primary regulator, the CFTC, in CME Submission Number 15–290.

CME believes the proposed rule changes are consistent with the requirements of the Exchange Act including Section 17A.[5] The proposed rules expand the listing schedule for the Urea (Granular) FOB US Gulf Coast Swaps (Clearing Only) contract, which is available for submission for clearing via CME ClearPort, from 12 consecutive calendar months to 24 consecutive calendar months in response to the needs of market participants. These rule changes are therefore designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Exchange Act.[6]

Furthermore, the proposed changes are limited to CME's futures and swaps clearing businesses, which mean they are limited in their effect to products that are under the exclusive jurisdiction of the CFTC. As such, the proposed CME changes are limited to CME's activities as a DCO clearing futures that are not security futures and swaps that are not security-based swaps. CME notes that the policies of the CFTC with respect to administering the Commodity Exchange Act are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

Because the proposed changes are limited in their effect to CME's futures and swaps clearing businesses, the proposed changes are properly classified as effecting a change in an existing service of CME that:

(a) Primarily affects the clearing operations of CME with respect to products that are not securities,

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

including futures that are not security futures, swaps that are not security-based swaps or mixed swaps; and forwards that are not security forwards; and

(b) does not significantly affect any securities clearing operations of CME or any rights or obligations of CME with respect to securities clearing or persons using such securities-clearing service.

As such, the changes are therefore consistent with the requirements of Section 17A of the Exchange Act [7] and are properly filed under Section 19(b)(3)(A) [8] and Rule 19b–4(f)(4)(ii) [9] thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The proposed changes involve expanding the listing schedule for the Urea (Granular) FOB US Gulf Coast Swaps (Clearing Only) contract listed on the CBOT designated contract market, which is available for submission for clearing via CME ClearPort. More specifically, the CME ClearPort listing schedule as of August 17, 2015 will be amended from 12 consecutive calendar months to 24 consecutive calendar months. CME has determined that the amended listing schedule is more conducive to the needs of market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Exchange Act [10] and Rule 19b–4(f)(4)(ii) thereunder,[11] CME has designated that this proposal constitutes a change in an existing service of CME that (a) primarily affects the clearing operations of CME with respect to products that are not securities, including futures that are not security futures, and swaps that are not security-based swaps or mixed swaps, and forwards that are not security forwards; and (b) does not significantly affect any securities clearing operations of CME or any rights or obligations of CME with respect to securities clearing or persons using such securities-clearing service, which renders the proposed change effective upon filing.

CME believes that the proposal does not significantly affect any securities clearing operations of CME because CME recently filed a proposed rule change that clarified that CME has decided not to clear security-based swaps, except in a very limited set of circumstances.[12] The rule filing reflecting CME's decision not to clear security-based swaps removed any ambiguity concerning CME's ability or intent to perform the functions of a clearing agency with respect to security-based swaps. Therefore, this proposal will have no effect on any securities clearing operations of CME.

At any time within 60 days of the filing of the proposed 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 Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CME–2015–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CME–2015–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CME–2015–015 and should be submitted on or before September 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20789 Filed 8–21–15; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(4)(ii).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(4)(ii).

[12] *See* Securities Exchange Act Release No. 73615 (Nov. 17, 2014), 79 FR 69545 (Nov. 21, 2014) (SR–CME–2014–49). The only exception is with regards to Restructuring European Single Name CDS Contracts created following the occurrence of a Restructuring Credit Event in respect of an iTraxx Component Transaction. The clearing of Restructuring European Single Name CDS Contracts will be a necessary byproduct after such time that CME begins clearing iTraxx Europe index CDS.

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Recording of Aircraft Conveyances and Security Documents

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB)

approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 29, 2015. Approval is needed for security reasons such as mortgages submitted by the public for recording against aircraft, engines, propellers, and spare parts locations.

DATES: Written comments should be submitted by September 23, 2015.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson at (202) 267–1416, or by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0043.

Title: Recording of Aircraft Conveyances and Security Documents.

Form Numbers: FAA Form 8050–41.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 29, 2015 (80 FR 30752). 49 U.S.C. 44108 provides for establishing and maintaining a system for the recording of security conveyances affecting title to or interest in U.S. civil aircraft, as well as certain specifically identified engines, propellers, or spare parts locations, and for recording of releases relating to those conveyances. Security conveyances are examined by the Civil Aviation Registry to insure that they meet recording requirements in FAR part 49. If they do, they are given recording numbers and are made a permanent part of the aircraft record.

Respondents: Approximately 45,469 lienholders.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 45,469 hours.

Issued in Washington, DC, on August 18, 2015.

Ronda Thompson,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2015–20909 Filed 8–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification of Airmen for the Operation of Light-Sport Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 29, 2015. Regulation generates a need for new designated pilot examiners and designated airworthiness representatives to support the certification of new light-sport aircraft, pilots, flight instructors, and ground instructors.

DATES: Written comments should be submitted by September 23, 2015.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson at (202) 267–1416, or by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0690.

Title: Certification of Airmen for the Operation of Light-Sport Aircraft.

Form Numbers: FAA form 8130–15, 8710–11, 8710–12.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 29, 2015 (80 FR 30757). The Final Rule ''Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft'' [69 FR 44771] generated a need for new designated pilot examiners and designated airworthiness representatives to support the certification of new light-sport aircraft, pilots, flight instructors, and ground instructors.

Respondents: Approximately 57,214 respondents.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1.27 hours.

Estimated Total Annual Burden: 39,640 hours.

Issued in Washington, DC, on August 18, 2015.

Ronda Thompson,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2015–20906 Filed 8–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification: Airmen Other Than Flight Crewmembers, Subpart C, Aircraft Dispatchers and App. A Aircraft Dispatcher Courses

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 29, 2015. The respondents to this information collection are FAR part 135 and part 121 operators seeking airman certification and approval of aircraft dispatcher courses. The FAA uses the information to ensure compliance and adherence to the regulations.

DATES: Written comments should be submitted by September 23, 2015.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson at (202) 267–1416, or by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0648.

Title: Certification: Airmen Other Than Flight Crewmembers, Subpart C, Aircraft Dispatchers and App. A Aircraft Dispatcher Courses.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 29, 2015 (80 FR 30753). Each applicant for an aircraft dispatcher certificate or FAA approval of an aircraft dispatcher course much comply with 14 CFR part 65, subpart C and Appendix A. Any paperwork is provided to the local Flight Standards District Office of the FAA which oversees the certificates and FAA approvals.

Respondents: Approximately 36 applicants.

Frequency: Information is collected as needed.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 4,679 hours.

Issued in Washington, DC, on August 18, 2015.

Ronda Thompson,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2015–20915 Filed 8–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Gillespie County Airport in Fredericksburg, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Gillespie County Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before September 23, 2015.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Ed Agnew, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76177.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Roger Hansen, Airport Manager, at the following address: 101 W Main Unit 9, Fredericksburg, Texas 78624.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Mekhail, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 10101 Hillwood Parkway, Fort Worth, TX 76177, Telephone: (817) 222–5663, email: *Anthony.Mekhail@faa.gov.*

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Gillespie County Airport under the provisions of the AIR 21.

The following is a brief overview of the request:

Gillespie County requests the release of 5 acres of non-aeronautical airport property. The property is located south of FM 2093 and between Airport Road and Business Court. The property to be released will be sold and revenues shall be used for the operation and maintenance at the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Gillespie County Airport, telephone number (830) 990–5764.

Issued in Fort Worth, Texas on 7 August, 2015.

Ignacio Flores,

Manager, Airports Division.

[FR Doc. 2015–20916 Filed 8–21–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Hazardous Materials: Delayed Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION:

Key to "Reason for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

R—Renewal Request

P—Party to Exemption Request

Issued in Washington, DC, on August 12, 2015.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
Modification to Special Permits			
15744–M	Praxair Distribution, Inc., Danbury, CT	4	09–30–2015
14779–M	Corrosion Companies Inc., Washougal, WA	4	08–31–2015
15071–M	Orbital Sciences Corporation, Dulles, VA	4	09–30–2015
New Special Permit Applications			
15767–N	Union Pacific Railroad Company, Omaha, NE	3	09–30–2015
16001–N	VELTEK ASSOCIATES, INC., Malvern, PA	3	09–30–2015
16212–N	Entegris, Inc., Billerica, MA	4	08–30–2015
16220–N	Americase, Waxahache, TX	4	09–30–2015
16249–N	Optimized Energy Solutions, LLC, Durango, CO	3	09–30–2015
16320–N	Digital Wave Corporation, Centennial, CO	3	10–01–2015
16337–N	Volkswagen Group of America (VWGoA), Herndon, VA	4	08–31–2015
16366–N	Department of Defense, Scott AFT, IL	4	09–30–2015
16395–N	Chandler Instruments Company LLC, Broken Arrow, OK	4	09–30–2015
16373–N	Stainless Tank & Equipment Co., LLC, Beloit, WI	4	09–30–2015
16356–N	United Launch Affiance, LLC, Centennial, CO	4	09–30–2015
16371–N	Volkswagen Group of America (VWGoA), Herndon, VA	4	09–30–2015
Party to Special Permits Application			
16279–P	Twin Enterprise International LLC, Chandler, AZ	4	09–30–2015
12412–P	TerraChem Inc., Fellows, CA	4	09–30–2015
Renewal Special Permits Application			
11860–R	GATX Corporation, Chicago, IL	4	10–31–2015
8009–R	NK. Co., Ltd., Busan City, KR	4	09–30–2015

[FR Doc. 2015–20480 Filed 8–21–15; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Hazardous Materials: Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 23, 2015.

ADDRESSES: Address comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey

Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 5, 2015.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
		New Special Permits		
16526–N		Helimax Aviation, Inc., McClellan Park, CA.	49 CFR 172.101 Hazardous Materials Table Column (9B), Subpart C of Part 172, 172.301(c), 175.30, Part 173.	To authorize the transportation in commerce in the U.S. only of certain hazardous materials by 14 CFR part 133 Rotorcraft Load External Operations transporting hazardous materials attached to or suspended from an aircraft and 14 CFR part 135 operations transporting hazardous materials on board an aircraft. Such transportation is in support of construction operations when the use of cranes or other lifting devices is impracticable or unavailable or when aircraft is the only means of transportation, without being subject to certain hazard communication requirements, quantity limitations, packaging and loading and storage requirements. (mode 4).
16530–N		3M Company, Saint Paul, MN.	49 CFR 173.301(f)	To authorize the transportation in commerce of certain DOT specification cylinders containing certain toxic gases without pressure relief devices. (modes 1, 2, 3).
16532–N		Kinsbursky Brothers Supply Inc., Anaheim, CA.	49 CFR 173.185(f)	To authorize the transportation in commerce of certain lithium ion cells and batteries and lithium metal cells and batteries in alternative packaging. (modes 1, 2).
16535–N		National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.301(h)(3), 173.302a.	To authorize the transportation in commerce of non-DOT specification cylinders containing compressed nitrogen. (modes 1, 2, 4, 5).
16536–N		FIBA Technologies, Inc., Littleton, MA.	49 CFR 172.203(a), 178.37(k)(2)(i), 178.45(j)(1).	To authorize the manufacture, mark, sale and use of cylinders conforming with all regulations applicable to DOT Specifications 3AA, 3AAX and 3T, except as specified herein. (modes 1, 2, 3, 4, 5).
16537–N		Occidental Chemical Corporation, Dallas, TX.	49 CFR 174.50, 179.15, 179.100–3.	To authorize the transportation in commerce of clean and empty DOT 105J500W tank cars without pressure relief devices or loading and unloading valves, when being moved between tank car facilities for the purpose of requalification, as exempt from the FRA approval requirements in 49 CFR 174.50. (mode 2).
16540–N		GLI Citergaz, Civray, France.	49 CFR 172.102(b)(3) Special Provision B77, 172.102(c)(7), 172.102(c)(8) Special Provision TP38, 178.274(b), 178.277(b)(1).	To authorize the manufacture, mark, sale and use of a non-DOT specification portable tank conforming to the requirements specified in § 172.102(c)(7) portable tank code T50 that have been designed, constructed and stamped in accordance with the latest edition of Section VIII, Division 1 of the ASME Code with a design margin of 3.5:1 for the transportation in commerce of certain Division 2.3, Class 3, Division 6.1 and Class 8 materials. (modes 1, 3).
16542–N		Retriev Technologies, Lancaster, OH.	49 CFR 173.185(f)	To authorize the transportation in commerce of certain lithium ion cells and batteries and lithium metal cells and batteries in alternative packaging. (modes 1, 2).

[FR Doc. 2015–20482 Filed 8–21–15; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Elizabeth Betsy Pope d/b/a Eastgate Laboratory Testing; Public Interest Exclusion Order

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) issued a decision and order under the Procedures for Transportation Workplace Drug and Alcohol Testing Programs that excludes a service agent, Elizabeth ''Betsy'' Pope d/b/a Eastgate Laboratory Testing, from providing drug and alcohol testing services in any capacity to any DOT-regulated employer for a period of 5

years. Ms. Pope and her company provided Medical Review Officer services to DOT-regulated trucking companies when Ms. Pope was not qualified to act as a Medical Review Officer. This **Federal Register** serves as notice to the public that DOT-regulated employers or their service agents must stop using the services of Elizabeth ''Betsy'' Pope d/b/a Eastgate Laboratory Testing for administering their DOT-regulated drug and/or alcohol testing programs.

DATES: The effective date of the Public Interest Exclusion is August 18, 2015 and it will remain in effect until August 18, 2020.

FOR FURTHER INFORMATION CONTACT: Patrice M. Kelly, Acting Director, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE., Washington, DC 20590; (202) 366–3784 (voice), (202) 366–3897 (fax), or *patrice.kelly@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

In accordance with the provisions of the Department's regulation at 49 CFR part 40 (Part 40), Subpart R, Public Interest Exclusions (PIE), the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Proposed Exclusion to Ms. Pope on January 20, 2015. FMCSA recommended the PIE based upon a criminal conviction that resulted from the fraudulent Medical Review Officer (MRO) services Ms. Pope was providing to a DOT-regulated trucking company through her company, Eastgate Laboratory Testing. The grand jury had charged that from approximately January 2006 through approximately March 2012, Ms. Pope provided drug test results without using a qualified MRO, as required by the DOT regulations. Ms. Pope, who was not a licensed physician (a Doctor of Medicine or Osteopathy), and therefore not qualified to act as an MRO, used the signature of an MRO to certify results, while the MRO had not worked for her company since June 2005. Specifically, the NOPE cited a guilty plea that Ms. Pope entered in the United States District Court for the Western District of Pennsylvania and the resulting December 10, 2014 ''conviction for mail fraud relating to [Ms. Pope's] forgery of a medical review officer's signature on commercial motor vehicle operator drug tests.''

Public Interest Exclusion Decision and Order

On August 18, 2015, the Department issued a PIE against Elizabeth ''Betsy'' Pope d/b/a Eastgate Laboratories. This PIE prohibits all DOT-regulated employers and service agents from utilizing Elizabeth ''Betsy'' Pope d/b/a Eastgate Laboratories for drug and alcohol testing services in any capacity for a period of 5 years. A full copy of the Department's Decision and Order can be found at *http://www.dot.gov/odapc.*

In accordance with the terms of the Department's Decision and Order and per 49 CFR 40.403(a), Elizabeth ''Betsy'' Pope d/b/a Eastgate Laboratories is required to directly notify each of the affected DOT-regulated employer clients in writing about the issuance, scope, duration, and effect of the PIE. The Department is notifying employers and the public about this PIE by publishing it in a ''List of Excluded Drug and Alcohol Service Agents'' on its Web site at *http://www.dot.gov/odapc/* and will make the list available upon request. As required by 49 CFR 40.401(d), the Department is publishing this **Federal Register** notice to inform the public that Elizabeth ''Betsy'' Pope d/b/a Eastgate Laboratories is subject to a PIE for 5 years. After August 18, 2020, Elizabeth ''Betsy'' Pope d/b/a Eastgate Laboratories, will be removed from the list and the public will be notified of that removal, also in accordance with 49 CFR 40.401(d).

Any DOT-regulated employer who uses the services of Elizabeth ''Betsy'' Pope d/b/a Eastgate Laboratories between August 18, 2015 and August 18, 2020 may be subject to a civil penalty for violation of Part 40.

Dated: This 18th Day of August, 2015, at Washington, DC.

Patrice M. Kelly,

Acting Director, Office of Drug and Alcohol Policy Compliance.

[FR Doc. 2015–20842 Filed 8–21–15; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Customer Complaint Form

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC 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. Currently, the OCC is soliciting comment concerning the renewal of an existing collection titled ''Customer Complaint Form.'' The OCC also is giving notice that it has sent the rule to OMB for review.

DATES: You should submit written comments by September 23, 2015.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0232, 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.

FOR FURTHER INFORMATION CONTACT: 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.

SUPPLEMENTARY INFORMATION: The OCC is requesting that OMB extend its approval of the following collection:

Title: Customer Complaint Form.

OMB Control No.: 1557–0232.

Description: The customer complaint form was developed as a courtesy for customers who contact the OCC's Customer Assistance Group (CAG) and wish to file a formal written complaint.

The form offers a template for national bank and Federal savings association customers to use to focus their issues and identify the information necessary to provide a complete picture of their concerns. Use of the form is entirely voluntary; however, use of the form helps to avoid the processing delays associated with incomplete complaints and allows CAG to process complaints more efficiently.

CAG uses the information included in a completed form to create a record of the customer's contact, capture information that can be used to resolve the customer's issues, and provide a database of information that is incorporated into the OCC's supervisory process.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Number of Respondents: 18,000.

Total Annual Responses: 18,000.

Frequency of Response: On occasion.

Total Annual Burden Hours: 1,494.

The OCC issued a notice concerning this collection for 60-days of comment on May 11, 2015, 80 FR 26989. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information shall have practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 18, 2015.

Mary H. Gottlieb,

Regulatory Specialist, Legislative & Regulatory Activities Division.

[FR Doc. 2015–20762 Filed 8–21–15; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of six individuals and fifteen entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Acting Director of OFAC of the six individuals and 15 entities identified in this notice pursuant to section 805(b) of the Kingpin Act are effective on August 19, 2015.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security, may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On August 19, 2015, the Acting Director of OFAC designated the following six individuals and 15 entities whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals:

1. AMARAL AREVALO, Wendy Dalaithy, Asuncion 747 Inter 301, Guadalajara, Jalisco 44660, Mexico; Calle 16 de Septiembre No. 21, Gral Manuel Avila Camacho, Naucalpan, Estado de Mexico 53910, Mexico; DOB 11 Jul 1980; POB Guadalajara, Jalisco, Mexico; R.F.C. AAAW800711FN9 (Mexico); C.U.R.P. AAAW800711MJCMRN05 (Mexico) (individual) [SDNTK] (Linked To: HD COLLECTION, S.A. DE C.V.; Linked To: HOTELITO DESCONOCIDO; Linked To: W&G ARQUITECTOS, S.A. DE C.V.). Designated for materially assisting in, or providing support for or to, or providing goods or services in support of, the international narcotics trafficking activities of the LOS CUINIS DRUG TRAFFICKING ORGANIZATION and/or acting for or on behalf of the LOS CUINIS DRUG TRAFFICKING ORGANIZATION and therefore meets the statutory criteria for designation as a Specially Designated Narcotics Trafficker (SDNT) pursuant to sections 805(b)(2) and/or (3) of the Kingpin Act, 21 U.S.C. 1904(b)(2) and/or (3).
2. CAMACHO CAZARES, Jeniffer Beaney (a.k.a. CAMACHO CAZARES, Jennifer Beaney; a.k.a. CAMACHO CAZAREZ, Jeniffer Beaney), Sendero De Los Olmos 110, Zapopan, Jalisco 45129, Mexico; 4850 ch de la Cote-Saint-Luc, Montreal, Quebec H3W 2H2, Canada; DOB 01 Feb 1979; POB Ahome, Sinaloa, Mexico; C.U.R.P. CACJ790201MSLMZN03 (Mexico) (individual) [SDNTK] (Linked To: AG & CARLON, S.A. DE C.V.; Linked To: GRUPO DIJEMA, S.A. DE C.V.). Designated for materially assisting in, or providing support for or to, or providing goods or services in support of, the international narcotics trafficking activities of Abigael GONZALEZ VALENCIA and/or acting for or on behalf of Abigael GONZALEZ VALENCIA and therefore meets the statutory criteria for designation as a SDNT pursuant to

sections 805(b)(2) and/or (3) of the Kingpin Act, 21 U.S.C. 1904(b)(2) and/or (3).

3. MARQUEZ GALLEGOS, Ma Elena (a.k.a. MARQUEZ GALLEGOS, Maria Elena), Albino Aranda 3525, Guadalajara, Jalisco 44690, Mexico; Pablo Casals # 240–24, Col. Prados Providencia, Guadalajara, Jalisco 44680, Mexico; DOB 15 Mar 1965; POB Santa Maria de los Angeles, Jalisco, Mexico; C.U.R.P. MAGE650315MJCRLL03 (Mexico) (individual) [SDNTK] (Linked To: DILAVA; Linked To: GRUPO DIJEMA, S.A. DE C.V.). Designated for acting for or on behalf of GRUPO DIJEMA, S.A. DE C.V. and therefore meets the statutory criteria for designation as a SDNT pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).
4. SANCHEZ CARLON, Diana Maria, Calle Ricardo Palma 2814, Colonia Prados Providencia, Guadalajara, Jalisco, Mexico; DOB 11 Feb 1979; POB Ahome, Sinaloa, Mexico; R.F.C. SACD–790211–KC2 (Mexico); C.U.R.P. SACD790211MSLNRN04 (Mexico) (individual) [SDNTK] (Linked To: AG & CARLON, S.A. DE C.V.; Linked To: AHOME REAL ESTATE, S.A. DE C.V.; Linked To: GRUPO DIJEMA, S.A. DE C.V.; Linked To: CONSULTORIA INTEGRAL LA FUENTE, SOCIEDAD CIVIL). Designated for materially assisting in, or providing support for or to, or providing goods or services in support of, the international narcotics trafficking activities of the Abigael GONZALEZ VALENCIA and/or acting for or on behalf of Abigael GONZALEZ VALENCIA and therefore meets the statutory criteria for designation as a SDNT pursuant to sections 805(b)(2) and/or (3) of the Kingpin Act, 21 U.S.C. 1904(b)(2) and/or (3).
5. SANCHEZ CARLON, Silvia Romina, Calle Alberta No. 2166, Fraccionamiento Los Colomos, Guadalajara, Jalisco, Mexico; Av. Balam Kanche Mza. 30, Lote 002, Condominio Playa Car Fase II, Playa del Carmen, Quintana Roo 77710, Mexico; DOB 22 Dec 1986; POB Ahome, Sinaloa, Mexico; R.F.C. SACS–861222–PH0 (Mexico); C.U.R.P. SACS861222MSLNRL04 (Mexico) (individual) [SDNTK] (Linked To: AHOME REAL ESTATE, S.A. DE C.V.; Linked To: CONSULTORIA INTEGRAL LA FUENTE, SOCIEDAD CIVIL; Linked To: INTERCORP LEGOCA, S.A. DE C.V.; Linked To: LA FIRMA MIRANDA, S.A. DE C.V.; Linked To: XAMAN HA CENTER). Designated for materially assisting in, or providing support for or to, or providing goods or services in support of, the international narcotics trafficking activities of the Abigael GONZALEZ VALENCIA and/or acting for or on behalf of Abigael GONZALEZ VALENCIA and therefore meets the statutory criteria for designation as a SDNT pursuant to sections 805(b)(2) and/or (3) of the Kingpin Act, 21 U.S.C. 1904(b)(2) and/or (3).
6. TORRES GONZALEZ, Fernando, Blvd. Puerta de Hierro # 5210, Piso 8–C, Puerta de Hierro, Zapopan, Jalisco 45116, Mexico; Calle Aldama 548, Interior 3, Tepatitlan de Morelos, Jalisco, Mexico; Calle Guadalupe 676, Fraccionamiento Guadalupe, Tepatitlan de Morelos, Jalisco, Mexico; Guayaquil numero 2600, Colonia Providencia, Guadalajara, Jalisco, Mexico; DOB 04 Jul 1970; POB Tepatitlan de Morelos, Jalisco, Mexico; C.U.R.P. TOGF700704HJCRNR06 (Mexico) (individual) [SDNTK] (Linked To: CIRCULO COMERCIAL TOTAL DE PRODUCTOS, S.A. DE C.V.; Linked To: HD COLLECTION, S.A. DE C.V.; Linked To: HOTELITO DESCONOCIDO; Linked To: W&G ARQUITECTOS, S.A. DE C.V.). Designated for materially assisting in, or providing support for or to, or providing goods or services in support of, the international narcotics trafficking activities of the LOS CUINIS DRUG TRAFFICKING ORGANIZATION and/or acting for or on behalf of the LOS CUINIS DRUG TRAFFICKING ORGANIZATION and therefore meets the statutory criteria for designation as a SDNT pursuant to sections 805(b)(2) and/or (3) of the Kingpin Act, 21 U.S.C. 1904(b)(2) and/or (3).

Entities

1. AG & CARLON, S.A. DE C.V., Diag. Hernan Cortes No. 29, Vallarta San Lucas, Guadalajara, Jalisco 44690, Mexico; R.F.C. AAC100303FP1 (Mexico) [SDNTK]. Designated for being owned, controlled or directed by, or acting for or on behalf of, Diana Maria SANCHEZ CARLON and/or Jeniffer Beaney CAMACHO CAZARES and therefore meets the statutory criteria for designation as a SDNT pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).
2. AHOME REAL ESTATE, S.A. DE C.V., Alberta No. 2166, Colomos Providencia, Guadalajara, Jalisco 44660, Mexico; Albino Aranda # 3525, Colonia Rinconada Santa Rita, Guadalajara, Jalisco, Mexico; R.F.C. ARE0906295S0 (Mexico) [SDNTK]. Designated for being controlled or directed by, or acting for or on behalf of, Abigael GONZALEZ VALENCIA, Diana Maria SANCHEZ CARLON, and/or Jeniffer Beaney CAMACHO CAZARES and therefore meets the statutory criteria for designation as a SDNT pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).
3. ARENAS DE LORETO, Pedro Moreno 1421, Col. Americana, Guadalajara, Jalisco 44160, Mexico; Playon de Mismaloya s/n, La Cruz de Loreto, Tomatlan, Jalisco 48460, Mexico; Web site *www.arenasdeloreto.com* [SDNTK]. Designated for being controlled or directed by, or acting for or on behalf of, the LOS CUINIS DRUG TRAFFICKING ORGANIZATION and/or HOTELITO DESCONOCIDO and therefore meets the statutory criteria for designation as a SDNT pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).
4. BRIC INMOBILIARIA, Naciones Unidas # 6875, local 8a, Fracc. Vista del Tule, Zapopan, Jalisco, Mexico; Web site *www.bricinmobiliaria.com* [SDNTK]. Designated for being controlled or directed by, or acting for or on behalf of, Abigael GONZALEZ VALENCIA and therefore meets the statutory criteria for designation as a SDNT pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).
5. CIRCULO COMERCIAL TOTAL DE PRODUCTOS, S.A. DE C.V., Blvd. Puerta de Hierro No. 5210, Puerta de Hierro, Zapopan, Jalisco 45116, Mexico; R.F.C. CCT060531FQ1 (Mexico) [SDNTK]. Designated for being controlled or directed by, or acting for or on behalf of, the LOS CUINIS DRUG TRAFFICKING ORGANIZATION and/or Fernando TORRES GONZALEZ and therefore meets the statutory criteria for designation as a SDNT pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).
6. CONSULTORIA INTEGRAL LA FUENTE, SOCIEDAD CIVIL, Zapopan, Jalisco, Mexico; Folio Mercantil No. 26736 (Mexico) [SDNTK]. Designated for being controlled or directed by, or acting for or on behalf of, Diana Maria SANCHEZ CARLON and/or Silvia Romina SANCHEZ CARLON and therefore meets the statutory criteria for designation as a SDNT pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).
7. DILAVA, Pablo Casals # 240–24, Col. Prados Providencia, Guadalajara, Jalisco 44680, Mexico; Torre Medica San Javier, Consultorio 307, Quebec 631, Col. Providencia, Guadalajara, Jalisco, Mexico; Web site *http://esteticavaginal.com.mx* [SDNTK].

Designated for being controlled or directed by, or acting for or on behalf of, Ma Elena MARQUEZ GALLEGOS and therefore meets the statutory criteria for designation as a SDNT pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).

8. GRUPO DIJEMA, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Folio Mercantil No. 46092–1 (Mexico) [SDNTK]. Designated for being controlled or directed by, or acting for or on behalf of, Diana Maria SANCHEZ CARLON and/or Jeniffer Beaney CAMACHO CAZARES and therefore meets the statutory criteria for designation as a SDNT pursuant to sections 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).
9. HD COLLECTION, S.A. DE C.V., Boulevard Puerta de Hierro # 5210 8C, Col. Puerta de Hierro, Zapopan, Jalisco 45116, Mexico; R.F.C. HCO0911242K8 (Mexico) [SDNTK]. Designated for being controlled or directed by, or acting for or on behalf of, the LOS CUINIS DRUG TRAFFICKING ORGANIZATION, Fernando TORRES GONZALEZ, and/or Wendy Dalaithy AMARAL AREVALO and therefore meets the statutory criteria for designation as a SDNT pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).
10. HOTELITO DESCONOCIDO, Playon de Mismaloya s/n, La Cruz de Loreto, Tomatlan, Jalisco 48460, Mexico; Blvd. Puerta de Hierro # 5210, Piso 8, Col. Puerta de Hierro, Zapopan, Jalisco 45116, Mexico; Web site *www.hotelito.com* [SDNTK]. Designated for materially assisting in, or providing support for or to, or providing goods or services in support of, the international narcotics trafficking activities of the LOS CUINIS DRUG TRAFFICKING ORGANIZATION, and/or acting for or on behalf of the LOS CUINIS DRUG TRAFFICKING ORGANIZATION, HD COLLECTION, S.A. DE C.V., W&G ARQUITECTOS, S.A. DE C.V., Fernando TORRES GONZALEZ, and/or Wendy Dalaithy AMARAL AREVALO and therefore meets the statutory criteria for designation as a SDNT pursuant to sections 805(b)(2) and/or (3) of the Kingpin Act, 21 U.S.C. 1904(b)(2) and/or (3).
11. INTERCORP LEGOCA, S.A. DE C.V., Avenida Fco I Madero 643, Colonia Guadalajara Centro, Guadalajara, Jalisco 44100, Mexico; Folio Mercantil No. 65256 (Mexico) [SDNTK]. Designated for being controlled or directed by, or acting for or on behalf of, Silvia Romina SANCHEZ CARLON and therefore meets the statutory criteria for designation as a SDNT pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).
12. LA FIRMA MIRANDA, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Folio Mercantil No. 47864 (Mexico); alt. Folio Mercantil No. 65256 (Mexico) [SDNTK]. Designated for being controlled or directed by, or acting for or on behalf of, Silvia Romina SANCHEZ CARLON and therefore meets the statutory criteria for designation as a SDNT pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).
13. PLAZA LOS TULES, Av. Naciones Unidas # 6875, Fracc. Vista del Tule, Zapopan, Jalisco, Mexico; Av. Naciones Unidas # 6895, Fracc. Vista del Tule, Zapopan, Jalisco, Mexico [SDNTK]. Designated for being controlled or directed by, or acting for or on behalf of, Abigael GONZALEZ VALENCIA and/or Diana Maria SANCHEZ CARLON and therefore meets the statutory criteria for designation as a SDNT pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).
14. W&G ARQUITECTOS, S.A. DE C.V., 16 de Septiembre No. 21, Col. Manuel Avila Camacho, Naucalpan, Edo. de Mex., Mexico; R.F.C. WAR050401H27 (Mexico) [SDNTK]. Designated for being controlled or directed by, or acting for or on behalf of, the LOS CUINIS DRUG TRAFFICKING ORGANIZATION, Fernando TORRES GONZALEZ, and/or Wendy Dalaithy AMARAL AREVALO and therefore meets the statutory criteria for designation as a SDNT pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).
15. XAMAN HA CENTER (a.k.a. PLAZA XAMAN HA), Av. Balam Kanche Mza. 30, Lote 002, Condominio Playa Car Fase II, Playa del Carmen, Quintana Roo 77710, Mexico; Carretera Cancun-Tulum, Playacar, Solidaridad, Playa del Carmen, Quintana Roo 77717, Mexico; Avenida 50, Playa del Carmen, Quintana Roo, Mexico [SDNTK]. Designated for being controlled or directed by, or acting for or on behalf of, Abigael GONZALEZ VALENCIA, Diana Maria SANCHEZ CARLON, and/or Silvia Romina SANCHEZ CARLON and therefore meets the statutory criteria for designation as a SDNT pursuant to section 805(b)(3) of the Kingpin Act, 21 U.S.C. 1904(b)(3).

Dated: August 19, 2015.

Andrea M. Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015–20829 Filed 8–21–15; 8:45 am]

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FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Part 171

Pesticides; Certification of Pesticide Applicators; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 171

[EPA–HQ–OPP–2011–0183; FRL–9931–83]

RIN 2070–AJ20

Pesticides; Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing changes to the existing regulation concerning the certification of applicators of restricted use pesticides (RUPs) in response to extensive stakeholder review of the regulation and its implementation since 1974. EPA's proposed changes would ensure the Federal certification program standards adequately protect applicators, the public, and the environment from risks associated with use of RUPs. The proposed changes are intended to improve the competency of certified applicators of RUPs, increase protection for noncertified applicators of RUPs operating under the direct supervision of a certified applicator through enhanced pesticide safety training and standards for supervision of noncertified applicators, and establish a minimum age requirement for certified and noncertified applicators. In keeping with EPA's commitment to work more closely with Tribal governments to strengthen environmental protection in Indian country, certain changes are intended to provide more practical options for establishing certification programs in Indian country.

DATES: Comments must be received on or before November 23, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0183, 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. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- *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: Michelle Arling, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (703) 308–5891; email address: *arling.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you apply RUPs. You may also be potentially affected by this action if you are: Certified by a State, Tribe, or Federal agency to apply pesticides; a State, Tribal, or Federal agency who administers a certification program for pesticide applicators or a pesticide safety educator; or other person who provides pesticide safety training for pesticide applicator certification or recertification.

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 rulemaking applies to them. Potentially affected entities may include:

- Agricultural Establishments (Crop Production) (NAICS code 111).
- Nursery and Tree Production (NAICS code 111421).
- Agricultural Pest Control and Pesticide Handling on Farms (NAICS code 115112).
- Crop Advisors (NAICS codes 115112, 541690, 541712).
- Agricultural (Animal) Pest Control (Livestock Spraying) (NAICS code 115210).
- Forestry Pest Control (NAICS code 115310).
- Wood Preservation Pest Control (NAICS code 321114).
- Pesticide Registrants (NAICS code 325320).
- Pesticide Dealers (NAICS codes 424690, 424910, 444220).
- Research & Demonstration Pest Control, Crop Advisor (NAICS code 541710).
- Industrial, Institutional, Structural & Health Related Pest Control (NAICS code 561710).
- Ornamental & Turf, Rights-of-Way Pest Control (NAICS code 561730).
- Environmental Protection Program Administrators (NAICS code 924110).
- Governmental Pest Control Programs (NAICS code 926140).

B. What is the Agency's authority for taking this action?

This action is issued under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136–136y, particularly sections 136a(d), 136i, and 136w.

C. What action is the Agency taking?

The proposed rule would revise the existing Certification of Pesticide Applicators (certification) rule at 40 CFR part 171 to enhance the following: Private applicator competency standards, exam and training security standards, standards for noncertified applicators working under the direct supervision of a certified applicator, Tribal applicator certification, and State, Tribal, and Federal agency certification plans. The proposed rule would revise the existing certification rule at 40 CFR part 171 to add: Application method-specific categories of certification for commercial and private applicators, predator control categories for commercial and private applicators, recertification standards and interval, and minimum age for certified applicators and noncertified applicators working under direct supervision.

1. *Private applicator competency standards.* The proposed rule would clarify the standards of competency a private applicator must meet in order to be certified. The proposed rule would expand the private applicator competency standards to include the general standards of competency for commercial applicators (also known as ''core'' competency), standards generally applicable to pesticide use in agriculture, and specific related regulations relevant to private applicators, such as the Worker Protection Standard (WPS) (40 CFR part 170). The proposed rule also would amend the options for determining private applicator competency by requiring the applicator to complete a training program or to pass a written exam that covers the specific competency standards.

2. *Application method-specific categories of certification for commercial and private applicators.* The proposed rule would require that commercial and private applicators who apply pesticides aerially or by fumigation demonstrate competency to make these types of applications. The proposal would add categories for aerial

application, soil fumigation, and non-soil fumigation.

3. *Recertification standards and interval.* The proposed rule would require that commercial and private applicators demonstrate continued competency to use RUPs every 3 years by either passing written exams for each certification they hold or completing specific training in a continuing education program administered by the certifying authority. Commercial applicators would be required to demonstrate continued competency in the core standards and each category in which they intend to maintain their certification. Private applicators would be required to demonstrate continued general competency and competency in each relevant application method-specific category in which they intend to maintain their certification.

4. *Standards for noncertified applicators working under the direct supervision.* The proposed rule would include several new requirements to ensure that noncertified applicators are competent to use RUPs under the supervision of a certified applicator. In order for noncertified applicators to work under the direct supervision of a certified applicator they would have to complete specific training as outlined in the proposed rule, complete training required for handlers under the WPS, or pass the exam covering general standards of competency for commercial pesticide applicators (''core exam''). Noncertified applicators who qualify by satisfying the training requirement under the proposed rule or the training required for handlers under the WPS would be required to renew their qualification after a year; noncertified applicators who qualify by passing the core exam would need to renew their qualification after 3 years. Noncertified applicators can renew their qualifications using any of these same options. All applicators would be required to ensure noncertified applicators have met these qualifications and commercial applicators would be required to maintain records of the noncertified applicators' qualifications. The proposal would require a certified applicator supervising noncertified applicators to be certified in each category in which he or she supervises applications, to provide to the noncertified applicators a copy of the labeling for the RUPs used, and to ensure that a means for immediate communication between the supervising applicator and noncertified applicators under his or her direct supervision is available.

5. *Minimum age.* The proposed rule would require commercial and private applicators to be at least 18 years old and noncertified applicators using RUPs under the direct supervision of certified applicators to be at least 18 years old.

6. *Indian country certification.* The proposed rule would offer three options for certification for applicators in Indian country. A Tribe may choose to allow persons holding currently valid certifications issued under one or more specified State or Federal agency certification plans to apply RUPs within the Tribe's Indian country, develop its own certification plan for certifying private and commercial applicators, or take no action, in which case EPA may, in consultation with the Tribe(s) affected, implement an EPA-administered certification plan. EPA currently administers a Federal certification program covering Indian country not otherwise covered by a certification plan (Ref. 1) as well as a certification program specifically for Navajo Indian country (Ref. 2).

7. *State, Tribal, and Federal agency certification plans.* The proposed rule would update the requirements for submission, approval, and maintenance of State, Tribal, and Federal agency certification plans. The proposed rule would delete the section on Government Agency Plans (GAP) and would codify existing policy on review and approval of Federal agency certification plans.

D. Why is the Agency taking this action?

The Agency is proposing revisions to the existing certification regulation at 40 CFR part 171 in order to reduce occupational pesticide exposure and the incidence of related illness among certified applicators, noncertified applicators working under their direct supervision, and agricultural workers, and to ensure that when used according to their labeling, RUPs do not cause unreasonable adverse effects to applicators, workers, the public, or the environment. Discussions with State regulatory partners and key stakeholders over many years, together with EPA's review of incident data, have led EPA to identify several shortcomings in the current regulation that should be addressed, including:

- Absence of a minimum age for certified pesticide applicators and noncertified applicators working under their direct supervision.
- Absence of standards or a time period for ensuring that certified pesticide applicators maintain continued competency.
- Lack of certification standards for specific types of pesticide application (aerial and fumigation) that may pose risks to applicators, bystanders, and the environment if not performed correctly.
- Vague standards for evaluating the competency of private applicators to use RUPs.
- Incomplete protections for persons applying pesticides under the direct supervision of a certified applicator.
- Inconsistent national program for applicator certification that hinders applicators' ability to work in different states without duplicative burden and inhibits EPA's ability to develop certification and training materials that can be used nationally.
- Limited options for establishing applicator certification programs in Indian country.
- Incomplete information incorporated into the regulation about certification of applicators by Federal agencies.

A detailed discussion about the rationale for the proposed rule and EPA's regulatory objectives are provided in Units III. and VI. through XX. The proposed changes would offer targeted improvements that are reasonably expected to reduce risk to applicators, workers, the public, and the environment and improve applicator certification programs' operational efficiencies. EPA expects the proposed changes would:

- Improve competency of private and commercial applicators and noncertified applicators using RUPs under their direct supervision.
- Provide more uniform competency among certified applicators across the nation, thereby assuring the effectiveness of restricted use registration as a risk management tool.
- Protect applicators, workers, the public, and the environment from unreasonable adverse effects from the use of RUPs.
- Ensure that applicators are competent to use high-risk application methods.
- Ensure applicators' ongoing competency to use RUPs.
- Protect children by establishing a minimum age for commercial, private, and noncertified applicators.
- Improve human health and environmental protection in Indian country.
- Clarify and streamline requirements for States, Tribes, and Federal agencies to administer their own certification programs.

E. What are the estimated impacts of this action?

EPA has prepared an economic analysis (EA) of the potential costs and impacts associated with this rulemaking (Ref. 3). This analysis, which is available in the docket, is discussed in more detail in Unit III., and is briefly

summarized here. The following chart provides a brief outline of the costs and impacts of this proposed rule.

Category	Description	Source
Monetized Benefits Avoided acute pesticide incidents.	$80.5 million/year after adjustment for underreporting of pesticide incidents ...	EA Chapter 6.5.
Qualitative Benefits	Willingness to pay to avoid acute effects of pesticide exposure beyond cost of treatment and loss of productivity. • Reduced latent effect of avoided acute pesticide exposure. • Reduced chronic effects from lower chronic pesticide exposure to workers, handlers, and farmworker families, including a range of illnesses such as Non-Hodgkins lymphoma, prostate cancer, Parkinson's disease, lung cancer, chronic bronchitis, and asthma.	EA Chapter 6.4 & 6.6.
Total Costs	$47.2 million/year	EA Chapter 5.
Costs to Private Applicators	490,000 impacted; $19.5 million/year; average $40 per applicator	EA Chapter 5 & 5.6.
Costs to Commercial Applicators	414,000 impacted; $27.4 million/year; average $66 per applicator	EA Chapter 5 & 5.6.
Costs to States and Other Jurisdictions.	63 impacted; $359,000/year	EA Chapter 5.
Small Business Impacts	No significant impact on a substantial number of small entities • The rule may affect over 800,000 small farms that use pesticides, although about half are unlikely to apply restricted use pesticides. • Impact less than 0.1% of the annual revenues for the average small entity.	EA Chapter 5.7.
Impact on Jobs	The rule will have a negligible effect on jobs and employment • Most private and commercial applicators are self-employed. • Incremental cost per applicator represents from 0.3 to 0.5 percent of the cost of a part-time employee.	EA Chapter 5.6.

II. Background

A. Regulatory Framework

This unit discusses the legal framework within which EPA regulates the safety of those who apply RUPs as certified applicators and noncertified applicators working under the direct supervision of certified applicators, as well as of the general public and the environment.

1. FIFRA. FIFRA, 7. U.S.C. 136 *et seq.,* was signed into law in 1947 and established a framework for the regulation of pesticide products, requiring them to be registered by the Federal government before sale or distribution in commerce. Amended in 1972 by the Federal Environmental Pesticide Control Act, FIFRA broadened Federal pesticide regulatory authority in several respects, notably by making it unlawful for anyone to use any registered product in a manner inconsistent with its labeling, 7 U.S.C. 136i(a)(2)(G), and limiting the sale and use of RUPs to certified applicators and those under their direct supervision. 7 U.S.C. 136i(a)(2)(F). The amendments provided civil and criminal penalties for violations of FIFRA. 7 U.S.C. 136l. The new and revised provisions augmented EPA's authority to protect humans and the environment from unreasonable adverse effects of pesticides.

As a general matter, in order to obtain a registration for a pesticide under FIFRA, an applicant must demonstrate that the pesticide satisfies the statutory standard for registration, section 3(c)(5) of FIFRA. 7 U.S.C. 136a(c)(5). That standard requires, among other things, that the pesticide performs its intended function without causing ''unreasonable adverse effects on the environment.'' The term ''unreasonable adverse effects on the environment'' takes into account the economic, social, and environmental costs and benefits of the use of any pesticide and includes any unreasonable risk to man or the environment. 7 U.S.C. 136(bb). This standard requires a finding that the risks associated with the use of a pesticide are justified by the benefits of such use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices. See *Defenders of Wildlife* v. *Administrator, EPA,* 882 F.2d 1294, 1298–99 (8th Cir. 1989) (describing FIFRA's required balancing of risks and benefits).

A pesticide product may be unclassified, or it may be classified for restricted or for general use. Unclassified and general use pesticides generally have a lower toxicity than RUPs and so pose less potential to harm humans or the environment. The general public can buy and use unclassified and general use pesticides without special permits or restrictions.

Where EPA determines that a pesticide product would not meet these registration criteria if unclassified or available for general use, but could meet the registration criteria if applied by experienced, competent applicators, EPA classifies the pesticide, or particular uses of the pesticide, for restricted use only by certified applicators. 7 U.S.C. 136a(d)(1). Generally, EPA classifies a pesticide as restricted use if its toxicity exceeds one or more human health toxicity criteria or based on other standards established in regulation. EPA may also classify a pesticide as restricted use if it meets certain criteria for hazards to non-target organisms or ecosystems, or if EPA determines that a product (or class of products) may cause unreasonable adverse effect on human health and/or the environment without such restriction. The restricted use classification designation must be prominently placed on the top of the front panel of the pesticide product labeling.

The risks associated with products classified as RUP require additional controls to ensure that when used they do not cause unreasonable adverse effects on human health or the environment. However, RUPs can be used safely when labeling instructions are followed. These products may only be applied by certified applicators or persons working under their direct supervision who have demonstrated competency in the safe application of pesticides, including the ability to read and understand the complex labeling requirements. FIFRA requires EPA to develop standards for certification of applicators (7 U.S.C. 136i(a)(1)) and allows States to certify applicators under a certification plan submitted to and approved by EPA. 7 U.S.C. 136i(a)(2).

Provisions limiting EPA's authority with respect to applicator certification

include 7 U.S.C. 136i(a)(1), (c), and (d); 7 U.S.C. 136w–5; and 7 U.S.C. 136(2)(e)(4). Section 136i(a)(1) of FIFRA prohibits EPA from requiring private applicators to take an exam to establish competency in the use of pesticides under an EPA certification program, or from requiring States to impose an exam requirement as part of a State plan for certification of applicators.

Section 136i(c) of FIFRA instructs EPA to make instructional materials on Integrated Pest Management (IPM) available to individuals, but it prohibits EPA from establishing requirements for instruction or competency determination on IPM. EPA makes IPM instructional materials available to individual users through the National Pesticide Applicator Certification Core Manual, which is used directly or as a model by many States. Additionally, EPA has developed and implemented a variety of programs in other areas of the pesticide program to inform pesticide applicators about the principles and benefits of IPM. These include the EPA's IPM in Schools Program, the Pesticide Environmental Stewardship Program (PESP), and the Strategic Agricultural Initiative (SAI) Grant Program, as well as several other efforts. The Agency will continue to place a high priority on initiatives and programs that promote IPM practices. For additional information about the range of programs and activities, visit the Office of Pesticide Programs PestWise Web page on the EPA Web site at: *http://www.epa.gov/pesp/about/index.html.*

Section 136i(d) of FIFRA prohibits EPA from requiring private applicators to keep records or file reports in connection with certification requirements. However, private applicators must keep records of RUP applications containing information substantially similar to that which EPA requires commercial applicators to maintain pursuant to USDA regulations at 7 CFR 110.3.

Section 136w–5 of FIFRA prohibits EPA from establishing training requirements for maintenance applicators (certain applicators of non-agricultural, non-RUPs) or service technicians.

FIFRA section 2(e)(4)'s definition of ''under the direct supervision of a certified applicator'' allows noncertified applicators to apply RUPs under the direct supervision of a certified applicator even though the certified applicator may not be physically present at the time and place the pesticide is applied. EPA can, on a product-by-product basis and through the pesticide's labeling, require application of an RUP only by a certified applicator.

2. Pesticide registration. In order to protect human health and the environment from unreasonable adverse effects that might be caused by pesticides, EPA has developed and implemented a rigorous process for registering and re-evaluating pesticides. The registration process begins when a manufacturer submits an application to register a pesticide. The application must contain required test data, including information on the pesticide's chemistry, environmental fate, toxicity to humans and wildlife, and potential for human exposure. The Agency also requires a copy of the proposed labeling, including directions for use, and appropriate warnings.

Once an application for a new pesticide product is received, EPA conducts an evaluation, which includes a detailed review of scientific data to determine the potential impact on human health and the environment. The Agency considers the risk assessments and results of any peer review, and evaluates potential risk management measures that could mitigate risks above EPA's level of concern. Risk management measures could include, among other things, classifying the pesticide as restricted use, limitations on the use of the pesticide or requiring the use of engineering controls.

In the decision-making process, EPA evaluates the proposed use(s) of the pesticide to determine whether it would cause adverse effects on human health, non-target species, and the environment. FIFRA requires that EPA balance the benefits of using a pesticide against the risks from that use.

If the application for registration does not contain evidence sufficient for EPA to determine that the pesticide meets the FIFRA registration criteria, EPA communicates to the applicant the need for more or better refined data, labeling modifications, or additional use restrictions. Once the applicant has demonstrated that a proposed product meets the FIFRA registration criteria and—if the use would result in residues of the pesticide on food or feed—a tolerance or exemption from the requirement of a tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.,* is available, EPA approves the registration subject to any risk mitigation measures necessary to achieve that approval. EPA devotes significant resources to the regulation of pesticides to ensure that each pesticide product meets the FIFRA requirement that pesticides not cause unreasonable adverse effects to the public and the environment.

Part of EPA's pesticide regulation and evaluation process is determining whether a pesticide should be classified as for restricted use. As discussed in Unit II.A., EPA classifies products as RUPs when they would cause unreasonable adverse effects on the environment, the applicator, or the public when used according to the labeling directions and without additional restrictions. 7 U.S.C. 136a(d)(1)(C). EPA maintains a list of active ingredients with uses that have been classified as restricted use at 40 CFR 152.175. In addition, EPA periodically publishes an ''RUP Report'' that lists RUP products' registration number, product name, status, registration status, company name, and active ingredients (*http://www.epa.gov/opprd001/rup/).* EPA has classified about 900 pesticide products as RUPs, which is about 5% of all registered pesticide products. EPA does not have data on the relative usage of RUPs versus general use or unclassified pesticides.

When EPA approves a pesticide, the labeling reflects the risk mitigation measures required by EPA. The potential risk mitigation measures include requiring certain engineering controls, such as use of closed systems for mixing pesticides and loading them into application equipment to reduce potential exposure to those who handle pesticides; establishing conditions on the use of the pesticide by specifying certain use sites, maximum application rate or maximum number of applications; or limiting the use of the product to certified applicators (*i.e.,* prohibit application of an RUP by a noncertified applicator working under the direct supervision of a certified applicator) to protect users, the public, and the environment against risks associated with misapplication by unqualified or incompetent applicators. Since users must comply with the directions for use and use restrictions on a product's labeling, EPA uses the labeling to establish and convey mandatory requirements for how the pesticide must be used to protect the applicator, the public, and the environment from pesticide exposure.

3. Pesticide Reregistration and Registration Review. Under FIFRA, EPA is required to review periodically the registration of pesticides currently registered in the United States. The 1988 FIFRA amendments required EPA to establish a pesticide reregistration program. Reregistration was a one-time comprehensive review of the human health and environmental effects of pesticides first registered before November 1, 1984 to make decisions

about these pesticides' future use. The Food Quality Protection Act of 1996 (FQPA) amendments to FIFRA require that EPA establish, through rule making, an ongoing ''registration review'' process of all pesticides at least every 15 years. The final rule establishing the registration review program was signed in August 2006. The purpose of both re-evaluation programs is to review all pesticides registered in the United States to ensure that they continue to meet current safety standards based on up-to-date scientific approaches and relevant data.

Pesticides reviewed under the reregistration program that met current scientific and safety standards were declared ''eligible'' for reregistration. The results of EPA's reviews are summarized in Reregistration Eligibility Decision (RED) documents. The last RED was completed in 2008. Often before a pesticide could be determined ''eligible,'' certain risk reduction measures had to be put in place. For a number of pesticides, measures intended to reduce exposure to certified applicators and pesticide handlers were needed and are reflected on pesticide labeling. To address occupational risk concerns, REDs include mitigation measures such as: Voluntary cancellation of the product or specific use(s); limiting the amount, frequency or timing of applications; imposing other application restrictions; classifying a product or specific use(s) as for restricted use; requiring the use of specific personal protective equipment (PPE); and establishing specific restricted entry intervals; and improving use directions.

Under the registration review program, EPA will review each registered pesticide at least every 15 years to determine whether it continues to meet the FIFRA standard for registration. Pesticides registered before 1984 were reevaluated initially under the reregistration program. These pesticides also are subject to registration review.

Rigorous ongoing education and enforcement are needed to ensure that these mitigation measures are appropriately implemented in the field. The framework provided by the pesticide applicator certification regulation and associated training programs are critical for ensuring that the improvements brought about by reregistration and registration review are realized in the field. For example, the requirement for applicators to demonstrate continued competency, or to renew their certifications periodically, is one way to educate applicators about changes in product labeling to ensure they continue to use RUPs in a manner that will not harm themselves, the public, or the environment. The changes being proposed are designed to enhance the effectiveness of the existing structure.

In summary, EPA's pesticide reregistration and registration reviews assess the specific risks associated with particular chemicals and ensure that the public and environment do not suffer unreasonable adverse effects from the risks. EPA implements the risk reduction and mitigation measures that result from the pesticide reregistration and registration review programs through individual pesticide product labeling.

4. Related rulemaking. EPA also issued proposed amendments to the WPS (Ref. 4). Since 40 CFR parts 170 and 171, along with other components of the pesticide program, work together to reduce and prevent unreasonable adverse effects from pesticides, EPA's experience with the proposed amendments to 40 CFR part 170 significantly informs its effort to amend the current certification rule at 40 CFR part 171.

B. Overview of Certified Applicator Information

1. Existing Certification of Pesticide Applicators Rule. The certification regulation is intended to ensure that persons using or supervising the use of RUPs are competent to use these products without causing unreasonable adverse effects to human health or the environment and to provide a mechanism by which States, Tribes, and Federal agencies can administer their own programs to certify applicators of RUPs as competent. FIFRA distinguishes three categories of persons who might apply RUPs:

- *Commercial applicators.* ''Commercial applicator'' is defined at 7 U.S.C. 136(e)(3). This group consists primarily of those who apply RUPs for hire, including applicators who perform agricultural pest control, structural pest control, lawn and turf care, and public health pest control.
- *Private applicators.* ''Private applicator'' is defined at 7 U.S.C. 136(e)(2). This group consists primarily of farmers or agricultural growers who apply RUPs to their own land to produce an agricultural commodity.
- *Noncertified applicators.* A noncertified applicator is a person who uses RUPs under the direct supervision of a certified applicator. The phrase ''under the direct supervision of a certified applicator'' is defined at 7 U.S.C. 136(e)(4).

The current certification regulation establishes requirements for submission and approval of State plans for the certification of applicators. Consistent with the provisions of FIFRA section 11(a)(2) and the State plan requirements in the current rule, programs for the certification of applicators of RUPs are currently implemented by each of the fifty States. The certification programs are conducted by the States and Tribes in accordance with their State or Tribal certification plans, which are approved by the EPA Administrator and filed with EPA after approval. (Ref. 5) In some cases, certification programs are also carried out by other Federal agencies under approved Federal agency plans or by EPA under EPA-administered plans. In addition to the 50 State-implemented plans, EPA has approved plans for 3 territories, 4 Federal agencies, and 4 Tribes. EPA also directly administers a national certification plan for Indian country (Ref. 1) and has implemented a specific certification plan for the Navajo Nation (Ref. 2). As used in FIFRA, the term State means a State, the District of Columbia, the Commonwealth of Puerto Rico, The Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa; the term *State* will have the same meaning in this proposed rulemaking.

The current certification regulation establishes competency standards for persons seeking to become certified as private or commercial applicators. For a person to become certified as a private applicator, he or she must either pass an exam covering a general set of information related to pesticide application and safety or qualify through a non-exam option administered by the certifying authority. For a person to become certified as a commercial applicator, he or she must pass at least two exams—one covering the general or ''core'' competencies related to general pesticide application and environmental safety and an exam related to each specific category in which he or she intends to apply pesticides. The current certification rule lists 10 categories of certification for commercial applicators: Agricultural pest control—plant; agricultural pest control—animal; forest pest control; ornamental and turf pest control; seed treatment; aquatic pest control; right-of-way pest control; industrial, institutional, structural and health related pest control; public health pest control; regulatory pest control; and demonstration and research pest control. 40 CFR 171.3(b). (Note: EPA and other certifying authorities may sometimes refer to 11 categories of

certification if the two subcategories under agricultural pest control are counted as individual categories.) Although EPA only requires certification of applicators who use RUPs, most States require all commercial ''for hire'' applicators to be certified, regardless of whether they plan to use RUPs. Once the applicator completes the necessary requirements, the certifying authority issues to the applicator a certification valid for a set period of time, ranging from 1–6 years depending on the State, Tribe, or Federal agency that provides the certification.

The current regulation requires States to implement a recertification process to ensure that applicators maintain ongoing competency to use pesticides safely and properly. 40 CFR 171.8(a)(2). However, the current rule does not have a requirement for the frequency, content, or standards for applicator recertification. States, Tribes and Federal agencies have established varying requirements for applicators to be recertified, such as attending a full-day workshop, earning a specific number of ''continuing education units,'' or passing written exams. Applicators who do not complete the recertification requirements in the established period no longer hold a valid certification and cannot use RUPs after their certification expires.

Under the current certification regulation, noncertified applicators, *i.e.,* persons using RUPs under the direct supervision of certified applicators, must receive general instructions and be able to contact their supervisor in the event of an emergency. The rule does not have specific training requirements, a limit on the distance between the supervisor and noncertified applicator, or a restriction on the number of noncertified applicators that one certified applicator can supervise.

An overview of the development of the certification rule and the process leading to this proposal appear in Unit IV.

2. Applicator demographics. The profile of certified applicators of RUPs has shifted over time. The U.S. is moving away from small agricultural production and more individuals seek professional pest control to address issues in their home or workplace. In 1987, around 1.2 million applicators held a certification, almost 80% of which were private applicators, and 20% of which were commercial applicators (Ref. 6). In 2013, the total number of certified applicators decreased to just over 900,000 (Ref. 5). The respective proportions of private and commercial applicators changed more significantly—private applicators account only for 53% of the total certified applicator population and commercial applicators now make up about 47%.

Applicators work in a diverse array of situations including agricultural production, residential pest control, mosquito spraying for public health protection, treating weeds along roadside and railroad rights of way, fumigating rail cars and buildings, maintaining lawns and other ornamental plantings, and controlling weeds and algae in waterways through pesticide application. Specific information on applicators across all industries or in each certification category is difficult to find and summarize. However, the broad trends indicate a decrease in agricultural applicators and an increase in urban and public health pest control.

Since publication of the original rule, pesticide usage and reliance on hired pest control applicators have increased. The U.S. Bureau of Labor Statistics expects that ''employment of pest control workers [will] grow by 15 percent between 2008 and 2018, . . . [because] more people are expected to use pest control services as environmental and health concerns and improvements in the standard of living convince more people to hire professionals, rather than attempt pest control work themselves'' (Ref. 7).

3. *Incident data and general information.*

i. Incident Databases. Incident monitoring programs have informed EPA's understanding of common types of pesticide exposures and their outcomes. In 2007, EPA released a report detailing the coverage of all pesticide incident reporting databases considered by EPA (Ref. 8). When developing the proposed changes to the certification rule, EPA consulted three major databases for information on pesticide incidents involving applicator errors while using RUPs.

To identify deaths and high severity incidents associated with use of RUPs, EPA consulted its Incident Data System (IDS). IDS is maintained by EPA's Office of Pesticide Programs (OPP) and incorporates data submitted by registrants under FIFRA section 6(a)(2), as well as other incidents reported directly to EPA. FIFRA allows the aggregation of individual events in some circumstances, meaning an incident with negative impacts to a number of individuals (persons, livestock, birds, pollinators) and/or the environment could be reported as a single incident. In addition to incidents involving human health, IDS also collects information on claims of adverse effects from pesticides involving plants and animals (wild and domestic), as well as detections of pesticide in water. EPA uses this information to identify incidents involving the use of RUPs that have ecological effects. While IDS reports may be broad in scope, the system does not consistently capture detailed information about incident events, such as occupational exposure circumstances or medical outcome, and the reports are not necessarily verified or investigated.

The second database, the Sentinel Event Notification System for Occupational Risk (SENSOR), is maintained by the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health (NIOSH). SENSOR covers all occupational injuries and has a specific component for pesticides (SENSOR-Pesticides). EPA uses SENSOR-Pesticides to monitor trends in occupational health related to acute exposures to pesticides, to identify emerging pesticide problems, and to build and maintain State surveillance capacity. SENSOR-Pesticides is a State-based surveillance system with 12 State participants. The program collects most poisoning incident cases from:

- U.S. Department of Labor (DOL) workers' compensation claims when reported by physicians.
- State Departments of Agriculture.
- Poison control centers.

A State SENSOR-Pesticides contact specialist follows up with workers and obtains medical records to verify symptoms, circumstances surrounding the exposure, severity, and outcome. SENSOR-Pesticides captures incidents only when the affected person has two or more symptoms. Using a standardized protocol and case definitions, SENSOR-Pesticides coordinators enter the incident interview description provided by the worker, medical report, and physician into the SENSOR data system. SENSOR-Pesticides has a severity index, based partly on poison control center criteria, to assign illness severity in a standardized fashion. SENSOR-Pesticides provides the most comprehensive information on occupational pesticide exposure, but its coverage is not nationwide and a majority of the data come from California and Washington State. Since 2009, SENSOR has been including information about how the incidents may have been prevented.

The third database, the American Association of Poison Control Centers maintains the National Poison Data System (NPDS), formerly the Toxic

Effects Surveillance System (TESS). NPDS is a computerized information system with geographically-specific and near real-time reporting. While the main mission of Poison Control Centers (PCC) is helping callers respond to emergencies, not collecting specific information about incidents, NPDS data help identify emerging problems in chemical product safety. Hotlines at 61 PCCs nationwide are open 24 hours every day of the year. There are many bilingual PCCs in predominantly Spanish speaking areas. Hotlines are staffed by toxicology specialists to provide poisoning information and clinical care recommendations to callers with a focus on triage to give patients appropriate care. Using computer assisted data entry, standardized protocols, and strict data entry criteria, local callers report incidents that are retained locally and updated in summary form to the national database. Since 2000, nearly all calls in the system are submitted in a computer-assisted interview format by the 61 certified PCCs, adhering to clinical criteria designed to provide a consistent approach to evaluating and managing pesticide and drug related adverse incidents. Information calls are tallied separately and not counted as incidents. The NPDS system covers nearly the entire United States and its territories, but the system is clinically oriented and not designed to collect detailed occupational incident data. Additionally, NPDS does not capture EPA pesticide registration numbers, a critical element for identifying the specific product and whether it was an RUP.

Three studies showing undercounting of poison control data indicate the magnitude of the problem. The studies each focus on a specific region and compare cases reported to poison control with those poisonings for which there are hospital records. In all three cases, the studies indicate a substantial underreporting of poisoning incidents to poison control, especially related to pesticides (Refs. 9, 10 and 11). Underreporting of pesticide incidents is a challenge for all available data sources for a number of reasons.

Symptoms of acute pesticide poisoning are often vague and mimic symptoms with other causes, leading to incorrect diagnoses, and chronic effects are difficult to identify and track. The demographics of the populations that typically work with or around pesticides also contribute to underreporting of incidents. There may not be enough information to determine if the adverse effects noted were in fact the result of pesticide exposure and not another contributing factor because many incident reports lack useful information such as the exact product that was the source of the exposure, the amount of pesticide involved, or the circumstances of the exposure. A more complete discussion of the underreporting and its effect on pesticide incident reporting is located in the Economic Analysis for this proposal (Ref. 3).

The data available do provide a snapshot of the illnesses faced by those applying RUPs and others impacted by the application and the likely avenues of exposure. Review of these data sources shows that certified applicators continue to face avoidable occupational pesticide exposure and in some instances cause exposures to others. EPA notes that RUPs can be used safely when labeling directions for use are carefully followed. Deaths and illnesses from applicator errors involving RUPs occur for a variety of reasons, including misuse of pesticides in or around homes, faulty application and/or personal protective equipment, failure to confirm a living space is empty before fumigating, or unknowing persons accidentally ingesting an RUP that was improperly put in a beverage container. Common reasons for ecological incidents include failure to follow labeling directions, inattention to weather patterns at the time of application, and faulty application equipment (Ref. 12). Generally, reports on the data note that many of the incidents could be prevented with strengthened requirements for initial and ongoing applicator competency (certification and recertification), improved training for noncertified applicators working under the direction of a certified applicator, and knowledge of proper techniques for using specific methods to apply pesticides (Ref. 12).

ii. Agricultural Health Study. The National Institutes of Health (National Cancer Institute and National Institute of Environmental Health Sciences) and EPA have sponsored the Agricultural Health Study since 1994. This long-term, prospective epidemiological study collects information from farmers who are certified applicators in Iowa and North Carolina to learn about the effects of environmental, occupational, dietary, and genetic factors on the health of the farmers, pesticide applicators, and their families. The study design involves gathering information over many years about the pesticide applicator and his or her family's health, occupational practices, lifestyle, and diet through mailed questionnaires and individual interviews (Ref. 1).

The Agricultural Health Study includes approximately 52,000 private applicators, 32,000 spouses of private applicators, and 5,000 commercial applicators. All applicators participating in the study are certified (or licensed) in every State in which they work and in each category in which they make applications. All participants were healthy before enrolling in the study, allowing the researchers to consider a number of variables such as pesticide use, lifestyle, and diet.

The Agricultural Health Study is observational and considers a variety of factors including, but not limited to, pesticide use and exposure. Therefore, establishing a link between a specific health outcome and pesticide exposure can be difficult. However, it is possible to demonstrate statistical associations between a certain activity and an outcome. Using the information collected, the investigators working on the Agricultural Health Study have produced a number of articles relevant to the health and safety of pesticide applicators. See *http://aghealth.nih.gov/news/publications.html.* For instance, publications include information on characteristics of farmers who experience high pesticide exposure events and potential links between pesticide use and chronic health effects.

EPA considers the information from the Agricultural Health Study when appropriate, such as during a chemical reassessment. The data also provide information on applicator practices that lead to exposures, some of which EPA plans to address through the changes proposed in this rulemaking.

III. Rationale and Objectives for This Action

A. Reasons for the Proposed Action

Broadly defined, a pesticide is any agent used to kill or control undesired insects, weeds, rodents, fungi, bacteria, or other organisms. Chemical pest control plays a major role in modern agriculture and has contributed to dramatic increases in crop yields for most field, fruit and vegetable crops. Additionally, pesticides ensure that the public is protected from health risks, such as West Nile Virus, Lyme disease, and the plague, and help manage invasive plants and organisms that pose significant harm to the environment. Pesticides are also used to ensure that housing and workplaces are free of pests, and to control microbial agents in health care settings. EPA's obligation under FIFRA is to register only those pesticides that do not cause unreasonable adverse effects to human health or the environment. EPA is

committed to protecting against these potential harms and to ensure access to a safe and adequate food supply in the United States.

FIFRA requires EPA to consider the benefits of pesticides as well as the potential risks. This consideration does not override EPA's responsibility to protect human health and the environment; rather, where a pesticide's use provides benefits, EPA must ensure that the product can be used without posing unreasonable adverse effects to human health or the environment. Some pesticides may pose unreasonable adverse effects to human health or the environment without strict adherence to precise and often complex mitigation measures specified on the pesticide labeling—EPA classifies these products as restricted use. To ensure that the necessary measures are followed, EPA requires an additional level of precaution—these pesticides may be applied only by applicators who are certified or by noncertified applicators working under the direct supervision of a certified applicator. Certification serves to ensure competency of applicators to use these restricted products, and therefore to protect the applicator, persons working under the direct supervision of the applicator, the general public, and the environment through judicious and appropriate use of RUPs.

Applicator certification enables the registration of pesticides that otherwise could not be registered, allowing the use of RUPs for pest management in agricultural production, building and other structural pest management, turf and landscape management, forestry, public health, aquatic systems, food processing, stored grain, and other areas.

The certification regulation, which sets standards for applicators using RUPs, is 40 years old and has not been updated significantly since it was finalized. In conjunction with various non-regulatory programs, the certification regulation requirements are intended to reduce unreasonable adverse effects from application of RUPs to applicators, bystanders, the public, and the environment. The certification regulation provisions are meant to:

- Ensure that certified applicators are and remain competent to use RUPs without unreasonable adverse effects.
- Ensure that noncertified applicators receive adequate information and supervision to protect themselves and to ensure they use RUPs without posing unreasonable adverse effects.
- Set standards for States, Tribes, territories, and Federal agencies to administer their own certification programs.
- Protect human health and the environment from risks associated with use of RUPs.
- Ensure the continued availability of RUPs used for public health and pest control purposes.

Within these five areas, EPA evaluated the costs and benefits of alternative requirements and is proposing a set of requirements that, in combination, is expected to achieve substantial benefits at minimum cost.

The certification regulation must be updated to ensure that the certification process adequately prepares and ensures the continued competency of applicators to use RUPs. Several factors prompted EPA to propose changes to the current rule: The changing nature of pesticide labeling, risks associated with specific methods for applying pesticides, adverse human health and ecological incidents, inadequate protections for noncertified applicators of RUPs, an uneven regulatory landscape, and outdated and obsolete provisions in the rule related to the administration of certification programs by Tribes and Federal agencies.

1. *The changing nature of pesticide labeling.* As discussed above, EPA uses a rigorous process to register pesticides. EPA has also implemented the pesticide reregistration program and the registration review program to review registered pesticides periodically to ensure they continue to meet the necessary standard. As a result of these ongoing evaluations, labeling for pesticides changes with some frequency to incorporate risk mitigation measures that allow the pesticide to continue to be used safely. Changes address, among other topics, pesticide product formulation and packaging, application methods, types of personal protective equipment, and environmental concerns, such as the need to protect pollinators. In addition, EPA conducts risk assessments that result in more detailed risk mitigation measures, which can make the pesticide labeling more complex. For pesticides classified as RUPs, it is essential that applicators stay abreast of the changes to the labeling and understand the risk mitigation measures, because if the products are not used according to their labeling, they may cause harm to the applicator, the public or the environment. EPA's registration decisions assume that the applicator follows all labeling instructions; when the labeling is followed, RUPs can be used safely. The current regulation requires that applicators demonstrate continued competency to use RUPs, but does not specify the length of the certification period or standards for recertification. The more frequently applicators receive training, the more likely they are retain the substance of the training and apply it on the job. Studies show that information retained from training sessions declines significantly within a year (Refs. 14 and 15). EPA must ensure that certified applicators demonstrate and maintain an understanding of how to use RUPs in a manner that will not cause unreasonable adverse effects so that EPA can continue to register RUPs. Therefore, EPA is proposing changes to the regulation that would establish a certification period and standards for applicator recertification.

2. *Risks associated with specific application methods.* RUPs are applied using a variety of application methods. Some methods of application may pose a higher risk to the applicator, bystander, and the environment if not performed correctly. Spray applications, particularly spraying pesticides from an aircraft, may result in off-target drift of the pesticide. For example, a recent study estimates that 37% to 68% of acute pesticide-related illnesses in agricultural workers are caused by spray drift, including both ground-based and aerial spray applications (Ref. 16). EPA also recognized risks associated with performing soil fumigation in the 2008 REDs for soil fumigants (Ref. 17). As a result of these risks, EPA required additional training for soil fumigant applicators through labeling amendments on top of the existing requirement for the applicator to be certified. The decision also acknowledged that a specific certification category requiring demonstration of competency by passing a written exam related to applying fumigants to soil would be an acceptable alternative risk mitigation measure. EPA must ensure that applicators are competent to perform specific types of applications that may pose higher risks if not performed correctly. Therefore, EPA is proposing changes to the regulation to require applicators to demonstrate competency to apply RUPs using specific application methods.

3. *Adverse human health and ecological incidents.* Much has changed over the last 40 years related to use of RUPs—pesticide product formulation and labeling, application methods, types of personal protective equipment, and environmental concerns, such as the need to protect pollinators. The regulation needs to be updated to address these and other changes affecting applicators of RUPs. In

addition to the hundreds of potentially avoidable acute health incidents related to RUP exposure reported each year (Ref. 5), several major incidents have occurred that demonstrate that a single or limited misapplication of an RUP can have widespread and serious effects.

In one of the most significant cases from the mid-1990s, there was widespread misuse of the RUP methyl parathion, an insecticide used primarily on cotton and other outdoor agricultural crops, to control pests indoors. The improper use of this product by a limited number of applicators across several States led to the widespread contamination of hundreds of homes, significant pesticide exposures and human health effects for hundreds of homeowners and children, and a clean-up cost of millions of dollars (Refs. 18 and 19). The incident resulted in one of the most significant and widespread pesticide exposure cases in EPA's history. In another incident, an applicator using the RUP aluminum caused the death of 2 young girls and made the rest of the family ill (see, *e.g., http://www.justice.gov/archive/usao/ut/news/2011/bugman%20plea.pdf* and *http://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2249*). Finally, several severe health incidents have resulted from the public getting access to RUPs that have been put into different containers, *e.g.,* transferred to a soda bottle or a sandwich bag, that do not have the necessary labeling (Ref. 3).

In addition to human health incidents from RUP exposure, there are instances where use of RUPs has had negative impacts on the environment. Although data on the damage associated ecological incidents are difficult to capture, EPA has identified a number of incidents of harm to fish and aquatic animals, birds, mammals, bees, and crops that could be prevented by the proposed changes to the certification rule (Ref. 3). See the economic assessment for this rule for more information on human health and ecological incidents stemming from RUP use (Ref. 3).

In light of the incidents discussed above, EPA has determined to update the certification rule to ensure that RUPs can continue to be used without posing unreasonable adverse effects to human health or the environment. EPA's decision to register products as restricted use rests in part on an assumption that applicators will follow all labeling instructions. When labeling instructions are followed, RUPs can be used safely. EPA expects the proposed rule to reduce human health and environmental incidents related to RUP use by strengthening the standards of competency for certified applicators, improving training for noncertified applicators, and establishing a maximum certification period and standards for recertification training. These changes would ensure that applicators and those under their supervision more carefully follow pesticide label instructions, take proper care to prevent harm, and generally have a higher level of competency.

4. *Inadequate protection for noncertified applicators of RUPs.* Noncertified applicators using RUPs receive little instruction on how to protect themselves, their families, other persons and the environment from pesticide exposure. Although little demographic data exists on this group, in industries including but not limited to agriculture and ornamental plant production, the profile of the population appears to be similar to that of agricultural pesticide handlers under the WPS. Both groups are permitted to mix, load, and apply pesticides with proper guidance from their employer or supervisor. Agricultural handlers under the WPS only use pesticides in the production of agricultural commodities; noncertified applicators may use pesticides in any setting not prohibited by the labeling. In order to mix, load or apply RUPs, however, all noncertified persons, including agricultural handlers, must be working under the direct supervision of a certified applicator and are protected under the certification rule. These noncertified applicators must be competent to use RUPs in a manner that will not cause unreasonable adverse effects to themselves, the public, or the environment. The existing certification rule does not have specific standards on which noncertified applicators must receive instruction in order to prepare them to use RUPs. EPA identified six incidents from 2006 to 2010 where noncertified applicators experienced high severity health impacts from working with RUPs (Ref. 3). These adverse health effects were largely due to the noncertified applicators' lack of understanding about the risks posed by the RUPs they were applying, proper application procedures and techniques, and labeling instructions.

Under the WPS, agricultural handlers must receive training that covers, among other topics, hazards associated with pesticide use; format and meaning of pesticide labeling; and proper pesticide use, transportation, storage, and disposal. 40 CFR 170.230(c)(4). Agricultural handlers also must be provided a copy of the labeling and any other information necessary to make the application without causing unreasonable adverse effects. EPA is proposing additional content under the WPS for agricultural handler training that covers proper use and removal of PPE and specific information on fitting and wearing respirators to ensure agricultural handlers are protected adequately and understand how to follow all relevant labeling provisions (Ref. 4).

Like agricultural handlers, some noncertified applicators may face challenges, such as not speaking or reading English. They may bear risks from occupational pesticide exposure because they work with and around pesticides on a daily basis, and language and literacy barriers may make effective training and hazard communication challenging. Under the principles of environmental justice, EPA recognizes the need to reduce the disproportionate burden or risk carried by this population.

Noncertified applicators must receive adequate instruction on understanding and following pesticide labeling to ensure that RUPs are used in a manner that will not cause unreasonable adverse effects to human health or the environment. Additionally, noncertified applicators must have sufficient information in order to protect themselves, others, and the environment before, during, and after pesticide applications. Because of the similar risks faced by agricultural handlers under the WPS and noncertified applicators under the certification rule, EPA proposes to strengthen the standards for noncertified applicators to include relevant provisions from the proposed agricultural handler training under the WPS and to ensure that the training is provided in a manner that the noncertified applicators understand, including through audiovisual materials or a translator if necessary.

5. *Uneven regulatory landscape.* EPA assumes a minimum standard level of competency of RUP applicators as part of the pesticide registration and ongoing review processes, and registers RUPs based on the minimum standard of competency. States, however, may adopt additional requirements as long as they meet the minimum standards established by EPA. Two areas of the rule related to assessing applicator competency lack specificity sufficient to ensure the minimum level of competency: Standards for exams and private applicator competency standards. The lack of specificity in the rule has resulted in States adopting differing standards, some of which do not match EPA's expectation regarding

the minimum level of competency of a certified applicator.

In 2007, EPA issued guidance on its interpretation of exams in the rule. The guidance notes that EPA interprets any exam administered to gauge applicator competency as being a proctored, closed-book, written exam. EPA has become aware, however, that not all State certification programs reflect this interpretation; several States have certification processes that allow open-book, written exams for determining applicator competency. EPA is concerned that open-book exams allow a lower standard for the process of determining and assuring competency than intended when EPA established the requirement for exams in the regulation. EPA proposes to codify the 2007 guidance and to clarify its expectations regarding administration of certification exams and training programs to ensure that the process for determining competence meets a standard national baseline.

The certification rule lists five points on which a person much demonstrate competency to become a private applicator. While these points cover the main topics that EPA expects an applicator to master before being certified to use RUPs, they do not cover in detail the necessary competencies for a person to use RUPs without causing unreasonable adverse effects. EPA must ensure that private applicators use RUPs competently. Commercial applicators must demonstrate competency in core pesticide use, such as reading and understanding the labeling, calculating application rates, wearing and caring for PPE, how to handle spills and other emergencies, and avoiding environmental contamination from pesticide use, as well as in specific categories of application. Private and commercial applicators have access to the same RUPs and EPA expects that they have the same level of competency. Almost 90% of States have adopted specific standards of competency for private applicators that are comparable to the core standards for commercial applicators. Those States that have not adopted such standards for private applicators may be certifying applicators who do not meet the level of competency that EPA believes is necessary to use RUPs. To address this problem, EPA proposes to make the standards of competency for private applicators more specific—the proposed standards include many concepts from the commercial core standards as well as competencies necessary to use RUPs in agricultural production.

6. *Outdated and obsolete rule provisions.* The certification rule has one section regarding Tribal programs that is outdated and one section on government agency certification programs that is not necessary. The current rule provides three options for applicator certification programs in Indian country. Consultation with Tribes raised an issue with one of the current options because it calls for Tribes that chooses to utilize a State certification program and rely on State certifications to obtain concurrence from the relevant States and to enter into a documented State-Tribal cooperative agreement. This option has led to questions about jurisdiction and the appropriate exercise of enforcement authority for such programs in Indian country. EPA proposes to revise this option to allow Tribes to administer programs based on certifications issued by a State, a separate Tribe, or a Federal agency by entering into an agreement with the appropriate EPA Regional office. This would allow Tribes to enter into agreements with EPA to recognize the certification of applicators who hold a certificate issued under an EPA-approved certification plan without the need for State-Tribal cooperative agreements. The agreement between the Tribe and the EPA Regional office would address appropriate implementation and enforcement issues.

The current rule includes a provision for a GAP, a certification program that would cover all Federal government employees using RUPs. No such plan was developed or implemented by EPA or any other Federal agency. Subsequently, EPA issued a policy that allows each Federal agency to submit its own plan to certify RUP applicators. Four Federal agencies have EPA-approved certification plans. To streamline the rule and codify the existing policy, EPA proposes to delete the current section on GAP and replace it with requirements from the existing policy on Federal agency certification plans.

B. Regulatory Objectives

Through this proposal EPA seeks to have those responsible for making pesticide use decisions and applying RUPs and those who benefit from the availability of these products to internalize the effects of their decisions. By strengthening certification standards, adding categories for application methods that present high risk of exposure, establishing recertification standards, and requiring specific training for noncertified applicators, EPA proposes to put the responsibility to ensure that RUPs are used in a manner to avoid unreasonable adverse effects on the parties who are most able to control the situation. This would minimize the externalities, undesirable or unintended consequences of decisions that result in negative consequences for other parties, in this case bystanders, the public, and the environment.

EPA estimates the total annualized cost of the rule at $47.2 million (Ref. 3). States and other jurisdictions that administer certification programs would bear annualized costs of about $359,000, but States would incur most of these costs immediately after the rule is finalized to modify their programs to correspond with the proposed changes to the Federal regulation. The annual cost to private applicators would be about $19.5 million, or about $40 per year per private applicator. The estimated annual cost to commercial applicators would be $27.4 million, or about $66 per commercial applicator per year. Many of the firms in the affected sectors are small businesses, particularly in the agricultural sector. EPA concludes that there would not be a significant impact on a substantial number of small entities. The impact to the average small farm is anticipated to be less than 1% of annual sales while the impacts to small commercial pest control services are expected to be around 0.1% of annual gross revenue. Given the modest increases in per-applicator costs, EPA also concludes that the proposed rule would not have a substantial effect on employment.

The rule changes proposed by EPA would improve the pesticide applicator certification and training program substantially. Trained and competent applicators are more likely to apply pesticide products without causing unreasonable adverse effects and to use RUPs properly to achieve the intended results than applicators who are not adequately trained or properly certified. In addition to core pesticide safety and practical use concepts, certification and training assures that certified applicators possess critical information on a wide range of environmental issues such as endangered species, water quality, worker protection, and protecting non-target organisms, such as pollinators. Pesticide safety education helps applicators improve their abilities to avoid pesticide misuse, spills and harm to non-target organisms.

The benefits of the proposed rule accrue to certified and noncertified applicators, the public, and the environment. EPA estimates the quantified value of the 638 to 762 acute illnesses from RUP exposure per year that could be prevented by the rule to be between $20.1 million and $20.5 million per year (Ref. 3). However, EPA

recognizes that the estimate is biased downward by an unknown degree. First, pesticide incidents, like many illnesses and accidents, are underreported because sufferers may not seek medical care, cases may not be correctly diagnosed, and correctly diagnosed cases may not be filed to the central reporting database. Also, many symptoms of pesticide poisoning, such as fatigue, nausea, rash, dizziness, and diarrhea, may be confused with other illnesses and may not be reported as related to pesticide exposure. Studies estimate that underreporting of pesticide exposure ranges from 20% to 75% (Refs. 9, 10 and 11). If only 25% of pesticide poisonings are reported, the quantified estimated benefits of the rule would be about $80.5 million annually (Ref. 3).

EPA's approach to estimating the quantitative benefits of the proposal only measures avoided medical costs and lost wages, not the willingness to pay to avoid possible symptoms due to pesticide exposure, which could be substantially higher. Many of the negative health impacts associated with agricultural pesticide application are borne by agricultural workers and handlers, a population that more acutely feels the impact of lost work time on their incomes and family health. An increase in the overall level of competency for certified applicators and noncertified applicators working under their direct supervision would also be beneficial to people who work, play, or live in areas treated with RUPs, such as agricultural workers, neighbors of agricultural fields, and consumers whose homes are treated. Undertrained and under qualified pesticide applicators may not be aware immediately of the potential impacts to their own health or the health of those who live or work around areas where RUPs are applied, and therefore may not independently adopt measures to increase the safety of themselves or others, necessitating intervention by the government to ensure these populations are adequately protected.

It is reasonable to expect that the qualitative benefits of the rule are more substantial. Although EPA is not able to measure the full benefits that accrue from reducing chronic exposure to pesticides, well-documented associations between pesticide exposure and certain cancer and non-cancer chronic health effects exist in peer-reviewed literature. See the economic assessment for this proposal for a discussion of the peer-reviewed literature (Ref. 3). The proposals for strengthened competency standards for private applicators, expanded training for noncertified applicators, additional application method-specific certification categories, a minimum age for all persons using RUPs, and appropriate certification options in Indian country would lead to an overall reduction in the number of human health incidents related to chronic pesticide exposure and environmental contamination from improper or misapplication of pesticides. Overall, the weight of evidence suggests that the proposed requirements would result in long-term health benefits to certified and noncertified applicators, as well as to bystanders and the public.

It is reasonable to expect that the proposed rule would benefit the environment and the food supply. The proposed changes enhance private applicator competency standards to include information on protecting the environment during and after application, such as protecting pollinators and avoiding contamination of water supplies. The proposal to ensure that all applicators continue to demonstrate their competency to use RUPs without unreasonable adverse effect should better protect the public from RUP exposure when occupying treated buildings or outdoor spaces, consuming treated food products, and when near areas where RUPs have been applied. The economic assessment for this proposal includes a qualitative discussion of 68 incidents from 2009 through 2013 where applicator errors while applying RUPs damaged crops or killed fish, bird, bees, or other animals (Ref. 3). The environment should also be better protected from misapplication, which can result in cleaner water and less impact on non-target plants and animals.

In addition, the proposed changes to the certification regulation specifically mitigate risks to children. The proposal would implement a minimum age of 18 for certified applicators and noncertified applicators working under their direct supervision. Since children's bodies are still developing, they may be more susceptible to risks associated with RUP application and therefore would benefit from strengthened protections. In addition, research has shown that children may not have developed fully the capacity to make decisions and to weigh risks (Refs. 20, 21 and 22). Proper application of RUPs is essential to protect the safety of people who work, visit, or live in or near areas treated with RUPs, people who eat food that has been treated with RUPs, people and animals who depend on an uncontaminated water supply, as well as the safety of the applicator him or herself. Therefore, it is reasonable to expect that restricting certification to persons over 18 years old would better protect both the applicators and those who may be affected negatively by improper or misapplication.

Children also suffer the effects of RUP exposure from residential applications and accidental ingestion. Accidental ingestion occurs when children get access to an RUP that has been improperly stored, *e.g.,* transferred to an unmarked container or left accessible to the public (Ref. 12). The proposed changes improve training for noncertified applicators, strengthen competency standards for private applicators, and require all applicators to demonstrate continued competency to use RUPs. These changes would remind applicators about core principles of safe pesticide use and storage, reducing the likelihood that children would experience these types of RUP exposures. Thus, the proposed changes may reduce children's exposure to RUPs and contamination caused by improper application of pesticides.

In the almost 4 decades since implementing the certification regulation, EPA has learned from the Pesticide Program Dialogue Committee, Certification and Training Assessment Group (CTAG), National Assessment of the Pesticide Worker Safety Program, meetings with State regulators, and other stakeholder interaction, that the national applicator certification program needs improvements, some of which can only be accomplished through rulemaking. This proposal reflects EPA's commitment to pay particular attention to the health of children and environmental justice concerns.

C. Considerations for Improving the Certification of Applicators Rule

1. *Regulatory history.* The Agency proposed the existing certification rule in 1974. EPA finalized sections covering applicator competency standards and noncertified applicator requirements (40 CFR 171.1 through 171.6) in 1974 (Ref. 23), followed by sections outlining State plan submission and review and certification in Indian country (40 CFR 171.7 through 171.10) in 1975 (Ref. 24), and the requirements for EPA-administered plans (40 CFR 171.11) in 1978 (Ref. 25). Since 1978, EPA has made minor amendments to the rule, such as requiring dealer recordkeeping and reporting under EPA-implemented plans and establishing standards for EPA-administered plans (Refs. 26 and 27).

In 1990, EPA proposed amendments to the certification regulation that included provisions for establishing private applicator categories, adding

categories for commercial applicators, revising applicator competency standards, establishing criteria and levels of supervision for the use of a RUP by a noncertified applicator, criteria for approving State noncertified applicator training programs, establishing recertification requirements for private and commercial applicators, and eliminating the exemption for non-reader certification (Ref. 28). EPA took comments on the proposal but did not finalize it due to constraints on EPA's resources.

Because no major revision has been made to this Federal regulation in almost 40 years, State programs have taken the lead in revising and updating standards for certification and recertification. Many States updated their certification programs based on EPA's 1990 proposal. Others have amended their programs to address changes in technology or other aspects of pesticide application. As a result, the State requirements for certification of applicators are highly varied and most States go beyond the existing Federal requirements for applicator certification. This situation has created an uneven regulatory landscape and problems in program consistency that complicate registration decisions, inhibit State-to-State reciprocity (*i.e.,* recognition of other State certifications as valid), and hinder EPA's ability to develop national program materials that meet the needs of all States.

2. *Stakeholder Engagement.* In 1985, a taskforce was formed by EPA and the State-FIFRA Issues Research and Evaluation Group (SFIREG) to review existing certification programs and policies to determine what, if any, actions should be taken to improve the certification program. The taskforce included representatives from EPA, USDA, State cooperative extension services, and State lead agencies for pesticide regulation. The taskforce issued the *Report of the EPA/SFIREG Certification and Training Task Force* in August 1985 (Ref. 29), which identified areas in need of improvement and made specific recommendations for improvement. The taskforce noted the growing complexity and technological advancements in pesticides and pesticide use practices, especially in the agricultural community. Further, the taskforce recognized proper pesticide use as a growing issue under broader environmental concerns, such as groundwater protection, endangered species protection, worker protection, chronic toxicity, pesticide disposal, and pesticide residues in the food supply (Ref. 29). The agricultural and commercial applicator communities were becoming aware of these issues and as a consequence sought increased and specialized training. Based on the identified issues and action in the applicator community, the taskforce suggested that EPA upgrade the competency requirements for private and commercial agricultural applicators.

The taskforce's recommendations included adding additional categories ''for certain use and application methods which require more stringent attention [such as] Compound 1080, certain fumigants, or aerial application'' (Ref. 29). In addition, the taskforce recommended strengthening the training for noncertified applicators working under the direct supervision of a certified applicator and requiring commercial applicators to retain records of the training (Ref. 29). It suggested that EPA add dealer requirements for recordkeeping about sales of RUPs and make private applicator competency standards closer to the general commercial applicator competency standards. Lastly, the report discussed the need for a standard recertification period and ''sufficient standardization of training and the process of certification renewal to facilitate interstate commerce'' (Ref. 29).

EPA proposed amendments to the certification regulation in 1990 (Ref. 28), based in part on the taskforce's report (Ref. 29). However, the proposed rule was not finalized and the taskforce's recommendations were not implemented at the Federal level. While many States adopted new regulations meeting or exceeding the proposed standards contained in the 1990 proposal, other States chose to retain their standards until EPA revised the Federal certification regulation. Some States sought to avoid potential conflicts with Federal regulations that had not been finalized, while other States were bound by laws or regulations that prohibited the State's standards from being more restrictive than Federal standards.

In 1996, stakeholders from the Federal and State governments and cooperative extension programs formed CTAG to assess the current status of and provide direction for Federal and State pesticide applicator certification programs. CTAG's mission is to develop and implement proposals to strengthen Federal, State and Tribal pesticide certification and training programs, with the goal of enhancing the knowledge and skills of pesticide users. Pesticide certification and training programs are run primarily by State government programs and cooperative extension service programs from State land grant universities, so these stakeholders provide valuable insight into the needs of the program.

In 1999, CTAG issued a comprehensive report, *Pesticide Safety in the 21st Century* (Ref. 30), which recommended improvements for State and Federal pesticide applicator certification programs, including how to strengthen the certification regulation. The report suggests that EPA update the core training requirements for private and commercial applicators, establish a minimum age for applicator certification, set standards for a recertification or continuing education program, facilitate the ability of applicators certified in one State to work in another State without going through the whole certification process again, and strengthen protections for noncertified applicators working under the direct supervision of a certified applicator (Ref. 30).

Around the same time as CTAG issued its report, EPA initiated the National Assessment of the Pesticide Worker Safety Program (the National Assessment), an evaluation of its pesticide worker safety program (pesticide applicator certification and agricultural worker protection) (Ref. 31). The National Assessment engaged a wide array of stakeholder groups in public forums to discuss among other things, the CTAG recommendations and other necessary improvements to EPA's pesticide applicator certification program. In 2005, EPA issued the *Report on the National Assessment of EPA's Pesticide Worker Safety Program* (Ref. 32), which included many recommendations for rule revisions to improve the applicator certification program. The various individual opinions and suggestions made during the course of the assessment centered on a few broad improvement areas: The expansion and upgrade of applicator and worker competency and promotion of safer work practices, improved training of and communication with all pesticide workers, increased enforcement efforts and improved training of inspectors, training of health care providers and monitoring of pesticide incidents, and finally, program operation, efficiency and funding (Ref. 32). Suggestions specific to certification of applicators included improving standards for noncertified applicators working under the direct supervision of certified applicators, establishing a minimum age for applicator certification, requiring all applicators to pass an exam to become certified, and facilitating reciprocity between States for certification of applicators (Ref. 32). While EPA addressed some of the recommendations through grants,

program guidance, and other outreach, others could only be accomplished by rulemaking.

During the initial stages of the framing of this proposal, EPA's Federal advisory committee, the Pesticide Program Dialogue Committee (PPDC), formed a workgroup in 2006 to provide feedback to EPA on different areas for change to the certification regulation and the WPS. The workgroup had over 70 members representing a wide range of stakeholders. EPA shared with the workgroup suggestions for regulatory change identified through the National Assessment and solicited comments. The workgroup convened for a series of meetings and conference calls to get more information on specific parts of the regulation and areas where EPA was considering change, and provided feedback to EPA. The workgroup focused on evaluating possible changes under consideration by EPA by providing feedback from each member's or organization's perspective. Comments from the PPDC workgroup members have been compiled into a single document and posted in the docket (Ref. 33).

EPA convened a Small Business Advocacy Review (SBAR) Panel on potential revisions to the certification rule and the WPS in 2008. The SBAR Panel was convened under section 609(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 609(b). As part of the SBAR Panel's activities, EPA consulted with a group of Small Entity Representatives (SERs) from small businesses and organizations that could be affected by the potential revisions. EPA provided the SERs with information on potential revisions to both rules and requested feedback on the proposals under consideration. EPA asked the SERs to offer alternate solutions to the potential proposals presented to provide flexibility or to decrease economic impact for small entities while still accomplishing the goal of improved safety (Ref. 34).

Specific to the certification rule, the SERs provided feedback on requirements for the minimum age of pesticide applicators and protections for noncertified applicators working under the direct supervision of a certified applicator. The SERs' responses were compiled in an Appendix to the final Panel Report and posted in the docket (Ref. 34). EPA considered input from the SERs as part of the evaluation of available options for this rulemaking and SER feedback is discussed where relevant in this preamble.

Consistent with EPA's Indian Policy and Tribal Consultation Policy, EPA's Office of Pesticide Programs conducted a consultation with Tribes. The consultation was carried out via a series of scheduled conference calls with Tribal representatives to inform them about potential regulatory changes, especially areas that could affect Tribes. EPA also informed the Tribal Pesticide Program Council (TPPC) about the potential changes to the regulation.

In addition to formal stakeholder outreach, EPA held numerous individual stakeholder meetings as requested to discuss concerns and suggestions in detail. Stakeholders requesting meetings included the National Association of State Departments of Agriculture (NASDA), the American Association of Pesticide Safety Educators (AAPSE), the Association of American Pesticide Control Officials (AAPCO), the Association of Structural Pest Control Regulatory Officials (ASPCRO), Crop Life America, and others.

3. *Children's health protection.* Executive Order 13045 (62 FR 19885, April 23, 1997) and modified by Executive Order 13296 (68 FR 19931, April 18, 2003) requires Federal agencies to identify and assess environmental health risks that may disproportionately affect children. Children who apply pesticides face risks of exposure. A 2003 study identified 531 children under 18 years old with acute occupational pesticide-related illnesses over a 10-year period (Ref. 35). The same study raised concerns for chronic impacts: ''because [the] acute illnesses affect young people at a time before they have reached full developmental maturation, there is also concern about unique and persistent chronic effects'' (Ref. 35). Although the study is not limited to RUPs, its findings indicate the potential risk to children from working with and around pesticides.

The Fair Labor Standard Act's (FLSA) child labor provisions, which are administered by DOL, permit children to work at younger ages in agricultural employment than in non-agricultural employment. Children under 16 years old are prohibited from doing hazardous tasks in agriculture, including handling or applying acutely toxic pesticides. 29 CFR 570.71(a)(9). DOL has established a general rule, applicable to most industries other than agriculture, that workers must be at least 18 years old to perform hazardous jobs. 29 CFR 570.120.

Research has shown differences in the decision making of adolescents and adults that leads to the conclusion that applicators that are children may take more risks than those who are adults. Behavioral scientists note that responsible decision making is more common in young adults than adolescents: ''socially responsible decision making is significantly more common among young adults than among adolescents, but does not increase appreciably after age 19. Adolescents, on average, scored significantly worse than adults did, but individual differences in judgment within each adolescent age group were considerable. These findings call into question recent assertions, derived from studies of logical reasoning, that adolescents and adults are equally competent and that laws and social policies should treat them as such'' (Ref. 22). Decision-making skills and competence differ between adolescents and adults. While research has focused on decision making of juveniles in terms of legal culpability, the research suggests similar logic can be applied to decision making for pesticide application.

In sum, children applying RUPs—products that require additional care when used to ensure they do not cause unreasonable adverse effects on people or the environment—may be at a potentially higher risk of pesticide exposure and illness. The elevated risk to the adolescent applicators, in addition to adolescents' not fully developed decision-making abilities, warrant careful consideration of the best ways to protect them. It is reasonable to expect that the proposed changes would mitigate or eliminate many of the risks faced by adolescents covered by this rule.

4. *Retrospective regulatory review.* On January 18, 2011, President Obama issued Executive Order 13563 (76 FR 3821, January 21, 2011), to direct each Federal agency to develop a plan, consistent with law and its resources and regulatory priorities, under which the agency would periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. The Executive Order also enumerates a number of principles and directives to guide agencies as they work to improve the Nation's regulatory system.

In developing its plan, EPA sought public input on the design of EPA's plan for the periodic retrospective review of its regulations, and stakeholder suggestions for regulations that should be the first to undergo a retrospective review (76 FR 9988, February 23, 2011), and issued the final EPA plan, titled ''Improving Our Regulations: Final Plan

for Periodic Retrospective Reviews of Existing Regulations,'' in August 2011 (*http://www.epa.gov/regdarrt/retrospective/documents/eparetroreviewplan-aug2011.pdf*).

The existing certification rule was nominated for retrospective review as part of the public involvement process in 2011. In EPA's final plan, EPA committed to review the existing certification rule to determine how to clarify requirements and modify potentially redundant or restrictive requirements, in keeping with Executive Order 13563.

The results of EPA's review, which included identified opportunities for improving the existing regulation, were incorporated into this rulemaking effort. Based on extensive interactions with stakeholders during review of the certification regulation, EPA has identified the potential for harmonized minimum requirements to enhance State-to-State reciprocity of applicator certifications, which could reduce the burden on the regulated community by promoting better coordination among the State, Federal, and Tribal partnerships; clarifying requirements; and modifying potentially redundant or restrictive regulation. EPA expects the proposed rule, if finalized, to achieve the benefits outlined throughout the preamble. For a summary of the benefits, see the table in Unit I.E. and the discussion of regulatory objectives in Unit III.B.

IV. Summary of Rationale and Introduction to Specific Revisions to Part 171

Units II. and III. describe the stakeholder engagement and reports highlighting the need to update the certification regulation. In addition to stakeholder recommendations, EPA believes the rule needs to be updated to address State variability and to support EPA registration decisions. Each of these reasons for updating the rule are discussed in this unit.

As noted in Unit III., EPA has not updated the certification regulation substantially in almost 40 years. However, many States have adopted updated standards for certification and recertification. As a result, State requirements for certification of applicators are highly varied; most States go beyond the existing Federal requirements for applicator certification. This has created an uneven regulatory landscape between States and inhibits recognition of an applicator certification issued in one State by another State.

If certification does not represent a uniform degree of competence, this diversity also compromises EPA's ability to determine confidently that use of a pesticide product by certified applicators will not cause unreasonable adverse effects. In order to retain or expand the number and types of pesticides available to benefit agriculture, public health, and other pest control needs, EPA plans to raise the Federal standards for applicator competency. By adopting the proposed strengthened and additional competency standards, the rule would provide assurance that certified applicators and noncertified applicators under their direct supervision are competent to use RUPs in a manner that will not cause unreasonable adverse effects. In the absence of such assurance, EPA may have to seek label amendments imposing other use limitations that could be more burdensome to users.

Units VI. to XX. describe the most significant of the proposed changes and alternative options considered by EPA. Each discussion is generally structured to provide, where appropriate:

- A concise statement of the proposed change.
- The current requirements of the certification regulation.
- Stakeholder feedback and research supporting the proposed change.
- A detailed description of the proposed change and the rationale for the change.
- An estimated cost.
- A description of primary alternatives considered by EPA and the reason for not proposing them.
- Specific questions on which EPA seeks feedback.

V. Public Comments

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 comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

VI. Revise Private Applicator Certification Standards

A. Enhance Private Applicator Competency Standards

1. *EPA's proposal.* Because private applicators have access to and can apply the same RUPs as commercial applicators and therefore need to have similar knowledge and skills to apply pesticides safely and effectively, EPA proposes to amend the private applicator competency standards to include more specific information on pesticide application and safe use.

2. *Existing regulation.* The current rule has 5 topics under the competency standards for private applicators:

- Recognize common pests to be controlled and damage caused by them.
- Read and understand the label and labeling information.
- Apply pesticides in accordance with label instructions and warnings.
- Recognize local environmental situations that must be considered during application to avoid contamination.
- Recognize poisoning symptoms and procedures to follow in case of a pesticide accident. 40 CFR 171.5(a)(1) through (5).

These topics are listed without specific detail or clarification of the areas to be covered under each point. In contrast, the core standards of competency for commercial certification have nine major areas of focus with more specific sub-points listed under each. 40 CFR 171.4(b)(1).

3. *Stakeholder information.* Starting in 1985, EPA received requests from stakeholders to increase the level of detail and subject matter outlined in the competency standards for private applicators. SFIREG's taskforce report calls for EPA to make private applicator competency standards parallel to those of commercial applicators (Ref. 29). CTAG recommended that all applicators with access to RUPs meet a similar competency standard (Ref. 30). Members of the PPDC workgroup also noted that since commercial and private applicators have access to the same products, they should meet similar competency standards (Ref. 33). Almost 90% of States noted that their private applicator certification standards are comparable to the core standards for commercial applicators (Ref. 5).

4. *Details of the proposal/rationale.* Based on the importance of understanding and following the pesticide's labeling in managing risks to the applicator, the public, and the environment, EPA is proposing to enhance the competency standards for private applicators to more specifically

define the necessary knowledge and skills to be demonstrated by private applicators to become certified. More specific competency standards would better outline the knowledge and skills EPA expects private applicators to have in order to apply RUPs effectively and without unreasonable adverse effects.

The enhanced private applicator competency standards would cover: Label and labeling comprehension; safety; environment; pests; pesticides; equipment; application methods; laws and regulations; responsibilities for supervisors of noncertified applicators; stewardship; and agricultural pest control. EPA is proposing a set of competency standards substantially parallel to the core standards for commercial applicators in the current rule at 40 CFR 171.4(a) and proposed as 40 CFR 171.105(a), with the addition of some points from the agricultural plant category and information particularly relevant to private applicators, such as the WPS. The proposed competency standards specifically cover protecting pollinators under the ''environment'' heading. In addition to the differences in the proposed general competency standards for private and commercial applicators, EPA proposes to maintain the distinction between private and commercial applicator competency standards required by FIFRA, 7 U.S.C. 136i(e), by not requiring private applicators to obtain a specific category certification in addition to the proposed general certification. For commercial applicators to become certified, they must pass the core and at least one category exam.

It is reasonable to expect that the more detailed competency standards would contribute to improving the overall competency of private applicators.

The proposed regulatory text would be located at 40 CFR 171.105(a).

5. *Costs/benefits.* EPA estimated the cost of the proposed enhancements to private applicator competency standards in conjunction with the requirement to strengthen private applicator certification requirements. The cost for these combined proposals is presented in Unit VI.B.5.

6. *Alternative options.* EPA considered adopting the core standards for commercial applicators in the current rule at 40 CFR 171.4(a) for private applicator competency standards. Private and commercial applicators have the same access to RUPs and need knowledge of basic safety and application techniques related to the use of these products. However, FIFRA requires that EPA establish separate standards for commercial and private applicators, thereby prohibiting EPA from using the same core competency standards for commercial and private applicators. 7 U.S.C. 136i(e). In addition, because private applicators are engaged only in the production of agricultural commodities, it is necessary for them to demonstrate specific competency related to this type of RUP use rather than the broader range of commercial applicator competencies.

7. *Request for comment.* EPA seeks comment on the following:

- Should EPA consider adding points to or deleting points from the proposed private applicator competency standards? If so, what points and why?
- Are the competencies necessary to protect pollinators adequately covered in the proposed competency standards for private applicators? If not, please explain why and provide alternatives to ensure that private applicators are competent to use RUPs in a manner that protects pollinators.

B. Strengthen Private Applicator Certification Requirements

1. *EPA's proposal.* In order to address the need for private applicators to be competent to use RUPs, EPA proposes to require that persons seeking certification as private applicators complete a training program approved by the certifying authority that covers the standards of competency for private applicators or pass a written exam administered by the certifying authority.

2. *Existing regulation.* The certification regulation requires States to ensure that private applicators are competent and the certification process use a written or oral exam, or other method approved as part of the State certification plan. 40 CFR 171.5(b). The rule does not have a description of a certification system that is not a written or oral testing procedure.

3. *Stakeholder information.* SFIREG, the PPDC workgroup, and CTAG have recommended that private applicators be required to take and pass a written exam to become certified to use RUPs (Refs. 29, 33 and 36). Based on data from State certification plans, 42 States require private applicators to pass a written exam to become certified, and another 3 States offer the option to certify by passing a written exam (Ref. 5).

Stakeholders recognize the provision in FIFRA that prohibits EPA from requiring private applicators to take an exam to establish competency, 7 U.S.C. 136i(a)(1), and have suggested that EPA set a minimum training requirement for those States that do not require private applicators to take an exam.

4. *Details of the proposal/rationale.* To implement the enhanced competency standards for private applicators, EPA proposes to require that private applicators complete a training program approved by the certifying authority, or in the alternative, by passing a written exam. In either case, the certification process must cover the private applicator core standards described in Unit VI.A., and meet the procedural standards described in Unit IX. By allowing private applicators to be certified by either attending a training program or taking an exam, EPA's action does not conflict with the FIFRA's prohibition against EPA requiring private applicators of RUPs take an exam to establish competency. 7 U.S.C. 136i(a)(1).

Forty-two States already require private applicators to pass a written exam for certification, so EPA is proposing standard procedures for such examinations. Those States without a written exam requirement generally require some form of training, though the length, quality, and content of the training vary considerably between States, so EPA is proposing specific content requirements. It is reasonable to expect that the risks associated with private applicators' use of RUPs can be reduced through setting more specific minimum requirements for the content of and mechanisms to assess private applicator competency. This proposal acknowledges the need for more specific requirements for the alternate mechanism for private applicator certification and balances it with the recognition that certifying authorities are well-suited to develop training programs that cover the content EPA has deemed necessary to avoid unreasonable adverse effects from the use of RUPs by private applicators and meet the needs of the private applicators in their jurisdictions.

The proposed regulatory text would be located at 40 CFR 171.105(e).

5. *Costs.* EPA estimates this proposal would cost about $3.7 million annually for private applicators (Ref. 3). EPA also estimates that those States that do not currently require an exam or training that last approximately 12 hours for private applicator certification would incur costs of about $16,000 per year for the first two years after implementation to develop the programs, as well as $61,000 per year thereafter for ongoing program administration (Ref. 3). EPA plans to support the development of exams and manuals for private applicator certification, which should reduce the costs to States.

6. *Alternative options considered but not proposed.* While maintaining the

same enhanced competency standards discussed in Unit VI.A., EPA considered alternative options of allowing private applicator certification by completing a training program of a specific length—either 4, 8, or 16 hours—that covers the content outlined in Unit VI.A. In developing the EPA-administered certification plan for Indian country, EPA developed a non-exam certification option for private applicators. Because of the difficulty of reaching candidates in various parts of the country and the need to make the training available throughout the year, the Federal Indian country training program is a pre-recorded, narrated PowerPoint presented through the Internet that runs 12 hours (Ref. 37). The training covers much of the content proposed in Unit VI.A., as well as specific requirements for pesticide applicators in Indian country. However, EPA decided not to propose a specific length for private applicator certification by training. EPA believes that specifying that private applicator non-exam certification must be accomplished through training and outlining the content that must be covered in the training would allow States and private applicator educators—who understand the content, the audience, and how to convey the content to the audience—to develop training programs that cover the content EPA deems necessary and meet the needs of their audiences. For example, narrated PowerPoint presentations and webinars may take a longer amount of time to cover the specified topics than an in-person training. Additionally, a mandatory training length could encourage some training providers to either rush through or draw out coverage of the content, thereby diminishing the effectiveness of the training. It is not clear that specifying the length of the training would better protect human health or the environment.

7. *Request for comment.* EPA specifically requests comment on the following:

- Please provide any relevant information on the efficacy of private applicator certification training programs or comparisons between training and testing programs.
- Please comment on the proposed structure of the non-exam option for private applicator certification.
- Would a different training requirement adequately convey the necessary information to private applicators? If so, please describe the alternate requirement.
- Is it necessary for EPA to specify a minimum length of time for the training program for private applicator certification? If so, please provide the minimum length of the training program and explain its basis.

C. Eliminate Non-Reader Certification for Private Applicators

1. *EPA's proposal.* Due to the importance of an applicator's ability to read, understand, and follow the labeling in order to apply pesticides in a manner that would not cause unreasonable adverse effects to people or the environment, EPA proposes to delete the provision of the rule that allows a non-reader to become a certified private applicator.

2. *Existing regulation.* The existing rule contains a provision for limited certification of private applicators who cannot read by offering the option to obtain a product-specific certification. 40 CFR 171.5(b)(1). This provision allows States to use a testing procedure approved by the Administrator to assess the competence of the non-reader candidate related to the use and handling of each individual pesticide for which certification is sought. This generally means that someone has explained the labeling to the non-reader and the non-reader answers questions on the same labeling asked by the State regulator. The person seeking certification is not required to demonstrate the ability to read and understand pesticide labeling.

As discussed earlier, FIFRA prohibits EPA from requiring private applicators to pass an exam to establish competency. 7 U.S.C. 136i(a)(1).

3. *Stakeholder information considered by EPA.* CTAG recommended that EPA establish a requirement for persons seeking certification to be able to read and understand English language pesticide labeling. Most PPDC workgroup members did not oppose elimination of the non-reader certification provision (Ref. 33). One State noted that there are small populations who either cannot read English-language labeling or who could not pass an exam, but who could use a single product without causing unreasonable adverse effects. It is EPA's understanding that 22 states have rules in place that make accommodations for persons who have difficulty reading and who want to become certified as a private applicator. These states are Alaska, Arizona, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Maine, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, Vermont, Virginia, Wisconsin, and Wyoming. Of these states, 6 have rules in place that make accommodations under the Americans with Disabilities Act for persons who have documented disabilities. States are not required to track private applicators certified under the limited certification provision separately from other private applicator certification methods. However, EPA requested anecdotal information from the states on the use of this limited certification provision and most states responding said that the provision was never or rarely used.

4. *Details of the proposal/rationale.* EPA proposes to eliminate the current provision that allows States to offer limited certification to persons who cannot read the pesticide labeling. A key element of applicator competency is the ability to read the labeling because understanding the labeling is critical to preventing unreasonable adverse effects from the use of RUPs. Labeling is increasingly relied upon to transmit product-specific information relative to subjects such as worker protection, groundwater, endangered species, and human exposure. In addition, labeling may change frequently. Approved uses, application rates, and application methods may be deleted or added by a registrant voluntarily or as part of an EPA risk mitigation strategy. The potential for misuse of RUPs presents an unreasonable risk unless the applicator is able to read and correctly interpret the labeling that accompanies each product he or she uses. While the current system is intended to ensure the applicator has knowledge of a specific product's labeling, there is no way to ensure the applicator would be aware of subsequent changes. It is reasonable to expect that by eliminating the specific certification method for applicators who cannot read, RUPs are more likely to be applied as required by their labeling, and therefore will be less likely to cause unreasonable adverse effects to people or the environment.

EPA recognizes that persons can be certified as private applicators by attending a training course. In this case, EPA expects that the certifying body would ensure that the applicator demonstrated all of the necessary competencies to apply RUPs, including the ability to read.

The proposed change does not affect noncertified persons applying RUPs under the direct supervision of a certified applicator. It is conceivable that persons who cannot read labeling could use RUPs properly while working under the direct supervision of a certified applicator. EPA is proposing to strengthen the training and other requirements related to noncertified applicators to ensure that they understand the labeling requirements for each application, are supervised by

a qualified applicator familiar with the specific product labeling for each application, and have equipment available to contact the supervising applicator immediately in the event of an emergency or with any questions. These strengthened standards should provide sufficient training that a non-reader or a person who cannot read English could apply RUPs under the direct supervision of a certified applicator without causing unreasonable adverse effects to the applicator, the public, or the environment.

5. *Costs.* EPA expects the cost of this proposal would be negligible, but has not quantified the cost (Ref. 3). Based on EPA's understanding, the limited certification option is only offered in 22 States, and in those states it is very rarely, if ever, used. EPA did not quantify the baseline cost to States for maintaining the existing provision or the potential reduction in administrative burden to States from eliminating it. EPA anticipates that the minimal costs would be borne by persons who could not qualify as private applicators absent a limited certification provision. These persons would have several options. First they could hire a person on the farm who can be certified as a private applicator to conduct RUP applications. Second, they could contract with a commercial applicator to conduct RUP applications. Third, they could substitute non-RUPs for the RUPs. EPA is sensitive to the fact that elimination of this provision may increase costs for a very small number of private applicators, but it is reasonable to expect that this adverse impact would be small in comparison to the potential reduction in risks to the applicator, the public, and the environment. EPA does not expect any impact on the employability of private applicators because by definition, a private applicator cannot receive compensation for applying RUPs on the property of another.

If the proposal is finalized, EPA would allow existing non-reader certifications to remain valid until expiration or recertification is required under the implementation of the final rule. Because most non-reader certifications are issued for a specific application in a single growing season, EPA anticipates that non-reader certification would not continue for any significant period of time if this proposal is finalized.

6. *Alternative options considered but not proposed.* EPA also considered retaining the limited certification option for private applicator certification and strengthening the requirements. For this alternative scenario, the limited certification would be valid for a single product and for a single season. The State would have to evaluate each request for a limited certification separately. This option would codify what EPA understands to be the current practice in States that allow non-reader certification. Under this option, a person could be certified to use a single product based on a specific product's labeling, but might not be aware of subsequent changes to the labeling of the same product purchased later in the season. Given the importance of avoiding unreasonable adverse effects from the use of RUPs and the limited use of this certification option, EPA decided not to propose this option.

7. *Request for comment.* EPA requests comment on the following questions:

- Would the elimination of the non-reader provision cause hardship to specific groups of private applicators? If so, please describe the group and the hardship.
- Should EPA allow private applicators currently certified under this provision to retain their certification if the non-reader provision is eliminated? Please explain why. If so, how would ''grandfathering in'' private applicators certified under this provision impact other proposed changes, such as requirements for maintaining certification and supervising noncertified applicators?
- Do alternatives to the non-reader certification option exist that would offer an adequate level of protection while maintaining a narrow exception to certification requirements? If so, please describe.

VII. Establish Application Method-Specific Certification Categories for Private and Commercial Applicators

1. *Overview.* In order to address the elevated risks associated with certain specific methods of application used by certified private and commercial applicators to apply RUPs, EPA proposes to add application method-specific certification categories for private and commercial applicators that use RUPs to conduct soil fumigation, non-soil fumigation, and aerial applications. These application method-specific categories would be independent of the pest control categories in the existing rule, for example, a person certified in the aerial method category would also need certification in one or more pest control categories, such as crop pest control, forest pest control, or public health pest control.

2. *Existing regulation.* The existing rule has no categories for private applicators. For commercial applicators, the existing rule does not have any application method-specific categories, although it does have 11 pest control categories: Agricultural pest control—plant; agricultural pest control—animal; forest pest control; ornamental and turf pest control; seed treatment; aquatic pest control; right-of-way pest control; industrial, institutional, structural and health related pest control; public health pest control; regulatory pest control; and demonstration and research pest control. 40 CFR 171.3.

3. *Stakeholder information considered by EPA.* Stakeholders, including SFIREG, CTAG, AAPCO, and members of the PPDC workgroup, recommended that EPA consider adding application method-specific certification categories for high-risk uses (Refs. 29 and 30). States have noted that certain application methods, specifically fumigation and aerial application, pose elevated risks of exposure or harm to the applicator, bystanders, or the environment.

Some States have addressed these elevated risks related to these application methods by adding specific categories for both private and commercial applicators seeking to use certain application methods. States that have chosen to add categories have done so independently, resulting in different standards and levels of protection across the country. EPA reviewed the categories related to application methods adopted by the States and other stakeholders. According to data from 2013, 32 States (Alaska, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, South Carolina, Texas, Utah, Vermont, Virginia, Wisconsin, Wyoming) require commercial applicators to be certified for aerial application and 1 State (Wisconsin) requires the same for private applicators. For soil fumigation, 16 States (California, Connecticut, Delaware, Florida, Idaho, Illinois, Minnesota, Nebraska, New York, North Carolina, Ohio, Oregon, Pennsylvania, Virginia, Washington, Wisconsin) require commercial applicators to obtain a specific certification and 10 States (Hawaii, Idaho, Minnesota, Nevada, North Carolina, Ohio, Pennsylvania, Washington, Wisconsin, Virginia) have a similar requirement for private applicators. Finally, for non-soil fumigation, 41 States (Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia,

Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington State, West Virginia, Wisconsin, Wyoming) mandate that commercial applicators be certified in this specific category to conduct non-soil fumigation applications and 8 States (Arizona, Iowa, Minnesota, Nevada, North Dakota, Ohio, Pennsylvania, Utah) have a similar requirement for private applicators.

The 2008 REDs for soil fumigants acknowledged the elevated risks (Ref. 17). As a result of these risks, EPA required additional training for soil fumigant applicators through labeling amendments. The decision also acknowledged that a specific certification category requiring demonstration of competency by passing a written exam related to applying fumigants to soil would be an acceptable alternative risk mitigation measure. Several States have opted to require applicators to be certified in a specific soil fumigation category. As chemicals are reviewed as part of the ongoing registration review program, risks associated with individual pesticides may be addressed through labeling requirements for additional training or competency.

4. *Details of the proposal/rationale.* The Agency proposes to establish three application method-specific certification categories for private and commercial applicators: Soil fumigation, non-soil fumigation, and aerial. Based on the discussions with States and review of existing State-adopted categories, EPA proposes these categories because EPA has concluded that these categories of use for RUPs may cause unreasonable adverse effects without additional regulation. These types of RUP application require specialized skills and present unique risks, such that it is reasonable and appropriate for private and commercial applicators to acquire or demonstrate the pertinent knowledge and skills before being certified to apply RUPs in any of these three categories. For commercial applicators, certification in any of the application method-specific categories would only be available to persons certified in a relevant pest control category as described in proposed 40 CFR 171.101(a). Private applicators would need to satisfy the general competency standards described in Unit VI in order to qualify for additional certification in an application method-specific category.

Pesticide application and agriculture both are becoming increasingly specialized. Improper use of application equipment may lead to increased risks to the health of the applicator, workers, the environment, and the public. Additionally, certain categories of pesticides, including fumigants, pose an inherently higher risk of acute injury or death if the applicator does not understand and follow the labeling. These increased risks can be mitigated by requiring applicators to demonstrate a more specific set of competencies relative to certain application methods.

Soil fumigation is a complicated process, and involves highly toxic pesticide products that can cause acute, severe injury to the applicator, handler, bystanders, or the environment if not used properly. Given the increased potential for harm to human health and the environment, EPA proposes to establish soil fumigation categories for private and commercial applicators. Under the re-registration decisions for the soil fumigants (Refs. 38, 39, 40 and 41), additional soil fumigation-specific training is required for applicators certified to use RUPs registered for use as soil fumigants due to their increased potential for harm. Because there was no generally applicable requirement or standard of competence for soil fumigation, EPA required each registrant to develop and implement a soil fumigant training program. In discussing this approach with States, EPA recognized that an applicator certification category specific to soil fumigation with a single, uniform set of criteria would be less burdensome than requiring separate, registrant-sponsored trainings for each soil fumigation product. States have requested that EPA consider requiring all applicators using soil fumigants to be certified in a single, soil fumigation category in lieu of each product's labeling requirement for registrant-sponsored training (Ref. 42). The labeling for soil fumigants provides the option for applicators to qualify to purchase and use these products either by attending the registrant training specified on the labeling for each specific chemical or by being certified in a soil fumigation category that covers all active ingredients and meets the competency standards approved by EPA. Recognizing the potential risks from soil fumigants and the importance of applicator competency, EPA worked with State regulators, cooperative extension personnel, soil fumigant applicators, and industry to develop a training manual and exam item bank (database of questions related to soil fumigation that can be used on a certification exam) that States can use for certification of applicators performing soil fumigation (Refs. 43 and 44).

Under the proposal, commercial applicator certification in the soil fumigation category would require the applicator to demonstrate competency in soil fumigation by passing a written exam and to hold concurrent certification in each of the pest control categories in which he or she intends to conduct this type of application, *e.g.,* agricultural pest control—plant; ornamental and turf pest control; forest pest control; right-of-way pest control; regulatory pest control; or demonstration and research. Private applicator certification in soil fumigation would require the applicator to demonstrate competency by passing a written exam or completing a training program covering the proposed competency standards for soil fumigation (proposed at 40 CFR 171.105(c)(1)) in addition to holding a valid general private applicator certification.

Other (non-soil) types of fumigation require different techniques and training than soil fumigation, but have similar potential to harm the applicator, the environment, and the public. For example, although fumigation of a shipping container requires different application equipment, monitoring strategy, and mitigation of environmental concerns than soil fumigation, both types of fumigation can cause acute, severe injury to the applicator, handler, bystanders, or the environment if not conducted properly. Given the high potential for harm to human health and the environment, EPA proposes to add non-soil fumigation application method-specific certification categories for private and commercial applicators. Commercial applicator certification in the non-soil fumigation category would require the applicator to demonstrate competency in non-soil fumigation by passing a written exam and to hold concurrent certification in each of the pest control categories in which he or she intends to conduct this type of application, *e.g.,* agricultural pest control—plant; forest pest control; ornamental and turf pest control; seed treatment; aquatic pest control; industrial, institutional, structural, and health-related pest control; public health pest control; regulatory pest control; or demonstration and research. Private applicator certification in non-soil fumigation would require the applicator to demonstrate competency by passing a written exam or completing a training

program covering the proposed competency standards for non-soil fumigation (proposed at 40 CFR 171.105(c)(2)) in addition to holding a valid general private applicator certification.

Applying pesticides with a plane or helicopter poses a unique set of risks and challenges to the applicator, bystanders, and the environment. There is heightened concern for spray drift, elevated potential for off-target applications and bystander exposure, and an increased need for application equipment to be calibrated accurately. Aerial applicators are required to comply not only with EPA regulations for the application of pesticides, but also Federal Aviation Administration requirements for pilots making applications using an aircraft at 14 CFR part 137. Recognizing the potential risks and the importance of applicator competency when performing aerial applications, EPA worked with State regulators, cooperative extension personnel, aerial applicators, and industry to develop a training manual and exam item bank that States can use for certification of aerial applicators (Ref. 45). The unique challenges posed by this application method warrant establishing aerial application categories for private and commercial applicators. Accordingly, in order for a commercial applicator to make aerial applications of RUPs, the commercial applicator would be required to demonstrate competency in aerial application by passing a written exam and to hold concurrent certification in each of the pest control categories in which he or she intends to conduct aerial application, *e.g.,* agricultural pest control—plant; ornamental and turf pest control; forest pest control; aquatic pest control; right-of-way pest control; public health pest control; demonstration and research; or regulatory pest control. Private applicator certification in aerial application would require the applicator to demonstrate competency by passing a written exam or completing a training program covering the proposed competency standards for aerial application (proposed at 40 CFR 171.105(c)(3)) in addition to holding a valid general private applicator certification.

Requirements for general private applicator certification in each of the aforementioned application method-specific categories would parallel the certification requirements proposed in Unit VI.B. Private applicators would be required to either pass a written exam or complete a training program for each application method-specific category that covers the proposed competency standards and is approved by the certifying authority. A person who does not have a general private applicator certification would not be eligible for certification in any of the application method-specific categories. These additional categories of certification would provide a measure of assurance that the private applicator has the specialized knowledge of application methods, equipment, and the characteristics of the pesticides pertinent to a specific category to use the pesticide without generally causing unreasonable adverse effects.

The regulatory text for the proposed commercial applicator application method-specific categories would be located at 40 CFR 171.101(b). The regulatory text for the proposed private applicator application method-specific categories would be located at 40 CFR 171.105(c).

5. *Costs.* The cost estimates are broken out by each category for private and commercial applicators (Ref. 3). As discussed in Unit VI.B., EPA plans to support the development of exams and manuals for the proposed application-method specific categories, which should reduce the overall burden to States associated with this proposal. EPA has already developed and made available to State certification agencies free of charge training manuals and exam item banks for the aerial and soil fumigation categories. States that elect to use the EPA-developed materials would incur minimal development costs; however, the costs below reflect the full estimated cost to States and do not include EPA assistance in developing exams and manuals. EPA expects the actual costs to States would be lower (Ref. 3).

i. *Private applicators.* EPA estimates the cost of adding a private aerial category to be about $2,000 annually, which reflects the aggregate cost to all affected private aerial applicators (Ref. 3). The low cost to applicators reflects the number of existing private applicators certified in aerial application and the low estimated number of new private applicators seeking aerial certification. The costs to States to develop and administer exams or training for certification would be about $108,000 annually for the first 2 years of implementation (Ref. 3). Most of this cost would be borne within the first two years to develop the exams and recognizes that nationally developed materials will be available for States to adapt for their own programs.

EPA estimates that adding a soil fumigation category for private applicators would not result in any additional cost to private applicators. The labeling for soil fumigation products already requires applicators to either participate in registrant training for each product or to be certified in a State soil fumigation category.

EPA estimates that the cost of adding a non-soil fumigation category for private applicators to be about $78,000 annually, which reflects the aggregate cost to all affected private applicators conducting non-soil fumigation (Ref. 3). The estimate represents the private applicators' opportunity cost of time spent in training or preparing for and taking the certification exam.

EPA estimates that the costs to States to develop and administer exams or training for certification in the soil and non-soil fumigation categories would be $197,000 annually for the first 2 years of implementation.

ii. *Commercial applicators.* EPA estimates the cost of adding an aerial category for commercial applicators to be about $98,000 annually, which reflects the aggregate cost to all affected commercial aerial applicators (Ref. 3). The low cost to applicators reflects the number of States that already require commercial applicators to obtain a specific certification to perform aerial application and the relatively low number of applicators that seek certification in an aerial category each year. The cost to States to develop a certification exam for this category would be about $39,000 annually for the first 2 years after implementation (Ref. 3).

EPA estimates that adding a soil fumigation category for commercial applicators would not result in any additional cost to commercial applicators (Ref. 3). The labeling for soil fumigation products already requires applicators to either participate in registrant training for each product or to be certified in a State soil fumigation category.

EPA estimates the cost of adding a non-soil fumigation category for commercial applicators to be about $131,000 annually, which reflects the cost to all affected commercial applicators conducting non-soil fumigation (Ref. 3). Many States already require commercial applicators to be certified in either general fumigation, soil fumigation, or another type of fumigation. However, the cost to add this category is higher than for other commercial applicator categories proposed because most States do not already have categories for both soil and non-soil fumigation.

The costs to States to develop non-soil fumigation certification exams would be about $30,000 per year for the first 2 years following implementation (Ref. 3).

6. *Alternative options considered by EPA but not proposed.* The Agency considered six alternatives to the proposed requirement.

i. *Specify a certain number of training hours for private applicator certification in these categories.* EPA considered requiring private applicators to complete a specific number of hours of training (either 4 or 8 hours) or to pass an exam in order to become certified in an application method-specific category. As discussed above in Unit VI.B., it is not clear that a mandatory minimum length for private applicator certification training programs would not ensure specific competency.

ii. *Continue to rely on label-specific risk mitigation to address elevated risks associated with certain application methods.* EPA considered relying on imposing risk mitigation measures through labeling, limiting the use of high risk products or higher risk application methods. This approach would be implemented on a case-by-case basis and not directly linked to pesticide applicator certification programs. The Agency learned that applicators, States, and cooperative extension service programs did not support this approach and faced significant burdens when this approach was used to regulate soil fumigants (Refs. 46, 47, 48 and 49). Based on the adverse reaction and impact to States, as well as the need to promote applicator competency and national consistency, EPA decided not to propose this option. It is reasonable to expect that adding categories at the Federal level to cover many types of pesticides applied by specific mechanisms would be more efficient than imposing similar but not identical requirements on each pesticide label.

iii. *Consolidate soil fumigation and non-soil fumigation into a single fumigation category.* To reduce the burden on State certification authorities and applicators who perform both types of fumigation applications, EPA considered proposing a single general fumigation concurrent category instead of separate soil and non-soil fumigation concurrent categories. The knowledge and skills necessary to perform soil fumigation and non-soil fumigation differ substantially. In addition, there are significant differences in risks to the applicator and environmental concerns between the two methods for applying fumigants. The reregistration decisions on the soil fumigants highlighted the specific use conditions and risk mitigation measures necessary to apply soil fumigants without unreasonable adverse effects, not necessary restrictions for applications of all fumigants. Combining these related categories may reduce the burden on certifying agencies and on some applicators; however, applicators who perform only soil fumigation or only non-soil fumigation would receive less instruction specific to their particular application method and more instruction than they wish on a method for which they may have no use. In order to ensure that applicators have a level of competency in the applicable application method proportional to the potential risk, EPA decided not to propose a general fumigation category.

iv. *Add application method-specific standards as subcategories under the existing commercial applicator categories.* EPA considered adding the categories discussed in this Unit as subcategories under the applicable existing commercial applicator pest control categories. For example, a person seeking to perform aerial application to agricultural fields and forests, and for mosquito control would have to take an aerial exam specific to each of these categories. This would require creating subcategories under almost every pest control category. An applicator would have to be certified not only in each relevant pest control category, but also in a subcategory under each in order to use a specific application method. Application method-specific certification requirements as proposed are expected to impose a lower burden on applicators seeking certification, *e.g.,* one aerial method-specific certification exam rather than separate aerial subcategory exams under agricultural plant, forest, and aquatic pest control. The competency necessary to employ a specific application method, *i.e.,* soil fumigation, non-soil fumigation, or aerial pest control, does not appear to vary substantially based on where the application occurs. For example, an applicator performing soil fumigation needs to know the same techniques and safety measures whether doing it in for a field crop or for ornamental pest control. Therefore, EPA decided not to propose the application method-specific certification as subcategories under the commercial applicator pest control categories.

v. *Add an application method-specific category for chemigation.* Chemigation, *i.e.,* application of pesticides through irrigation systems, has a higher potential for environmental contamination if not conducted properly and poses additional risks to the applicator or those working under the applicator's direct supervision due to the nature of the equipment. Chemigation can contaminate ground and drinking water that flow directly into a water supply, if uncalibrated equipment causes application over the rate specified on the labeling, or improperly maintained equipment leaks treated water from the chemigation system. Applicators need to be knowledgeable about the equipment specific to chemigation necessary to prevent contamination of groundwater, including but not limited to anti-backflow devices, injection pumps, storage tanks, safety valves, anti-pollution devices, and calibration devices. In addition, applicators should be knowledgeable about the risks, benefits, and necessary precautions associated with chemigation in order to protect themselves before, during, and after the application. EPA considered adding an application method-specific category to perform chemigation; however, very few States have added a specific category for this application method and very few incidents involving this application method have been reported to EPA. Absent more persuasive evidence that chemigation is causing adverse effects that could be mitigated through a demonstration of competency by applicators who use this application method, EPA is not proposing this as an application method-specific category at this time.

vi. *Add a ''limited use'' category.* EPA considered adding a category for commercial applicators who would be certified for limited uses of specific RUP pesticides or in niche application scenarios. For example, some States require applicators to be certified to perform sewer line root control, wood treatment, biocide use in hydraulic fracturing (commonly called ''fracking''), or use of horse sterilization products. These types of applications require use of a single product or very limited set of products and specific application techniques. Frequently, the industry in which these applications are made (*e.g.,* fracking) provides training to applicators on proper use of the product(s) and other specific information related to use in the specific situation. However, applicators often have to be certified by taking the core exam, a category exam (*e.g.,* industrial, institutional, structural, and health-related pest control), and an additional exam for the limited use subcategory (*e.g.,* sewer line root control), although they will only be performing specific applications and using a few products. This places a substantial burden on applicators to demonstrate competency related to types of applications they will not perform. It also places a burden on States to maintain an infrastructure to

address the needs of niche applicator populations.

Some States have developed and updated exams and training programs in these limited use categories that have fewer than 10 certified applicators. Other States handle limited use applicators differently. They require commercial applicators to pass the core exam, demonstrating competency in basic environmental safety; reading, understanding, and following pesticide labeling; calculating application rates; and other general application techniques. The State relies on the industry to provide the necessary training related to the limited use. The State clearly marks on the applicator's certification credential that the applicator is only certified for the purchase and use of a limited subset of products, not all RUPs. States that follow the second approach described above note they are confident that applicators are prepared to conduct applications in a manner that will protect themselves, the public, and the environment.

EPA considered adding a ''limited use'' category for commercial applicators that would allow States and applicators to reduce the burden associated with maintaining certification categories for few applicators performing specific applications. Commercial applicators must demonstrate competency in core and for the specific category in which they intend to use RUPs. To address the need for category-specific certification for applicators performing ''limited use'' applications of RUPs, EPA considered three options, other than a category-specific exam. First, the applicator could be required to comply with industry-provided training or certification requirements as specified on the product labeling. This is similar to the requirements for people who treat water using chlorine gas—the labeling requires the applicator to use the product in accordance with a manual from The Chlorine Institute that details proper use of the product and safety procedures. Second, the applicator could be required to hold applicable State or Federal professional credentials in addition to passing the core exam. For example, a plumber performing sewer line root control who uses a specific RUP as part of his services could be required to pass the core exam and to hold a State-issued plumbing license to demonstrate his competency to use the specific RUP safely in the limited circumstance. Third, the applicator could demonstrate competency as required by a specific product's labeling. For example, the labeling for sodium fluoroacetate (Compound 1080 used in livestock protection collars) details specific competency standards that the applicator must meet to use the product; certifying authorities that allow use of this product must develop a specific certification category that covers the labeling-based requirements.

A commercial applicator seeking certification in a limited use category would be required to demonstrate competency by passing the core exam and satisfying one of the category-specific methods described in this Unit. The applicator's certification would be limited only to the specific uses related to his certification. EPA would require that the certifying authority ensure that any certification documentation, *e.g.,* a license, clearly note the limited set of RUPs available for purchase and use by an applicator certified in a limited use category.

EPA is actively seeking additional information from States, applicators, and industry on the value of a limited use category and will consider any public comments received in deciding whether to include this type of category in the final rule.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- Would the proposed categories adequately establish competency for the specified application methods?
- Should EPA consider adding or deleting any of the proposed private applicator application method-specific certification categories? If so, which category(ies) and why?
- Please provide feedback on the proposed competency standards for private applicators in each of the application method-specific categories. Do the proposed standards contain sufficient detail? Are there any elements of these types of application that are not covered adequately?
- Should EPA consider adding or deleting any of the proposed commercial applicator application method-specific certification categories? If so, which category(ies) and why?
- Should EPA require that commercial applicators be certified in one or more pest control categories in order to be certified in one of the application method-specific certification categories? If so, please specify which other categories should be considered prerequisites for each application method-specific certification (in addition to those proposed) and explain why.
- Should EPA add an application method-specific certification category for chemigation? If so, why? Please provide any data about chemigation that would support the addition of a chemigation certification category.
- Should EPA consider adding any categories (not application method-specific) for commercial applicators? If so, which category(ies) and why?
- Please provide feedback on adding a ''limited use'' category for commercial applicators. Would the proposed options for category-specific demonstrations of competency for limited use certification minimize burden on applicators and State certification authorities while ensuring that RUPs are applied in a manner that would not cause unreasonable adverse effects on human health or the environment? Are there other options for offering a limited use certification for certain RUPs that EPA has not considered? If so, please describe.
- Please provide any relevant information on how the regulation could best balance flexibility and uniformity of the certification categories used in different jurisdictions.
- Are the competencies necessary to treat bee hives adequately covered in the agricultural pest control—animal category? If not, please explain why this category does not ensure that applicators are competent to use RUPs to treat bee hives and provide alternatives to ensure that applicators are competent to use RUPs in this manner.
- What were the impacts of EPA's decision to make soil fumigants restricted use on state certification programs and on the number of certified applicators? Would states expect a similar impact if the proposed application method-specific categories are included in the final rule?
- For entities that have already developed certification requirements for persons using soil fumigants, please provide a description of the costs incurred.

VIII. Establish Predator Control Categories for Commercial and Private Applicator Certification

1. Overview. In order to address the specific risks and competency requirements associated with the use of predator control products and to formalize the existing labeling-based requirements for specific certification to use these products, EPA proposes to add categories for both private and commercial applicators to use two mammalian predator control methods: Sodium fluoroacetate (Compound 1080 used in livestock protection collars) and sodium cyanide in an M–44 device.

2. Existing regulation. The existing regulation does not have categories for

the use of sodium fluoroacetate in livestock protection collars or sodium cyanide in an M–44 device. Registration decisions for these products have established specific competency standards and require applicators to be competent in how to use the products properly (Refs. 50 and 51).

3. Stakeholder information considered by EPA. Sodium fluoroacetate is a highly acutely toxic predacide used to control coyotes that prey on sheep and goats. Currently registered end-use products are injected into the rubber reservoirs of livestock protection collars (LPC). These collars are strapped to the throats of sheep or goats. Coyotes attempting to attack livestock wearing LPCs are likely to puncture the LPCs and be fatally poisoned by sodium fluoroacetate as a result. Sodium fluoroacetate is highly toxic to humans and to non-target mammals. No antidote exists for sodium fluoroacetate.

Sodium cyanide dispensed through an M–44 device is another highly toxic predacide that poses extreme risks to humans and non-target mammals. M–44 is an ejector device used to dispense sodium cyanide as a single dose poison to control predators of livestock, poultry, or Federally-designated threatened or endangered species, or those that are vectors of communicable diseases. EPA has registered this product for use in pastures, range land, and forests, only by trained and certified applicators under the direct supervision of a government agency.

4. Details of the proposal/rationale. EPA proposes to establish predator control categories for commercial applicators and private applicators, codifying the current standards of competency outlined in the specific registration decisions for each of these pesticides. Based on the extreme risks posed by the use of sodium fluoroacetate in livestock protection collars and sodium cyanide dispensed through M–44 devices, EPA only grants registrations to State, Tribal, and Federal agencies. EPA's existing registrations of these products prohibit their use except by applicators who meet certain criteria. Each registration decision outlines specific competencies the applicator must demonstrate and the process that must be used to certify applicators of these products. EPA is adding specific categories to the rule to codify the competency standards established by the products' labeling and to facilitate the adoption of a certification category in areas where these products are used.

The predator control categories for commercial applicators will be located at 40 CFR 171.101(a)(10) and the categories for private applicators will be located at 40 CFR 171.105(b).

5. Costs. EPA estimates that this proposal will not impose any additional costs because the labeling requirements of sodium fluoroacetate and sodium cyanide predator control products already establish competency standards and require specific certification to use these products (Ref. 3). It is reasonable to expect that the costs associated with this proposal are de minimus because it merely codifies in the regulation the requirement already imposed through the products' labeling.

6. *Request for comment.* EPA requests comment on the proposed addition of pest control categories for certification to use sodium fluoroacetate in livestock protection collars and sodium cyanide dispensed through an M–44 device.

IX. Establish Requirements To Ensure Security and Effectiveness of Exam and Training Administration

1. *Overview.* In order to address concerns that administration of pesticide applicator exams and trainings currently affords opportunity for cheating or fraud, and to maintain the integrity of exams, EPA proposes to add requirements for those seeking certification or recertification to present identification at the time of the exam or training session. EPA also proposes to codify the existing policy that all certification exams be closed book and proctored (Ref. 52).

2. *Existing regulation.* The rule establishes that commercial applicators must demonstrate competence by passing written exams, and as appropriate, through performance testing. 40 CFR 171.4(a). Private applicators may demonstrate competency through a written or oral exam, or other method established by the State and approved by EPA. 171.5(b). The rule does not have requirements for verification of the identity of persons seeking certification or recertification or for exams to be proctored.

3. *Stakeholder information considered by EPA.* States have varying requirements for exams because there are no minimum standards for exam development and administration. Some States place a priority on developing content-relevant exams and administering them in a secure manner, while other States allow candidates to bring notes and manuals into the exam which may undermine the competency determination process. EPA is aware of at least one situation in which a State offered a practice test in the study materials and administered exactly the same exam for certification. In cases where exam security is not implemented, the integrity of the entire certification process can be compromised.

CTAG recognized the gap in security in the applicator certification program and developed the *Exam Administration and Security Procedures Manual* (Ref. 53). This document recommends practical ways for States to ensure the integrity of their applicator certification exams, including establishing chain of custody requirements, treating exam booklets and answer sheets as controlled documents, proctoring exams, implementing security requirements such as checking all booklets for missing pages before releasing exam candidates, and not allowing candidates to bring in or remove scratch paper from the exam room. States invest significant resources in developing and administering exams for applicator certification. A breach in security, such as a person taking an exam booklet from the test site or copying questions and answers on scratch paper and sharing them with others, compromises the exam's integrity and could require the State to invest substantial resources to develop another exam. Many States have consulted CTAG's document to incorporate elements of exam security into their certification programs.

States have recognized the need to ensure that the candidate pursuing certification by exam or training or attending a recertification session is the person seeking or currently holding a certification. CTAG recommended that EPA require positive identification of candidates for pesticide certification exams before the exam is issued and before any credentials are issued, noting that the lack of such a requirement ''calls into question the integrity of the entire certification system and provides opportunity for abuse'' (Ref. 54). CTAG suggests that States that do not currently ask for any form of identification before administering exams review their policies, regulations, and laws and consider adopting a mechanism to verify the identification of all individuals taking their exams. CTAG also recommended that States verify the identity of certified applicators attending recertification training sessions (Ref. 55).

Based on an EPA review of State program data, 36 States require persons seeking commercial certification to present identification prior to taking the exam and 27 States have a similar requirement for private applicators seeking certification through an exam or training. Similarly, 22 States require

commercial applicators to present identification at recertification training sessions or exams, and 29 States require the same for private applicators (Ref. 3). Many States seem to recognize the importance of maintaining the integrity of the pesticide applicator certification and recertification programs, evidenced by the number of States that have adopted a requirement to verify the identity of candidates.

States have raised the need for a standard definition of closed-book exams to ensure that certifying authorities using EPA-developed exams or sharing a State-developed exam with another State have confidence that the exam administration would meet a consistent security standard. CTAG recommended that EPA require States using the EPA-developed exams to agree to administer them as closed-book exams, meaning the candidate cannot bring in any materials, *e.g.,* study manuals, notebooks, or scrap paper. Any materials necessary, apart from non-memory calculators and writing utensils, *e.g.,* scratch paper or reference pesticide labeling, would be provided by the proctor and collected at the end of the exam. CTAG believes this would help preserve the integrity of the exam process and give confidence that the security of EPA-developed exams is not compromised by varying administration standards across States.

4. *Details of the proposal/rationale.* The Agency proposes to require that applicator certification exams for initial certification and recertification be closed book, proctored, and that the identity of each test taker be verified. The identity of the applicant must also be verified where the State or other agency certifies or recertifies applicators based on training rather than an exam. EPA considers these requirements essential elements of the certification process because exams and training programs are the means used to assure that those who are seeking to become certified have adequate training and experience to use RUPs without causing unreasonable adverse effects. It is also reasonable to expect that these security requirements would give States confidence that exams are administered consistently across the country in such a way to ensure their integrity.

The Agency proposes to require that exams be ''closed book,'' that is, the test taker would not be allowed to use any materials, for example notes or study guides, other than the materials provided by the test administrator during the exam. EPA is proposing this requirement for two reasons. First, a closed-book exam provides a more reliable gauge of the individual test taker's competency because the outcome depends more directly on the test taker's personal knowledge and understanding than does an exam where the test-taker may refer to his or her own notes or other study aids. Second, limitations on outside materials reduce the likelihood of test takers copying questions and removing them from the exam room to share with subsequent test takers. Implementing closed-book exams is one step towards improving exam security and the competency of certified applicators.

EPA proposes to require that proctors:

- Verify the identity and age of persons taking the exam by checking identification as required under the proposed rule and have examinees sign an exam roster.
- Monitor examinees throughout the exam period.
- Instruct examinees in exam procedures before beginning the exam.
- Keep exams secure before, during, and after the exam period.
- Allow only examinees to access the exam and allow such access only in the presence of the proctor.
- Ensure that examinees have no verbal or non-verbal communication with anyone other than the proctor during the exam period.
- Ensure that no copies of the exam or any associated reference materials are made and/or retained by examinees.
- Ensure that examinees do not have access to reference materials other than those that are approved by the certifying authority and provided by the proctor.
- Review reference materials provided to examinees when the exam is complete, to ensure that no portion of the reference material has been removed or destroyed.
- Report to the certifying authority any exam administration inconsistencies or irregularities, including but not limited to cheating, use of unauthorized materials, and attempts to copy or retain the exam.
- Comply with any other instructions required by the certifying authority related to exam administration.

EPA proposes to prohibit a proctor from seeking certification at any exam session that he or she is proctoring. Where applicator exams require use of resource materials (for example, requiring the candidate to identify pests based on depictions of plant damage, interpret specific labels, or demonstrate other skills or abilities beyond the core requirements), the proctor would provide the necessary materials (*e.g.,* sample labeling, reference books) and collect them after the exam is completed.

Finally, EPA proposes a requirement for States to ensure that test or training administrators verify the identity of persons seeking initial applicator certification and recertification. Many organizations and institutions require a person taking a test for possible employment to present valid, government-issued photo identification. It is important that pesticide applicator candidates are required to present valid photo identification when they sit for the exam, receive their credentials, and purchase RUPs. This requirement would help to ensure that the person who takes the exam is the same person who receives the certification, which could help prevent a candidate from sending a more qualified or prepared person to take the exam under his name, and to verify that the candidate meets the minimum age requirement. See Units XII. and XIII. Preventing abuse of the exam process is necessary to ensure the integrity of the exams and that certified applicator credentials are issued only to those who are qualified and certified as competent. Without such assurance, classification for restricted use offers an uncertain level of protection.

If finalized, the requirements for initial certification administration security would be located at 40 CFR 171.103(a) for commercial applicators and at 40 CFR 171.105(e) for private applicators. The requirement for recertification administration security would be located at 40 CFR 171.107(b).

5. *Costs.* Not all States or applicators would be expected to incur costs to implement the aforementioned proposals. For those that do, EPA expects the incremental costs to come into compliance would be minimal (Ref. 3). Many States already check identification at initial certification events and already have proctors for some sessions. The aspects of a secure exam—written, closed-book, proctored, and requiring positive identification of the candidate—would provide the benefit of maintaining the credibility of the certification program, as well as to filter out unqualified candidates.

6. *Alternative options considered by EPA but not proposed.* EPA considered imposing only a requirement to verify the identity of the initial certification and recertification candidates and not codifying the existing policy that requires exams to be proctored and closed book. A requirement to verify a certification or recertification candidate's identity implemented independently of other exam security requirements could lead to a potential improvement because by verifying that the candidates are the same person seeking the certification, false

attendance at training and exam sessions should decrease. It is also more likely that credentials would be issued to the same candidate that demonstrated competency. However, it is reasonable to expect that the additional burden of implementing closed-book, proctored exams would have substantial additional benefits by ensuring the security of the exams, reducing burden on certifying authorities to update exams after security breaches, and limiting instances where candidates taking an exam can cheat. It is reasonable to expect that the potential benefits of requiring proctored, closed-book exams are sufficient to justify the burden.

7. *Request for comment.* EPA requests comments on the following:

- Should EPA consider allowing an exception to the requirement for candidates to present a government-issued photo identification? If so, under what circumstances? Please provide examples of how an exception could be implemented.
- Should EPA consider any other requirements to improve the security and integrity of applicator certification and recertification exams? If so, please describe.

X. Strengthen Standards for Noncertified Applicators Working Under the Direct Supervision of Certified Applicators

A. Enhance Competence of Noncertified Applicators Working Under the Direct Supervision of a Certified Applicator

1. *Overview.* To improve the protection of noncertified applicators and to reduce the chance for RUP applications to cause unreasonable adverse effects, EPA proposes to require that noncertified applicators working under the direct supervision of a certified applicator receive annual training that covers pesticide labeling, safety precautions, application equipment and techniques, environmental concerns, health effects of pesticide exposure, decontamination, emergency response, and protection of the applicator and the applicator's family. The Agency also proposes exemptions to this training requirement for persons qualified as a trained handler under the WPS or who have passed the core exam covering general standards of competency for commercial applicators, and to require periodic retraining or retesting.

2. *Existing regulation.* FIFRA section 2(e)(4) provides that a noncertified applicator using an RUP must be competent and working under the direction of a certified applicator. The certified applicator must be available when needed but does not need to be present physically at the application.7 U.S.C. 136(e)(4). The regulation establishes: General requirements for the certified applicator to demonstrate a practical knowledge of Federal and State supervisory requirements; that when the certified applicator will not be present during application, he or she must provide instruction to the noncertified applicator, including instructions for proper pesticide applications and how to contact the certified applicator if necessary; and that certain labeling-specific restrictions require the certified applicator to be physically present for the application. 40 CFR 171.2(a)(28) and 171.6.

3. *Stakeholder information considered by EPA.* The need to upgrade the requirements for the supervision of a noncertified applicator by the certified applicator was a major recommendation of the SFIREG 1985 Taskforce report (Ref. 29). The Taskforce concluded that the existing requirements at 40 CFR 171.6 are general in nature and have resulted in some instances where supervision of the noncertified applicator is conducted from locations far removed from the application site. The issue has also been raised to EPA by the PPDC Worker Safety Workgroup and by States at the Pesticide Regulatory Education Program (PREP), which provides an avenue for information sharing between States and EPA about pesticide regulatory issues and programs (Ref. 33). While some States have imposed more stringent supervision requirements or eliminated the option for application of RUPs by noncertified applicators under the direct supervision of a certified applicator, other States' standards are similar to the existing requirement at 40 CFR 171.6.

4. *Details of the proposal/rationale.* EPA proposes to enhance protections for noncertified applicators, *i.e.,* those who use RUPs under the direct supervision of a certified applicator, and to ensure that RUPs are used in a manner that does not pose unreasonable adverse effects to the applicator, bystanders, or the environment by: Expanding the training content, offering alternatives to the training requirement, and requiring periodic retraining.

i. *Expanding training content.* Noncertified applicators have a similar work profile to agricultural handlers under the WPS (40 CFR part 170); both are permitted to mix, load, and apply pesticides with proper guidance from their employer or supervisor. In order to mix, load or apply RUPs, however, all noncertified persons, including agricultural handlers, must be working under the direct supervision of a certified applicator. Agricultural handlers must receive training that covers self-protection; hazards associated with pesticide use; format and meaning of pesticide labeling; protection from take home exposure to family members; proper pesticide use, transportation, storage, and disposal; and protections required under the WPS. 40 CFR 170.230(c)(4). In addition, agricultural handlers must be provided a copy of the labeling and any other information necessary to make the application without causing unreasonable adverse effects. The existing part 171 regulation does not require that noncertified applicators receive similar training before applying RUPs under the direct supervision of a certified applicator.

To foster a level of competency appropriate to the responsibilities of noncertified applicators who apply RUPs under the direct supervision of a certified applicator and comparable to the competency currently required of agricultural pesticide handlers, EPA proposes to add the following training requirements for noncertified applicators:

a. Training on information, techniques, and equipment that noncertified applicators need to protect themselves, other people, and the environment before, during, and after making a pesticide application, including all of the following:

- Format and meaning of information contained on pesticide labels and in labeling, including safety information, such as precautionary statements about human health hazards, and hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.
- Routes by which pesticides can enter the body.
- Signs and symptoms of common types of pesticide poisoning.
- Emergency first aid for pesticide injuries or poisonings.
- How to obtain emergency medical care.
- Routine and emergency decontamination procedures.
- Need for, and appropriate use of, personal protective equipment.
- Prevention, recognition, and first aid treatment of heat-related illness associated with the use of personal protective equipment.
- Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.
- Environmental concerns such as drift, runoff, and wildlife hazards.

b. Training on all of the following elements, which noncertified applicators need to protect their families from pesticides:

- Warnings against taking pesticides or pesticide containers home.
- Washing and changing work clothes before physical contact with family.
- Washing work clothes separately from the family's clothes before wearing them again.
- Heightened precautions required to protect children and pregnant women.

c. Training on how to report suspected pesticide illness to the appropriate State agency. The proposed training requirements would promote the competence of noncertified applicators who apply RUPs under the direct supervision of a certified applicator by improving their understanding of pesticide labeling, application methods, self-protection, risk mitigation, and general pesticide safety principles. It is reasonable to expect that an understanding of this information, together with the specific instructions for each application from a certified applicator, would provide noncertified applicators with an adequate level of competency to use RUPs without causing unreasonable adverse effects, consistent with the FIFRA requirement that noncertified applicators be competent.

ii. Offering alternatives to the training requirement. In addition to the training proposed in Unit X.A.4.i., EPA proposes to offer two alternative mechanisms for establishing the competency of noncertified applicators who apply RUPs under the direct supervision of a certified applicator: Demonstrating that the noncertified applicator has met the handler training requirements of the WPS (40 CFR 170.230 of the current WPS or 40 CFR 170.201(c) of the proposed revisions to the WPS) or passing the exam on core standards of competency for certified commercial applicators (currently 40 CFR 171.4(b)).

As mentioned in this unit, noncertified applicators working on agricultural establishments and agricultural pesticide handlers have similar job responsibilities. The proposed training for noncertified applicators mirrors the proposed training for agricultural pesticide handlers, except it does not include specific requirements of the WPS. Including a provision in the rule to allow noncertified applicators to meet the training requirement by following the training outlined in this rule or that outlined in the WPS could reduce the burden on noncertified applicators, certified applicators, agricultural pesticide handlers, and agricultural employers by allowing them to provide substantially similar training to the same audience once, rather than twice, to comply with both regulations. EPA estimates that almost two-thirds of the noncertified applicators under the direct supervision of private applicators will receive WPS training but very few noncertified applicators under the direct supervision of commercial applicators would be covered by WPS training provisions.

The second alternative mechanism, requiring noncertified applicators to pass a written exam covering the core standards of competency for commercial applicators, would also establish an adequate level of competency for noncertified applicators. The commercial applicator core competency standards outlined at 40 CFR 171.4(b) of the existing regulation cover label and labeling comprehension, proper application, potential environmental risks, characteristics of pesticides, application equipment and techniques, and laws and regulations. The content of these core competency standards encompasses the proposed noncertified applicator training content. In some situations, it may be easier or more convenient to allow a noncertified applicator to qualify by taking the core exam than to complete the noncertified applicator training. For example, a person who has taken and passed the core exam and failed the category exam, which generally has a lower pass rate, would not be certified as a commercial applicator but would have demonstrated sufficient competency to apply RUPs under the direct supervision of a certified applicator. Allowing such a person to qualify as a noncertified applicator based on passing the core exam rather than requiring that he or she undergo another training program would reduce the potential burden on noncertified applicators and their employers without sacrificing protection of the noncertified applicators, the public, or the environment.

iii. Requiring periodic retraining. EPA proposes to implement a requirement to refresh the qualifications of noncertified applicators. Noncertified applicators who qualified through a training program, either as proposed under 171.201(d) or as a handler under the WPS, would be required to undergo retraining annually. Noncertified applicators who recertify by passing the commercial applicator core exam would be required to requalify every 3 years. The proposed training requirement for noncertified applicators who would apply RUPs under the direct supervision of a certified applicator is comparable to the training required for agricultural pesticide handlers. EPA has proposed a requirement under the WPS for handlers to receive pesticide safety training annually. EPA will ensure that the final requirements for noncertified applicator training under the certification rule are consistent with the final requirements for WPS handler training where applicable. It is reasonable to expect that noncertified applicators must maintain an ongoing level of competency similar to that required of certified applicators. However, neither of the options to qualify by attending a training program requires passing a written exam or attending a training course covering the proposed enhanced competency standards for private applicators. Therefore, the proposed noncertified applicator training programs would not provide the same assurance of competency as the certification process for commercial and private applicators. For these reasons, it is reasonable to expect that noncertified applicators who qualify through training should receive training every year rather than every 3 years as proposed for the recertification of certified private and commercial applicators.

States require certified applicators to demonstrate continued competency through recertification programs; noncertified applicators who establish competency must also demonstrate that they maintain a level of competency to apply pesticides without unreasonable adverse effects. An annual training requirement would be consistent with the proposed training interval for agricultural handlers (Ref. 4), thereby decreasing the burden on agricultural employers to track two training timeframes. Additionally, studies have shown that training participants begin to forget the content of the training almost immediately, that often 90% or less of the training is remembered at 1 year after training, and that knowledge from training on skills and decision making deteriorates more quickly than information from training on repetitive physical tasks (Ref. 14). Further, studies have demonstrated the effectiveness of periodic retraining on retention of the knowledge necessary to implement self-protective measures (Ref. 15).

Noncertified applicators who qualify through passing the core exam for commercial applicators would be required to requalify every 3 years. Passing the core exam provides an assurance of competency similar to that required of certified applicators. Therefore, it is reasonable to expect that noncertified applicators who pass the core exam would maintain their

competency on the topics covered for a similar length of time as commercial applicators. EPA is proposing a requirement for all certified applicators to renew their credentials every 3 years.

The regulatory text related to these proposals would be located at 40 CFR 171.201(c) and (d).

5. *Costs.* Because noncertified applicators working under the direct supervision of commercial applicators and private applicators have different wage rates, the costs are presented separately for noncertified applicators working under the direct supervision of a commercial applicator and for noncertified applicators working under the direct supervision of a private applicator (Ref. 3).

i. *Noncertified applicators working under the direct supervision of a commercial applicator.* EPA estimates the cost of the proposed requirement to require noncertified applicators to either complete the proposed training, be handlers under the WPS, or pass the core exam would be about $6.6 million per year for noncertified applicators working under the direct supervision of a commercial applicator (Ref. 3).

ii. *Noncertified applicators working under the direct supervision of a private applicator.* EPA estimates the cost of the proposed requirement to require noncertified applicators to either complete the proposed training, be handlers under the WPS, or pass the core exam would be about $639,000 per year for noncertified applicators working under the direct supervision of a private applicator (Ref. 3).

6. *Alternative options considered by EPA but not proposed.* EPA considered four alternatives to this proposal.

i. *Allow States to determine noncertified applicator training content.* EPA considered allowing each State to determine what training or qualifications are appropriate for noncertified applicators, rather than adhering to the standard established in this proposal. For example, some States have specific requirements for noncertified applicators to be qualified, such as through an apprenticeship program, or completing a State-developed training program or minimum number of hours of privately-provided training. Although the State programs with various requirements may adequately ensure the competency of noncertified applicators, allowing States to adopt varying standards would result in classification for restricted use providing differing levels of protection from State to State. In order to ensure that RUPs are used by competent persons in a way that would not cause unreasonable adverse effects, it is necessary for noncertified applicators to receive instruction that covers a specific set of basic competency information. The consistent minimum standard would not be met if States adopted their own programs that did not meet or exceed the standards proposed by EPA.

EPA recognizes that State programs may adequately prepare a noncertified applicator to use pesticides effectively and without unreasonable adverse effect on human health or the environment. However, under the proposed option, States can modify existing programs to ensure they cover the content and requirements of the proposed standard and do not need a specific exception. If the State training program provides instruction on the training requirements listed above, the supervising certified applicator would still be required to verify that the noncertified applicators working under his or her direct supervision have received the training. The proposed option balances flexibility for States to adopt more stringent standards with the need to ensure that noncertified applicators meet a consistent standard of competency.

ii. *Require all noncertified applicators to pass the core exam.* EPA considered requiring all noncertified applicators to pass the core exam for commercial applicator certification. The current requirements concerning the core exam for commercial applicators covers all the topics that would help ensure general knowledge of pesticide application by noncertified applicators.

The Agency decided against proposing a requirement that noncertified applicators demonstrate competence only by taking the core exam for commercial applicators because in some instances, that requirement may impose additional burden on the certified applicators and the noncertified applicators. Some noncertified applicators may have a more difficult time preparing for and passing a written exam than meeting training requirements. Although noncertified applicators may be able to demonstrate their competency to make applications without unreasonable adverse effects with proper supervision, some noncertified applicators may have literacy and language issues that would stand in the way of passing a written exam. By limiting a noncertified applicator's options for demonstrating competence to passing a written exam, the number of noncertified applicators available could decrease because fewer people would qualify. A decrease in the number of noncertified applicators available would increase costs because certified applicators would be required to perform the applications themselves. In addition, States would have to administer approximately five times the current number of exams, increasing their administrative burden.

EPA decided not to propose this option because it would impose a significant burden on noncertified applicators, the supervising certified applicators, and the States, and the benefits associated with the alternate options do not appear to justify the burden.

iii. *Establish different standards for noncertified applicators working under the direct supervision of commercial and private applicators.* EPA considered establishing separate standards for noncertified applicators under the direct supervision of commercial and private applicators. Under this alternative, noncertified applicators working under the direct supervision of a private applicator would be required to complete the proposed training or the training for handlers under the proposed revisions to the WPS (Ref. 4). EPA considers this to be the minimum level of training that could reasonably be expected to prevent unreasonable adverse effects associated with the use of RUPs. EPA considered requiring a higher level of training for noncertified applicators working under the direct supervision of a commercial applicator; specifically, EPA considered requiring them to pass the core exam for certified applicators as described in the alternate option discussed in this unit.

EPA decided not to propose this alternative for two reasons. First, EPA does not believe there is a significant difference in the risks faced by, or posed by, a noncertified applicator under the direct supervision of a private applicator and a noncertified applicator under the direct supervision of a commercial applicator. As the risks appear to be the same, the same level of training seems appropriate. Second, having a single standard would allow noncertified applicators to work for both commercial and private applicators without having to meet different standards.

iv. *Implement longer retraining interval.* Lastly, EPA considered requiring all noncertified applicators to be retrained using the same timeframes as certified applicator recertification (currently proposed as every 3 years, see Unit XIV.). However, commercial applicators are required to demonstrate their competency through a written exam; the more rigorous standard establishes a higher level of confidence in commercial applicators' knowledge and ability to protect themselves, the public, and the environment. Training is a less reliable indicator of competency

than passing an exam and knowledge from training deteriorates rapidly (Refs.14 and 15). EPA recognizes a distinction between the noncertified applicators that qualify through training and those that qualify through an exam. That distinction and EPA's confidence in the exam process prompted EPA to reject the option to establish the same requalification timeframe for all noncertified applicators parallel to the recertification period for certified applicators.

7. *Request for comment.* EPA requests specific feedback on the following:

- Should EPA allow States to adopt noncertified applicator training programs different than what EPA proposes? If so, please explain why, and how portability of the varied programs might be addressed.
- Should EPA require States to adopt the proposed noncertified applicator training program and allow States to add other qualifications or requirements?
- Should EPA require noncertified applicators to receive training specifically on avoiding harm to pollinators? If so, please explain what additional information should be included in the training and why.
- Are there other points that EPA should include in the noncertified applicator training outlined in the proposal? If so, what points should be added and why?
- Should EPA consider a single requalification interval for all noncertified applicators, regardless of their method of qualification, *i.e.,* should EPA consider requiring noncertified applicators who qualify by passing the core exam to requalify annually, or for those who qualify by training to requalify every 3 years? Please explain why.
- Please provide any available data on or sources of information for the number of noncertified applicators who apply RUPs under the direct supervision of commercial and private applicators.

B. Establish Qualifications for Training Providers

1. *Overview.* In order to ensure that noncertified applicators receive training that communicates the nature of their work and the potential risks of pesticide exposure in a manner they understand, EPA proposes to require that noncertified applicator training be provided by a currently certified applicator, a State-designated trainer of certified applicators, or a person who has completed a train-the-trainer course under the WPS.

2. *Existing regulation.* The rule has no requirement for training and therefore, no restrictions on who may provide training to noncertified applicators.

3. *Stakeholder information considered by EPA.* Stakeholders, including the PPDC, State associations, and CTAG, have noted the similar work profiles between WPS handlers and noncertified applicators working on agricultural establishments. They recommended that noncertified applicator trainers have similar qualifications to WPS handler trainers because of the importance of conveying information related to safe pesticide use, understanding labeling requirements, and how to contact the employer in the event of an emergency.

4. *Details of the proposal/rationale.* EPA proposes to allow noncertified applicators to receive training from an applicator with a valid certification issued under 40 CFR part 171, a State-designated trainer of certified applicators, or a person who has completed a pesticide safety train-the-trainer program under the WPS, 40 CFR part 170. Given the elevated risks associated with applying RUPs, it is critical to have a high level of confidence in the competence of those who will make applications. Commercial applicators have to pass a written exam to demonstrate their competency. The qualifications of the trainer become more important where the competency of noncertified applicators is established through training rather than through passing a written exam. It is important to have the information presented by trainers who are knowledgeable about pesticide safety requirements.

Certified applicators supervising noncertified applicators have knowledge of the information necessary to ensure that applications are made effectively and without unreasonable adverse effects and commercial applicators have passed an exam demonstrating their competency. The core standards of competency for both private and commercial applicators would cover supervising noncertified applicators using RUPs, including how to convey information about proper application techniques, understanding the labeling, and contacting the supervisor if necessary. In addition, the competency standards would cover communicating with noncertified applicators in a manner they understand. State designated trainers, mainly cooperative extension service pesticide safety educators and county agents, have expertise in educating adult populations about how to conduct pesticide applications and the risks associated with pesticide exposure. Lastly, trainers who have undergone a train-the-trainer program have learned techniques to effectively transfer information on application techniques, risks of exposure, and other necessary information required to protect agricultural handlers before, during, and after application. EPA anticipates that most people likely to be training noncertified applicators would already be within one of the aforementioned categories of qualified trainers.

The regulatory text related to this proposal would be located at 40 CFR 171.201(d)(2).

5. *Costs.* EPA expects this proposal to have negligible cost. Certified applicators are qualified as trainers by virtue of their certification and would not incur any additional costs to be qualified under this proposal (Ref. 3). EPA assumes most training would be provided by certified applicators to noncertified applicators working under their direct supervision. Therefore, EPA does not believe many people who are not already certified applicators would seek to be qualified trainers under this proposal. Allowing State-designated trainers of applicators and those who have completed a WPS pesticide safety train-the-trainer program would provide flexibility to the certified applicators and offer a variety of options to ensure noncertified applicators are trained.

C. Establish Qualifications for Certified Applicators Supervising Noncertified Applicators

1. *Overview.* In order to ensure that noncertified applicators do not apply RUPs in a manner that would cause unreasonable adverse effects, EPA proposes to establish specific requirements for the supervising applicator.

2. *Existing regulation.* The current regulation requires supervising certified applicators to demonstrate a practical knowledge of Federal and State supervisory requirements related to the application of RUPs by noncertified applicators. 40 CFR 171.6(a). In addition, the current rule requires the availability of the certified applicator and the hazard of the situation to be directly related. 40 CFR 171.6(a). For certain products, the labeling requires the applicator to be on-site for the application or prohibits application by noncertified applicators even under the direct supervision of a certified applicator. Wherever noncertified applicators are applying RUPs under the direct supervision of a certified applicator, the existing regulation requires the certified applicator provide verifiable instruction to the noncertified

applicator, which includes detailed guidance for applying the pesticide properly, and provisions for contacting the certified applicator in the event that he or she is needed. 40 CFR 171.6.

3. *Stakeholder information considered by EPA.* States indicated overall support for establishing qualifications for certified applicators supervising noncertified applicators; however they noted that some limitations would be impractical or difficult to enforce (Ref. 33). For example, States noted that they would not be able to verify whether the supervising applicator was within a certain distance or time of the noncertified applicator conducting the application, and it would be impossible to note how many noncertified applicators were working under the direct supervision of a certified applicator at one time (Ref. 33). The SBAR panel recommended that EPA require ''communication capability between certified applicators and those under their supervision during RUP applications'' (Ref. 34).

4. *Details of the proposal/rationale.* EPA proposes to require that certified applicators who supervise noncertified applicators to be certified in the category of the supervised application in order to protect the noncertified applicator and the environment from risks associated with insufficient supervision or qualification. EPA proposes to require that certified applicators ensure that noncertified applicators under their direct supervision have satisfied one of the qualification methods discussed in Unit X.B. For specific applications, EPA proposes to require the certified applicator to provide a copy of all applicable labeling to each noncertified applicator for each supervised application; ensure that means are available for immediate communication between the certified applicator and the noncertified applicators working under their direct supervision; provide specific instructions related to each application, including the site-specific precautions and how to use the equipment; and explain and comply with all labeling restrictions.

It is critical that the supervising applicator be competent in the specific types of application that he or she is supervising, know the requirements related to application of RUPs by noncertified applicators, and ensure that noncertified applicators are competent. It is reasonable to expect that many supervising applicators currently provide instruction to the noncertified applicators under their supervision and are certified in the appropriate category. The proposed change would codify more precise requirements to ensure that supervising certified applicators are prepared adequately to supervise specific types of applications and to provide the appropriate protections to noncertified applicators.

EPA proposes to add a requirement for the certified applicator to provide a copy of the labeling to noncertified applicators applying RUPs under his or her supervision. Providing the product labeling to noncertified applicators is important for several reasons. First, product labeling communicates critical information to the pesticide user on how to use and apply the product. The labeling contains use directions, health and safety information, and instructions for proper storage and disposal. By law, users must follow the use instructions on the labeling for registered products. Second, in the event that the noncertified applicator cannot contact the supervising applicator, the labeling contains critical information that the noncertified applicator or a literate person nearby could consult in order to understand special use restrictions, make a proper application, or respond in the event of a spill or accident, including providing proper medical treatment. Third, the WPS requires employers to provide handlers access to the product labeling during handling activities in order to provide protections parallel to those provided under the Occupational Safety and Health Act (OSHA). OSHA requires that persons with hazardous chemicals in their work area receive information in the form of labels, training, and access to safety data sheets (SDSs). Label and SDSs must always be available; training must take place at the time of the employee's initial assignment and when new hazardous chemicals are introduced into the work area. Fourth, noncertified applicators have similar job responsibilities to agricultural pesticide handlers under the WPS and have an equal need for labeling information. For these reasons, it is important to make the labeling available to all noncertified applicators working with RUPs, even if some may not be able to read or understand the labeling.

Communication between the supervising applicator and the noncertified applicator is critical if the noncertified applicator has a question before application or encounters an emergency situation related to the misapplication. The current rule requires provisions for contacting the certified applicator, but it is very general and provides no assurance of timely contact. The intent of the existing provision was to enable communication between the supervising applicator and the noncertified applicator throughout the application process. Telecommunications options have improved dramatically over the last 35 years, and the proposed requirement to ensure means are available for immediate communication would take advantage of those changes to more fully accomplish the intent of the original provision. Requiring means to be available for immediate communication would allow flexibility for the supervising applicator; if the certified and noncertified applicator are working at the same location, means for immediate communication could be speaking to one another directly. In the event the noncertified applicator is using RUPs under the direct supervision of a certified applicator when the certified applicator is not present, means of immediate communication could include cellular phones or two-way radios, among other mechanisms.

The regulatory text related to this proposal would be located at 40 CFR 171.201(b).

5. *Costs.* EPA assumes that the current requirement to provide detailed guidance for applying the pesticide properly and the proposed requirement to provide application-specific instructions are substantially similar and will not result in a significant increase in the cost of compliance (Ref. 3).

EPA estimates the cost for ensuring means for immediate communication are available would be negligible because according to CTIA—The Wireless Association, as of December 2012, wireless penetration in the United States was 102% (the number of wireless subscriptions divided by the U.S. population) (Ref. 56).

6. *Alternative options considered by EPA but not proposed.* EPA considered different application-specific requirements for supervising applicators, including a requirement for the supervising applicator to keep noncertified applicators within their line of sight or to be on site during applications, a limit on the number of noncertified applicators that could be supervised at one time, or a limit on the distance between the certified applicator and the noncertified applicators.

EPA may limit who may apply RUPs and the type of supervision required on a product-by-product basis. Some RUP labeling requires certified applicators to keep noncertified applicators within their line of sight during applications. EPA considered requiring line of sight supervision wherever noncertified applicators are applying RUPs under the

direct supervision of a certified applicator. For example, labeling for fumigant products requires the supervising applicator to be on site because of the significant danger to the applicator if not used properly. However, a universal requirement that certified applicators keep noncertified applicators in their line of sight or to be on site during application would be inconsistent with 7 U.S.C. 136(e)(4), which allows use of RUPs even if the certified applicator providing direct supervision is not on site at the time of application.

EPA considered establishing a limit on the number of noncertified applicators that a certified applicator could supervise for each application of RUPs, *e.g.,* 10 noncertified applicators could use RUPs under the direct supervision of a certified applicator at any specific time. Limiting the number of noncertified applicators using RUPs under the direct supervision of a certified applicator could better ensure that the applications are conducted in a manner that would not cause unreasonable adverse effects to the applicator, the public, or the environment. EPA does not have information on the maximum number of noncertified applicators that a certified applicator could supervise without causing unreasonable adverse effects. There may be limits on the capability of a certified applicator to supervise noncertified applicators using RUPs, but the limits seem circumstantial. For example, a certified applicator supervising the application of RUPs through backpack sprayers on a single agricultural establishment may be able to supervise many noncertified applicators without causing unreasonable adverse effects. However, a certified applicator supervising noncertified applicators fumigating a warehouse with RUPs may not be able to supervise other applications of RUPs at the same time in a safe manner.

EPA chose not to propose a limit on the number of noncertified applicators that can use RUPs under the direct supervision of a certified applicator. EPA regulates specific risks related to the use of RUPs on a product by product basis, including limiting or restricting the use of RUPs by noncertified applicators. The certified applicator is liable for all applications conducted under his or her supervision. To become certified, applicators must demonstrate competency in conducting and supervising applications in a manner that will not result in adverse effects to human health or the environment. It is reasonable to expect that the certified applicator will generally recognize the limits of his or her capacity to appropriately supervise multiple noncertified applicators. It is reasonable to expect that the combination of certified applicators' competency in making and supervising applications of RUPs, product-specific limitations on the use of RUPs by noncertified applicators, combined with the proposed requirement that the supervising applicator ensure that a mechanism for communication between certified applicators and noncertified applicators using RUPs under their direct supervision, would adequately protect the noncertified applicator, the public, and the environment. Recognizing that EPA has insufficient data to support a limit on the number of noncertified applicators that can be supervised by a certified applicator or data to establish the number if a limit is required, EPA is soliciting additional information related to this option.

EPA also considered proposing a maximum physical distance or travel time between the certified applicator and noncertified applicator using RUPs under his or her direct supervision. For instance, the certified applicator would have to be within X yards or Y minutes of the noncertified applicator. This option would make it more likely that the certified applicator could physically reach the noncertified applicator within a reasonable timeframe in the event assistance was needed. Time-based and distance-based limitations would have different impacts in urban and rural areas—in a city, the certified applicator might take an hour to get to an application site within 5 miles, whereas in a rural area, the applicator could cover the same distance in a few minutes. EPA does require the supervising certified applicator to be on site when certain RUPs are used by noncertified applicators. These restrictions are imposed on a product by product basis. EPA does not have sufficient information on a specific time or distance between certified applicators and noncertified applicators using RUPs under their direct supervision that would make meaningful reductions in the overall risk of adverse effects from RUP use by noncertified applicators. Rather than set an arbitrary time or distance, EPA chose to propose a requirement for the certified applicator to ensure a mechanism for the supervisor and noncertified applicator using RUPs under his or her direct supervision to be in immediate communication. It is reasonable to expect that ensuring that noncertified applicators are able to immediately contact their supervisors in the event of a spill, emergency, or question about the application would reduce the potential for unreasonable adverse effects from RUP application by noncertified applicators.

7. *Request for comment.* EPA requests specific comment on the following:

- Would supervising certified applicators and noncertified applicators rely on cell phones rather than two-way radios as a means to ensure immediate communication?
- Please provide any additional information that would assist EPA in more accurately estimating the cost associated with this proposal.
- Should EPA consider other qualifications for supervising applicators? If so, what qualifications and why?
- Should EPA require certified applicators to be within a certain distance or time of the noncertified applicators using RUPs under their direct supervision? Please explain why. If so, what distance or time should EPA require?
- Should EPA limit the number of noncertified applicators that a certified applicator can supervise? Please explain why. If so, how should EPA select the maximum number?

XI. Expand Commercial Applicator Recordkeeping To Include Noncertified Applicator Training

1. *Overview.* In order to facilitate inspectors' ability to verify that noncertified applicators have been trained in accordance with the rule, EPA proposes to require commercial applicators to maintain records of noncertified applicator training for two years.

2. *Existing regulation.* The current rule does not require any person to keep records of the information or training provided to noncertified applicators.

3. *Details of the proposal/rationale.* EPA proposes to require commercial applicators to maintain records of noncertified applicators' training. The proposed recordkeeping requirement includes: The trained noncertified applicator's printed name, and signature; the date of the training; the name of the person who provided the training; and the supervising commercial applicator's name. It is reasonable to expect that requiring commercial applicators to maintain records of noncertified applicators' training would increase the likelihood that the noncertified applicators will be trained in accordance with the proposed requirements. In addition, records can help ensure that noncertified applicators meet the proposed minimum age requirement. Records are

a key component of an effective enforcement program. EPA is not proposing to require commercial applicators to document the qualifications of noncertified applicators who satisfy the requirement of 40 CFR 171.201(c) as agricultural handlers or by having passed the core exam. The WPS already requires agricultural employers to maintain records of pesticide safety training provided to handlers. It is reasonable to expect that certifying authorities would be able to verify whether a noncertified applicator has passed the core exam.

FIFRA prohibits EPA from issuing regulations that require private applicators to maintain records. Therefore, EPA is not proposing to make the recordkeeping requirements outlined in this Unit apply to private applicators. Nevertheless, private applicators still would be subject to the proposed requirements for ensuring that noncertified applicators under their direct supervision have met the proposed training requirements. In the absence of training records maintained by private applicators, EPA would gauge compliance with the training requirement during routine compliance inspections. The inspector could question noncertified applicators regarding the content of the training and the labeling of any products being applied. If the noncertified applicators' answers are not consistent with the content of the required training and the labeling of any products being applied, it may support a presumption that the private applicator has failed to adequately comply with the noncertified applicator training requirement. Where private applicators keep records, either on their own initiative or in response to State, Tribal, or local requirements, that are sufficient to verify compliance with the requirements for training and supervising noncertified applicators, EPA expects that it would ordinarily rely on such records to assess compliance, rather than evaluating individual noncertified applicators.

The regulatory text related to this proposal would be located at 40 CFR 171.201(e).

4. *Costs.* EPA estimates the cost of the proposal to require commercial applicators to maintain records of the training provided to noncertified applicators working under their direct supervision for 2 years would be $324,000 annually (Ref. 3).

5. *Alternative options considered by EPA but not proposed.* EPA considered requiring the training record to include the noncertified applicator's date of birth. The Department of Homeland Security (DHS) requires every employer to have a completed I–9 form for every employee. The I–9 form already requires employers to obtain and keep records on a number of pieces of information about the employee to verify employability, including the employee's date of birth. The employer must retain the I–9 form for inspection by DHS or other federal agencies. Rather than impose a duplicative requirement for recordkeeping on employers, EPA chose not to propose a requirement for the training record to include the noncertified applicators date of birth.

6. *Request for comment.* EPA requests specific comment on the following:

- Should EPA consider requiring the commercial applicator to provide a copy of the training record to the noncertified applicator? What would be the value of this record to the noncertified applicator and subsequent employers? Should EPA require the record to be provided to all noncertified applicators as a matter of course or only to those noncertified applicators who request such documentation from the certified applicator?
- Should EPA consider requiring commercial applicators to maintain records of noncertified applicator training for a different length of time? If so, for how long should training records be maintained and why?
- Should EPA consider requiring commercial applicators to document the noncertified applicator's qualification regardless of the method used to qualify? Should EPA require commercial applicators to document the WPS training or core exam? If so, why?

XII. Establish a Minimum Age for Certified Applicators

1. *Overview.* In order to reduce the risks of exposure to applicators, bystanders, the public, and the environment, EPA proposes to establish a minimum age of 18 for any person to become certified as a private or commercial applicator.

2. *Existing regulation.* The rule has no age restrictions for certified applicators.

3. *Stakeholder information considered by EPA.* Stakeholders including Farmworker Justice, Migrant Clinicians Network, EPA's Children's Health Protection Advisory Committee, members of the PPDC workgroup, and State regulatory agencies recommended establishing a minimum age for pesticide applicators.

In 2002, CTAG surveyed State lead agencies for pesticide applicator certification. Responses were provided from 49 States, with 30 States implementing a minimum age for commercial applicators and 27 States establishing a minimum age for private applicators. The commercial applicator minimum ages were 16 (6 States) and 18 (24 States); the private applicator minimum ages ranged from 15 to 18 (15 years, 1 State; 16 years, 10 States; 17 years, 1 State; 18 years, 15 States) (Ref. 57). CTAG also evaluated State support of a minimum age requirement for applicator certification. Ninety-eight percent of the respondents supported such a requirement. Twenty-six States supported a minimum age of 18, 12 States supported a minimum age of 16, and the remainder did not respond with a specific age or provided different required minimum ages, depending on type of certification (Ref. 57).

As of 2013, 35 States had implemented a minimum age of 18 for commercial applicators and 8 States had implemented a minimum age of 16 for commercial applicators. For private applicators, 16 States established a minimum age of 18, 1 State established a minimum age of 17, and 17 States established a minimum age of 16 (Ref. 3).

The SBAR panel recommended that EPA consider a minimum age of 18 for commercial and private applicator certification, with an exception allowing private applicators working on a farm owned by an immediate family member (as defined in the WPS at 40 CFR part 170) to be certified at 16 years old (Ref. 34). The SERs (including pesticide applicators, farmers, and other business owners) consulted by the panel had varying recommendations regarding minimum age.

For commercial applicators, SERs mainly suggested a minimum age of 18, noting that the minimum age for a pilot license is 18 so it would not impact aerial applicators and that ''one cannot understand the concept of safe and accurate application until age 18.'' Other SERs suggested that the minimum age should be 16 for children of farmers, that the minimum age should not exceed 14, and that there should be no minimum age—only a requirement to pass a written test (Ref. 34).

For private applicators, recommendations ranged from no minimum age to a minimum age of 18. Two SERs suggested that there should be no minimum age, with one suggesting that children be certified as private applicators when they pass a test. Three representatives suggested a minimum age of 16. One SER suggested a minimum age of 18 (Ref. 34). Two SERs noted that establishing a minimum age would require farm owners to hire certified applicators, increasing the cost of RUP applications (Ref. 34).

DOL has established a general rule, applicable to non-agricultural employment, that workers must be at least 18 years old to perform hazardous jobs. 29 CFR 570.120. For example, those under the age of 18 may not perform most tasks in manufacturing or mining industries; communications or public utilities; construction or repair; in transporting people or property; and in warehousing and storage. The FLSA establishes a minimum age of 16 for youth in agriculture engaged in occupations deemed hazardous by the Secretary of Labor. 29 U.S.C. 213(c)(2). This includes persons handling toxicity category I and II pesticides in agriculture. 29 CFR 570.71(a)(9). By regulation, DOL prohibits youth under the age of 16 engaged in nonagricultural employment from any work involving pesticides unless employed by a parent or someone standing in place of the parent. 29 CFR 570.32.

4. *Details of the proposal/rationale.* EPA proposes to establish a minimum age of 18 for persons to become certified as commercial and private applicators.

Aside from any increased risks that adolescents may suffer from pesticide exposures, adolescents generally lack the experience and judgment to avoid or prevent unnecessary exposure. A study conducted by the National Institutes of Health (NIH) also demonstrates that because their brains are still developing, adolescents may have trouble balancing risk-reward decision-making and goal-oriented decision-making (Ref. 21). Although adolescents may understand the possible consequences of their actions, they are more likely to make decisions based upon their initial emotional responses, which will often lead them to make suboptimal choices (Ref. 20). Additionally, adolescents are less likely to be aware of their rights and how to recognize hazards in the workplace (Ref. 20).

Pesticide applicators must exercise good judgment and responsible behavior to best protect themselves and others as they work with these potentially toxic materials. Research has shown differences in the decision making of adolescents and adults that reasonably supports the conclusion that applicators who are children may take more risks than those who are adults. Behavioral scientists note that responsible decision making is more common in young adults than adolescents: ''socially responsible decision making is significantly more common among young adults than among adolescents, but does not increase appreciably after age 19. Adolescents, on average, scored significantly worse than adults did, but individual differences in judgment within each adolescent age group were considerable. These findings call into question recent assertions, derived from studies of logical reasoning, that adolescents and adults are equally competent and that laws and social policies should treat them as such'' (Ref. 22). Decision-making skills and competence differ between adolescents and adults. A NIOSH compilation of studies demonstrates ''[y]outh are at increased risk of injury from lack of experience. Inexperienced workers are unfamiliar with the requirements of work, are less likely to be trained to recognize hazards, and are commonly unaware of their legal rights on the job. Developmental factors—physical, cognitive, and psychological—may also place them at increased risk'' (Ref. 21). While some research has focused on decision-making of adolescents in terms of legal culpability, the findings on decision-making skills and competence can be applied reasonably to pesticide application.

Society has established 18 as the age of majority in many circumstances, and research has shown that by 18 years old, most people have developed a level of competence that makes responsible decision making more likely. For example, persons must wait until they are 18 to vote, join the military, use tobacco, and give medical consent. For the one major exception to 18 as the age of majority, issuance of driver's licenses, States have recognized the increased risks associated with new, immature drivers. Forty-nine States have established a graduated driver's license program, under which the young drivers do not get full rights and independence upon passing the necessary tests; rather they get limited privileges that expand over time to result in full rights and independence when they reach 17 or 18 years old. Overall, this approach has resulted in fewer accidents by teenage drivers between 16 and 18 years old (Refs. 58 and 59). Society does not entrust individuals with the right to conduct some high risk activities until they have met a certain age because the risk of harm to the underage person and others is too great. Pesticide application presents comparable risks, with the potential for significant harm to the applicator, the public, and the environment.

In addition to differences between adolescents and adults in terms of decision-making ability, children may be more susceptible to pesticides because their physiological systems are developing, and that development may be altered by pesticide exposure. Most pesticides classified as RUPs are so classified based on an increased potential for acute harm to human health. A level of exposure to RUPs considered safe for an adult may not be safe for a child.

EPA expects that restricting certification to persons 18 years of age or older would prevent children from being exposed while performing and supervising application activities and protect other persons and the environment from misapplication due to children's poor judgment or inadequate decision-making skills. EPA's proposal would harmonize the age requirements for pesticide applicators with the minimum age requirements for workers performing hazardous jobs in other industries.

The regulatory text for these provisions would be located at 40 CFR 171.103(a)(1) for commercial applicators and at 40 CFR 171.105(d) for private applicators.

5. *Costs.* EPA separates the cost of establishing a minimum age for commercial and private applicators in this unit.

i. Commercial applicators. EPA estimates the cost of establishing a minimum age of 18 for commercial applicators would be $294,000 per year (Ref. 3). The costs would reflect the difference in the wage rates between commercial applicators who are 18 years or older and those who are younger in States that do not currently have a minimum age of 18 (Ref. 3). As discussed in this unit, many States already have a requirement that certified applicators must be at least 18 years old.

ii. Private applicators. EPA estimates the cost of establishing a minimum age of 18 for private applicators would be $174,000 per year (Ref. 3). The costs would reflect the difference in the wage rates between private applicators who are 18 years or older and those who are younger in States that do not currently have a minimum age of 18.

6. *Alternative options considered by EPA but not proposed.* EPA considered two alternatives: Allowing flexibility in the minimum age of 18 for applicators on a family farm, and establishing a minimum age of 16 for commercial and private applicators.

EPA took into account the recommendation of the SBAR panel that EPA consider a minimum age of 18 for commercial and private applicator certification, with an exception allowing private applicators working on a farm owned by an immediate family member (as defined in the WPS at 40 CFR part 170) to be certified at 16 years old (Ref. 34). This option would allow flexibility for earlier certification for private applicators working on farms owned by immediate family members; however, it

provides a different level of protection for private and commercial applicators and to those who would be impacted by their applications of RUPs. EPA's primary concern is the protection of human health and the environment from pesticide hazards; the SBAR panel alternative does not adequately protect a vulnerable segment of the population, youths 16 and 17 years old. It also puts at risk neighbors, bystanders, and the environment. RUPs pose greater potential for unreasonable adverse effects if they are misused than do other pesticides. Persons younger than 18 may possess less maturity and good judgement than adults, and they may be careless in making applications. It is reasonable to expect that there would be additional risk to the applicator, the public, and the environment from RUP applications by persons younger than 18, and despite the benefit of flexibility offered by a reduced minimum age on family owned enterprises, EPA does not consider that flexibility justified in light of the associated risks.

The second alternative considered by EPA was to set a minimum age of 16 for persons to become certified as commercial or private applicators. This option would require fewer States to incorporate the new requirement because most States have a minimum age of at least 16. Under this alternative, States could adopt or retain a requirement for a higher minimum age. In addition, a minimum age of 16 would match the requirements of the FLSA for handling or applying products in toxicity category I and II in agricultural employment and the minimum age for handlers under the proposed changes to the WPS (Ref. 4). However, this option would provide significantly less protection to the applicator, the public, and the environment. Moreover, this option could create a scenario in which a minor could be directing the actions of an adult by supervising the application of RUPs. States have noted that it can be difficult to take enforcement actions against minors. Under this scenario, States may have no recourse if the pesticide was misapplied by the noncertified applicator because responsibility ultimately rests with the certified applicator, in this case, a minor. Certified applicators use RUPs, pesticides with a higher potential for harming human health and the environment, and must possess an appropriate level of competence, maturity and decision-making skills to ensure these products are used safely. Therefore, EPA does not believe that the difference in cost between the proposed option and this alternative justifies the associated risk to youth applicators, the public, and the environment.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- Are there alternatives that have not been considered that would improve protections for adolescent certified applicators using RUPs, either those under 16 or 18 years old, while allowing flexibility for pesticide use for agriculture?
- What would be the impact on State programs of establishing a minimum age of either 16 or 18 for certified applicators? What would be the impact on pesticide application businesses?
- Are there additional benefits or burdens associated with establishing a minimum age of 16 or 18 for certified applicators? If so, please provide data to support either position.
- Would this proposal have an impact on training programs for adolescents? If so, please describe the impact.
- Is there a need for an exemption from the minimum age requirement for persons working on a farm owned by their immediate family members? If so, how widespread is this need and what are its economic impacts? What criteria should EPA consider if it creates such an exemption, *e.g.,* size of the farm, specific familial relationship, whether a family member/owner is also a certified applicator? Should EPA use the same criteria established for the exemption for owners and their immediate family members under the WPS (see 40 CFR 170.104(a) and 170.204(a))?

XIII. Establish a Minimum Age for Noncertified Applicators Working Under the Direct Supervision of Certified Applicators

1. *Overview.* EPA proposes to require that noncertified applicators who use RUPs under the direct supervision of a certified applicator be at least 18 years old. EPA expects this change would result in reduced risks to children and improved competency in the use of RUPs, resulting in reduced exposure to noncertified applicators, bystanders, and the environment.

2. *Existing WPS regulations.* The current rule does not establish a minimum age for noncertified applicators.

3. *Stakeholder information considered by EPA.* As of 2013, 16 States had implemented a minimum age of 18 for noncertified applicators under the direct supervision of commercial applicators and 4 States had implemented a minimum age of 16 for noncertified applicators under the direct supervision of commercial applicators. For private applicators, 5 States established a minimum age of 18 and 2 States established a minimum age of 16. Two States prohibit use of RUPs by noncertified applicators, eliminating the option for use of RUPs under the direct supervision of a certified applicator (Ref. 3).

The SBAR panel recommended that EPA consider a minimum age of 18 for noncertified applicators working under the direct supervision of commercial applicators and a minimum age of 16 for noncertified applicators working under the direct supervision of private applicators (Ref. 34). The SERs consulted by the panel provided varied recommendations. One SER recommended that EPA adopt a minimum age of 16 for persons working in an apprentice program, but prohibit these noncertified applicators from working alone (*i.e.,* supervising applicator not present at the site of application). Another SER suggested a minimum age of 18 because ''one cannot understand the concept of safe and accurate application until age 18.'' A third SER suggested that EPA not establish a minimum age because establishments applying RUPs need to use family members. Finally, one SER supported EPA's adoption of either a requirement for training for noncertified applicators or a requirement for certified applicators to be present for applications made under their direct supervision (Ref. 34). EPA also considered the information discussed in Unit XII.3.

4. *Details of the proposal/rationale.* EPA proposes to establish a minimum age of 18 for noncertified applicators using RUPs under the direct supervision of certified applicators. The proposed age restriction would include a requirement for commercial applicators supervising the noncertified applicator to record the training and the birth date of any noncertified applicator using RUPs under their direct supervision.

EPA considered the rationale discussed in Unit XII.4. in developing this proposal. As discussed in the previous section, research shows the differences in the decision-making of adolescents and adults leads to the conclusion that noncertified applicators who are adolescents may take more risks than those who are adults. The use of RUPs presents demonstrable risks of significant harm to the applicator, the public, and the environment, and these risks are significantly influenced by the user's judgment and decision-making skills. Requiring noncertified applicators to be 18 years of age or older would prevent youth under 18 from being exposed while using RUPs under the supervision of a certified applicator

and would reduce risks to other persons and the environment from misapplication owing to users' poor judgment or decision-making skills. This proposal would also align with society's general trend toward increasing the ages at which persons are eligible to do certain things that present recognized risks, such as purchasing alcohol or becoming a licensed driver.

Because noncertified applicators use RUPs, their activities entail a heightened level of risk that requires maturity and good decision-making skills if unreasonable adverse effects are to be avoided. Therefore, it is reasonable to expect that establishing a minimum age of 18 for noncertified applicators would improve protections from misapplication of RUPs to applicators, the public, and the environment.

The regulatory text establishing a minimum age for noncertified applicators would be located at 40 CFR 171.201(b)(5).

5. Costs. EPA separated the cost for establishing a minimum age of 18 for noncertified applicators working under the direct supervision of commercial applicators and for those under the direct supervision of private applicators in this unit.

i. Noncertified applicators working under the direct supervision of commercial applicators. EPA estimates the cost of requiring noncertified applicators working under the direct supervision of commercial applicators to be 18 would be $12.8 million per year (Ref. 3). The costs reflect the difference in the wage rates between these noncertified applicators who are 18 years or older and those who are younger.

ii. Noncertified applicators working under the direct supervision of private applicators. EPA estimates the cost of requiring noncertified applicators working under the direct supervision of private applicators to be 18 would be $1.1 million per year (Ref. 3). The costs reflect the difference in the wage rates between these noncertified applicators who are 18 years or older and those who are younger.

For a complete discussion of the estimated costs of the proposals and alternatives, see the economic analysis for this proposal (Ref. 3).

EPA cannot quantify the benefits associated with this proposal (Ref. 3). However, it is reasonable to expect that this proposal would improve the health of adolescent noncertified applicators, as well as other bystanders and the environment. As discussed in Units XII. and XIII., adolescents' judgment is not fully developed. It is reasonable to expect that restricting adolescents' ability to handle pesticides would lead to less exposure potential for the noncertified applicators themselves, and less potential for misapplication that could cause negative impacts on other persons nearby, and the environment.

6. *Alternative options considered but not proposed.* EPA considered two alternatives: Proposing a minimum age of 16 for all noncertified applicators using RUPs under the direct supervision of commercial and private applicators, and proposing a minimum age of 18 for all noncertified applicators using RUPs under the direct supervision of a certified applicator with an exception for noncertified applicators working under the direct supervision of a private applicator on a farm owned by an immediate family member.

Establishing a minimum age of 16 for noncertified applicators would roughly align with the DOL's age restrictions related to pesticide handling. It would also correspond with the proposed minimum age of 16 for pesticide handlers under the WPS that EPA is considering. Finally, this alternative would give noncertified applicators the opportunity to gain knowledge and experience about the proper use of RUPs at a younger age while working under the direct supervision of a certified applicator. EPA recognizes similarities between noncertified applicators and handlers under the WPS. However, noncertified applicators use RUPs, products that pose a higher risk of harm to human health and the environment if not used properly. For this reason, it is critical that those who use RUPs, even with proper supervision, have developed the necessary maturity and decision-making skills to use the products in a manner that avoids unreasonable adverse effects to themselves, other persons, and the environment. EPA does not believe that harmonizing the minimum age for noncertified applicators with the proposed minimum age for handlers under the WPS and the Department of Labor's requirements would offer benefits sufficient to justify the increased potential risk from improper use of an RUP by a noncertified applicator who is not at least 18 years old.

The SBAR panel recommended that EPA consider a minimum age of 18 for commercial and private applicator certification, with an exception allowing private applicators working on a farm owned by an immediate family member (as defined at 40 CFR 170.2) to be certified at 16 years old (Ref. 34). EPA considered adopting a similar requirement for noncertified applicators or establishing a minimum age of 18 for those working under the direct supervision of commercial applicators and 16 years old for those working under the direct supervision of private applicators. These options would allow flexibility for earlier certification on family-owned farms or for private applicators; however, they would provide a different level of protection to noncertified applicators working under the direct supervision of private and commercial applicators. A noncertified applicator is likely to have less experience and knowledge than a certified applicator. A person younger than 18 may also have less maturity and good judgement. It is reasonable to expect that it is more likely that there would be additional risk to the applicator, the public, and the environment from RUP applications by noncertified persons younger than 18, and despite the benefit of flexibility offered by a reduced minimum age on family owned enterprises, EPA does not consider that flexibility justified in light of the associated risks.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- Are there alternatives that have not been considered that would improve protections for adolescent noncertified applicators using RUPs under the direct supervision of a certified applicator, either those under 16 or 18 years old, while allowing flexibility for pesticide use for agriculture?
- What would be the impact on State programs of establishing a minimum age of either 16 or 18 for noncertified applicators? What would be the impact on pesticide application businesses?
- Are there additional benefits or burdens with establishing a minimum age of 16 or 18 for noncertified applicators? If so, please provide data to support either position.
- Would this proposal have an impact on training programs for adolescents? If so, please describe the impact.
- Would it be possible for EPA to include in the final rule exceptions to the proposed minimum age requirement for persons participating in adolescent vocational training programs and high school educational programs, where persons who do not meet the minimum age work under the direct supervision of certified applicators, while ensuring that adolescents, others, and the environment are protected adequately? If so, explain how EPA could ensure adequate protections. Please suggest a framework for such an exemption.

XIV. Establish a National Certification Period and Standards for Recertification

A. National Recertification Period

1. *Overview.* To ensure certified applicators maintain core competencies and keep pace with the changing technology of pesticide application, and to ensure that the public, environment and applicators are protected from misapplication and misuse, EPA proposes to establish a maximum certification period of 3 years. This would require all applicators to renew their certification, *i.e.,* recertify, at least every 3 years.

2. *Existing regulation.* The current rule requires States to ensure applicators maintain a continuing level of competency and ability to apply pesticides safely and properly as part of their State plans. 40 CFR 171.8(a)(2). The rule requires that under plans administered by EPA, commercial applicators must be recertified every 3 years and private applicators must be recertified every four years. 40 CFR 171.11. A policy applicable to Federal agency plans directs Federal agencies to include in their certification plans a requirement for applicators to recertify every 3 years (Ref. 60). There are no corresponding regulatory requirements or policies establishing a maximum certification period under State and Tribal certification plans.

3. *Stakeholder information considered by EPA.* CTAG, SFIREG, State regulatory agencies and members of the PPDC workgroup all requested that EPA establish a standard maximum certification period. State and Tribal participants at the 2006 Worker Safety PREP generally supported the proposed 3-year maximum certification period, though States with 5-year periods expressed concerns for the potential impacts to their programs (Ref. 33).

States' requirements for frequency of applicator certification range from 1 year to 6 years. In a survey of State requirements, EPA determined that 31 States already have a certification period of 3 years or fewer for commercial applicators. Twenty-five States already require recertification every 3 years or fewer for private applicators (Ref. 5).

4. *Details of the proposal/rationale.* EPA proposes that all pesticide applicator certifications be valid for no more than 3 years. This proposal corresponds with the existing requirements for commercial applicators under EPA-administered plans and Federal agency plans.

Ensuring the ongoing competency of applicators of RUPs is crucial in preventing unreasonable adverse effects when RUPs are used. Applicators must be knowledgeable about changing technology, product reformulations, new labeling and regulatory requirements, and other essential labeling information. Applicators also must be reminded about personal safety and basic application principles. To ensure ongoing competency, it is necessary to require renewal of an applicator's certification within a specific period. The more frequently applicators receive training, the more likely they are retain the substance of the training and apply it on the job. Studies show that information retained from training sessions declines significantly within a year (Refs. 14 and 15). However, preparing for and demonstrating competency by passing an exam requires a higher level of preparation and a more reliable demonstration of the competencies needed. Therefore, it is reasonable to believe that allowing certified applicators to renew their certifications over a slightly longer period would not adversely impact human health and the environment. EPA already requires applicators under an EPA-administered plan to recertify every 3 years and it is reasonable to extend this requirement to all applicators certified under any plan approved by EPA.

It is reasonable to expect that requiring all applicators certified by States, Tribes and Federal agencies to be recertified at least every 3 years would set an acceptable minimum standard for continued competency in the applicator certification program.

The regulatory text for this proposal would be located at 40 CFR 171.107(a).

5. *Costs.* EPA estimated the cost of this proposal in conjunction with the proposal to establish requirements for recertification programs. See Unit XIV.B. The cost of this proposal is provided in combination with the cost of the proposal for recertification requirements in Unit XIV.B.5.

6. *Alternative options considered by EPA but not proposed.* EPA considered proposing a maximum certification period of 5 years for private and commercial applicators. As discussed in this unit, learned knowledge diminishes over time (Refs. 14 and 15). EPA must ensure that applicators maintain ongoing competency to protect themselves, other persons, and the environment from unreasonable adverse effects from RUP exposure. It is reasonable to expect that applicators retain less knowledge over a 5 year recertification period than they would over a 3 year recertification period, thereby increasing the potential risk posed by applicators who do not maintain an ongoing level of competency. EPA estimates that the difference in cost between a 3 year and 5 year recertification would be negligible. For these reasons, it is reasonable to expect that the potential small cost savings associated with a 5 year recertification period instead of a 3 year recertification period are not significant enough to warrant the increased risks associated with applicators who do not maintain an ongoing level of competency in the use of RUPs.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- Should EPA consider a different maximum recertification period? If so, what period and why?

B. Recertification Requirements

1. *Overview.* To ensure certified applicators maintain core competencies and keep pace with the changing technology of pesticide application, and to ensure that the public, environment and applicators are protected from misapplication and misuse, EPA proposes to require State, Tribal, and Federal agencies to require applicators to complete a continuing education program that meets or exceeds specific standards or to pass exams related to their certification(s) in order to be recertified.

2. *Existing regulation.* The current rule requires States to require applicators to demonstrate ongoing competency as part of their State plans. 40 CFR 171.8(a)(2). The rule has no requirements for the recertification standards such as content or manner in which ongoing competency is evaluated.

3. *Stakeholder information considered by EPA.* In a survey of State certification program personnel, CTAG found most States agreed that the credibility of training presenters, programs, and recertification exams should be subject to review and approval by the agency that assigns the recertification program credits or oversees exams. Participants at the 2006 Worker Safety PREP noted that most States offer applicators the option to take an exam for recertification if recertification is not accomplished through accruing continuing education units by the required deadline. Additionally, States noted that some applicator categories have so few applicators or the substance of the categories changes so infrequently that developing and updating training materials may be cost-prohibitive for States or cooperative extension services;

therefore, States requested the option to offer or require retesting for recertification (Ref. 33).

State and Tribal participants at the 2006 Worker Safety PREP generally supported having a requirement for the minimum number of credits that must be earned by an applicator in a continuing education program during the recertification period. Some States expressed concern that minimum requirements established at the Federal level could cause States with more stringent requirements to lower their requirements. For example, if EPA required an applicator to earn 6 credits per category every 3 years, those States with higher requirements (*e.g.,* 12 credits per category) might face resistance from their applicators. Conversely, they appreciated that a Federal standard would make issuing and monitoring reciprocal certificates to applicators less burdensome, because all States would meet a minimum standard for recertification programs.

4. *Details of the proposal/rationale.* The Agency proposes to establish minimum standards for continuing education programs, including: The minimum number of continuing education units (CEUs) that must be earned by an applicator in order to be recertified in core and each category; the standard length of a CEU; and a requirement for applicators to earn at least half of the required CEUs in the 18 months preceding expiration of the applicator's certification. States, Tribes, and Federal agencies would be required to include a continuing education program that meets or exceeds these standards as part of their certification plan. EPA also proposes to allow States to require recertification only by exam. The exam and its administration would have to meet the standards outlined in Unit IX.

EPA proposes to require that private applicator continuing education programs require instruction in the general competency standards as well as each relevant application method-specific category. The more training applicators receive, the more likely they are retain the substance of the training and apply it on the job. Under EPA's proposal, a private applicator would need to earn a minimum of 6 CEUs of instruction that covers the content proposed as 40 CFR 171.105(a) every 3 years to maintain core certification. The CEUs must be part of a continuing education program approved by the appropriate State, Tribal, or Federal agency for recertification. To qualify for recertification in the proposed application-method specific categories of soil fumigation, non-soil fumigation, or aerial application, or in the predator control category, a private applicator would need to earn a minimum of an additional 3 CEUs specific to each relevant application method that covers the content proposed as 40 CFR 171.105(b) and (c) every 3 years. A commercial applicator would need to earn a minimum of 6 CEUs related to his or her core certification every 3 years to maintain his or her core certification. For each category (pest control and application method-specific) in which the applicator is certified, he or she would need to obtain at least 6 CEUs specific to each category every 3 years. For example, a commercial applicator certified in agricultural pest control and aerial application would be required to obtain 6 CEUs of core material to satisfy recertification requirements for commercial core, as well as an additional 6 CEUs in agricultural pest control and 6 CEUs in aerial application in order to satisfy recertification requirements for maintaining his or her overall certification in the appropriate categories.

EPA proposes to allow applicators to earn CEUs in a program administered by or approved by the certifying State, Tribal, or Federal agency. The certifying authority's certification plan would need to detail how it would review and approve content for the continuing education program and how it would ensure that applicators satisfy the necessary requirements. The certifying authority could either conduct the continuing education program directly (some States refer to this type of program as a workshop), or could approve continuing education programs administered by cooperative extension services at State universities, other States, or private training providers. To approve the program, the State would have to ensure that the continuing education program meets the competency requirements established for commercial core certification, general private applicator certification, or the specific category or application method-specific category covered by the continuing education program.

EPA also proposes to set 50 minutes of active training time as the standard for a CEU. There is a wide range of time across States and professions for what constitutes a CEU. A minimum standard of 50 minutes of education per CEU would be consistent with most State standards. Setting a minimum standard for acceptable CEUs across all States, Tribes, and Federal agencies will ensure a baseline level for recertification programs that employ training and may facilitate applicators earning credits for recertification in more than one State. With a more standardized baseline for a CEU, States may be more likely to approve or accept continuing education programs presented in other States. Interstate collaboration for recertification would reduce the burden on State lead agencies and educators to develop and present new materials for each category. In addition, applicators certified in the same category in more than one State could be able to earn CEUs in one State and apply them to recertification in their other State of certification, reducing the overall burden associated with recertification in multiple States.

EPA also proposes to require that the applicator earn a minimum of one-half of the required CEUs during the 18 month period preceding the expiration date of his or her certification. A more recently trained applicator is more likely than less frequently trained applicators to apply what he or she learned from the training on the job. This should ensure that the applicator maintains an ongoing level of competence throughout the period that the certification is valid. The proposal would support applicators staying abreast of current information and technology related to their category of pesticide application.

EPA is also proposing to allow certifying authorities to require applicators to pass exams relevant to their categories of certification in order to be recertified. Exams are a reliable gauge of competency and can be used to ensure that applicators continue to demonstrate an appropriate level of competency.

For a discussion of the requirement for verification of the recertification candidate's identity, see Unit IX.

The regulatory text for the proposed addition of recertification standards would be located at 40 CFR 171.107(b).

5. *Costs.* The estimated costs for this proposal and the proposal in Unit XIV.A. are presented by impact to commercial applicators and private applicators. The costs to the States are incorporated in each section.

i. Commercial applicators. EPA estimates that the proposed requirement for commercial applicators to recertify would cost a total of $6.5 million per year (Ref. 3). EPA estimated this cost based on an applicator being required to complete 6 hours of training in core competency standards and 6 hours of training for each category of certification. The recertification costs include applicators recertifying in the proposed application-method specific categories and the new predator control categories. EPA estimates that State costs to administer the proposed

recertification program for commercial applicators would be $39,000 because most States already have recertification programs in place and would only need to adjust it to match the proposed regulatory requirement (Ref. 3).

ii. Private applicators. EPA estimates the cost of the proposed requirement for private applicators to recertify at $16.8 million annually (Ref. 3). EPA estimated this cost based on an applicator being required to complete 6 hours of training in general private applicator competency standards and 3 hours of training for each application method-specific category of certification. The recertification costs include applicators recertifying in the proposed application-method specific categories and the new predator control categories. EPA estimates that State costs to administer the proposed recertification program for private applicators would be $11,000 because most States already have a recertification program in place and would only need to adjust it to match the proposed regulatory requirement (Ref. 3).

6. *Alternative options considered by EPA but not proposed.* EPA considered a range of continuing education requirements but does not have a specific alternative proposal. EPA reviewed recertification and continuing education requirements for several other types of professional occupations and found wide variability in continuing education requirements across States or organizations within a single profession (*e.g.,* nursing), and found little information to explain the variation in requirements. Similarly, EPA reviewed the existing State continuing education requirements for pesticide applicator recertification and found that the requirements ranged from two up to 40 continuing education units per cycle, and cycles ranged from 1 to 5 years, but there was little or no information available to support why a particular number of continuing education units was selected.

7. *Request for comment.* EPA specifically requests comment on the following questions:

- Is the proposed number of recertification CEUs too low or too high? If so, please provide specific information on the number of continuing education units that you believe should be required for professional recertification and the rationale behind the number.
- Is EPA's proposal to require that the applicator earn a minimum of one-half of the required CEUs during the 18 month period preceding the expiration date of his or her certification clear? Is there a way EPA could make the requirement clearer or easier to understand? If so, please provide suggestions for how EPA could structure the requirement without altering the substance.
- Should EPA reconsider the proposal to require that the applicator earn a minimum of one-half of the required CEUs during the 18 month period preceding the expiration date of his or her certification? If so, why?
- Should EPA consider a different time period for applicator recertification? If so, please explain what period EPA should consider and why.
- Should EPA require commercial and private applicators to have the same recertification requirements for category recertification? If so, why?
- Should EPA do more to harmonize requirements for recertification to further facilitate reciprocity? Please describe what actions EPA should take and how they would further facilitate reciprocity.

XV. Revise State Certification Plan Requirements

1. *Overview.* In order to clarify requirements for content, submission and approval of State plans, raise the minimum standards for State pesticide applicator certification programs, and update the requirements for State plans, EPA proposes to revise the provisions of the rule related to submission, approval, and maintenance of State plans. Since the requirements for Tribal and Federal agency plans reference the standards for State plans, the proposed changes would also impact the requirements for Tribal and Federal agency plans.

2. *Existing regulation.* The current provisions at 40 CFR 171.7 and 171.8 establish the requirements for the submission, approval and maintenance of State plans. These sections of the rule set the content of State plans and outline the specific regulatory provisions, legal authorities, and components that States must have in order for EPA to approve a State plan. An EPA-approved State plan allows the State to certify and recertify RUP applicators.

3. *Details of the proposal/rationale.* EPA proposes to revise the provisions covering the submission, approval, and maintenance of State plans. The revisions will cover: Revision of State plans to conform with proposed changes; additional reporting and accountability information; States' need to have both civil and criminal penalty authority to enforce their State plans; recordkeeping requirements for commercial applicators; recordkeeping requirements for RUP dealers; standards for certification credentials; requirements for States' recognition of certifications issued by other States (known as reciprocal certification); and maintenance, modification, and withdrawals of State plans.

i. State plan modification to implement proposed changes. EPA's proposal would add appropriate provisions to ensure that State plans conform to new standards and requirements being proposed in other parts of the rule. This includes proposed standards for the certification of private and commercial applicators, recertification, and direct supervision of noncertified applicators. States would continue to be permitted to adopt, as they considered appropriate, the Federal categories appropriate for their States, add subcategories under the Federal categories, delete Federal categories not needed, and add State-specific categories not reflected by the Federal categories.

EPA considered several alternatives. First, EPA considered requiring States to adopt all applicable Federal categories proposed as 40 CFR 171.101 and 171.105. At the present time, few States have defined their certification categories to align exactly with the Federal categories—many have either split existing Federal categories into multiple categories or added a number of subcategories under categories similar to the Federal categories. Some stakeholders believe that requiring all certifying authorities to use the Federally-established categories could benefit applicator mobility, stating that if the standards for certification were consistent across States, States would be able to more easily evaluate requests for reciprocal certification. However, requiring States to adopt the Federal categories would burden States and applicators, and would not necessarily result in improved protection for applicators, the public, or the environment. Because the Federal categories may be broad, applicators may be required to learn material in areas not relevant to their actual applications, potentially reducing protections. Consequently, EPA expects that many States would still require applicators to certify in their State-specific subcategories to ensure specific competency. If a significant number of States continue to require applicators to certify in State-specific subcategories, it would defeat the goal of facilitating reciprocal certification. In this scenario, requiring States to adopt the Federal categories would increase the burden to the States to revise their certification systems to accommodate the changes, and to applicators required to pass

another exam, without any clear benefit in either efficiency or protection. Because there is little, if any, gain in protection from this option, and because it would be a burden to States and applicators, it is not proposed.

EPA also considered subdividing the national pest category 7 (industrial, institutional, structural and health-related pest control) into component parts. This category covers a range of specific application types—for example, applications in food handling areas to control insects and rodents, termite control in infested buildings, and treatments to nursing homes and schools. Safe and effective applications to these different sites require different skills and knowledge. Subdividing the category at the Federal level would allow the certification to focus on the competencies most relevant to applicators in the subdivided categories. However, 47 States have already created appropriate categories for their needs and their applicators learn information relevant to their specific applications and are being tested on that specific information. Because of the State-specific divisions, there is little consistency in how the States have subdivided the category. Retaining the category in its current form and allowing States to adjust it as needed would avoid imposing an increased burden on States to adjust their categories to a newly developed Federal standard with little or no improvement in protection.

For a discussion on EPA's proposal for applicator reciprocity, please refer to Unit XV.3.vii.

For standards for direct supervision of noncertified applicators, EPA proposes to require States to adopt the proposed standards at 40 CFR 171.201 for commercial and/or private applicators that supervise noncertified applicators. This would not require States to allow the use of RUPs by noncertified applicators under the direct supervision of certified applicators; States that choose to restrict use of RUPs to certified applicators would be exempted from the requirement to adopt the proposed standards as 40 CFR 171.201. These options would continue to allow the States the flexibility to decide whether or not to allow use of RUPs by noncertified applicators. EPA's criteria for approving the registrations of RUPs are based, in part, on presumptions that any uncertified applicators have at least the level of training mandated in 40 CFR 171.201. Therefore, EPA only proposes that States adopt EPA's standards for noncertified applicators exactly, with the flexibility to adopt additional standards at the State's discretion to address State-specific issues.

The proposed regulatory text would be located at 40 CFR 171.303(a) and (b).

ii. Program reporting and accountability. To reflect the proposed changes to applicator certification categories and to ensure EPA receives adequate information to monitor the State's implementation of its certification plan, EPA proposes to require States to report the information below to EPA annually. EPA is also proposing to require Tribes and Federal agencies with their own certification plans to submit similar relevant information to EPA.

- The numbers of new, recertified, and total applicators holding a valid general private certification at the end of the last 12-month reporting period.
- For each application method-specific category specified in 40 CFR 171.105(c), the numbers of new, recertified, and total private applicators holding valid certifications for the last 12-month reporting period.
- The numbers of new, recertified, and total commercial applicators holding a valid core and at least one category certification at the end of the last 12-month reporting period.
- For each commercial applicator certification category specified in 40 CFR 171.101(a), the numbers of new, recertified, and total commercial applicators holding a valid certification in each of those categories at the end of the last 12-month reporting period.
- For each application method-specific category specified in 40 CFR 171.101(b), the numbers of new, recertified, and total valid certifications for the last 12 month reporting period.
- If a State has established subcategories within any of the commercial categories, the report must include the numbers of new, recertified, and total commercial applicators holding valid certifications in each of the subcategories.
- A description of any modifications made to the approved certification plan during the last 12-month reporting period that have not been previously evaluated by EPA.
- A description of any proposed changes to the certification plan that the State anticipates making during the next reporting period that may affect the certification plan.
- The number and description of enforcement actions taken for any violations of Federal or State laws and regulations involving use of RUPs during the last 12-month reporting period.
- A narrative summary describing the misuse incidents or enforcement activities related to use of RUPs during the last 12-month reporting period, including specific information on the pesticide(s) used, circumstances of the incident, nature of the violation, and information on the applicator's certification. This section should include a discussion of potential changes in policy or procedure to prevent future incidents or violations.

EPA considers these additional reporting elements necessary to improve performance measurement and accountability for the applicator certification program. Standardized data reporting requirements assist in uniform program measurement, an important element of the 1993 Government Performance and Results Act (GPRA), Public Law 103–62, August 3, 1993, 107 Stat 285. The limited requirements for, and the wide variation in, the current State program reporting present impediments to national program monitoring and management. Fair and equitable assessment of State programs and the national program should be based on the review of standardized reports. Uniform data collection and submission would assist EPA in accurately measuring the success of the program and would facilitate the development and use of program measures to gauge program success. Areas requiring improvement and targeted outreach to address problems could be identified during data analysis.

The proposed regulatory language for the program reporting would be located at 40 CFR 171.303(c).

iii. Civil and criminal penalty authority. The current rule is not clear on whether States must have authority to impose both criminal and civil penalty provisions for commercial and private applicators. EPA has concerns that in the absence of either civil or criminal penalty provisions, a State would not have an adequate range of enforcement options and capabilities to respond appropriately to the wide range of pesticide misuse situations that could arise. EPA proposes to revise the regulation to expressly require that States have both civil and criminal penalty provisions.

The proposed regulatory language for civil and criminal penalty authority would be located at 40 CFR 171.303(b)(6)(iii).

iv. Commercial applicator recordkeeping. EPA proposes to clarify what records commercial applicators must maintain. The current rule mandates that State plans include requirements for certified commercial applicators maintain for at least two years routine operational records containing information on kinds,

amounts, uses, dates, and places of application of RUPs. 40 CFR 171.7(b)(1)(iii)(E). Under this proposal, commercial applicators would be required to keep and maintain all of the following records for the RUPs they apply:

• The name and address of the person for whom the pesticide was applied.
• The location of the pesticide application.
• The size of the area treated.
• The crop, commodity, stored product, or site to which the pesticide was applied.
• The time and date of the pesticide application.
• The brand or product name of the pesticide applied.
• The EPA registration number of the pesticide applied.
• The total amount of the pesticide applied.
• The name and certification number of the certified applicator that made or supervised the application, and if applicable, the name of any noncertified applicator(s) that made the application under the direct supervision of the certified applicator.
• Records related to the supervision of noncertified applicators working under the direct supervision of a certified applicator described in Unit XI.

This proposed recordkeeping is substantially similar to the recordkeeping requirements established for private applicators under the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, November 28, 1990, 104 Stat 3359, which is administered by USDA. This proposal would ensure consistency between State recordkeeping requirements for commercial applicators and existing Federal recordkeeping requirements, which govern recordkeeping by commercial applicators certified under EPA-administered certification programs.

The proposed regulatory language for commercial applicator recordkeeping would be located at 40 CFR 171.303(b)(6)(vi).

v. RUP dealer recordkeeping. EPA proposes to require States to have provisions requiring RUP retail dealers to keep and maintain at each individual dealership, for a period of at least two years, records of each transaction where a RUP is distributed or sold by that dealership to any person. Records of each such transaction must include all of the following information:

• Name and address of the residence or principal place of business of each person to whom the RUP was distributed or sold, or if applicable, the name and address of the residence or principal place of business of each noncertified applicator to whom the RUP was distributed or sold for use by a certified applicator.
• The applicator's unique certification number on the certification document presented to the dealer evidencing the valid certification of the certified applicator authorized to purchase the RUP; the State, Tribe or Federal agency that issued the certification document; the expiration date of the certified applicator's certification; and the categories in which the certified applicator is certified.
• The product name and EPA registration number of the RUP(s) distributed or sold in the transaction, and the State special local need registration number on the label of the RUP if applicable.
• The quantity of the pesticide(s) distributed or sold in the transaction.
• The date of the transaction.

All 50 States currently have RUP dealer recordkeeping requirements; EPA proposes this Federal standard to ensure consistency across the States and to ensure all necessary information is collected. This proposal would also ensure consistency between State recordkeeping requirements for RUP dealers and existing Federal recordkeeping requirements, which govern recordkeeping by RUP dealers that operate in areas covered by EPA-administered certification programs.

The proposed regulatory language for the proposed RUP dealer recordkeeping requirement would be located at 40 CFR 171.303(b)(6)(vii).

vi. Certified applicator credentials. The certification regulation does not currently have requirements for what information States must include on applicator certification documents. EPA proposes to require States to issue appropriate credentials or documents verifying certification of applicators, containing all of the following information:

• The full name of the certified applicator.
• The certification, license, or credential number of the certified applicator.
• The type of certification (private or commercial).
• The category(ies), including any application method-specific category(ies) and subcategories of certification, in which the applicator is certified, as applicable.
• The expiration date of the certification.
• A statement that the certification is based on a certification issued by another State, Tribe or Federal agency, if applicable, and the identity of that State, Tribe or Federal agency.

It is reasonable to expect that requiring consistent information on applicator certification across all certifying agencies would assist States in evaluating certification documents presented by applicators certified in another State, would assist dealers in reviewing certification information, and would assist enforcement agents in evaluating the applicator's certification document during an inspection.

The proposed regulatory text for applicator certification credentials would be located at 40 CFR 171.303(a)(6).

vii. Reciprocal applicator certification. The current provisions do not require States to provide specific information about State requirements and procedures for reciprocity. States have requested that EPA take action to establish standards to allow reciprocal certification between States and to standardize the process. Based on the request by States and to facilitate the certification of applicators working in more than one State, EPA proposes to require State certification plans to specify whether (and if so, under what circumstances) the State would certify applicators based, in whole or in part, on the applicator having been certified by another State, Tribe, or Federal agency. Under the proposed rule, such certifications would be subject to all of the following conditions:

• A State may only rely on current, valid certifications issued under an approved State, Tribal or Federal agency certification plan, and may only rely on a certification issued by a State, Tribe or Federal agency that issued its certification based on an independent determination of competency without reliance on any other existing certification or authority. For each category of certification that will be accepted, the standards of competency in the State, Tribe or Federal agency that originally certified the applicator must be comparable to the standards of the accepting State.
• Any certification that is based, in whole or in part, on the applicator having been certified by another State, Tribe or Federal agency must terminate immediately if the applicator's original certification terminates for any reason.
• Any State which chooses to certify applicators based, in whole or in part, on the applicator having been certified by another State, Tribe, or Federal agency, must implement a mechanism to ensure the State will immediately terminate an applicator's certification if the applicator's original certification terminates for any reason.

• The State issuing a certification based, in whole or in part, on the applicator having been certified by another State, Tribe or Federal agency must issue an appropriate credential or document in accordance with the requirements of this section.

The proposed regulatory text related to States issuing certifications based on applicator certification credentials obtained in other jurisdictions would be located at 40 CFR 171.303(a)(7).

viii. State plan maintenance, modification, and withdrawal. EPA proposes to replace the existing provisions related to maintenance, modification, and withdrawals of State certification plans. The proposed revisions would clarify the types of plan changes that constitute substantial modifications and therefore require additional review and approval by EPA. The proposed revisions would codify existing interim program policy and guidance issued by EPA in 2006 (Ref. 52).

The regulatory text for modification and withdrawal of State plans will be located at 40 CFR 171.309.

4. *Costs.* EPA estimates the proposed revisions to the State certification plan requirements will include 3 costs: Revising State requirements to meet EPA's proposed standards, updating State plans for submission to and approval by EPA, and adding a requirement for dealers to maintain records of RUP sales (Ref. 3). The current rule requires States to require commercial applicators to keep records; the proposal merely clarifies the content of the records and therefore is not expected to result in costs to the applicator or States.

EPA estimates that States would incur a one-time cost of about $119,000 annually for the first two years to revise and finalize pesticide applicator laws and regulations that meet or exceed EPA's proposed requirement (Ref. 3). Once States have revised their laws and regulations, they will need to draft and submit a revised plan for applicator certification to EPA for approval. Since EPA already requires States to update plans as appropriate and to report necessary information to EPA annually, EPA estimates the cost of this process would be about $4,000 annually for the first two years after implementation across all States (Ref. 3).

Finally, it is reasonable to expect that the requirement for RUP dealers to maintain records of RUP sales will not impose any burden on the regulated community. All States already require RUP applicators to maintain such records. However, a few States may have to do additional revisions to their laws and regulations to ensure the State recordkeeping requirement mirrors the proposed Federal requirement. There is no estimated cost associated with this proposal because all States already require RUP dealers to maintain records of sales (Ref. 3).

5. *Alternative options considered by EPA but not proposed.* EPA considered requiring States to make available publically a list of all applicators certified by the State. Under this alternative, such a list could be made available electronically, *e.g.,* via the internet. Such a list could be used by the public to verify whether the pest control operator hired to perform the application was certified. States already maintain information on the persons who hold valid certifications. States maintain the information in varying formats—some keep paper files, while others maintain an electronic database that is updated in real time as certifications are earned and expired. Some States have chosen to publish the information on the internet. Some States may have restrictions on publishing information online, but would make it available upon request. Because the States do not have a uniform manner to track and make available electronically the names of all certified applicators, and the public may already have access to this information in varying forms in each State, it is not necessary impose a requirement at the Federal level.

6. *Request for comment.* EPA specifically requests comment on the following questions:

• EPA is not proposing to require States to adopt all applicable Federal categories to address reciprocity between jurisdictions, because it would burden States and applicators, and protections may not be improved. Are there approaches to facilitate reciprocity that would minimize burdens and disruption at the lead agency level and improve protections? Please describe these approaches and how they may be implemented.

• Should EPA require all States, Tribes, and Federal agencies to adopt the same certification standards and to mandate reciprocity between jurisdictions? Please describe benefits and drawbacks to such a requirement.

• Are there benefits, that EPA has not considered, to requiring States to adopt Federal certification categories? If so, please explain the benefits and how they would impact competency standards for national certification categories.

• Would the proposed reporting and recordkeeping requirements impose unnecessary burden on States, farmers, small businesses, or other entities? If so, who would bear unnecessary burden and why?

• Should EPA consider requiring records to be retained for a different period? If so, what how long should records be retained and why?

• Are there other types of information that EPA should consider collecting from States, RUP dealers, or commercial applicators?

• Is there any other information related to reciprocal certification that EPA should consider incorporating into the regulation? If so, please indicate which information should be added or deleted and why.

• Should EPA consider adding to or deleting from the required elements of the applicator certification document? If so, please indicate which information should be added or deleted and why.

• Should EPA consider requiring States to make available publically a list of all applicators holding a valid certification? If so, should the list be available electronically? Should the list be updated in real time, or would periodic updates be acceptable? If periodic updates are chosen, what period would be reasonable?

• Should EPA consider requiring certifying authorities to require their commercial applicators to report incidents that would meet the reporting criteria of 40 CFR 159.184 if known to the pesticide registrant?

XVI. Establish Provision for Review and Approval of Federal Agency Plans

1. *Overview.* In order to codify Agency policy on Federal agency certification plans, EPA proposes to delete from the current regulation the section on GAP (40 CFR 171.9) and to codify EPA's 1977 policy on review and approval of Federal agency plans.

2. *Existing regulation.* The certification rule covers GAP certifications, outlining a process for certifying employees of Federal agencies to use RUPs in the course of their duties under a government-wide GAP. 40 CFR 171.9. The 1974 proposal (Ref. 61) included a special process for certifying employees of Federal agencies, but the process was not included in the final rule. EPA subsequently outlined a proposed process for certifying employees of Federal agencies under a government-wide GAP (Ref. 62). The GAP certification process was included in the final revised rule (Ref. 24), but a GAP was never developed or implemented by EPA or the Federal government. In 1977, EPA announced a policy that provided an alternative approach for Federal employee certification (Ref. 60). Under the 1977 policy, EPA allows Federal agencies to

submit their own plans for the certification of RUP applicators; EPA approves the Federal plans provided they meet or exceed EPA's standards. In the 1977 policy, EPA noted that the standards for Federal agency plans were to be essentially equal to or more stringent than requirements for State plans. Four Federal agencies currently have EPA-approved Federal agency plans. The Department of Defense (DOD) and USDA have certification plans that were revised and approved in 2009. The Departments of Energy (DOE) and the Interior (DOI) have plans that were approved prior to 1990.

3. *Details of the proposal/rationale.* EPA proposes to delete the current text at 40 CFR 171.9. EPA proposes to codify the 1977 policy covering Federal agency plans (Ref. 60), and to clarify the standards that Federal agencies must meet. The proposed revisions include the following requirements: Federal agencies must comply with all applicable standards for certification, recordkeeping, and other similar requirements for State/Tribal plans; Federal agencies must ensure compliance with applicable State pesticide use laws and regulations, including those pertaining to special certification requirements and use reporting, when applying pesticides on State lands; Federal agencies must comply with all applicable Executive Orders; and Federal agencies must conform to standards established for States related to maintenance of plans and annual reporting.

The proposed regulatory language concerning Federal agency plans will be located at 40 CFR 171.305.

4. *Costs.* EPA estimates negligible burden associated with this requirement (Ref. 3). Although Federal agencies with existing plans would be required to revise and resubmit their certification plans to be in compliance with the revised proposed rule resulting in some administrative burden for these Federal agencies, EPA believes that the administrative burden associated with plan revisions would not be significant for two reasons. First, the four Federal agencies currently administering certification plans appear to be the only Federal agencies interested in certifying applicators and so this proposal will not have a substantial impact on most Federal agencies. Second, Federal agencies with existing certification plans have revised their plans to address changing needs within their certification programs, so revisions required by this proposal would not significantly increase the burden above that which they already incur.

5. *Request for comment.* EPA specifically requests comment on the following questions:

- Is there any reason for EPA to retain the GAP provisions in the current rule? If so, why?

XVII. Clarify Options for Establishing a Certification Program in Indian Country

1. *Overview.* In order to provide more workable applicator certification options in Indian country, EPA proposes to revise the mechanisms available to Tribes for certifying pesticide applicators.

2. *Existing regulation.* The current rule provides three options for applicator certification programs in Indian country: Tribes may utilize State certification to certify applicators (requires concurrence by the State(s) and an appropriate State-Tribal cooperative agreement); Tribes may develop and implement a Tribal certification plan (requires Tribes to develop and submit an appropriate Tribal certification plan to EPA for approval); or EPA may administer a Federal certification plan for applicators in Indian country, such as EPA's national plan for Indian country (Ref. 1).

Currently, only a few Tribes have been approved by EPA to administer certification plans. In those areas of Indian country without an EPA-approved State or Tribal certification plan in effect, EPA administers a certification plan to ensure that RUPs are used only by certified applicators or noncertified applicators working under their direct supervision.

3. *Stakeholder information considered by EPA.* Consistent with EPA's Indian Policy and Tribal Consultation Policy, EPA engaged in a formal consultation process with Tribes summarized in Unit XXII. (Ref. 63).

4. *Details of the proposal/rationale.* EPA proposes to revise the mechanisms for establishing applicator certification programs in Indian country. EPA would revise the option where a Tribe relies on State certification and the option for EPA-administered certification plans in Indian country. EPA would also amend the requirements for Tribal-implemented certification plans to require Tribal plans to incorporate the proposed revisions to applicator certification standards.

First, the proposal would revise the current option for Tribes to rely on State certification by eliminating the requirement for Tribes to enter into cooperative agreements with States. This option would be replaced by an option to enter into agreements with EPA Regional offices to establish certification programs in Indian country. The proposed revisions would allow Tribes to enter into agreements with EPA to recognize the certification of applicators who hold a certificate issued under one or more specific EPA-approved State, Tribal or Federal agency certification plans, without the need for State-Tribal cooperative agreements and with little burden on States or Tribes. EPA would retain relevant enforcement responsibilities in areas of Indian country covered by a certification plan implemented in this manner.

Second, EPA proposes to clarify that EPA can include multiple Tribes and/or multiple geographic areas of Indian country under one single EPA-administered plan. This option facilitates the implementation of a nation-wide certification plan that would cover applicators using RUPs in different, non-contiguous parts of Indian country. This proposal is merely a clarification of the existing rule, and EPA has already established a national plan for certification of applicators in Indian country. EPA implemented its national plan for Indian country in 2014 (Ref. 1). The EPA-administered plan serves those areas of Indian country throughout the United States where no other EPA-approved certification mechanism exists.

Third, the proposal would update the requirements for Tribal plans by requiring those Tribes that choose to manage their own certification plan to adopt the new standards being proposed for State and Federal agency certification plans in regard to initial certification and recertification of private and commercial applicators and the training and supervision of noncertified applicators who apply RUPs under the direct supervision of a certified applicator. The proposal would also eliminate current requirements for States to include in their State certification plans references to any agreements with Tribes for recognizing the States' certificates.

The proposed revisions would ensure that Tribes are generally subject to the same certification program standards applicable to States, Federal agencies, and EPA-administered programs. However, certain separate requirements would be included in the Indian country provision relating to the exercise of criminal enforcement authority. EPA recognizes that certain limitations exist regarding Tribes' ability to exercise criminal enforcement authority. In such circumstances, it is appropriate to retain primary criminal enforcement authority with the Federal government and EPA has proposed requirements for Tribes and EPA to

enter into relevant agreements regarding the exchange of potential investigative leads. These requirements are similar to EPA's approach to criminal enforcement authority in the context of other EPA rules addressing Tribal programs under Federal environmental laws. See, *e.g.,* 40 CFR 49.8. The proposed revisions would enhance the ability of Tribal programs to develop and implement certification plans and programs for those Tribes that choose to manage their own certification plans, and would provide practicable alternatives for those Tribes that do not. The proposed revisions may require some Tribes with a current, EPA-approved certification plan to make changes to Tribal laws, regulations, or code. EPA intends to consider the potential impacts of Tribal legislative changes and Tribal plan revision when establishing effective dates for the final rule.

The regulatory language for the proposed options for applicator certification in Indian country would be located at 40 CFR 171.307.

5. *Costs.* The costs associated with these changes should be negligible because they primarily result in clarification of requirements and policy, not in the imposition of substantial new requirements or obligations on the part of Tribes (Ref. 3). EPA does not believe the proposed revisions would place any unreasonable burden on Tribes because they do not require Tribes to implement certification programs. These proposed revisions would require existing Tribal certification plans to be revised and resubmitted to EPA for review and approval. EPA estimates the costs to these Tribes would be similar to the costs to States for updating and submitting to EPA for approval a revised certification plan. Because there are currently only four Tribes with an EPA-approved certification plan the proposed changes to certification mechanisms in Indian country should not result in a significant impact on Tribal entities or programs as a whole.

6. *Request for comment.* EPA specifically requests comment on the following questions:

• Are there other mechanisms EPA should consider for certification of RUP applicators in Indian country? If so, please describe the additional mechanism(s), how they would be implemented, and the benefit to Tribes, applicators, human health, and the environment.

XVIII. Revise Provisions for EPA-Administered Plans

1. *Overview.* To update requirements for EPA-administered plans to conform with the proposed changes to the regulation, EPA proposes to amend the section of the rule dealing with EPA-administered plans.

2. *Existing regulation.* The current rule establishes requirements for EPA-administered certification in States or areas of Indian country without EPA-approved certification plans in place, including specific standards for certification and recertification of pesticide applicators. 40 CFR 171.11.

3. *Details of the proposal/rationale.* EPA proposes to revise the current section outlining the requirements for an EPA-administered Federal certification plan to incorporate the proposed changes to State certification plans related to RUP applicator certification, recertification, and noncertified applicator qualifications, as well as plan reporting and maintenance requirements. The rules governing EPA-administered certification programs should be constructed in a way that minimizes administrative burden on EPA and the regulated community and reduces costs to taxpayers, while still providing EPA with the tools necessary to protect human health and the environment. The proposed revisions would make requirements for the certification and recertification of RUP applicators and supervision of noncertified applicators parallel to the requirements proposed for States, Tribes, and other Federal agencies.

The proposed regulatory language covering EPA-administered plans would be located at 40 CFR 171.311.

4. *Costs.* EPA estimates the costs associated with this proposal would be negligible (Ref. 3). EPA currently administers two certification plans—one for the Navajo Tribe (Ref. 2) and one for certification in Indian country (Ref. 1). It is reasonable to expect that the costs of updating these plans to conform to the proposed changes would be relatively low.

5. *Request for comment.* EPA specifically requests comment on the following questions:

• Should EPA consider other revisions to the provisions for EPA-administered plans? If so, please describe the additional revision(s), how they would be implemented, and the benefit(s) to applicators, human health, and the environment.

XIX. Revise Definitions and Restructure 40 CFR Part 171

A. Improved Definitions

EPA proposes to revise the definitions in the certification regulation to add several new definitions and to eliminate several unnecessary definitions. EPA expects that improved definitions would reduce the likelihood of misinterpretation and thereby improve compliance and enforceability.

These proposed revisions to the definitions adopt more widely used and commonly accepted ''plain English'' language, and add clarity and consistency to the rule. The proposed revisions to the definitions also help address issues raised by State regulatory partners and other program stakeholders. EPA does not believe the proposed revisions to the definitions will add new regulatory requirements on the regulated community or substantially increase regulatory burden.

The revised and new definitions would be located at 40 CFR 171.3.

1. *Revised definitions.* The Agency proposes to revise the following existing definitions: ''compatibility'', ''dealership'', ''non-target organism'', ''ornamental'', ''principal place of business'', and ''toxicity''.

2. *New definitions.* The Agency also proposes to add the following new definitions: ''application'', ''application method'', ''fumigant'', ''fumigation'', ''Indian country'', ''Indian Tribe'', ''noncertified applicator'', ''personal protective equipment'', ''use'', and ''use-specific instructions''.

3. *Definitions to be deleted.* The Agency proposes to delete the following existing definitions from 40 CFR part 171 because they are no longer necessary as a result of other proposed revisions to the existing rule or are already defined in FIFRA: ''Act'', ''Agency'', ''forest'', ''uncertified person'', and ''hazard''.

4. *Request for comment.* EPA specifically requests comment on the following questions:

• Are there other terms that EPA should consider adding, clarifying, redefining, or eliminating from the rule? If so, please provide detail about the term(s) and rationale for change.

B. Restructuring of 40 CFR Part 171

In order to improve clarity and implement the principles of using plain language in regulations, EPA proposes to reorganize the structure of 40 CFR part 171. EPA expects the revised 40 CFR part 171 will be easier to read and understand, improving compliance by applicators and other program stakeholders.

1. *Existing 40 CFR part 171.* At this time 40 CFR part 171 is a single part with no subparts. The first sections (40 CFR 171.1 through 171.6) describe the standards for commercial and private applicators, requirements for persons working under the direct supervision of a certified applicator, definitions, and a

statement of purpose. The second half of the rule (40 CFR 171.7 through 171.11) describes the procedures for States, Tribes, Federal agencies, and EPA to administer a certification program. The rule has a section titled ''Government Agency Plan'' describing a plan covering the entire Federal government that was not implemented. EPA has received feedback that this section is difficult to understand and seems irrelevant.

2. *This proposal.* The proposal would reorganize the rule into four subparts: ''General Provisions'', ''Certification Requirements for Applicators of Restricted Use Pesticides'', ''Supervision of Noncertified Applicators'', and ''Certification Plans''. The General Provisions section would include the sections on scope, definitions, and effective date. The Certification Requirements for Applicators of Restricted Use Pesticides section would include all standards for the certification and recertification of commercial and private applicators. The Supervision of Noncertified Applicators section would include all relevant standards for the certified applicator and the noncertified applicator using RUPs under his or her direct supervision. The Certification Plans section would include requirements for States, Tribes, and Federal agencies to submit and modify their certification plans, as well as a description of an EPA-administered applicator certification plan.

EPA expects that the restructured rule will facilitate understanding of the rule by applicators and authorized agencies because it deletes obsolete provisions and uses clearer language.

3. *Alternative options considered by EPA but not proposed.* EPA considered two additional changes to the organization of the regulation. First, EPA considered moving the paragraph titled ''Determination of Competency'' proposed as 40 CFR 171.103(a) to the beginning of subpart B as an independent, introductory section. Second, EPA considered moving the paragraph titled ''Examination Standards'' proposed as 40 CFR 171.103(b) to subpart D related to certification plans. Keeping the standards related to determining competency and administering competency exams in the same section as the specific competency standards that applicators must meet is a more reasonable organization of the regulation because these two sections are related to how commercial applicator competency is determined. Therefore, EPA does not propose the two changes discussed in this unit.

4. *Request for comment.* EPA specifically requests comment on the following questions:

- Is the restructuring clearer? Is it easier to read and understand?
- Are there other ways that EPA could simplify or clarify 40 CFR part 171? If so, please describe.
- Should EPA consider alternate organizations of the regulation? If so, please provide a proposal and rationale for reorganization.

XX. Implementation

EPA proposes to make the final rule effective 60 days after the promulgated rule is published in the **Federal Register**. Compliance with certain provisions of the rule would be delayed. Existing certification plans could remain in effect for up to four years after the effective date of the final rule. Beginning four years after the effective date of the final rule, a State, Tribe, Federal agency, and EPA would only be permitted to certify applicators of RUPs in accordance with a certification plan that meets or exceeds all of the applicable requirements of the final regulation and that has been approved by EPA after the effective date of the rule.

States, Tribes, and Federal agencies administering EPA-approved certification plans would be required to submit amended certification plans to EPA for approval within two years of the effective date of the final rule. EPA intends to review and respond to all certification plans submitted within 2 years of the effective date. This would allow ample time for EPA, Tribes, Federal agencies, and State regulators time to make the necessary changes to certification plans, and for these and other stakeholders to implement the new certification procedures. EPA expects that applicators may need to be certified in new categories and noncertified applicators could need training to meet the new standard. States, Tribes, and Federal agencies administering EPA-approved certification plans would need to become familiar with the new regulation and conduct outreach to the regulated community. Certified applicators and trainers of noncertified applicators would have to become familiar with the noncertified applicator training content, ensure that they meet any eligibility requirements, and obtain training materials if necessary. As resources permit and if the final rule includes the relevant provisions from the proposal, EPA intends to develop training materials for noncertified applicators working under the direct supervision of a certified applicator and for certification in a non-soil fumigation category. Materials currently exist that can be modified to support general certification for private applicators, and EPA has developed and distributed to States training materials for aerial applicators and soil fumigation categories.

To facilitate implementation, EPA plans to issue a guidance document at the time the final rule is published, to provide assistance to States, and to conduct outreach to potentially affected parties.

EPA requests comment on the proposed implementation of the rule. Specifically, EPA requests feedback on the following:

- Would States and Tribes be able to amend and submit revised certification plans for EPA approval within 2 years of the effective date of the final rule?
- If the proposed implementation schedule does not seem reasonable, please provide specific comments on why the proposal is not reasonable and provide specific suggestions of an alternate schedule and why it would be reasonable.
- Would States, Tribes, and Federal agencies need additional time after EPA approves the revised certification plan that meets or exceeds the requirements of the final rule in order to bring certified applicators into compliance with the new requirements? If so, how much time would be needed? What activities would be conducted?
- Would the implementation schedule be reasonable if EPA provided exams and training materials for the proposed additional categories?
- What support would States, Tribes, and Federal agencies require from EPA during the implementation of the provisions of the final rule?
- If EPA evaluates the effectiveness and/or the impacts and benefits of the rule, what timeframe should be used to conduct the evaluation, *e.g.,* should EPA begin a review after the rule is fully implemented or a specific time period after full implementation? For how long should EPA conduct the evaluation? Please provide additional information on methodology that could be used to conduct any evaluation.

XXI. References

The following is a listing of the documents that are specifically referenced in this rulemaking. The docket includes these documents and other information considered by EPA. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Final EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides Within Indian Country; Notice of Implementation. Notice. **Federal Register** (79 FR 7185, February 6, 2014) (FRL–9904–18).

2. EPA. Federal Plan for Certification of Restricted Use Pesticide Applicators in Navajo Indian Country; Notice of Implementation; and Announcement of Availability of Form to Request Pesticide Applicator Certification in Navajo Indian Country. Notice. **Federal Register** (72 FR 32648, June 13, 2007) (FRL–8078–9).

3. EPA. Economic Analysis of Proposed Revisions to the Applicator Certification Regulation. July 29, 2015.

4. EPA. Pesticides; Agricultural Worker Protection Standard Revision. Proposed Rule. **Federal Register** (79 FR 15444, March 19, 2014) (FRL–9395–8).

5. EPA. Certification Plan and Reporting Database. *http://cpard.wsu.edu/reports/menu.aspx.*

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19. EPA. Office of the Inspector General. Result of Assessment of Controls Over Emergency Removal Actions at Methyl Parathion Sites. Report No. E1SFB7–06–0020–7400069. September 23, 1997.

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21. HHS, PHS, CDC, NIOSH. National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders. May 3, 2002.

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24. EPA. Submission and Approval of State Plans for Certification of Commercial and Private Applicators of Restricted Use Pesticides. **Federal Register** (40 FR 11698, March 12, 1975) (FRL–340.6).

25. EPA. Federal Certification of Pesticide Applicators in States or Indian Reservations Where There is No Approved State or Tribal Certification Plan in Effect. Final Rule. **Federal Register** (43 FR 24834, June 8, 1978) (FRL–881–7).

26. EPA. Certification of Pesticide Applicators; Expansion of Recertification Time Period. Final Rule. **Federal Register** (48 FR 29854, June 29, 1983) (FRL–2338–8).

27. EPA. Certification of Pesticide Applicators; Recordkeeping and Reporting Requirements. Final Rule. **Federal Register** (48 FR 53972, November 29, 1983) (FRL–2402–7).

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62. EPA. Pesticide Programs; Submission and Approval of State Plans for Certification of Commercial and Private Applicators. Proposed Rule. **Federal Register** (40 FR 2528; January 13, 1975) (FRL–320–4).

63. EPA. Summary of Consultation with Tribes on the Certification of Pesticide Applicators Regulation. 2010.

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XXII. FIFRA Review Requirements

Under FIFRA section 25(a), EPA has submitted a draft of the proposed rule to the Secretary of the Department of Agriculture, the FIFRA Scientific Advisory Panel (SAP), and the appropriate Congressional Committees. USDA provided comments on this proposed rule, copies of which, along with EPA's responses, are located in the docket for this rulemaking. The SAP waived its review of this proposal on September 4, 2014.

XXIII. Statutory and Executive Order Reviews

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

This action is a significant regulatory action because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (58 FR 51735, October 4, 1993). Accordingly, EPA submitted the action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and Executive Order 13563 (76 FR 3821, January 21, 2011), and any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an economic analysis of the potential costs and benefits associated with this action, which is available in the docket and summarized in Unit III.B. (Ref. 3).

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2499.01 (OMB Control No. 2070–NEW). You can find a copy of the ICR in the docket for this proposed rule, and it is briefly summarized here (Ref. 64).

The information collection activities related to the existing certification regulation are already approved by OMB in an ICR titled ''Certification of Pesticide Applicators'' (EPA ICR No. 0155.10; OMB Control No. 2070–0029). Therefore, EPA ICR number 2499.01 (OMB Control No. 2070–NEW) only addresses the proposed changes to the certification regulation. These include:

- Updating the information States, Tribes, and Federal agencies report to EPA.
- Updating the process and requirements for modifying a certification plan.
- Adding a provision for States to require recordkeeping by RUP dealers.
- Adding specific requirements for noncertified applicator qualification through training.
- Adding a provision for commercial applicators to maintain records of noncertified applicator training.

1. *Respondents/affected entities. i. Certified applicators; private and commercial.* The number of applicators is based on the Certification Plan and Reporting Database for the years 2008 to 2013 (CPARD, 2014), there are 364,579 commercial applicators and 455,278 private applicators.

ii. *Noncertified applicators under the direct supervision of certified applicators.* It is estimated that there are 947,275 noncertified applicators who apply RUPs under the direct supervision of commercial certified applicators, and there are 81,678 noncertified applicators under the direct supervision of private certified applicators.

iii. *RUP dealers.* EPA estimates that there are approximately 10,000 retail dealers. According to the Agricultural Retailers Association, there are approximately 9,000 agricultural retailers in the United States. Not all are licensed to sell RUPs. EPA estimates that there are far fewer nonagricultural pesticide retailers licensed to sell RUPs, given that RUPs are generally not labeled for use in residential and other public areas, even by a certified applicator.

iv. *Authorized agencies.* Authorized agencies are the entities that are federally authorized to administer applicator certification plans under 40 CFR part 171. Authorized agencies includes States, territories, federally recognized Tribes and Federal agencies authorized to operate certification programs. In addition to the 50 States, there are 4 plans for the US territories (Puerto Rico, DC, US Virgin Islands, and Pacific Islands), 4 Tribal plans, and 5 approved Federal agency certification plans. Federal agencies include DOD, DOE, USDA APHISPPQ, USDA Forest Service (the 2 USDA plans are separate plans), and DOI (the DOI plan covers 3 agencies within DOI BLM, BIA and NPS, but no others). Wage rates vary according to the entity.

2. *Respondent's obligation to respond.* Mandatory (7 U.S.C. 136–136y, particularly sections 136a(d), 136i, and 136w).

3. *Estimated number of respondents.* 1,749,265.

4. *Frequency of response.* Rule familiarization will occur annually for the first 3 years. Revising and submitting certification plans will occur one time. Training of noncertified applicators will occur annually. Recordkeeping of training of noncertified applicators working under the direct supervision of commercial applicators will occur annually. Recordkeeping of RUP sales will occur each time an RUP is sold, which EPA estimates will be 39 times per year.

5. *Total estimated burden.* 1,853,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

6. *Total estimated cost.* $57,363,250 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, and on applicable collect instruments.

Submit your comments on EPA's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *oira_submissions@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must

receive comments no later than September 23, 2015. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are private applicators, commercial applicators, and noncertified applicators using RUPs under their direct supervision. The Agency has determined that for private applicators, average impacts of the rule represent less than 1% of annual sales revenue for the average small farm and even to small-small farms with sales of less than $10,000. Impacts to the smallest farms, especially in high-impact States, could exceed 2% of annual sales revenue but the number of farms facing such impacts is small relative to the number of small farms affected by the rule. For commercial applicators, average impacts of the rule represent less than 0.1% of annual revenue for the average small firm. The impacts are expected to be around 0.1% of annual revenue even for the high cost scenarios. Details of this analysis are presented in the Economic Analysis for this action (Ref. 3).

Although EPA is not required by the RFA to convene a Small Business Advocacy Review (SBAR) Panel because this proposal would not have a significant economic impact on a substantial number of small entities, EPA has nevertheless convened a panel to obtain advice and recommendations from small entity representatives potentially subject to this rule's requirements. A copy of the SBAR Panel Report is included in the docket for this rulemaking (Ref. 34).

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 through 1538, and does not significantly or uniquely affect small governments. The proposed rule requirements would primarily affect certified applicators of RUPs. The total estimated annualized cost of the proposed rule is $47.2 million (Ref. 3).

E. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. However, this action may be of significant interest to State governments. Consistent with the EPA's policy to promote communications between the EPA and State and local governments, EPA consulted with State officials early in the process of developing this rulemaking to permit them to have meaningful and timely input into its development. EPA worked extensively with State partners when considering revisions to the existing regulation and solicited feedback from States in a number of ways, as discussed in Unit III. EPA carefully considered the input of State partners during the development of this rulemaking in meetings with State pesticide regulatory officials and with groups representing State pesticide regulatory agencies. In the spirit of Executive Order 13132, EPA specifically solicits comment on this rulemaking from State and local officials.

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 would require Tribes that certify applicators to perform RUP applications in Indian country to comply with the revised regulation. EPA currently directly administers a national certification plan for Indian country (Ref. 1) and has implemented a specific certification plan for the Navajo Nation (Ref. 2). As proposed, this rule provides Tribes with the option to develop and administer their own applicator certification programs, to participate in the EPA-administered applicator certification program for Indian country, or to enter into an agreement with EPA regarding administration of an applicator certification program. As explained in Unit XVII., EPA does not believe the proposed revisions would place any unreasonable burden on Tribes because the proposed rule does not require Tribes to implement certification programs. There are currently only four Tribes with an EPA-approved certification plan. The proposed rule would require existing Tribal certification plans to be revised and resubmitted to EPA for review and approval. The costs associated with the proposed changes should be negligible because they primarily result in clarification of requirements and policy, not the imposition of substantial new obligations on the part of Tribes. EPA estimates the costs to these Tribes would be similar to the costs to States for updating and submitting to EPA for approval a revised certification plan, and that they would not result in a significant impact on Tribal entities or programs. Thus, Executive Order 13175 does not apply to this action.

Consistent with EPA's Policy on Consultation and Coordination with Indian Tribes, EPA consulted with Tribal officials during the development of this action. A summary of that consultation is provided in the docket for this action (Ref. 63).

EPA specifically solicits additional comment on this proposed action from Tribal officials.

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

This proposed rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not an economically significant regulatory action as defined by Executive Order 12866. However, it is reasonable to expect that the environmental health or safety risks addressed in this proposed rule may have a disproportionate effect on children.

The primary risk to children that is within the scope of this rulemaking is exposure to RUPs during their work as applicators of RUPs. The proposed rule is intended to minimize these exposures and risks. By establishing a minimum age for persons to become a certified applicator or to use RUPs as a noncertified applicator under the direct supervision of a certified applicator, children would receive less exposure to pesticides that may lead to chronic or acute pesticide-related illness. In addition, the proposal expands training for noncertified applicators to include topics that should also assist in reducing potential risks to children from incidental pesticide exposure, such as avoiding bringing pesticide residues home on clothing.

Like DOL's regulations that implement the FLSA, the proposed rule seeks to regulate the ages at which children can apply pesticides. The proposed rule would establish a minimum age of 18 for persons to become certified to apply RUPs and to apply RUPs as noncertified persons under the direct supervision of certified applicators. Since many RUPs present heightened risks to harm human health relative to other pesticides, EPA feels that they warrant special consideration. EPA expects that the proposals to establish minimum ages would mitigate or eliminate many risks faced by young applicators.

Additional information on EPA's consideration of the risks to children in development of this action can be found in Unit III.C.3. and in the economic analysis for this action (Ref. 3).

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to pesticides.

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

This proposed rule 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. Further, this rule is not likely to have any adverse energy effects because it does not require any action related to the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272 note.

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

EPA believes that this proposed rule would not have disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994), 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.

EPA engaged with stakeholders from impacted communities extensively in the development of this rulemaking in order to seek meaningful involvement of all parties. The Agency's efforts to address environmental justice through this rulemaking were reviewed repeatedly during the development of the rule and its supporting documents. The proposed changes demonstrate EPA's commitment to improving the health and safety of certified applicators and noncertified applicators using RUPs under their direct supervision by changes such as adding application method-specific categories, strengthening competency standards for private applicators, adding training for noncertified applicators using RUPs under the direct supervision of a certified applicator, and establishing a minimum age for all persons using RUPs.

List of Subjects in 40 CFR Part 171

Environmental protection, Administrative practice and procedure, Certified applicator, Commercial applicator, Indian Country, Indian Tribes, Noncertified applicator, Pesticides and pests, Private applicator, Restricted use pesticides, Reporting and recordkeeping requirements.

Dated: August 5, 2015.

Gina McCarthy,

Administrator.

For the reasons discussed in the preamble, the EPA proposes to revise 40 CFR part 171 as follows:

PART 171—CERTIFICATION OF PESTICIDE APPLICATORS

Subpart A—General Provisions

Sec.
171.1 Scope.
171.3 Definitions.
171.5 Effective date.

Subpart B—Certification Requirements for Applicators of Restricted Use Pesticides

171.101 Commercial applicator certification categories.
171.103 Standards for certification of commercial applicators.
171.105 Standards for certification of private applicators.
171.107 Standards for recertification of certified applicators.

Subpart C—Supervision of Noncertified Applicators

171.201 Requirements for direct supervision of noncertified applicators by certified applicators.

Subpart D—Certification Plans

171.301 General.
171.303 Requirements for State certification plans.
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171.311 EPA-administered applicator certification programs.

Authority: 7 U.S.C. 136i and 136w.

Subpart A—General Provisions

§ 171.1 Scope.

(a) This part establishes Federal standards for the certification and recertification of applicators of restricted use pesticides. The standards address the requirements for certification and recertification of applicators using restricted use pesticides, requirements for certified applicators supervising the use of restricted use pesticides by noncertified applicators, requirements for noncertified persons using restricted use pesticides under the direct supervision of a certified applicator, and requirements for pesticide applicator certification plans administered by States, Tribes and Federal agencies.

(b) A person is a certified applicator for purposes of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.,* only if the person holds a certification issued pursuant to a plan approved in accordance with this part and currently valid in the pertinent jurisdiction. As provided in FIFRA section 12(a)(2)(F), it is unlawful for any person to make available for use or to use any pesticide classified for restricted use other than in accordance with the requirements of this part.

§ 171.3 Definitions.

Terms used in this part have the same meanings they have in FIFRA and 40 CFR part 152. In addition, the following terms, when used in this part, shall mean:

Agricultural commodity means any plant, or part thereof, or animal, or animal product, produced by a person (including, but not limited to, farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

Application means the dispersal of a pesticide on, in, at, or around a target site.

Application method means the application of a pesticide using a particular type of equipment, mechanism, or device, including, but not limited to, ground boom, air-blast sprayer, wand, and backpack sprayer, as well as methods such as aerial, chemigation, and fumigation.

Application method-specific certification category means a defined set of competencies related to the use of a specific application method to apply restricted use pesticides.

Applicator means any individual using a restricted use pesticide. An applicator may be certified as a commercial or private applicator as defined in FIFRA or may be a noncertified applicator as defined in this part.

Calibration means measurement of dispersal or output of application equipment and adjustment of such equipment to establish a specific rate of dispersal and, if applicable, droplet or

particle size of a pesticide dispersed by the equipment.

Certification means a certifying authority's issuance, pursuant to this part, of authorization to a person to use or supervise the use of restricted use pesticides.

Certifying authority means the Agency, or a State, Tribal, or Federal agency that issues restricted use pesticide applicator certifications pursuant to a certification plan approved by the Agency under this part.

Compatibility means the extent to which a pesticide can be combined with other chemicals without causing undesirable results.

Competent means having the practical knowledge, skills, experience, and judgment necessary to perform functions associated with restricted use pesticide application without causing unreasonable adverse effects, where the nature and degree of competency required relate directly to the nature of the activity and the degree of independent responsibility.

Dealership means any establishment owned or operated by a restricted use pesticide retail dealer where restricted use pesticides are distributed or sold.

Fumigant means any pesticide product that is a vapor or gas, or forms a vapor or gas upon application, and whose pesticidal action is achieved through the gaseous or vapor state.

Fumigation means the application of a fumigant.

Host means any plant or animal on or in which another species of plant or animal lives for nourishment, development, or protection.

Indian country means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State.

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian Tribe or *Tribe* means any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community included in the list of Tribes published by the Secretary of the Interior pursuant to the Federally Recognized Indian Tribe List Act.

Mishap means an event that may adversely affect man or the environment and that is related to the use or presence of a pesticide, whether the event was unexpected or intentional.

Non-target organism means any plant, animal or other organism other than the target pests which a pesticide is intended to affect.

Noncertified applicator means any person who is not certified in accordance with this part to use or supervise the use of restricted use pesticides in the pertinent jurisdiction, but who is using restricted use pesticides under the direct supervision of a person certified as a commercial or private applicator in accordance with this part.

Ornamental means trees, shrubs, flowers, and other plantings intended primarily for aesthetic purposes in and around habitations, buildings and surrounding grounds, including, but not limited to, residences, parks, streets, and commercial, industrial, and institutional buildings.

Personal protective equipment means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respirators, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

Practical knowledge means the possession of pertinent facts and comprehension sufficient to properly perform functions associated with application of restricted use pesticides, including properly responding to reasonably foreseeable problems and situations.

Principal place of business means the principal location, either residence or office, where a person conducts a business of applying restricted use pesticides. A person who applies restricted use pesticides in more than one State or area of Indian country may designate a location within a State or area of Indian country as its principal place of business for that State or area of Indian country.

Regulated pest means a particular species of pest specifically subject to Tribal, State or Federal regulatory restrictions, regulations, or control procedures intended to protect the hosts, man and/or the environment.

Restricted use pesticide means a pesticide that is classified for restricted use under the provisions of FIFRA section 3(d).

Restricted use pesticide retail dealer means any person who distributes or sells restricted use pesticides to any person, excluding transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail sellers, acting only in those capacities.

Toxicity means the property of a pesticide that refers to the degree to which the pesticide and its related derivative compounds are able to cause an adverse physiological effect on an organism as a result of exposure.

Use, as in ''to use a pesticide'' means any of the following:

(1) Pre-application activities, including, but not limited to:

(i) Arranging for the application of the pesticide.

(ii) Mixing and loading the pesticide.

(iii) Making necessary preparations for the application of the pesticide, including, but not limited to, responsibilities related to providing training, a copy of a label and use-specific instructions to noncertified applicators, and complying with any applicable requirements under 40 CFR part 170.

(2) Applying the pesticide, including, but not limited to, supervising the use of a pesticide by a noncertified applicator.

(3) Post-application activities, including, but not limited to, transporting or storing pesticide containers that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other materials contaminated with or containing pesticides.

Use-specific instructions means the information and requirements specific to a particular pesticide product or work site that are necessary in order for an applicator to use the pesticide in accordance with applicable requirements and without causing unreasonable adverse effects.

§ 171.5 Effective date.

This part is effective *[60 days after the date of publication of the final rule in the* **Federal Register**]. Certification plans approved by EPA before the effective date remain approved except as provided in §§ 171.301(b) and 171.309.

Subpart B—Certification Requirements for Applicators of Restricted Use Pesticides

§ 171.101 Commercial applicator certification categories.

(a) *Pest control certification categories.* Certification in any of the pest control certification categories listed in this paragraph (a) alone is not sufficient to lawfully use or supervise the use of products intended to be applied using a method specified in paragraph (b) of this section.

(1) *Agricultural pest control*—(i) *Crop pest control.* This category applies to commercial applicators who use or supervise the use of restricted use pesticides in production of agricultural crops, including but not limited to grains, vegetables, small fruits, tree fruits, peanuts, tree nuts, tobacco, cotton, feed and forage crops including, but not limited to, grasslands, and non-crop agricultural lands.

(ii) *Livestock pest control.* This category applies to commercial applicators who use or supervise the use of restricted use pesticides on animals or to places on or in which animals are confined. Certification in this category alone is not sufficient to authorize the purchase, use, or supervision of use of products for predator control listed in paragraph (a)(10) of this section.

(2) *Forest pest control.* This category applies to commercial applicators who use or supervise the use of restricted use pesticides in forests, forest nurseries and forest seed production.

(3) *Ornamental and turf pest control.* This category applies to commercial applicators who use or supervise the use of restricted use pesticides to control pests in the maintenance and production of ornamental plants and turf.

(4) *Seed treatment.* This category applies to commercial applicators using or supervising the use of restricted use pesticides on seeds in seed treatment facilities.

(5) *Aquatic pest control.* This category applies to commercial applicators who use or supervise the use of any restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in as specified in paragraph (b)(8) of this section.

(6) *Right-of-way pest control.* This category applies to commercial applicators who use or supervise the use of restricted use pesticides in the maintenance of roadsides, power-line, pipeline, and railway rights-of-way, and similar areas.

(7) *Industrial, institutional, and structural pest control.* This category applies to commercial applicators who use or supervise the use of restricted use pesticides in, on, or around the following: Food handling establishments, packing houses, and food-processing facilities; human dwellings; institutions, such as schools, hospitals and prisons; and industrial establishments, including, but not limited to, manufacturing facilities, warehouses, grain elevators, and any other structures and adjacent areas, public or private, for the protection of stored, processed, or manufactured products.

(8) *Public health pest control.* This category applies to State, Tribal, Federal or other governmental employees who use or supervise the use of restricted use pesticides in public health programs for the management and control of pests having medical and public health importance. This category includes contractors as well as individuals directly employed by a State, Tribal, Federal, or other government agency for government-sponsored public health programs.

(9) *Regulatory pest control.* This category applies to State, Tribal, Federal, or other governmental employees who use or supervise the use of restricted use pesticides in the control of regulated pests but does not include individuals that use or supervise the use of sodium cyanide in mechanical ejection devices or sodium fluoroacetate in a protective collar for predator pest control. This regulatory pest control category includes contractors and other individuals directly employed by a State, Tribal, Federal, or other government agency for government-sponsored regulatory pest control programs. Certification in this category does not authorize the purchase, use, or supervision of use of products for predator control listed in paragraph (a)(10) of this section.

(10) *Predator pest control—(i) Sodium cyanide predator control.* This pest control category applies to commercial applicators who use or supervise the use of sodium cyanide in a mechanical ejection device to control regulated predators.

(ii) *Sodium fluoroacetate.* This pest control category applies to commercial applicators who use or supervise the use of sodium fluoroacetate in a protective collar to control regulated predators.

(11) *Demonstration and research.* This category applies to individuals who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration and to persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides. This includes such individuals as extension specialists and county agents, commercial representatives demonstrating restricted use pesticide products, individuals demonstrating application or pest control methods used in public or private programs, and State, Tribal, Federal, commercial, and other persons conducting field research on or involving restricted use pesticides. Certification in this category requires concurrent certification in each pest control category identified in paragraphs (a)(1) through (10) of this section for which a person does demonstration or research involving the use or supervision of the use of restricted use pesticides for the type of pest control described in those categories, and in each application method-specific category identified in paragraph (b) of this section for which a person does demonstration or research involving the use or supervision of the use of restricted use pesticides using an application method described in those categories.

(b) *Application method-specific certification categories—(1) Soil fumigation applications.* This category applies to commercial applicators who use or supervise the use of a restricted use pesticide to fumigate soil. Certification in this application method-specific category requires concurrent certification in each pest control category identified in paragraphs (a)(1) through (10) of this section for which a person intends to perform soil fumigation.

(2) *Non-soil fumigation applications.* This category applies to commercial applicators who use or supervise the use of a restricted use pesticide to fumigate anything other than soil. Certification in this application method-specific category requires concurrent certification in each pest control category identified in paragraphs (a)(1) through (10) of this section for which a person intends to perform non-soil fumigation.

(3) *Aerial applications.* This category applies to commercial applicators who use or supervise the use of restricted use pesticides applied by fixed or rotary wing aircraft. Certification in this application method-specific category requires concurrent certification in each pest control category identified in paragraphs (a)(1) through (10) of this section for which a person intends to perform aerial application.

§ 171.103 Standards for certification of commercial applicators.

(a) *Determination of competency.* To be determined competent in the use and handling of restricted use pesticides by a State, Tribe, or Federal agency, a commercial applicator must meet the minimum age requirement specified in paragraph (a)(1) of this section and receive a passing score on a written examination that meets the standards specified in paragraph (a)(2) of this section and any related performance testing that is required by the State, Tribe, or Federal agency. Examinations and any alternate methods employed by

the certifying authority to determine applicator competency must include the core standards applicable to all categories (paragraph (c) of this section), the standards applicable to each pest control category in which an applicator seeks certification (paragraph (d) of this section), and the standards for each application method-specific category in which an applicator seeks certification (paragraph (e) of this section), as provided in this section. Certification processes must meet all of the following criteria:

(1) *Commercial applicator minimum age.* A commercial applicator must be at least 18 years old.

(2) *Examination standards.* Examinations must conform to all of the following standards:

(i) The examination must be presented and answered in writing.

(ii) The examination must be proctored by an individual designated by the certifying authority and who is not seeking certification at any examination session that he or she is proctoring. The proctor must do all of the following:

(A) Verify the identity and age of persons taking the examination by checking identification and having examinees sign an examination roster.

(B) Monitor examinees throughout the examination period.

(C) Instruct examinees in examination procedures before beginning the examination.

(D) Keep examinations secure before, during, and after the examination period.

(E) Allow only the examinees to access the examination, and allow such access only in the presence of the proctor.

(F) Ensure that examinees have no verbal or non-verbal communication with anyone other than the proctor during the examination period.

(G) Ensure that no portion of the examination or any associated reference materials described in paragraph (a)(2)(ii)(H) of this section is copied or retained by any person other than a person authorized by the certifying authority to copy or retain the examination.

(H) Ensure that examinees do not have access to reference materials other than those that are approved by the certifying authority and provided and collected by the proctor.

(I) Review reference materials provided to examinees after the exam is complete to ensure that no portion of the reference material has been removed or destroyed.

(J) Report to the certifying authority any examination administration inconsistencies or irregularities, including but not limited to cheating, use of unauthorized materials, and attempts to copy or retain the examination.

(K) Comply with any other requirements of the certifying authority related to examination administration.

(iii) The examination must be closed-book. No reference materials may be used during the examination, except those that are approved by the certifying authority and provided by the proctor.

(iv) Each person seeking certification must present at the time of examination valid, government-issued photo identification to the certifying authority as proof of identity and age to be eligible for certification.

(v) The certifying authority must notify each examinee of the results of his or her examination.

(b) *Additional methods of determining competency.* In addition to written examination requirements for determining competency, a certifying authority may employ additional methods for determining applicator competency, such as performance testing. Such additional methods must be part of the certifying authority's Agency-approved certification plan and must comply with the applicable standards in paragraph (a) of this section.

(c) *Core standards for all categories of certified commercial applicators.* Persons seeking certification as commercial applicators must demonstrate practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticides by passing a written examination. Written examinations for all commercial applicators must address all of the following areas of competency:

(1) *Label and labeling comprehension.* Familiarity with pesticide labels and labeling and their functions, including all of the following:

(i) The general format and terminology of pesticide labels and labeling.

(ii) Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling.

(iii) Understanding that it is a violation of Federal law to use any registered pesticide in a manner inconsistent with its labeling.

(iv) Understanding when a certified applicator must be physically present at the site of the application based on labeling requirements.

(v) Understanding labeling requirements for supervising noncertified applicators working under the direct supervision of a certified applicator.

(vi) Understanding that applicators must comply with all use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the certification category and application method-specific category appropriate to the type and site of the application.

(vii) Understanding the meaning of product classification as either general or restricted use and that a product may be unclassified.

(viii) Understanding and complying with product-specific notification requirements.

(2) *Safety.* Measures to avoid or minimize adverse health effects, including all of the following:

(i) Understanding the terms ''acute toxicity'' and ''chronic toxicity,'' as well as the long-term effects of pesticides.

(ii) Understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity.

(iii) Recognition of likely ways in which dermal, inhalation and oral exposure may occur.

(iv) Common types and causes of pesticide mishaps.

(v) Precautions to prevent injury to applicators and other individuals in or near treated areas.

(vi) Need for, and proper use of, protective clothing and personal protective equipment.

(vii) Symptoms of pesticide poisoning.

(viii) First aid and other procedures to be followed in case of a pesticide mishap.

(ix) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

(3) *Environment.* The potential environmental consequences of the use and misuse of pesticides, including the influence of all of the following:

(i) Weather and other indoor and outdoor climatic conditions.

(ii) Types of terrain, soil, or other substrate.

(iii) Presence of fish, wildlife, and other non-target organisms.

(iv) Presence of pollinators.

(v) Drainage patterns.

(4) *Pests.* The proper identification and effective control of pests, including all of the following:

(i) Common features of pest organisms and characteristics of damage needed for pest recognition.

(ii) Recognition of relevant pests.

(iii) Pest development, biology, and behavior as it may be relevant to problem identification and control.

(5) *Pesticides.* Characteristics of pesticides, including all of the following:

(i) Types of pesticides.

(ii) Types of formulations.

(iii) Compatibility, synergism, persistence, and animal and plant toxicity of the formulations.

(iv) Hazards and residues associated with use.

(v) Factors that influence effectiveness or lead to problems such as pesticide resistance.

(vi) Dilution procedures.

(6) *Equipment.* Application equipment, including all of the following:

(i) Types of equipment and advantages and limitations of each type.

(ii) Use, maintenance, and calibration procedures.

(7) *Application methods.* Selecting appropriate application methods, including all of the following:

(i) Methods used to apply various formulations of pesticides, solutions, and gases.

(ii) Knowledge of which application method to use in a given situation and when certification in an application method-specific category is required in accordance with paragraph (c) of this section.

(iii) Relationship of application and placement of pesticides to proper use, unnecessary or ineffective use, and misuse.

(iv) Prevention of drift and pesticide loss into the environment.

(8) *Laws and regulations.* Knowledge of all applicable State, Tribal, and Federal laws and regulations.

(9) *Responsibilities of supervisors of noncertified applicators.* Knowledge of the responsibilities of certified applicators supervising noncertified applicators, including all of the following:

(i) Understanding and complying with requirements in § 171.201 for certified commercial applicators who supervise noncertified applicators using restricted use pesticides.

(ii) Requirements to keep records of pesticide safety training for noncertified applicators using restricted use pesticides under the direct supervision of a certified applicator.

(iii) Providing use-specific instructions to noncertified applicators using restricted use pesticides under the direct supervision of a certified applicator.

(iv) Explaining appropriate State, Tribal, and Federal laws and regulations to noncertified applicators working under the direct supervision of a certified applicator.

(10) *Professionalism.* Understanding the importance of all of the following:

(i) Maintaining chemical security for restricted use pesticides.

(ii) How to communicate information about pesticide exposures and risks with the public and their clientele.

(iii) Appropriate product stewardship for certified applicators.

(d) *Specific standards of competency for each pest control category of commercial applicators.* Commercial applicators must demonstrate practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticides for each pest control category for which they intend to apply restricted use pesticides through written examinations. The minimum competency standards for each category of pest control are listed in paragraphs (d)(1) through (10) of this section. Examinations for each pest control category certification listed in § 171.101(a) must be based on the standards of competency specified in paragraphs (d)(1) through (11) of this section and examples of problems and situations appropriate to the particular category in which the applicator is seeking certification.

(1) *Agricultural pest control*—(i) *Plant.* Applicators must demonstrate practical knowledge of crops, grasslands, and non-crop agricultural lands and the specific pests of those areas on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. The required knowledge includes pre-harvest intervals, restricted entry intervals, phytotoxicity, potential for environmental contamination such as soil and water problems, non-target injury, and other problems resulting from the use of restricted use pesticides in agricultural areas. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures.

(ii) *Animal.* Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. The required knowledge includes specific pesticide toxicity and residue potential, and the hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment.

(2) *Forest pest control.* Applicators must demonstrate practical knowledge of types of forests, forest nurseries, and seed production within the jurisdiction of the certifying authority and the pests involved. The required knowledge includes the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications, the relevant organisms causing harm and their vulnerability to the pesticides to be applied, how to determine when pesticide use is proper, selection of application method and proper use of application equipment to minimize non-target exposures, and appropriate responses to meteorological factors and adjacent land use. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures.

(3) *Ornamental and turf pest control.* Applicators must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental plants and turf. The required knowledge includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

(4) *Seed-treatment.* Applicators must demonstrate practical knowledge including recognizing types of seeds to be treated, the effects of carriers and surface active agents on pesticide binding and germination, the hazards associated with handling, sorting and mixing, and misuse of treated seed, the importance of proper application techniques to avoid harm to non-target organisms such as pollinators, and the proper disposal of unused treated seeds.

(5) *Aquatic pest control.* Applicators must demonstrate practical knowledge of the characteristics of various water use situations, the potential for adverse effects on non-target plants, fish, birds, beneficial insects and other organisms in the immediate aquatic environment and downstream, and the principles of limited area application.

(6) *Right-of-way pest control.* Applicators must demonstrate practical knowledge of the types of environments (terrestrial and aquatic) traversed by

rights-of-way, techniques to minimize non-target exposure runoff, drift, and excessive foliage destruction, and recognition of target pests. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants and pests to be controlled, for drift, for persistence beyond the intended period of pest control, and for non-target exposures.

(7) *Industrial, institutional, and structural pest control.* Applicators must demonstrate a practical knowledge of industrial, institutional and structural pests, including recognizing those pests and signs of their presence, their habitats, their life cycles, biology, and behavior as it may be relevant to problem identification and control. Applicators must demonstrate practical knowledge of types of formulations appropriate for control of industrial, institutional and structural pests, and methods of application that avoid contamination of food, minimize damage to and contamination of areas treated, minimize acute and chronic exposure of people and pets, and minimize environmental impacts of outdoor applications.

(8) *Public health pest control.* Applicators must demonstrate practical knowledge of pests that are important vectors of disease, including recognizing the pests and signs of their presence, their habitats, their life cycles, biology and behavior as it may be relevant to problem identification and control. The required knowledge also includes how to minimize damage to and contamination of areas treated, acute and chronic exposure of people and pets, and non-target exposures.

(9) *Regulatory pest control.* Applicators must demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They must demonstrate knowledge of factors influencing introduction, spread, and population dynamics of regulated pests.

(10) *Predator pest control.* Applicators must demonstrate practical knowledge of mammalian predator pests, including recognizing those pests and signs of their presence, their habitats, their life cycles, biology, and behavior as it may be relevant to problem identification and control.

(i) *Sodium cyanide.* Applicators must demonstrate comprehension of all relevant laws and regulations applicable to the use of mechanical ejection devices for sodium cyanide, including the restrictions on the use of sodium cyanide products ordered by the EPA Administrator and published in the **Federal Register** (40 FR 44726, September 29, 1975) (FRL 436–3). Applicators must also demonstrate practical knowledge and understanding of all of the specific use restrictions for sodium cyanide devices, including safe handling and proper placement of the capsules and device, proper use of the antidote kit, notification to medical personnel before use of the device, conditions of and restrictions on when and where devices can be used, requirements to consult U.S. Fish and Wildlife Service maps before use to avoid affecting endangered species, maximum density of devices, provisions for supervising and monitoring applicators, required information exchange in locations where more than one agency is authorized to place devices, and specific requirements for recordkeeping, monitoring, field posting, proper storage, and disposal of damaged or used sodium cyanide capsules.

(ii) *Sodium fluoroacetate.* Applicators must demonstrate comprehension of all relevant laws and regulations applicable to the use of sodium fluoroacetate products, including the restrictions on the use of sodium fluoroacetate products ordered by the EPA Administrator and published in the **Federal Register** (49 FR 4830, February 8, 1984) (FRL 2520–6). Applicators must also demonstrate practical knowledge and understanding of the specific use restrictions for sodium fluoroacetate in the livestock protection collar, including where and when sodium fluoroacetate products can be used, safe handling and placement of collars, and practical treatment of sodium fluoroacetate poisoning in humans and domestic animals. Applicators must also demonstrate practical knowledge and understanding of specific requirements for field posting, monitoring, recordkeeping, proper storage of collars, disposal of punctured or leaking collars, disposal of contaminated animal remains, vegetation, soil, and clothing, and reporting of suspected and actual poisoning, mishap, or injury to threatened or endangered species, human, domestic animals, or non-target wild animals.

(11) *Demonstration pest control.* Applicators demonstrating the safe and effective use of restricted use pesticides to other applicators and the public must demonstrate practical knowledge of the potential problems, pests, and population levels reasonably expected to occur in a demonstration situation and the effects of restricted use pesticides on target and non-target organisms. In addition, they must demonstrate competency in each pest control category applicable to their demonstrations.

(e) *Specific standards of competency for each application method-specific certification category of commercial applicators.* In order to apply a restricted use pesticide using any of the application methods identified in this paragraph, a commercial applicator must first obtain the appropriate application method-specific certification as provided in this paragraph. This requirement is in addition to the requirements of paragraphs (c), (d), and (e) of this section. The competency standards for each application method-specific certification category are specified in paragraphs (e)(1) through (3) of this section.

(1) *Soil fumigation application.* Commercial applicators performing soil fumigation applications of restricted use pesticides must demonstrate practical knowledge of the pest problems and pest control practices associated with performing soil fumigation applications, including all the following:

(i) *Label and labeling comprehension.* Familiarity with the pesticide labels and labeling for products used to perform soil fumigation, including all of the following:

(A) Labeling requirements specific to soil fumigants.

(B) Fumigant applicators, fumigant applicator tasks, and the safety information that certified applicators must provide to noncertified applicators using fumigants under their direct supervision.

(C) Entry-restricted periods for different tarped and untarped field application scenarios.

(D) Recordkeeping requirements.

(E) Special label provisions of fumigant products containing certain active ingredients.

(ii) *Safety.* Measures to minimize adverse health effects, including all of the following:

(A) Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, field workers, and bystanders can become exposed to fumigants.

(B) Common problems and mistakes that can result in direct exposure to fumigants.

(C) Signs and symptoms of human exposure to fumigants.

(D) Air concentrations of a fumigant require that applicators wear respirators or exit the work area entirely.

(E) Steps to take if a fumigant applicator experiences sensory irritation.

(F) Understanding air monitoring, when it is required, and where to take samples.

(G) Buffer zones, including procedures for buffer zone monitoring.

(H) First aid measures to take in the event of exposure to a soil fumigant.

(I) Labeling requirements for transportation, storage, spill clean-up, and emergency response for soil fumigants, including safe disposal of containers and contaminated soil, and management of empty containers.

(iii) *Soil fumigant chemical characteristics.* Characteristics of soil fumigants, including all of the following:

(A) Chemical characteristics of soil fumigants.

(B) Specific human exposure concerns for soil fumigants.

(C) How soil fumigants change from a liquid or solid to a gas.

(D) How soil fumigants disperse in the application zone.

(E) Incompatibility concerns for tanks, hoses, tubing, and other equipment.

(iv) *Application.* Selecting appropriate application methods and timing, including all of the following:

(A) Application methods and equipment commonly used for each soil fumigant.

(B) Water-run and non-water-run application methods.

(C) Site characteristics that can be used to prevent fumigant exposure.

(D) Understanding temperature inversions and their impact on soil fumigation application.

(E) Weather conditions that could impact timing of soil fumigation application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications during specific weather conditions.

(F) Conducting pre-application inspection of application equipment.

(G) Understanding the purpose and methods of soil sealing, including the factors that determine which soil sealing method to use.

(H) Understanding the use of tarps, including the range of tarps available, how to seal tarps, and labeling requirements for tarp removal and perforation.

(I) Calculating the amount of product required for a specific treatment area.

(J) Understanding the basic techniques for calibrating soil fumigation application equipment.

(v) *Soil and pest factors.* Soil and pest factors that influence fumigant activity, including all of the following:

(A) Influence of soil factors on fumigant volatility and movement within the soil profile.

(B) Factors that influence gaseous movement through the soil profile and into the air.

(C) Soil characteristics, including how soil characteristics affect the success of a soil fumigation application, assessing soil moisture, and correcting for soil characteristics that could hinder a successful soil fumigation application.

(D) Identifying pests causing the damage to be treated by the soil fumigation.

(E) Understanding the relationship between pest density and application rate.

(F) The importance of proper application depth and timing.

(vi) *Personal protective equipment.* Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:

(A) Following labeling directions for required personal protective equipment.

(B) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.

(C) Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and cannisters.

(D) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.

(vii) *Fumigant management plans and post-application summaries.* Information about fumigant management plans, including all of the following:

(A) When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it.

(B) The elements of a fumigation management plan and resources available to assist the applicator in preparing a fumigation management plan.

(C) The party responsible for verifying that a fumigant management plan is accurate.

(D) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

(viii) *Buffer zones and posting requirements.* Understanding buffer zones and posting requirements, including all of the following:

(A) Buffer zones and the buffer zone period.

(B) Identifying who is allowed in a buffer zone during the buffer zone period and who is prohibited from being in a buffer zone during the buffer zone period.

(C) Using the buffer zone table from the labeling to determine the size of the buffer zone.

(D) Factors that determine the buffer zone credits for application scenarios and calculating buffer zones using credits.

(E) Distinguishing buffer zone posting and treated area posting, including the pre-application and post-application posting timeframes for each.

(F) Proper choice and placement of warning signs.

(2) *Non-soil fumigation applications.* Commercial applicators performing fumigation applications of restricted use pesticides to sites other than soil must demonstrate practical knowledge of the pest problems and pest control practices associated with performing fumigation applications to sites other than soil, including all the following:

(i) *Label & labeling comprehension.* Familiarity with the pesticide labels and labeling for products used to perform non-soil fumigation, including all of the following:

(A) Labeling requirements specific to non-soil fumigants.

(ii) *Safety.* Measures to minimize adverse health effects, including all of the following:

(A) Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, and bystanders can become exposed to fumigants.

(B) Common problems and mistakes that can result in direct exposure to fumigants.

(C) Signs and symptoms of human exposure to fumigants.

(D) Air concentrations of a fumigant that require applicators to wear respirators or to exit the work area entirely.

(E) Steps to take if a fumigant applicator experiences sensory irritation.

(F) Understanding air monitoring, when it is required, and where to take samples.

(G) First aid measures to take in the event of exposure to a fumigant.

(H) Labeling requirements for transportation, storage, spill clean-up, and emergency response for non-soil fumigants, including safe disposal of containers and contaminated materials, and management of empty containers.

(iii) *Non-soil fumigant chemical characteristics.* Characteristics of non-soil fumigants, including all of the following:

(A) Chemical characteristics of non-soil fumigants.

(B) Specific human exposure concerns for non-soil fumigants.

(C) How fumigants change from a liquid or solid to a gas.

(D) How fumigants disperse in the application zone.

(E) Incompatibility concerns for tanks, hoses, tubing, and other equipment.

(iv) *Application.* Selecting appropriate application methods and timing, including all of the following:

(A) Application methods and equipment commonly used for non-soil fumigation.

(B) Site characteristics that can be used to prevent fumigant exposure.

(C) Conditions that could impact timing of non-soil fumigation application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications when specific conditions are present.

(D) Conducting pre-application inspection of application equipment and the site to be fumigated.

(E) Understanding the purpose and methods of sealing the area to be fumigated, including the factors that determine which sealing method to use.

(F) Calculating the amount of product required for a specific treatment area.

(G) Understanding the basic techniques for calibrating non-soil fumigation application equipment.

(H) Understanding when and how to conduct air monitoring and when it is required.

(v) *Pest factors.* Pest factors that influence fumigant activity, including all of the following:

(A) Influence of pest factors on fumigant volatility.

(B) Factors that influence gaseous movement through the area being fumigated and into the air.

(C) Identifying pests causing the damage to be treated by the fumigation.

(D) Understanding the relationship between pest density and application rate.

(E) The importance of proper application rate and timing.

(vi) *Personal protective equipment.* Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:

(A) Following labeling directions for required personal protective equipment.

(B) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.

(C) Understanding the types of respirators required when using specific non-soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters.

(D) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.

(vii) *Fumigant management plans and post-application summaries.* Information about fumigant management plans and when they are required, including all of the following:

(A) When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it.

(B) The elements of a fumigation management plan and resources available to assist the applicator in preparing a fumigation management plan.

(C) The party responsible for verifying that a fumigant management plan is accurate.

(D) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

(viii) *Posting requirements.* Understanding posting requirements, including all of the following:

(A) Identifying who is allowed in an area being fumigated or after fumigation and who is prohibited from being in such areas.

(B) Distinguishing fumigant labeling-required posting and treated area posting, including the pre-application and post-application posting timeframes for each.

(C) Proper choice and placement of warning signs.

(3) *Aerial applications.* Commercial applicators performing aerial application of restricted use pesticides must demonstrate practical knowledge of the pest problems and pest control practices associated with performing aerial application, including all the following:

(i) *Labeling.* Labeling requirements and restrictions specific to aerial application of pesticides including:

(A) Spray volumes.

(B) Buffers and no-spray zones.

(C) Weather conditions specific to wind and inversions.

(ii) *Application equipment.* Understand how to choose and maintain aerial application equipment, including all of the following:

(A) The importance of inspecting application equipment to ensure it is proper operating condition prior to beginning an application.

(B) Selecting proper nozzles to ensure appropriate pesticide dispersal and to minimize drift.

(C) Knowledge of the components of an aerial application pesticide application system, including pesticide hoppers, tanks, pumps, and types of nozzles.

(D) Interpreting a nozzle flow rate chart.

(E) Determining the number of nozzles for intended pesticide output using nozzle flow rate chart, aircraft speed, and swath width.

(F) How to ensure nozzles are placed to compensate for uneven dispersal due to uneven airflow from wingtip vortices, helicopter rotor turbulence, and aircraft propeller turbulence.

(G) Where to place nozzles to produce the appropriate droplet size.

(H) How to maintain the application system in good repair, including pressure gauge accuracy, filter cleaning according to schedule, checking nozzles for excessive wear.

(I) How to calculate required and actual flow rates.

(J) How to verify flow rate using fixed timing, open timing, known distance, or a flow meter.

(K) When to adjust and calibrate application equipment.

(iii) *Application considerations.* The applicator must demonstrate knowledge of factors to consider before and during application, including all of the following:

(A) Weather conditions that could impact application by affecting aircraft engine power, take-off distance, and climb rate, or by promoting spray droplet evaporation.

(B) How to determine wind velocity, direction, and air density at the application site.

(C) The potential impact of thermals and temperature inversions on aerial pesticide application.

(vi) *Minimizing drift.* The applicator must demonstrate knowledge of methods to minimize off-target pesticide movement, including all of the following:

(A) How to determine drift potential of a product using a smoke generator.

(B) How to evaluate vertical and horizontal smoke plumes to assess wind direction, speed, and concentration.

(C) Selecting techniques that minimize pesticide movement out of the area to be treated.

(D) Documenting special equipment configurations or flight patterns used to reduce off-target pesticide drift.

(v) *Performing aerial application.* The applicator must demonstrate competency in performing an aerial pesticide application, including all of the following:

(A) Selecting a flight altitude that minimizes streaking and off-target pesticide drift.

(B) Choosing a flight pattern that ensures applicator and bystander safety and proper application.

(C) The importance of engaging and disengaging spray precisely when

entering and exiting a predetermined swath pattern.

(D) Tools available to mark swaths, such as global positioning systems and flags.

(E) Recordkeeping requirements for aerial pesticide applications including application conditions if applicable.

(f) *Exceptions.* The requirements in § 171.103(a) through (f) of this chapter do not apply to the following persons:

(1) Persons conducting laboratory research involving restricted use pesticides.

(2) Doctors of Medicine and Doctors of Veterinary Medicine applying restricted use pesticides to patients during the course of the ordinary practice of those professions.

§ 171.105 Standards for certification of private applicators.

(a) *General private applicator certification.* Before using or supervising the use of a restricted use pesticide, a private applicator must be certified by an appropriate certifying authority as being competent to use restricted use pesticides for pest control in the production of agricultural commodities, which includes the ability to read and understand pesticide labeling. Certification in this general private applicator certification category alone is not sufficient to authorize the purchase, use, or supervision of use of the restricted use pesticide products for predator pest control listed in paragraph (b) of this section, or the use or supervision of use of the restricted use pesticides using application methods specified in paragraph (c) of this section. Persons seeking certification as private applicators must demonstrate practical knowledge of the principles and practices of pest control associated with the production of agricultural commodities and effective use of restricted use pesticides, including all of the following:

(1) *Label and labeling comprehension.* Familiarity with pesticide labels and labeling and their functions, including all of the following:

(i) The general format and terminology of pesticide labels and labeling.

(ii) Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling.

(iii) Understanding that it is a violation of Federal law to use any registered pesticide in a manner inconsistent with its labeling.

(iv) Understanding when a certified applicator must be physically present at the site of the application based on labeling requirements.

(v) Understanding labeling requirements for supervising noncertified applicators working under the direct supervision of a certified applicator.

(vi) Understanding that applicators must comply with all use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the application method-specific category appropriate to the type and site of the application and in the predator pest control category for private applicators if applicable.

(vii) Understanding the meaning of product classification as either general or restricted use, and that a product may be unclassified.

(viii) Understanding and complying with product-specific notification requirements.

(2) *Safety.* Measures to avoid or minimize adverse health effects, including all of the following:

(i) Understanding the terms ''acute toxicity'' and ''chronic toxicity,'' as well as the long-term effects of pesticides.

(ii) Understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity.

(iii) Recognition of likely ways in which dermal, inhalation and oral exposure may occur.

(iv) Common types and causes of pesticide mishaps.

(v) Precautions to prevent injury to applicators and other individuals in or near treated areas.

(vi) Need for, and proper use of, protective clothing and personal protective equipment.

(vii) Symptoms of pesticide poisoning.

(viii) First aid and other procedures to be followed in case of a pesticide mishap.

(ix) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

(3) *Environment.* The potential environmental consequences of the use and misuse of pesticides, including the influence of the following:

(i) Weather and other climatic conditions.

(ii) Types of terrain, soil, or other substrate.

(iii) Presence of fish, wildlife, and other non-target organisms.

(iv) Presence of pollinators.

(v) Drainage patterns.

(4) *Pests.* The proper identification and effective control of pests, including all of the following:

(i) Common features of pest organisms and characteristics of damage needed for pest recognition.

(ii) Recognition of relevant pests.

(iii) Pest development, biology, and behavior as it may be relevant to problem identification and control.

(5) *Pesticides.* Characteristics of pesticides, including all of the following:

(i) Types of pesticides.

(ii) Types of formulations.

(iii) Compatibility, synergism, persistence, and animal and plant toxicity of the formulations.

(iv) Hazards and residues associated with use.

(v) Factors that influence effectiveness or lead to problems such as pesticide resistance.

(vi) Dilution procedures.

(6) *Equipment.* Application equipment, including all of the following:

(i) Types of equipment and advantages and limitations of each type.

(ii) Uses, maintenance, and calibration procedures.

(7) *Application methods.* Selecting appropriate application methods, including all of the following:

(i) Methods used to apply various formulations of pesticides, solutions, and gases.

(ii) Knowledge of which application method to use in a given situation and when certification in an application method-specific category is required in accordance with paragraph (c) of this section.

(iii) Relationship of application and placement of pesticides to proper use, unnecessary or ineffective use, and misuse.

(iv) Prevention of drift and pesticide loss into the environment.

(8) *Laws and regulations.* Knowledge of all applicable State, Tribal, and Federal laws and regulations, including understanding and complying with the Worker Protection Standard in 40 CFR part 170.

(9) *Responsibilities for supervisors of noncertified applicators.* Certified applicator responsibilities related to supervision of noncertified applicators, including all of the following:

(i) Understanding and complying with requirements in § 171.201 of this chapter for certified private applicators who supervise noncertified applicators using restricted use pesticides.

(ii) Providing use-specific instructions to noncertified applicators using restricted use pesticides under the direct supervision of a certified applicator.

(iii) Explaining appropriate State, Tribal, and Federal laws and regulations

to noncertified applicators working under the direct supervision of a certified applicator.

(10) *Stewardship.* Understanding the importance of all of the following:

(i) Maintaining chemical security for restricted-use pesticides.

(ii) How to communicate information about pesticide exposures and risks with agricultural workers and handlers and other relevant persons.

(11) *Agricultural pest control.* Practical knowledge of pest control applications to agricultural commodities including all of the following:

(i) Specific pests of agricultural commodities.

(ii) How to avoid contamination of ground and surface waters.

(iii) Understanding pre-harvest and restricted-entry intervals and entry-restricted periods and areas.

(iv) Understanding specific pesticide toxicity and residue potential when pesticides are applied to animal or animal product agricultural commodities.

(v) Relative hazards associated with using pesticides on animals or animal products based on formulation, application technique, age of animal, stress, and extent of treatment.

(b) *Predator pest control category for private applicators.* This category applies to private applicators that use or supervise the use of sodium cyanide in a mechanical ejection device to control regulated predators and private applicators that use or supervise the use of sodium fluoroacetate in a protective collar to control regulated predators. All private applicators that use or supervise the use of these restricted use pesticides for predator pest control must be specifically certified as competent by a certifying authority in accordance with the following competency standards:

(1) *Sodium cyanide.* Applicators must demonstrate comprehension of all relevant laws and regulations applicable to the use of mechanical ejection devices for sodium cyanide, including the restrictions on the use of sodium cyanide products ordered by the EPA Administrator and published in the **Federal Register** (40 FR 44726, September 29, 1975) (FRL 436–3). Applicators must also demonstrate practical knowledge and understanding of all of the specific use restrictions for sodium cyanide devices, including safe handling and proper placement of the capsules and device, proper use of the antidote kit, notification to medical personnel before use of the device, conditions of and restrictions on where devices can be used, requirements to consult FWS maps before use to avoid affecting endangered species, maximum density of devices, provisions for supervising and monitoring applicators, required information exchange in locations where more than one agency is authorized to place devices, and specific requirements for recordkeeping, monitoring, field posting, proper storage, and disposal of damaged or used sodium cyanide capsules.

(2) *Sodium fluoroacetate.* Applicators must demonstrate comprehension of all relevant laws and regulations applicable to the use of sodium fluoroacetate products, including the restrictions on the use of sodium fluoroacetate products ordered by the EPA Administrator and published in the **Federal Register** (49 FR 4830, February 8, 1984) (FRL 2520–6). Applicators must also demonstrate practical knowledge and understanding of the specific use restrictions for sodium fluoroacetate in the livestock protection collar, including where and when sodium fluoroacetate products can be used, safe handling and placement of collars, and practical treatment of sodium fluoroacetate poisoning in humans and domestic animals. Applicators must also demonstrate practical knowledge and understanding of specific requirements for field posting, monitoring, recordkeeping, proper storage of collars, disposal of punctured or leaking collars, disposal of contaminated animal remains, vegetation, soil, and clothing, and reporting of suspected and actual poisoning, mishap, or injury to threatened or endangered species, human, domestic animals, or non-target wild animals.

(c) *Application method-specific certification categories for private applicators.* In order to apply or supervise the use of restricted use pesticides using an application method described in this paragraph (c), private applicators must demonstrate practical knowledge related to the appropriate application method as provided in this paragraph (c). This requirement is in addition to certification in the general private applicator certification category specified in paragraph (a) of this section.

(1) *Soil fumigation application.* Private applicators that use or supervise the use of a restricted use pesticide to fumigate soil must demonstrate practical knowledge of the pest problems and pest control practices associated with performing soil fumigation applications, including all the following:

(i) *Label and labeling comprehension.* Familiarity with the pesticide labels and labeling for products used to perform soil fumigation, including all of the following:

(A) Labeling requirements specific to soil fumigants.

(B) Fumigant applicators, fumigant applicator tasks, and the safety information that certified applicators must provide to noncertified applicators using fumigants under the direct supervision of certified applicators.

(C) Entry-restricted period for different tarped and untarped field application scenarios.

(D) Recordkeeping requirements imposed by product labels and labeling.

(E) Special label provisions of products containing certain active ingredients.

(F) Labeling requirements for fumigant management plans, such as when a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it; the elements of a fumigation management plan and resources available to assist the applicator in preparing a fumigation management plan; the party responsible for verifying that a fumigant management plan is accurate; and the elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

(ii) *Safety.* Measures to minimize adverse health effects, including all of the following:

(A) Understanding how certified applicators, noncertified applicators using fumigants under the direct supervision of certified applicators, field workers, and bystanders can become exposed to fumigants.

(B) Common problems and mistakes that can result in direct exposure to fumigants.

(C) Signs and symptoms of human exposure to fumigants.

(D) Air concentrations of a fumigant that require applicators to wear respirators or to exit the work area entirely.

(E) Steps to take if a fumigant applicator experiences sensory irritation.

(F) Understanding air monitoring, when it is required, and where to take samples.

(G) Buffer zones, including procedures for buffer zone monitoring.

(H) First aid measures to take in the event of exposure to a soil fumigant.

(I) Labeling requirements for transportation, storage, spill clean up, and emergency response for soil fumigants, including safe disposal of containers and contaminated soil, and management of empty containers.

(iii) *Soil fumigant chemical characteristics.* Characteristics of soil fumigants, including all of the following:

(A) Chemical characteristics of soil fumigants.

(B) Specific human exposure concerns for soil fumigants.

(C) How soil fumigants change from a liquid or solid to a gas.

(D) How soil fumigants disperse in the application zone.

(E) Incompatibility concerns for tanks, hoses, tubing, and other equipment.

(iv) *Application.* Selecting appropriate application methods and timing, including all of the following:

(A) Application methods and equipment commonly used for each soil fumigant.

(B) Water-run and non-water-run application methods.

(C) Site characteristics that can be used to prevent fumigant exposure.

(D) Understanding temperature inversions and their impact on soil fumigation application.

(E) Weather conditions that could impact timing of soil fumigation application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications during specific weather conditions.

(F) Conducting pre-application inspection of application equipment.

(G) Understanding the purpose and methods of soil sealing, including the factors that determine which soil sealing method to use.

(H) Understanding the use of tarps, including the range of tarps available, how to seal tarps, and labeling requirements for tarp removal and perforation.

(I) Calculating the amount of product required for a specific treatment area.

(J) Understanding the basic techniques for calibrating soil fumigation application equipment.

(v) *Soil and pest factors.* Soil and pest factors that influence fumigant activity, including all of the following:

(A) Influence of soil factors on fumigant volatility and movement within the soil profile.

(B) Factors that influence gaseous movement through the soil profile and into the air.

(C) Soil characteristics, including how soil characteristics affect the success of a soil fumigation application, assessing soil moisture, and correcting for soil characteristics that could hinder a successful soil fumigation application.

(D) Identifying pests causing the damage to be treated by the soil fumigation.

(E) Understanding the relationship between pest density and application rate.

(F) The importance of proper application depth and timing.

(vi) *Personal protective equipment.* Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:

(A) Following labeling directions for required personal protective equipment.

(B) Selecting, inspecting, using, caring for, replacing, and disposing personal protective equipment.

(C) Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and cannisters.

(D) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.

(vii) *Buffer zones and posting requirements.* Understanding buffer zones and posting requirements, including all of the following:

(A) Buffer zones and the buffer zone period.

(B) Identifying who may be in a buffer zone during the buffer zone period and who is prohibited from being in a buffer zone during the buffer zone period.

(C) Using the buffer zone table from the labeling to determine the size of the buffer zone.

(D) Factors that determine the buffer zone credits for application scenarios and calculating buffer zones using credits.

(E) Distinguishing buffer zone posting and treated area posting, including the pre-application and post-application posting timeframes for each.

(F) Proper choice and placement of warning signs.

(2) *Non-soil fumigation applications.* Private applicators that use or supervise the use of a restricted use pesticide to fumigate anything other than soil must demonstrate practical knowledge of the pest problems and pest control practices associated with performing fumigation applications to sites other than soil, including all the following:

(i) *Label and labeling comprehension.* Familiarity with the pesticide labels and labeling for products used to perform non-soil fumigation, including all of the following:

(A) Labeling requirements specific to non-soil fumigants.

(B) Labeling requirements for fumigant management plans such as when a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it; the elements of a fumigation management plan and resources available to assist the applicator in preparing a fumigation management plan; the party responsible for verifying that a fumigant management plan is accurate; and the elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

(ii) *Safety.* Measures to minimize adverse health effects, including all of the following:

(A) Understanding how certified applicators, handlers, and bystanders can become exposed to fumigants.

(B) Common problems and mistakes that can result in direct exposure to fumigants.

(C) Signs and symptoms of human exposure to fumigants.

(D) When air concentrations of a fumigant triggers handlers to wear respirators or to exit the work area entirely.

(E) Steps to take if a person using a fumigant experiences sensory irritation.

(F) Understanding air monitoring, when it is required, and where to take samples.

(G) First aid measures to take in the event of exposure to a fumigant.

(H) Labeling requirements for transportation, storage, spill clean-up, and emergency response for non-soil fumigants, including safe disposal of containers and contaminated materials, and management of empty containers.

(iii) *Non-soil fumigant chemical characteristics.* Characteristics of non-soil fumigants, including all of the following:

(A) Chemical characteristics of non-soil fumigants.

(B) Specific human exposure concerns for non-soil fumigants.

(C) How fumigants change from a liquid or solid to a gas.

(D) How fumigants disperse in the application zone.

(E) Incompatibility concerns for tanks, hoses, tubing, and other equipment.

(iv) *Application.* Selecting appropriate application methods and timing, including all of the following:

(A) Application methods and equipment commonly used for non-soil fumigation.

(B) Site characteristics that can be used to prevent fumigant exposure.

(C) Conditions that could impact timing of non-soil fumigation application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications when specific conditions are present.

(D) Conducting pre-application inspection of application equipment and the site to be fumigated.

(E) Understanding the purpose and methods of sealing the area to be fumigated, including the factors that determine which sealing method to use.

(F) Calculating the amount of product required for a specific treatment area.

(G) Understanding the basic techniques for calibrating non-soil fumigation application equipment.

(H) Understanding when and how to conduct air monitoring and when it is required.

(v) *Pest factors.* Pest factors that influence fumigant activity, including all of the following:

(A) Influence of pest factors on fumigant volatility.

(B) Factors that influence gaseous movement through the area being fumigated and into the air.

(C) Identifying pests causing the damage to be treated by the fumigation.

(D) Understanding the relationship between pest density and application rate.

(E) The importance of proper application rate and timing.

(vi) *Personal protective equipment.* Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:

(A) Following labeling directions for required personal protective equipment.

(B) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.

(C) Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and cannisters.

(D) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.

(viii) *Posting requirements.* Understanding posting requirements, including all of the following:

(A) Identifying who is allowed in an area being fumigated or after fumigation and who is prohibited from being in such areas.

(B) Distinguishing fumigant labeling-required posting and treated area posting, including the pre-application and post-application posting timeframes for each.

(C) Proper choice and placement of warning signs.

(3) *Aerial applications.* Private applicators that use or supervise the use of restricted use pesticides applied by fixed or rotary wing aircraft must demonstrate practical knowledge of the pest problems and pest control practices associated with performing aerial application, including all the following:

(i) *Labeling.* Labeling requirements and restrictions specific to aerial application of pesticides including:

(A) Spray volumes.

(B) Buffers and no-spray zones.

(C) Weather conditions specific to wind and inversions.

(D) Labeling-mandated recordkeeping requirements for aerial pesticide applications including application conditions if applicable.

(ii) *Application equipment.* Understand how to choose and maintain aerial application equipment, including all of the following:

(A) The importance of inspecting application equipment to ensure it is proper operating condition prior to beginning an application.

(B) Selecting proper nozzles to ensure appropriate pesticide dispersal and to minimize drift.

(C) Knowledge of the components of an aerial application pesticide application system, including pesticide hoppers, tanks, pumps, and types of nozzles.

(D) Interpreting a nozzle flow rate chart.

(E) Determining the number of nozzles for intended pesticide output using nozzle flow rate chart, aircraft speed, and swath width.

(F) How to ensure nozzles are placed to compensate for uneven dispersal due to uneven airflow from wingtip vortices, helicopter rotor turbulence, and aircraft propeller turbulence.

(G) Where to place nozzles to produce the appropriate droplet size.

(H) How to maintain the application system in good repair, including pressure gauge accuracy, filter cleaning according to schedule, checking nozzles for excessive wear.

(I) How to calculate required and actual flow rates.

(J) How to verify flow rate using fixed timing, open timing, known distance, or a flow meter.

(K) When to adjust and calibrate application equipment.

(iii) *Application considerations.* The applicator must demonstrate knowledge of factors to consider before and during application, including all of the following:

(A) Weather conditions that could impact application by affecting aircraft engine power, take-off distance, and climb rate, or by promoting spray droplet evaporation.

(B) How to determine wind velocity, direction, and air density at the application site.

(C) The potential impact of thermals and temperature inversions on aerial pesticide application.

(iv) *Minimizing drift.* The applicator must demonstrate knowledge of methods to minimize off-target pesticide movement, including all of the following:

(A) How to determine drift potential of a product using a smoke generator.

(B) How to evaluate vertical and horizontal smoke plumes to assess wind direction, speed, and concentration.

(C) Selecting techniques that minimize pesticide movement out of the area to be treated.

(D) Documenting special equipment configurations or flight patterns used to reduce off-target pesticide drift.

(v) *Performing aerial application.* The applicator must demonstrate competency in performing an aerial pesticide application, including all of the following:

(A) Selecting a flight altitude that minimizes streaking and off-target pesticide drift.

(B) Choosing a flight pattern that ensures applicator and bystander safety and proper application.

(C) The importance of engaging and disengaging spray precisely when entering and exiting a predetermined swath pattern.

(D) Tools available to mark swaths, such as global positioning systems and flags.

(d) *Private applicator minimum age.* A private applicator must be at least 18 years old.

(e) *Private applicator competence.* The competence of each applicant for private applicator certification must be determined by the certifying authority based upon the certification standards set forth in paragraphs (a) through (d) of this section in order to assure that private applicators are competent to use and supervise the use of restricted use pesticides in accordance with applicable State, Tribal, and Federal laws and regulations. The certifying authority must use either a written examination process as described in paragraph (e)(1) of this section or a non-examination training process as described in paragraph (e)(2) of this section to assure the competence of private applicators in regard to the general certification standards applicable to all private applicators, and, if applicable, the specific standards for the predator pest control category and/or the standards for each application method-specific category in which an applicator is to be certified, as provided for in this section. The certifying authority must follow the labeling requirements for sodium fluoroacetate and sodium cyanide dispensed through an M–44 device to determine the competence of applicators in the predator control categories.

(1) *Determination of competence by examination.* If the certifying authority uses a written examination process to

determine the competence of private applicators, the examination process must meet all of the requirements of § 171.103(a)(2).

(2) *Becoming competent through training without examination.* Any applicant for certification as a private applicator may become competent by completing a training program approved by the certifying authority. A training program to establish private applicator competence must conform to all of the following criteria:

(i) *Positive photo identification.* Each person seeking certification must present a valid, government-issued photo identification to the certifying authority or designated representative as proof of identity and age at the time of the training program to be eligible for certification.

(ii) *Training programs for private applicator general certification and certification in application method-specific categories.* The training program for general private applicator certification must cover the competency standards outlined in paragraph (a) of this section. The training program for each application method-specific category for private applicator certification must cover the competency standards outlined in paragraph (c) of this section and must be in addition to the training program required for general private applicator certification.

§ 171.107 Standards for recertification of certified applicators.

(a) *Determination of continued competency.* Each commercial and private applicator certification shall expire 3 years after issuance, unless the applicator is recertified in accordance with this section. A certifying authority may establish a shorter certification period. In order for a certified applicator's certification to continue without interruption, the certified applicator must be recertified under this section before the expiration of his or her current certification.

(b) *Process for recertification.* Minimum standards for recertification by written examination, or through continuing education programs, are as follows:

(1) *Written examination.* A certified applicator may be found eligible for recertification upon passing a written examination approved by the certifying authority and that is designed to evaluate whether the certified applicator demonstrates the level of competency required by § 171.103 for commercial applicators or § 171.105 for private applicators. The examination shall conform to the applicable standards for exams set forth in § 171.103(a)(2) of this chapter and be designed to test the certified applicator's knowledge of current technologies and practices.

(2) *Continuing education programs.* A certified applicator may be found eligible for recertification upon successfully completing a continuing education program approved by the certifying authority and designed to ensure the applicator continues to demonstrate the level of competency required by § 171.103 for commercial applicators or § 171.105 for private applicators. A recertification process that relies on a continuing education program to maintain applicator certification must meet all of the following criteria:

(i) The continuing education program designed for applicator recertification must be approved by the certifying authority as being capable of ensuring continued competency.

(ii) A private applicator continuing education program must require the private applicator to complete six continuing education units specifically related to the standards of competency outlined in § 171.105(a) before the expiration of the applicator's certification to qualify for recertification. To qualify for recertification for application method-specific categories, a private applicator continuing education program must require the private applicator to complete three continuing education units specifically related to the standards of competency outlined in § 171.105(c) for each relevant application method-specific category certification held by the applicator before the expiration of the applicator's certification.

(iii) A commercial applicator continuing education program must require the commercial applicator to complete six continuing education units specifically related to the core standards of competency for commercial applicators outlined in § 171.103(c) before the expiration of the applicator's certification. In addition, a commercial applicator continuing education program must require the commercial applicator to complete six continuing education units specifically related to the standards of competency outlined in § 171.103(d), (e), and (f) for each relevant pest control category and application method-specific category of certification held by the applicator before the expiration of the applicator's certification in order to qualify for recertification.

(iv) Any education program, including an online or other distance education program, that grants continuing education units must have a process to verify the applicator's successful completion of the educational objectives of the program and positively identify the applicator taking the continuing education units consistent with the requirements of §§ 171.103(a)(2)(iv) and 171.105(e)(2)(i).

Subpart C—Supervision of Noncertified Applicators

§ 171.201 Requirements for direct supervision of noncertified applicators by certified applicators.

(a) *Applicability.* This section applies to any certified applicator who allows or relies on a noncertified applicator to use a restricted use pesticide under the certified applicator's direct supervision.

(b) *General requirements.*

(1) The certified applicator must have a practical knowledge of applicable Federal, State and Tribal supervisory requirements, including any requirements on the product label and labeling, regarding the use of restricted use pesticides by noncertified applicators.

(2) The certified applicator must be certified in each category as set forth in §§ 171.101(a) and (b) and 171.105(b) and (c) applicable to the supervised pesticide use.

(3) The certified applicator must ensure that any noncertified applicators working under his or her direct supervision have met the training requirements under paragraph (c) of this section.

(4) If the certified applicator is a commercial applicator, the certified applicator must prepare and maintain the records required by paragraph (e) of this section.

(5) The certified applicator must ensure that all noncertified applicators working under his or her direct supervision are at least 18 years of age.

(6) The certified applicator must ensure that a method for immediate communication between the certified applicator and each noncertified applicator working under his or her direct supervision is available.

(7) The certified applicator must ensure that the full labeling for the product(s) used during a supervised use is in the possession of each noncertified applicator during the use.

(8) The certified applicator must be physically present at the site of the use being supervised when required by the product labeling.

(9) The certified applicator must provide use-specific instructions for each application to each noncertified applicator, including labeling directions, precautions, and restrictions mandated by the specific site; the

interrelationship between the characteristics of the use site (*e.g.,* surface and ground water, endangered species, local population, and risks) and the conditions of application (*e.g.,* equipment, method of application, formulation, and risks); and how to use the application equipment.

(10) The certified applicator must ensure that before any noncertified applicator uses any equipment for mixing, loading, transferring, or applying pesticides, the noncertified applicator has been instructed in the safe operation of such equipment within the last 12 months.

(11) The certified applicator must ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and worn or damaged parts. If worn or damaged parts or equipment are found, the certified applicator must ensure that any damaged equipment is repaired or replaced prior to use.

(12) Where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, the certified applicator must ensure that any noncertified applicator using restricted use pesticides under his or her direct supervision has the label-required personal protective equipment, that the personal protective equipment is worn and used correctly for its intended purpose, and that the personal protective equipment is clean and in proper operating condition.

(c) *Training requirement.* Before any noncertified applicator uses a restricted use pesticide under the direct supervision of the certified applicator, the supervising certified applicator must ensure that the noncertified applicator has met at least one of the following qualifications:

(1) The noncertified applicator has been trained in accordance with paragraph (d) of this section within the last 12 months.

(2) The noncertified applicator has met the training requirements for an agricultural handler under § 170.201(c) within the last 12 months.

(3) The noncertified applicator has passed an examination covering the core standards of competency for commercial applicators outlined in § 171.103(c) within the last 3 years.

(d) *Noncertified applicator training programs.* (1) General noncertified applicator training must be presented to applicators either orally from written materials or audio visually. The information must be presented in a manner that the noncertified applicators can understand, such as through a translator. The person conducting the training must be present during the entire training program and must respond to the noncertified applicators' questions.

(2) The person who conducts the training must meet at least one of the following criteria:

(i) Be currently certified as an applicator of restricted use pesticides under this part.

(ii) Be currently designated as a trainer of certified applicators or pesticide handlers by a State, Tribal, or Federal agency having jurisdiction.

(iii) Have completed a pesticide safety train-the-trainer program under 40 CFR part 170.

(3) The noncertified applicator training materials must include the information that noncertified applicators need to protect themselves, other people, and the environment before, during, and after making a restricted use pesticide application. The noncertified applicator training materials must include, at a minimum, the following:

(i) Format and meaning of information contained in pesticide labels and labeling, including safety information, such as precautionary statements about human health hazards.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes by which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures.

(viii) Need for and proper use of personal protective equipment.

(ix) Prevention, recognition, and first aid treatment of heat-related illness associated with the use of personal protective equipment.

(x) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(xi) Environmental concerns such as drift, runoff, and wildlife hazards.

(xii) Warnings against taking pesticides or pesticide containers home.

(xiii) Washing and changing work clothes before physical contact with family.

(xiv) Washing work clothes separately from the family's clothes before wearing them again.

(xv) Precautions required to protect children and pregnant women.

(xvi) How to report suspected pesticide illness to the appropriate State agency.

(xvii) Instructions that the certified applicator must provide use-specific instructions for each application to the noncertified applicator(s), including labeling directions, precautions, and restrictions mandated by the specific site; the interrelationship between the characteristics of the use site (*e.g.,* surface and ground water, endangered species, local population, and risks) and the conditions of application (*e.g.,* equipment, method of application, formulation, and risks); and how to use the application equipment.

(e) *Recordkeeping.* For each noncertified applicator who uses a restricted use pesticide under a commercial applicator's direct supervision, the commercial applicator supervising any noncertified applicator must collect and maintain at the commercial applicator's principal place of business for 2 years from the date of meeting the training requirements of paragraph (d) of this section, the following information:

(1) The noncertified applicator's printed name and signature.

(2) The date the training requirement in paragraph (d) of this section was met.

(3) The name of the person who provided the training or the certifying agency, as applicable.

(4) The supervising certified applicator's name.

(f) *Compliance date.* After [*date 2 years and 60 days after date of publication of the final rule in the* **Federal Register**], any certified applicator who supervises a noncertified applicator using a restricted use pesticide under his or her direct supervision must comply with the requirements of this section.

Subpart D—Certification Plans

§ 171.301 General.

(a) *Jurisdiction.* A certification issued under a particular certifying authority's certification plan is only valid within the geographical area covered by the certification plan approved by the Agency.

(b) *Status of certification plans approved before effective date.* A certification plan approved by EPA before the effective date of this part remains approved until [*date 4 years and 60 days after date of publication of the final rule in the* **Federal Register**], except as provided in paragraphs (c)(4) and (5) of this section.

(c) *Compliance dates.* (1) After [*date 4 years and 60 days after date of publication of the final rule in the*

Federal Register], a State, Tribe or Federal agency may only certify applicators of restricted use pesticides in accordance with a certification plan that meets or exceeds all of the applicable requirements of this part and has been approved by the Agency.

(2) A State, Tribe or Federal agency that currently has an EPA-approved plan for the certification of applicators of restricted use pesticides and that chooses to certify applicators of restricted use pesticides under this part must submit to EPA for review and approval a revised certification plan that meets or exceeds all of the applicable requirements of this part no later than [*date 2 years and 60 days after date of publication of the final rule in the* **Federal Register**].

(3) If the Agency approves a certification plan submitted no later than [*date 2 years and 60 days after date of publication of the final rule in the* **Federal Register**], a State, Tribe, or Federal agency may only certify applicators of restricted use pesticides in accordance with the approved revised plan.

(4) If after [*date 2 years and 60 days after date of publication of the final rule in the* **Federal Register**] EPA has received but not yet approved the State, Tribal, or Federal agency certification plan revision submitted no later than [*date 2 years and 60 days after date of publication of the final rule in the* **Federal Register**], the State, Tribe, or Federal Agency may continue to certify applicators under the certification plan approved before the rule's effective date until such time as EPA approves a revised certification plan that meets or exceeds all applicable requirements of this part.

(5) States, Tribes, or Federal agencies that do not have an EPA-approved certification plan before the effective date of this rule may submit to EPA for review and approval a certification plan that meets or exceeds all of the applicable requirements of this part any time after the effective date of this rule.

§ 171.303 Requirements for State certification plans.

(a) *Conformance with Federal standards for certification of applicators of restricted use pesticides.* A State may certify applicators of restricted use pesticides only in accordance with a State certification plan submitted to and approved by the Agency.

(1) The State certification plan must include a full description of the proposed process the State will use to assess applicator competency to use or supervise the use of restricted use pesticides in the State.

(2) The State plan must list and describe the categories of certification from the certification categories listed in §§ 171.101(a) and (b) and 171.105(b) and (c), that will be included in the plan except that:

(i) A State may omit any unneeded certification categories.

(ii) A State may designate subcategories within the categories described in §§ 171.101(a) and (b) and 171.105(c) as it deems necessary, with the exception of the predator pest control categories outlined in §§ 171.101(a)(10) and 171.105(b).

(iii) A State may adopt additional certification categories for specific types of pest control or application methods not covered by the existing Federal categories described in §§ 171.101(a) and (b) and 171.105(b) and (c).

(3) For each of the categories adopted pursuant to paragraph (b)(1) of this section, the State plan must include standards for the certification of applicators of restricted use pesticides that meet or exceed those standards prescribed by the Agency under §§ 171.101 through 171.105.

(4) The State standards for the recertification of applicators of restricted use pesticides must meet or exceed those standards prescribed by the Agency under § 171.107.

(5) The State standards for the direct supervision of noncertified applicators by certified private and commercial applicators of restricted use pesticides must meet or exceed those standards prescribed by the Agency under § 171.201.

(6) The State certification plan must contain provisions for issuance of appropriate credentials or documents by the certifying authority verifying certification of applicators. The credential or document must contain all of the following information:

(i) The full name of the certified applicator.

(ii) The certification, license, or credential number of the certified applicator.

(iii) The type of certification (private or commercial).

(iv) The category(ies), including any pest control categories, application method-specific category(ies), and subcategory(ies) in which the applicator is certified.

(v) The expiration date of the certification(s).

(vi) If the certification is based on a certification issued by another State, Tribe or Federal agency, a statement identifying the State, Tribe or Federal agency certification upon which this certification is based.

(7) The State certification plan must explain whether, and if so, under what circumstances, the State will certify applicators based in whole or in part on their holding a valid current certification issued by another State, Tribe or Federal agency. Such certifications are subject to all of the following conditions:

(i) A State may rely only on valid current certifications that are issued directly under an approved State, Tribal or Federal agency certification plan and are not based on another certifying authority's certification.

(ii) The State certification regulations must provide that any certification that is based in whole or in part on the applicator holding a valid current certification issued by another State, Tribe or Federal agency terminates automatically if the certification on which it is based terminates for any reason.

(iii) The State issuing a certification based in whole or in part on the applicator holding a valid current certification issued by another State, Tribe or Federal agency must issue an appropriate State credential or document to the applicator in accordance with paragraph (a)(6) of this section.

(b) *Contents of a request for EPA approval of a State plan for certification of applicators of restricted use pesticides.*

(1) The application for Agency approval of a State certification plan must list and describe the categories of certification from the certification categories.

(2) The application for Agency approval of a State certification plan must contain satisfactory documentation that the State standards for the certification of applicators of restricted use pesticides meet or exceed those standards prescribed by the Agency under §§ 171.101 through 171.105. Such documentation must include one of the following:

(i) A statement that the State has adopted the same standards for certification prescribed by the Agency under §§ 171.101 through 171.105 and a citation of the specific State laws and/or regulations demonstrating that the State has adopted such standards.

(ii) A statement that the State has adopted its own standards that meet or exceed the standards for certification prescribed by the Agency under §§ 171.101 through 171.105. If the State selects this option, the certification plan must include both:

(A) A list and detailed description of all the categories, application method-specific categories, and subcategories to

be used for certification of private and commercial applicators in the State and a citation to the specific State laws and/or regulations demonstrating that the State has adopted such categories, application method-specific categories, and subcategories.

(B) A list and detailed description of all of the standards for certification of private and commercial applicators adopted by the State and a citation to the specific State laws and/or regulations demonstrating that the State has adopted such standards. Any additional pest control categories, application-method specific categories, or subcategories established by a State must be included in the application for Agency approval of a State plan and must clearly delineate the standards the State will use to determine if the applicator is competent.

(3) The application for Agency approval of a State certification plan must contain satisfactory documentation that the State standards for the recertification of applicators of restricted use pesticides meet or exceed those standards prescribed by the Agency under § 171.107. Such documentation must include a statement that the State has adopted its own standards that meet or exceed the standards for recertification prescribed by the Agency under § 171.107. The application for Agency approval of a certification plan must include a list and detailed description of all of the State standards for recertification of private and commercial applicators and a citation of the specific State laws and/or regulations demonstrating that the State has adopted such standards.

(4) The application for Agency approval of a State certification plan must contain satisfactory documentation that the State standards for the direct supervision of noncertified applicators by certified private and commercial applicators of restricted use pesticides meet or exceed those standards prescribed by the Agency under § 171.201. Such documentation must include one or both of the following as applicable:

(i) A statement that the State has met or exceeded the standards for direct supervision of noncertified applicators by certified private and/or commercial applicators prescribed by the Agency under § 171.201 and a citation of the specific State laws and/or regulations demonstrating that the State has adopted such standards.

(ii) A statement that the State prohibits noncertified applicators from using restricted use pesticides under the direct supervision of certified private and/or commercial applicators, and a citation of the specific State laws and/or regulations demonstrating that the State has adopted such a prohibition.

(5) The application for Agency approval of a State certification plan must include all of the following:

(i) A written designation of the State agency by the Governor of that State as the lead agency responsible for being the primary certifying authority and administering the certification plan in the State. The lead agency will serve as the central contact point for the Agency. The certification plan must identify the primary point of contact at the lead agency responsible for administering the certification plan and serving as the central contact for the Agency on any issues related to the State certification plan. In the event that more than one agency or organization will be responsible for performing functions under the certification plan, the plan must identify all cooperators and list the functions to be performed by each agency or organization, including compliance monitoring and enforcement responsibilities. The plan must indicate how the plan will be coordinated by the lead agency to ensure consistency of the administration of the certification plan throughout the state.

(ii) A written opinion from the State attorney general or from the legal counsel of the State lead agency that states the lead agency and other cooperating agencies have the legal authority necessary to carry out the plan.

(iii) A listing of the qualified personnel that the lead agency and any cooperating agencies or organizations have to carry out the plan. The list must include the number of staff, job titles, and job functions of such personnel of the lead agency and any cooperating units.

(iv) A commitment by the State that the lead agency and any cooperators will ensure sufficient resources are available to carry out the applicator certification program as detailed in the plan.

(6) The application for Agency approval of a State certification plan must include a complete copy of all State laws and regulations relevant to the certification plan. In addition, the plan must include citations to the specific State laws and regulations that demonstrate specific legal authority for each of the following:

(i) Provisions for and listing of the acts which would constitute grounds for denying, suspending and revoking certification of applicators. Such grounds must include, at a minimum, misuse of a pesticide and falsification of any records required to be maintained by the certified applicator.

(ii) Provisions for reviewing, and where appropriate, suspending or revoking an applicator's certification based on the applicator's conduct or a criminal conviction under section 14(b) of FIFRA, a final order imposing civil penalty under section 14(a) of FIFRA, or conclusion of a State enforcement action for violations of State laws or regulations relevant to the certification plan.

(iii) Provisions for assessing criminal and civil penalties for violations of State laws or regulations relevant to the certification plan.

(iv) Provisions for right of entry by consent or warrant by State officials at reasonable times for sampling, inspection, and observation purposes.

(v) Provisions making it unlawful for persons other than certified applicators or noncertified applicators working under a certified applicator's direct supervision to use restricted use pesticides.

(vi) Provisions requiring certified commercial applicators to record and maintain for the period of at least two years routine operational records containing information on types, amounts, uses, dates, and places of application of restricted use pesticides and for ensuring that such records will be available to appropriate State officials. Such provisions must require commercial applicators to record and maintain, at a minimum, all of the following:

(A) The name and address of the person for whom the restricted use pesticide was applied.

(B) The location of the restricted use pesticide application.

(C) The size of the area treated.

(D) The crop, commodity, stored product, or site to which the restricted use pesticide was applied.

(E) The time and date of the restricted use pesticide application.

(F) The brand or product name of the restricted use pesticide applied.

(G) The EPA registration number of the restricted use pesticide applied.

(H) The total amount of the restricted use pesticide applied per location per application.

(I) The name and certification number of the certified applicator that made or supervised the application, and, if applicable, the name of any noncertified applicator(s) that made the application under the direct supervision of the certified applicator.

(J) Records required under § 171.201(c).

(vii) Provisions requiring persons who distribute or sell restricted use

pesticides to record and maintain at each individual dealership, for the period of at least 2 years, records of each transaction where a restricted use pesticide is distributed or sold to any person, excluding transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail sellers, acting only in those capacities. Records of each such transaction must include all of the following information:

(A) Name and address of the residence or principal place of business of each certified applicator to whom the restricted use pesticide was distributed or sold, or if applicable, the name and address of the residence or principal place of business of each noncertified person to whom the restricted use pesticide was distributed or sold for application by a certified applicator.

(B) The certification number on the certification document presented to the seller evidencing the valid certification of the certified applicator authorized to purchase the restricted use pesticide, the State, Tribe or Federal agency that issued the certification document, the expiration date of the certified applicator's certification, and the categories in which the applicator is certified.

(C) The product name and EPA registration number of the restricted use pesticide(s) distributed or sold in the transaction, including any applicable emergency exemption or State special local need registration number.

(D) The quantity of the restricted use pesticide(s) distributed or sold in the transaction.

(E) The date of the transaction.

(c) *Requirement to submit reports to the Agency.* The State must submit reports to the Agency in a manner and containing the information that the Agency requires, including all of the following:

(1) An annual report to be submitted by the State lead agency to the Agency by the date established by the Agency that includes all of the following information:

(i) The number of new, recertified, and total applicators holding a valid general private applicator certification at the end of the last 12 month reporting period.

(ii) For each application method-specific category specified in § 171.105(c), the numbers of new, recertified and total existing private applicators holding valid current certifications at the end of the last 12 month reporting period.

(iii) The numbers of new, recertified, and total commercial applicators certified in at least one certification category at the end of the last 12 month reporting period.

(iv) For each commercial applicator pest control certification category specified in § 171.101(a), the numbers of new, recertified and total commercial applicators holding a valid certification in each of those categories at the end of the last 12 month reporting period.

(v) For each application method-specific category specified in § 171.101(b), the numbers of new, recertified and total existing commercial applicators holding valid current certifications at the end of the last 12 month reporting period.

(vi) If a State has established subcategories within any of the commercial categories, the report must include the numbers of new, recertified and total commercial applicators holding valid certifications in each of the subcategories at the end of the last 12 month reporting period.

(vii) A description of any modifications made to the approved certification plan during the last 12 month reporting period that have not been previously evaluated by the Agency under § 171.309(a)(3).

(viii) A description of any proposed changes to the certification plan that the State anticipates making during the next reporting period that may affect the certification program.

(ix) The number and description of enforcement actions taken for any violations of Federal or State laws and regulations involving use of restricted use pesticides during the last 12-month reporting period.

(x) A narrative summary and causal analysis of any misuse incidents or enforcement actions related to use of restricted use pesticides during the last 12 month reporting period. The summary should include the pesticide name and registration number, use or site involved, nature of violation, any adverse effects, most recent date of the certified applicator's certification or recertification and, if applicable, the date of qualification of any noncertified applicator using restricted use pesticides under the direct supervision of the certified applicator. This summary should include a discussion of potential changes in policy or procedure to prevent future incidents or violations.

(2) Any other reports that may be required by the Agency to meet specific needs.

§ 171.305 Requirements for Federal agency certification plans.

(a) A Federal agency may certify applicators of restricted use pesticides only in accordance with a Federal agency certification plan submitted to and approved by the Agency. Certification must be limited to the employees of the Federal agency covered by the certification plan and will be valid only for those uses of restricted use pesticides conducted in the performance of the employees' official duties.

(1) The Federal agency certification plan must include a full description of the proposed process the Federal agency will use to assess applicator competency to use or supervise the use of restricted use pesticides.

(2) Employees certified by the Federal agency must meet the standards for commercial applicators.

(3) The Federal agency plan must list and describe the categories of certification from the certification categories listed in §§ 171.101(a) and (b) that will be included in the plan except that:

(i) A Federal agency may omit any unneeded certification categories.

(ii) A Federal agency may designate subcategories within the categories described in §§ 171.101(a) and (b) as it deems necessary, with the exception of the predator pest control categories outlined in §§ 171.101(a)(10).

(iii) A Federal agency may adopt additional certification categories for specific types of pest control or application methods not covered by the existing Federal categories described in §§ 171.101(a) and (b).

(4) For each of the categories adopted pursuant to paragraph (b)(2) of this section, the Federal agency plan must include standards for the certification of applicators of restricted use pesticides that meet or exceed those standards prescribed by the Agency under §§ 171.101 through 171.103.

(5) The Federal agency standards for the recertification of applicators of restricted use pesticides must meet or exceed those standards prescribed by the Agency under § 171.107.

(6) The Federal agency standards for the direct supervision of noncertified applicators by certified private and commercial applicators of restricted use pesticides meet or exceed those standards prescribed by the Agency under § 171.201.

(7) The Federal agency certification plan must contain provisions for issuance of appropriate credentials or documents by the certifying authority verifying certification of applicators. The credential or document must contain all information listed in § 171.303(a)(6), except for the requirement to list the type of certification at § 171.303(a)(6)(iii).

(8) The Federal agency certification plan must explain whether, and if so,

under what circumstances, the Federal Agency will certify applicators based in whole or in part on their holding a valid current certification issued by another State, Tribe or Federal agency. Such certifications are subject to all of the conditions listed at § 171.303(a)(7).

(b) *Contents of a request for EPA approval of a Federal agency plan for certification of applicators of restricted use pesticides.*

(1) The application for Agency approval of a Federal agency certification plan must list and describe the categories of certification from the certification categories.

(2) The application for Agency approval of a Federal Agency certification plan must contain a statement that the Federal agency standards for certification of applicators of restricted use pesticides meet or exceed those standards prescribed by the Agency under §§ 171.101 and 171.103. Such a statement must include one of the following:

(i) A statement that the Federal agency has adopted the same standards for certification prescribed by the Agency under §§ 171.101 through 171.103.

(ii) A statement that the Federal agency has adopted its own standards that meet or exceed the standards for certification prescribed by the Agency under §§ 171.101 through 171.103. If the Federal agency selects this option, the certification plan must include both:

(A) A list and detailed description of all the categories, application method-specific categories, and subcategories to be used for certification of private and commercial applicators.

(B) A list and detailed description of all of the standards for certification of commercial applicators adopted by the Federal agency. Any additional pest control categories, application-method specific categories, or subcategories established by a Federal agency must be included in the application for Agency approval of a Federal agency plan and must clearly delineate the standards the Federal agency will use to determine if the applicator is competent.

(3) The application for Agency approval of a Federal agency plan must include a statement that the Federal agency has adopted standards for recertification that meet or exceed the standards for certification prescribed by the Agency under § 171.107. If the Federal agency adopts its own standards for recertification, the application for Agency approval of a Federal agency certification plan must include a list and detailed description of all the standards for recertification adopted by the Federal agency.

(4) The application for Agency approval of a Federal Agency certification plan must contain a statement that the Federal agency standards for direct supervision of noncertified applicators by certified commercial applicators meet or exceed those standards prescribed by the Agency under § 171.201, or a statement that the Federal agency prohibits noncertified applicators from using restricted use pesticides under the direct supervision of certified commercial applicators.

(5) The application for Agency approval of a Federal agency certification plan must meet or exceed all of the applicable requirements in § 171.303. However, in place of the legal authorities required in § 171.303(b)(6), the Federal agency may use administrative controls inherent in the employer-employee relationship to accomplish the objectives of § 171.303(b)(6). The application for Agency approval of a Federal agency certification plan must include a detailed description of how the Federal agency will exercise its administrative authority, where appropriate to deny, suspend or revoke certificates of employees who misuse pesticides, falsify records or violate relevant provisions of FIFRA. Similarly, the application for Agency approval of a Federal agency certification plan must include a commitment that the Federal agency will record and maintain for the period of at least two years routine operational records containing information on types, amounts, uses, dates, and places of application of restricted use pesticides and that such records will be available to State and Federal officials. Such recordkeeping requirements must require Federal agency employees certified as commercial applicators to record and maintain, at a minimum, all of the records specified in § 171.303(b)(6)(vi).

(c) *Commitment to do annual reports.* The application for Agency approval of a Federal agency certification plan must include a commitment by the Federal agency to submit an annual report to the Agency in a manner that the Agency requires that includes all of the following information:

(1) The numbers of new, recertified, and total commercial applicators certified in at least one certification category at the end of the last 12 month reporting period.

(2) For each commercial applicator certification category specified in § 171.101(a), the numbers of new, recertified and total commercial applicators holding a valid certification in each of those categories at the end of the last 12 month reporting period.

(3) For each application method-specific category specified in § 171.101(b), the numbers of new, recertified and total existing commercial applicators holding valid current certifications at the end of the last 12 month reporting period.

(4) If the Federal agency has established subcategories within any of the commercial categories, the report must include the numbers of new, recertified and total commercial applicators holding valid certifications in each of those subcategories at the end of the last 12 month reporting period.

(5) A description of any modifications made to the approved certification plan during the last 12 month reporting period that have not been previously evaluated under § 171.309(a)(3).

(6) A description of any proposed changes to the certification plan that may affect the certification program that the Federal agency anticipates making during the next reporting period.

(7) The number and description of enforcement actions taken for any violations of Federal or State laws and regulations involving use of restricted use pesticides during the last 12-month reporting period.

(8) A narrative summary of misuse incidents or enforcement activities related to use of restricted use pesticides during the last twelve-month reporting period. This section should include a discussion of potential changes in policy or procedure to prevent future incidents or violations.

(d) *Commitment to do other reports.* The application for Agency approval of a Federal agency certification plan must include a commitment by the Federal agency to submit any other reports that may be required by the Agency to meet specific needs.

(e) *Additional requirements for certain application.* If applicators certified under the Federal agency plan will make any applications of restricted use pesticides in States or Indian country, the application for Agency approval of a Federal agency certification plan must meet the following additional requirements:

(1) The Federal agency plan must have a provision that affirms Federal agency certified applicators will comply with all applicable State and Tribal pesticide laws and regulations of the jurisdiction in which the restricted pesticide is being used when using restricted use pesticides in States or Indian country, including any substantive State or Tribal standards in regard to qualifications for commercial

applicator certification that exceed the Federal agency's standards.

(2) The Federal agency plan must have a provision for the Federal agency to notify the appropriate EPA regional office and State or Tribal pesticide authority in the event of misuse or suspected misuse of a restricted use pesticide by a Federal agency employee and any pesticide exposure incident involving human or environmental harm that may have been caused by an application of a restricted use pesticide made by a Federal agency employee.

(3) The Federal agency plan must have a provision for the Federal agency to cooperate with the Agency and the State or Tribal pesticide authority in any investigation or enforcement action undertaken in connection with an application of a restricted use pesticide made by a Federal agency employee.

§ 171.307 Certification of applicators in Indian country.

All applicators of restricted use pesticides in Indian country must hold a certification valid in that area of Indian country, or be working under the direct supervision of a certified applicator whose certification is valid in that area of Indian country. An Indian Tribe may certify applicators of restricted use pesticides in Indian country only pursuant to a certification plan approved by the Agency that meets the requirements of paragraph (a) or (b) of this section. The Agency may implement a Federal certification plan, pursuant to paragraph (c) of this section and § 171.311, for an area of Indian country not covered by an approved plan.

(a) An Indian Tribe may choose to allow persons holding currently valid certifications issued under one or more specified State, Tribal, or Federal agency certification plans to use restricted use pesticides within the Tribe's Indian country.

(1) A certification plan under paragraph (a) must consist of a written agreement between the Tribe and the relevant EPA Region(s) that contains the following information:

(i) A detailed map or legal description of the area(s) of Indian country covered by the plan.

(ii) A listing of the State(s), Tribe(s) or Federal agency(ies) upon whose certifications the Tribe will rely.

(iii) A description of any Tribal law, regulation, or code relating to application of restricted use pesticides in the covered area of Indian country, including a citation to each applicable Tribal law, regulation, or code.

(iv) A description of the procedures and relevant authorities for carrying out compliance monitoring under and enforcement of the plan, including:

(A) A description of the Agency and Tribal roles and procedures for conducting inspections.

(B) A description of the Agency and Tribal roles and procedures for handling case development and enforcement actions and actions on certifications, including procedures for exchange of information.

(C) A description of the Agency and Tribal roles and procedures for handling complaint referrals.

(v) A description and copy of any separate agreements relevant to administering the certification plan and carrying out related compliance monitoring and enforcement activities. The description shall include a listing of all parties involved in the separate agreement and the respective roles, responsibilities, and relevant authorities of those parties.

(2) To the extent that an Indian Tribe is precluded from asserting criminal enforcement authority, the Federal government will exercise primary criminal enforcement authority for certification plans under paragraph (a) of this section. The Tribe and the relevant EPA region(s) shall develop a procedure whereby the Tribe will provide potential investigative leads to EPA and/or other appropriate Federal agencies in an appropriate and timely manner. This procedure shall encompass, at a minimum, all circumstances in which the Tribe is incapable of exercising relevant criminal enforcement requirements. This procedure shall be included as part of the agreement between the Tribe and relevant EPA Region(s) described in paragraph (a)(1) of this section.

(3) A plan for the certification of applicators under paragraph (a) of this section shall not be effective until the agreement between the Tribe and the relevant EPA Region(s) has been signed by the Tribe and the appropriate EPA Regional Administrator(s).

(b) An Indian Tribe may choose to develop its own certification plan for certifying private and commercial applicators to use or supervise the use of restricted use pesticides.

(1) A certification plan under paragraph (b) of this section shall consist of a written plan submitted by the Tribe to the Agency for approval that includes all of the following information:

(i) A detailed map or legal description of the area(s) of Indian country covered by the plan.

(ii) A demonstration that the plan meets all requirements of § 171.303 applicable to State plans, except that the Tribe's plan will not be required to meet the requirements of § 171.303(i)(3) with respect to provisions for criminal penalties, or any other requirement for assessing criminal penalties.

(2) To the extent that an Indian Tribe is precluded from asserting criminal enforcement authority, the Federal government will exercise primary criminal enforcement authority for certification plans under paragraph (b) of this section. The Tribe and the relevant EPA Region(s) shall develop a procedure whereby the Tribe will provide potential investigative leads to EPA and/or other appropriate Federal agencies in an appropriate and timely manner. This procedure shall encompass, at a minimum, all circumstances in which the Tribe is incapable of exercising relevant criminal enforcement requirements and shall be described in a memorandum of agreement signed by the Tribe and the relevant EPA Regional Administrator(s).

(3) A plan for the certification of applicators under paragraph (b) of this section shall not be effective until the memorandum of agreement required under paragraph (b)(2) of this section has been signed by the Tribe and the relevant EPA Region(s) and the plan has been approved by the Agency.

(c) In any area of Indian country not covered by an approved certification plan, the Agency may, in consultation with the Tribe(s) affected, implement an EPA-administered certification plan under § 171.311 for certifying private and commercial applicators to use or supervise the use of restricted use pesticides.

(1) Prior to publishing a notice of a proposed EPA-administered certification plan for an area of Indian country in the **Federal Register** for review and comment under § 171.311(d)(3), the Agency shall notify the relevant Indian Tribe(s) of EPA's intent to propose the plan.

(2) The Agency will not implement an EPA-administered certification plan for any area of Indian country where, prior to the expiration of the notice and comment period provided under § 171.311(d)(3), the chairperson or equivalent elected leader of the relevant Tribe provides the Agency with a written statement of the Tribe's position that the plan should not be implemented.

§ 171.309 Modification and withdrawal of certification plans.

(a) *Modifications to approved certification plans.* A State, Tribe, or Federal agency may make modifications to its approved certification plan,

provided that all of the following conditions are met:

(1) *Determination of plan compliance.* Before modifying an approved certification plan, the State, Tribe, or Federal agency must determine that the proposed modifications will not impair the certification plan's compliance with the requirements of this part or any other Federal laws or regulations.

(2) *Requirement for Agency notification.* The State, Tribe, or Federal agency must notify the Agency of any plan modifications within 90 days after the final State, Tribal, or Federal agency modifications become effective or when it submits its required annual report to the Agency, whichever occurs first.

(3) *Additional requirements for substantial modifications to approved certification plans.* Before making any substantial modifications to an approved certification plan, the State, Tribe or Federal agency must consult with the Agency and obtain Agency approval of the proposed modifications. The Agency shall make a written determination regarding the modified certification plan's compliance with the requirements of this part. Substantial modifications include the following:

(i) Deletion of a mechanism for certification and/or recertification.

(ii) Establishment of a new private applicator subcategory, commercial applicator category, or commercial applicator subcategory.

(iii) Any other changes that the Agency has notified the State, Tribal or Federal agency that the Agency considers to be substantial modifications.

(b) *Withdrawal of approval.* If at any time the Agency determines that a State, Tribal, or Federal agency certification plan does not comply with the requirements of this part or any other Federal laws or regulations, or that a State, Tribal, or Federal agency is not administering the certification plan as approved under this part, or that a State is not carrying out a program adequate to ensure compliance with FIFRA section 19(f), the Agency may withdraw approval of the certification plan. Before withdrawing approval of a certification plan, the Agency will notify the State, Tribal, or Federal agency and provide the opportunity for an informal hearing. If appropriate, the Agency may allow the State, Tribe, or Federal agency a reasonable time, not to exceed 90 days, to take corrective action.

§ 171.311 EPA-administered applicator certification programs.

(a) *Applicability.* This section applies in any State or area of Indian country where there is no approved State or Tribal certification plan in effect.

(b) *Certification requirement.* In any State or area of Indian country where EPA administers a certification plan, any person who uses or supervises the use of any restricted use pesticide must meet one of the following criteria:

(1) A commercial applicator must be certified in each category and subcategory, if any, and each application method, if any, as described in the EPA-administered plan, for which the applicator is applying or supervising the application of restricted use pesticides.

(2) A private applicator must be certified, including in each application method, if any, as described in the EPA-administered plan, for which the applicator is applying or supervising the application of restricted use pesticides.

(3) A noncertified applicator may only use a restricted use pesticide under the direct supervision of an applicator certified under the EPA-administered plan, in accordance with the requirements in § 171.201, and only for uses authorized by that certified applicator's certification.

(c) *Implementation of EPA-administered plans in States.* (1) In any State where this section is applicable, the Agency, in consultation with the Governor, may implement an EPA-administered plan for the certification of applicators of restricted use pesticides.

(2) Such a plan will meet the applicable requirements of § 171.303. Prior to the implementation of the plan, the Agency will publish in the **Federal Register** for review and comment a summary of the proposed EPA-administered plan for the certification of applicators and will generally make available copies of the proposed plan within the State. The summary will include all of the following:

(i) An outline of the proposed procedures and requirements for private and commercial applicator certification and recertification.

(ii) A description of the proposed categories and subcategories for certification.

(iii) A description of any proposed conditions for the recognition of State, Tribal, or Federal agency certifications.

(iv) An outline of the proposed arrangements for coordination and communication between the Agency and the State regarding applicator certifications and pesticide compliance monitoring and enforcement.

(d) *Implementation of EPA-administered plans in Indian country.*

(1) In any area of Indian country where this section is applicable, and consistent with the provisions of § 171.309(c), the Agency, in consultation with the appropriate Indian Tribe(s), may implement a plan for the certification of applicators of restricted use pesticides.

(2) An EPA-administered plan may be implemented in the Indian country of an individual Tribe or multiple Tribes located within a specified geographic area.

(3) Such a plan will meet the applicable requirements of § 171.309(c). Prior to the implementation of the plan, the Agency will publish in the **Federal Register** for review and comment a summary of the proposed EPA-administered plan for the certification of applicators and will generally make available copies of the proposed plan within the area(s) of Indian country to be covered by the proposed plan. The summary will include all of the following:

(i) A description of the area(s) of Indian country to be covered by the proposed plan.

(ii) An outline of the proposed procedures and requirements for private and commercial applicator certification and recertification.

(iii) A description of the proposed categories and subcategories for certification.

(iv) A description of any proposed conditions for the recognition of State, Tribal, or Federal agency certifications.

(v) An outline of the proposed arrangements for coordination and communication between the Agency and the relevant Tribe(s) regarding applicator certifications and pesticide compliance monitoring and enforcement.

(e) *Denial, suspension, modification, or revocation of a certification.* (1) The Agency may suspend all or part of a certified applicator's certification issued under an EPA-administered plan or, after opportunity for a hearing, may deny issuance of, or revoke or modify, a certified applicator's certification issued under an EPA-administered plan, if the Agency finds that the certified applicator has been convicted under section 14(b) of the Act, has been subject to a final order imposing a civil penalty under section 14(a) of the Act, or has committed any of the following acts:

(i) Used any registered pesticide in a manner inconsistent with its labeling.

(ii) Made available for use, or used, any registered pesticide classified for restricted use other than in accordance with section 3(d) of the Act and any regulations promulgated thereunder.

(iii) Refused to keep and maintain any records required pursuant to this section.

(iv) Made false or fraudulent records, invoices or reports.

(v) Failed to comply with any limitations or restrictions on a valid current certificate.

(vi) Violated any other provision of the Act and the regulations promulgated thereunder.

(vii) Allowed a noncertified applicator to use a restricted use pesticide in a manner inconsistent with the requirements in § 171.201.

(viii) Violated any provision of a State, Tribal or Federal agency certification plan or its associated laws or regulations.

(2) If the Agency intends to deny, revoke, or modify a certified applicator's certification, the Agency will:

(i) Notify the certified applicator of all of the following:

(A) The ground(s) upon which the denial, revocation, or modification is based.

(B) The time period during which the denial, revocation or modification is effective, whether permanent or otherwise.

(C) The conditions, if any, under which the certified applicator may become certified or recertified.

(D) Any additional conditions the Agency may impose.

(ii) Provide the certified applicator an opportunity to request an informal hearing prior to final Agency action to deny, revoke or modify the certification.

(3) If a hearing is requested by a certified applicator pursuant to paragraph (e)(2)(ii) of this section, the Agency will do all of the following:

(i) Notify the certified applicator of the legal and factual grounds upon which the action to deny, revoke or modify the certification is based.

(ii) Provide the certified applicator an opportunity to offer written statements of facts, explanations, comments and arguments relevant to the proposed action.

(iii) Provide the certified applicator such other procedural opportunities as the Agency may deem appropriate to ensure a fair and impartial hearing.

(iv) Appoint an attorney in the Agency as Presiding Officer to conduct the hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific case.

(4) The Presiding Officer appointed pursuant to paragraph (e)(3)(iv) of this section shall do all of the following:

(i) Conduct a fair, orderly and impartial hearing, without unnecessary delay.

(ii) Consider all relevant evidence, explanation, comment and argument submitted to the Agency pursuant to paragraphs (e)(3)(ii) and (iii) of this section.

(iii) Promptly notify the parties of the final decision and order. Such an order is a final Agency action subject to judicial review in accordance with Section 16 of the Act.

(5) If the Agency determines that the public health, interest or welfare warrants immediate action to suspend the certified applicator's certification, the Agency will do all of the following:

(i) Notify the certified applicator of the ground(s) upon which the suspension action is based.

(ii) Notify the certified applicator of the time period during which the suspension is effective.

(iii) Notify the certified applicator of the Agency's intent to revoke or modify the certification, as appropriate, in accord with paragraph (e)(2) of this section. If such revocation or modification notice has not previously been issued, it will be issued at the same time the suspension notice is issued.

(iv) In cases where the act constituting grounds for suspension of a certification is neither willful nor contrary to the public interest, health, or safety, the certified applicator may have additional procedural rights under 5 U.S.C. 558(c).

(6) Any notice, decision or order issued by the Agency under paragraph (e) of this section, and any documents filed by a certified applicator in a hearing under paragraph (e)(2)(ii) of this section, shall be available to the public except as otherwise provided by section 10 of the Act or by part 2 of this chapter. Any such hearing at which oral testimony is presented shall be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information that may be entitled to confidentiality under section 10 of the Act or under part 2 of this chapter.

(f) *Restricted use pesticide dealer reporting and recordkeeping requirements, availability of records, and failure to comply*—(1) *Reporting requirements.* Each restricted use pesticide retail dealer in a State or area of Indian country where the Agency implements an EPA-administered plan must do both of the following:

(i) Report to the Agency the business name by which the restricted use pesticide retail dealer operates and the name and business address of each of his or her dealerships. This report must be submitted to the appropriate EPA Regional office no later than sixty 60 days after the EPA-administered plan becomes effective or 60 days after the date the person becomes a restricted use pesticide retail dealer in an area where an EPA-administered plan is in effect, whichever occurs later.

(ii) Submit revisions to the initial report to the appropriate EPA Regional office reflecting any name changes, additions or deletions of dealerships. Revisions must be submitted to the appropriate EPA Regional office within 10 days of the occurrence of such change, addition or deletion.

(2) *Recordkeeping requirement.* A restricted use pesticide retail dealer is required to create and maintain records of each sale of restricted use pesticides to any person, excluding transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail sellers, acting only in those capacities. Each restricted use pesticide retail dealer must maintain at each individual dealership records of each transaction where a restricted use pesticide is distributed or sold by that dealership to any person. Records of each such transaction must be maintained for a period of 2 years after the date of the transaction and must include all of the following information:

(i) Name and address of the residence or principal place of business of each certified applicator to whom the restricted use pesticide was distributed or sold, or if applicable, the name and address of the residence or principal place of business of each noncertified person to whom the restricted use pesticide was distributed or sold, for application by a certified applicator.

(ii) The certification number on the certification document presented to the seller evidencing the valid certification of the certified applicator authorized to purchase the restricted use pesticide, the State, Tribe or Federal agency that issued the certification document, the expiration date of the certified applicator's certification, and the categories in which the certified applicator is certified.

(iii) The product name and EPA registration number of the restricted use pesticide(s) distributed or sold in the transaction, including any applicable emergency exemption or State special local need registration number, if applicable.

(iv) The quantity of the restricted use pesticide(s) distributed or sold in the transaction.

(v) The date of the transaction.

(3) *Availability of required records.* Each restricted use pesticide retail dealer must, upon request of any authorized officer or employee of the Agency, or other authorized agent or person duly designated by the Agency, furnish or permit such person at all reasonable times to have access to and

copy all records required to be maintained under this section.

(4) *Failure to comply.* Any person who fails to comply with the provisions of this section may be subject to civil or criminal sanctions, under section 14 of the Act, or 18 U.S.C. 1001.

(g) *Compliance date.* The only EPA-administered certification plans that will be effective after [*date 60 days after date of publication of the final rule in the* ***Federal Register***] are those approved by the Administrator after [*date 4 years and 60 days after date of publication of the final rule in the* ***Federal Register***].

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