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Contents

Federal Register

Vol. 80, No. 186

Friday, September 25, 2015

Agricultural Marketing Service
RULES
Sorghum Promotion, Research, and Information Program, 57698–57699

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Federal Crop Insurance Corporation
See Forest Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Changes to Requirements for Field Testing Regulated Genetically Engineered Wheat, 57741

Army Department
NOTICES
Exclusive Patent License Approvals:
Applied Materials, Austin, TX, 57794
Meetings:
Army Education Advisory Subcommittee, 57793–57794

Bureau of Consumer Financial Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57793

Centers for Disease Control and Prevention
NOTICES
Requests for Nominations:
Candidates to Serve as Members of the Community Preventive Services Task Force, 57820–57821

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57821–57822, 57826–57827
Application for Continued Approval of its Rural Health Accreditation Program:
American Association of Accreditation of Ambulatory Surgery Facilities, 57822–57824
Approval as an Accrediting Organization for Diabetes Self-Management Training Programs:
American Diabetes Association, 57825–57826
Medicare and Medicaid Programs:
Continued Approval of the American Association of Diabetes Educators as an Accrediting Organization for Diabetes Self-Management Training Programs, 57824–57825
Medicare Program:
Medicare Appeals; Adjustment to the Amount in Controversy Threshold Amounts for Calendar Year 2016, 57827–57828

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57828–57829

Coast Guard
RULES
Drawbridge Operations:
Hood Canal, Port Gamble, WA, 57722
Rancocas Creek, Centerton, NJ, 57720–57721
Special Local Regulations:
Temporary Change for Recurring Marine Event in the Fifth Coast Guard District, 57717–57720
NOTICES
Charter Renewals:
Cook Inlet Regional Citizen's Advisory Council, 57834–57835
Letter of Recommendation for Washington State Ferries Liquefied Natural Gas Conversion; Seattle, WA, 57835–57837

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 57792–57793

Committee for the Implementation of Textile Agreements
NOTICES
Limitations of Duty-and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries from Regional and Third-Country Fabric, 57791–57792

Commodity Credit Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57783

Community Living Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
OAA Title III–E Evaluation, 57829–57830

Defense Department
See Army Department
See Engineers Corps
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57795

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
TEACH Grant-Study of Institutional Practices and Grant Recipient Outcomes and Experiences, 57796–57797

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission

Energy Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57797–57799

Engineers Corps
NOTICES
Final Integrated Feasibility Reports:
Los Angeles River Ecosystem Restoration Study, City of Los Angeles, Los Angeles County, CA, 57795–57796

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Florida; Combs Oil Company Variance, 57727–57729
Georgia; Removal of Stage II Gasoline Vapor Recovery Program, 57729–57730
Mississippi; Miscellaneous Changes, 57730–57732
New Hampshire; Nonattainment New Source Review and Prevention of Significant Deterioration Program, 57722–57725
Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District, Ventura County Air Pollution Control District, 57725–57727
Approval and Promulgation of State Plans for Designated Facilities and Pollutants:
MO; Control of Mercury Emissions from Electric Generating Units, 57732–57734
Water Quality Standards Regulatory Revisions; Correction, 57734
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District, Ventura County Air Pollution Control District, 57766
Approval and Promulgation of State Plans for Designated Facilities and Pollutants:
MO; Control of Mercury Emissions from Electric Generating Units, 57767
Hazardous Waste Generator Improvements, 57918–58012
Management Standards for Hazardous Waste Pharmaceuticals, 58014–58092
NOTICES
Environmental Impact Statements; Availability, etc.; Weekly Receipts, 57807–57808
Meetings:
Environmental Modeling, 57808–57809
Pesticide Registration:
Draft Human Health and Ecological Risk Assessments for Sulfonylureas and Certain Other Pesticides, 57812–57816
Recommendations for Specifications, Environmental Performance Standards, and Ecolabels for Federal Procurement, 57809–57811
Test Data under the Toxic Substances Control Act, 57811–57812

Farm Credit System Insurance Corporation
NOTICES
Meetings:
Farm Credit System Insurance Corporation Board, 57816

Federal Aviation Administration
RULES
Amendment of Class E Airspace:
Mackall AAF, NC, 57699–57700
Establishment of Class E Airspace:
Poplarville-Pearl River County Airport, MS, 57700–57701
Federal Contract Tower Safety Action Program and Air Traffic Safety Action Program:
Engineers and Architects, Staff Support Specialists, Aviation Technical System Specialists, and Flight Procedures Team, 57701–57703
PROPOSED RULES
Airworthiness Directives:
Airbus Helicopters (previously Eurocopter France), 57742–57744
Alpha Aviation Concept Limited Airplanes, 57753–57755
Sikorsky Aircraft Corporation (Sikorsky) Helicopters, 57751–57753
The Boeing Company Airplanes, 57744–57751
Establishment of Class E Airspace:
International Falls, MN, 57755

Federal Communications Commission
PROPOSED RULES
Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers and Special Access for Price Cap Local Exchange Carriers, 57768–57782
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57816–57817

Federal Crop Insurance Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57783–57784

Federal Emergency Management Agency
RULES
Suspension of Community Eligibility, 57734–57737
PROPOSED RULES
Flood Elevation Determinations:
Butler County, PA (All Jurisdictions); Withdrawal, 57767
Mercer County, NJ (All Jurisdictions); Withdrawal, 57767–57768
NOTICES
Emergency Declarations:
Washington; Amendment No. 1, 57838
Final Flood Hazard Determinations; Correction, 57841–57842
Flood Hazard Determinations, 57837–57840
Major Disaster Declarations:
Kentucky; Amendment No. 2, 57840–57841
Louisiana; Amendment No. 2, 57838–57839
Privacy Act; Computer Matching Agreement, 57902–57906
Proposed Flood Hazard Determinations, 57842–57843
Proposed Flood Hazard Determinations:
Polk County, MN and Incorporated Areas, 57840

Federal Energy Regulatory Commission
RULES
Disturbance Monitoring and Reporting Requirements Reliability Standard, 57704–57709
NOTICES
Applications:
Steve Patton, 57803–57804
Combined Filings, 57802–57804
Continued Project Operation Authorizations:
Alabama Power Co., 57803
Environmental Assessments; Availability, etc.:
PacifiCorp, 57800–57801

Exempt Wholesale Generator or Foreign Utility Company Status:
Panda Liberty LLC, Panda Patriot LLC, Panda Stonewall LLC, et al., 57801–57802
Exemption Transfers:
Cascade Clean Energy, Inc. to Kingdom Energy Products, 57805
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Carousel Wind Farm, LLC, 57799–57800
Green Mountain Storage, LLC, 57801
Meyersdale Storage, LLC, 57807
Institution of Section 206 Proceeding and Refund Effective Dates:
RC Cape May Holdings, LLC, 57799
Meetings:
Northeast Energy Direct Pipeline Project; Tennessee Gas Pipeline Company, LLC, 57806–57807
Petitions for Declaratory Orders:
ETP Crude, LLC, 57806
Preliminary Determinations of Qualifying Conduit Hydropower Facilities:
Cheyenne, WY, 57804–57805
Records Governing Off-the-Record Communications, 57805–57806

Federal Reserve System
NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 57817–57818
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 57817

Federal Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57818–57820

Fish and Wildlife Service
RULES
Migratory Bird Hunting:
Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds, 58166–58194
Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2015–16 Late Season, 58158–58163

Food and Drug Administration
PROPOSED RULES
Clarification of When Products Made or Derived From Tobacco Are Regulated as Drugs, Devices, or Combination Products; Regulations Regarding Intended Uses, 57756–57765

Foreign-Trade Zones Board
NOTICES
Production Activities:
Foreign-Trade Zone 122; Corpus Christi, TX, 57785
Foreign-Trade Zone 230; Piedmont Triad Area, NC, 57785
Foreign-Trade Zone 33; Pittsburgh, PA, 57785–57786

Forest Service
NOTICES
Meetings:
Yavapai Resource Advisory Committee, 57784–57785

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Community Living Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Bright Futures Pediatric Implementation Cooperative Agreement, 57830–57832

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Mark-to-Market Program; Requirements for Community-Based Non-Profit Organizations and Public Agencies, 57848
Federal Property Suitable as Facilities to Assist the Homeless, 57843–57848

Indian Affairs Bureau
NOTICES
Land Acquisitions:
Mashpee Wampanoag Tribe, 57848–57862

Industry and Security Bureau
NOTICES
Meetings:
Emerging Technology and Research Advisory Committee, 57787
Materials Processing Equipment Technical Advisory Committee, 57786
Technical Advisory Committee, 57786–57787

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Ocean Energy Management Bureau

Internal Revenue Service
RULES
Reliance Standards for Making Good Faith Determinations, 57709–57717

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Oil Country Tubular Goods from the People's Republic of China; Court Decision Not in Harmony with Final Results of Administrative Review, 57789–57790
Investigations; Determinations, Modifications, and Rulings, etc.:
Silicomanganese from Australia, 57787–57789

Justice Department
See Justice Programs Office
NOTICES
Proposed Consent Decrees under the Clean Air Act, 57873–57874

Justice Programs Office
NOTICES
Meetings:
Federal Advisory Committee on Juvenile Justice, 57874

Labor Department
See Occupational Safety and Health Administration
NOTICES
Establishing a Minimum Wage for Contractors, Notice of Rate Change in Effect as of January 1, 2016; Correction, 57874–57876
United States-Peru Trade Promotion Agreement:
Determination Regarding Review of Submission #2015–01, 57877–57878

Land Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
California Desert Conservation Area Plan, West Mojave Planning Area, Inyo, Kern, Los Angeles and San Bernardino Counties, 57862

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 57879–57881

National Aeronautics and Space Administration
NOTICES
Meetings:
NASA Advisory Council; Science Committee; Astrophysics Subcommittee, 57881–57882

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 57882

National Highway Traffic Safety Administration
NOTICES
Petitions for Decisions of Inconsequential Noncompliance:
PACCAR, Inc., 57911–57912

National Institutes of Health
NOTICES
Approvals of Start-Up Exclusive Evaluation Option License Agreements:
Development of Diagnostic Tests and Kits for Detection of Pathological Angiogenesis in Cancer, 57832–57833
Meetings:
Center for Scientific Review, 57833–57834
National Cancer Institute, 57834
National Institute on Aging, 57832

National Oceanic and Atmospheric Administration
RULES
Fisheries Off West Coast States:
Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #30 Through #36, 57738–57740
Magnuson-Stevens Act Provisions:
Fishery Management Council Freedom of Information Act Requests, 57737–57738
NOTICES
Meetings:
Fisheries of the South Atlantic; South Atlantic Fishery Management Council, 57790
Western Pacific Fishery Management Council, 57790–57791

National Science Foundation
NOTICES
Permits under the Antarctic Conservation Act, 57882–57883

Nuclear Regulatory Commission
NOTICES
Final Safety Analysis Reports, Emergency Preparedness Documents, and Fire Protection Documents, 57884–57885
Guidance:
Chilled Water System, 57883–57884
Integrated Safety Analysis Standards for Acute Uranium Exposure of Workers, 57885–57886
License Amendment Applications:
Northern States Power Co.—Minnesota; Prairie Island Nuclear Generating Plant, Units 1 and 2, 57885

Occupational Safety and Health Administration
PROPOSED RULES
Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness; Extension of Comment Period, 57765–57766
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Lead in General Industry Standard, 57878–57879

Ocean Energy Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Outer Continental Shelf, Alaska Region, Beaufort Sea Planning Area, Liberty Development and Production Plan, 57873
Wind Lease Sales:
Atlantic Wind Lease Sale 5 for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore New Jersey, 57862–57872

Pension Benefit Guaranty Corporation
RULES
Multiemployer Plans; Electronic Filing Requirements; Correction, 57717

Personnel Management Office
RULES
Managing Senior Executive Performance, 57693–57698
Overtime Pay for Border Patrol Agents, 58094–58121
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certification of Qualifying District of Columbia, 57887–57888
Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, 57886–57887
Rollover Election, Rollover Information, and Special Tax Notice Regarding Rollovers, 57888
Meetings:
Federal Salary Council, 57887

Pipeline and Hazardous Materials Safety Administration
NOTICES
Delayed Applications, 57913–57914
Special Permit Applications:
Hazardous Materials, 57912–57913
Hazardous Materials; Modifications, 57914–57915

Postal Regulatory Commission
NOTICES
New Postal Products, 57888–57890

Postal Service
NOTICES
Product Changes:
Parcel Select Negotiated Service Agreement, 57891
Priority Mail Negotiated Service Agreement, 57890–57891

Securities and Exchange Commission
RULES
Removal of Certain References to Credit Ratings and Amendment to the Issuer Diversification Requirement in the Money Market Fund Rule, 58124–58155
NOTICES
Applications:
General Electric Co.and GE Capital International Funding Co., 57891–57893
Principal Exchange-Traded Funds, et al., 57893–57901
Meetings; Sunshine Act, 57901–57902

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57906–57907
Disaster Declarations:
Kentucky, 57906
West Virginia; Amendment 1, 57907
Privacy Act; Computer Matching Agreement, 57902–57906
Surrender of License of Small Business Investment Company, 57906

Social Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 57907–57910

State Department
NOTICES
Culturally Significant Objects Imported for Exhibition Determinations:
Delacroix's Influence; The Rise of Modern Art from Cezanne to van Gogh, 57910
Culturally Significant Objects Imported for Exhibition:
Frank Stella—A Retrospective, 57910–57911
Sotatsu—Making Waves, 57910

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Pipeline and Hazardous Materials Safety Administration
NOTICES
Meetings:
Global Positioning System Adjacent Band Compatibility Assessment Workshop IV, 57915

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Environmental Protection Agency, 57918–58012

Part III
Environmental Protection Agency, 58014–58092

Part IV
Personnel Management Office, 58094–58121

Part V
Securities and Exchange Commission, 58124–58155

Part VI
Interior Department, Fish and Wildlife Service, 58158–58163

Part VII
Interior Department, Fish and Wildlife Service, 58166–58194

Reader Aids

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
410 58094
430 57693
534 57693
550 58094
551 58094
870 58094

7 CFR
1221 57698

Proposed Rules:
340 57741

14 CFR
71 (2 documents) 57699, 57700
193 57701

Proposed Rules:
39 (4 documents) 57742, 57744, 57751, 57753
71 57755

17 CFR
270 58124
274 58124

18 CFR
40 57704

21 CFR

Proposed Rules:
201 57756
801 57756
1100 57756

26 CFR
53 57709

29 CFR
4000 57717
4041A 57717
4281 57717

Proposed Rules:
1904 57765

33 CFR
100 57717
117 (2 documents) 57720, 57722

40 CFR
52 (5 documents) 57722, 57725, 57727, 57729, 57730
62 57732
131 57734

Proposed Rules:
52 57766
62 57767
260 57918
261 (2 documents) 57918, 58014
262 (2 documents) 57918, 58014
263 57918
264 57918
265 57918
266 58014
268 (2 documents) 57918, 58014
270 57918
273 (2 documents) 57918, 58014
279 57918

44 CFR
64 57734

Proposed Rules:
67 (2 documents) 57767

47 CFR

Proposed Rules:
51 57768
63 57768

50 CFR
20 (2 documents) 58158, 58166
600 57737
660 57738

Rules and Regulations

Federal Register
Vol. 80, No. 186
Friday, September 25, 2015

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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430 and 534

RIN 3206–AM48

Managing Senior Executive Performance

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending subpart C of part 430 of title 5, Code of Federal Regulations, to help agencies design performance appraisal systems for senior executives that support a consistent approach for managing senior executive performance, incorporate current OPM policies, and reorganize information for ease of reading. We are also amending part 534 to make technical corrections to the regulation on pay for senior level and scientific and professional positions.

DATES: Effective October 26, 2015.

FOR FURTHER INFORMATION CONTACT: Nikki Johnson by telephone at (202) 606–8046 or by email at *nikki.johnson@opm.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) issued proposed regulations and requested comments on December 10, 2014 (79 FR 73239). OPM received comments from one Federal agency, a private association for career federal executives (''the Association''), and one individual. We reviewed the public comments, considered them, and decided upon any revisions we concluded were appropriate in light of that consideration. We have summarized the comments below and also indicate how we disposed of them in the final regulations.

In addition to specific substantive comments, we received general comments about the proposed regulations as well as information contained in the supplementary information. For example, the Association supports the concept of a consistent appraisal approach and recognizes the additional clarification provided for the definitions of performance standards and performance requirements as being particularly helpful.

Furthermore, the Association recommends ensuring a consistent framework to promote transparency for SES performance management by limiting agency flexibility. The Association suggests OPM direct agencies to leverage and tailor the critical elements, based on the executive core qualifications (ECQ), to secure the desired flexibility instead of permitting flexibility regarding the implementation of a Governmentwide system. In response, OPM notes that 5 U.S.C. 4312(a), one of the statutory provisions governing performance appraisals for the SES, specifically states: ''Each agency shall, in accordance with standards established by OPM, develop one or more performance appraisal systems. . . .'' Therefore, we are regulating concepts of good performance management by providing system standards for agencies to use in designing their SES performance management systems. In addition, the basic SES performance management system incorporates these system standards and is available for agencies to adopt and adapt, still allowing agencies limited flexibility in system design.

The Association also recommends OPM codify the SES and Performance Management Office to ensure that office can provide oversight and guidance on SES performance management, as well as serve as a resource for agencies. OPM already has sufficient statutory (5 U.S.C. 4312(c)(1) and (3) and 4315) and regulatory authority (5 CFR subpart C being finalized here and including § 430.314) to fulfill its obligations, with or without a separate office bearing this title, and OPM does not believe it is prudent to bind future directors to any particular organizational scheme. In addition, it is already clear that OPM is committed to providing agencies guidance and support in designing and implementing their performance management systems.

An agency has concerns that the use of the word ''rare'' in the example of a performance standard in the supplementary information describing Level 5 performance might be interpreted as imposing a quota or limitation on the number of executives who can receive a Level 5 rating. OPM did not intend ''rare, high quality performance'' to be a quantitative descriptor, as a quota would be proscribed under 5 U.S.C. 4312(b)(2). Nor did OPM intend to imply that Level 5 performance was merely ''high level'' as all standards for executives should anticipate high level work and be designed to encourage excellence in performance. Rather, OPM intended to convey that, qualitatively, the standards for a Level 5 (''An outstanding level'') rating should be clearly differentiated from and exceed the standards set for Level 4 performance (''An exceeds fully successful level'').

We received four comments on planning and appraising performance. First, the Association suggests the proposed regulations would be strengthened by a discussion of how Technical Qualifications (TQs) could be incorporated, when applicable, in appraising performance. OPM believes that the use of OPM-validated executive competencies can provide the proper balance between leadership qualifications and actual executive results, are the most appropriate basis for appraising executive performance, and would allow for incorporating TQs. We have removed specific reference to the ECQs, and clarified that standards for performance management systems should use critical elements based on OPM-validated executive competencies accordingly.

Also, the Association recommends the regulations establish appropriate timelines for communicating performance plans and ratings. It also recommends the communication of appraisals, including ratings that have been increased, sustained, or lowered, be provided in writing. OPM agrees with making this an explicit requirement and we have revised § 430.308 to ensure agencies establish timelines for communicating performance plans, conducting appraisals, and assigning and communicating annual summary ratings. In addition, we have revised § 430.306(b) regarding performance

plans and § 430.309(e)(4) regarding the annual summary rating to ensure they are communicated to the executive in writing in a timely manner.

In addition, the Association expresses concerns over the manner in which customer and employee perspectives will be collected and assessed and how those assessments will affect the performance appraisal of executives. The Association wants senior executives to be made aware of the assessment methods, and believes those methods must ensure a senior executive is assessed on things within the individual's control. OPM has included Governmentwide performance requirements for employee perspective into the Leading People critical element of the basic SES appraisal system executive performance plan template and for customer perspective in the Building Coalitions critical element. Beyond that, agencies are responsible for developing additional agency-specific requirements. In doing so, agencies should be clear on how the requirements will be measured and make executives aware of those assessment methods. They must make sure that such requirements are within the area of responsibility and control of the executive. We have clarified the language in several places in the regulation to include this concept.

Finally, an individual recommends OPM should consider providing a broader authority to develop alternative review procedures to cover other cases where it might be difficult or impossible to accommodate higher level review within the agency. For example, what would happen when the only person who can provide higher level review is also the final rater. The individual also questions the meaning of agency head in the proposed § 430.309(e)(2)(iii) and suggests OPM should provide a definition of agency for clarity and consistency. We have revised § 430.309(e)(2) to provide a broader authority for agencies to develop alternative review procedures when it is difficult or impossible to accommodate higher level review within the agency. We have also clarified that the review should be made by an official at a higher level who did not participate in determining the executive's initial summary rating. In other words, someone at a higher level who can provide an objective review who was not directly involved in the initial summary rating may serve as a higher-level official for this purpose. For example, a reviewing official may not provide a higher-level review because of their involvement in the process. It is not OPM's intention for agencies to exclude individuals with knowledge of the executive's performance from providing input. We also have revised § 430.303 to add a definition for agency.

Lastly, we received two comments on the oversight official. An agency suggests clarification of the responsibilities of the oversight official. It questions whether the responsibilities of the oversight official could be shared between two positions, such as one individual issuing performance appraisal guidelines and overseeing the performance management system and another individual issuing the organizational assessments. These regulations address the responsibilities of the oversight official with regard to providing oversight of the performance management system and issuing performance appraisal guidelines and do not make the oversight official responsible for organizational assessments. Therefore, it is up to the agency whether two separate positions have the responsibilities of these two functions.

The Association recommends the oversight official also oversee adherence to timelines for communicating performance plans and ratings, as well as ensure agency leaders and political appointees are meeting their responsibilities and obligations in support of implementation of the SES performance management system. We have revised § 430.308 to ensure agencies establish timelines for completing and communicating performance plans and ratings, and are continuing to provide agencies the flexibility to determine which official(s) will oversee adherence to these timelines and the proper exercise of upper management responsibilities regarding performance management.

In the interest of clarifying the regulatory content, OPM is making a few additional changes. Wherever we refer to written communications, we include the ability to accomplish these through the use of automated systems. In § 430.305(a)(7), we have revised the order of the wording to conform with the other entries in paragraph (a). In § 430.308(d)(3), we include language to clarify that guidelines must be issued before completion of the initial summary ratings. In § 430.310(b), we clarify that appraisal information from details and such must be provided to the executive.

Pay for Senior Level and Scientific and Professional Positions

On March 5, 2014, OPM published final regulations (79 FR 12353) on pay for senior level and scientific and professional positions to implement Section 2 of the Senior Professional Performance Act of 2008 (Pub. L. 110–372, October 8, 2008). We find that paragraphs (c)(1)(ii) and (c)(1)(iii) of 5 CFR 534.505 of these regulations contain erroneous cross-references that we are correcting. We also are revising the salary rates used in the example to reflect the most current rates at the time of publication of this correction.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities, because they will apply only to Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has not been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

List of Subjects in 5 CFR Parts 430

Government employees.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

Accordingly, OPM is amending 5 CFR parts 430 and 534 as follows:

PART 430—PERFORMANCE MANAGEMENT

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapter 43 and 5307(d).

■ 2. Revise subpart C to read as follows:

Subpart C—Managing Senior Executive Performance

Sec.
430.301 General.
430.302 Coverage.
430.303 Definitions.
430.304 SES performance management systems.
430.305 System standards for SES performance management systems.
430.306 Planning and communicating performance.
430.307 Monitoring performance.
430.308 Appraising performance.
430.309 Rating performance.
430.310 Details and job changes.
430.311 Performance Review Boards (PRBs).
430.312 Using performance results.
430.313 Training and evaluation.
430.314 OPM review of agency systems.

Subpart C—Managing Senior Executive Performance

§ 430.301 General.

(a) *Statutory authority.* Chapter 43 of title 5, United States Code, provides for the establishment of Senior Executive Service (SES) performance appraisal systems and appraisal of senior

executive performance. This subpart prescribes regulations for managing SES performance to implement the statutory provisions at 5 U.S.C. 4311–4315.

(b) *Purpose.* In order to improve the overall performance of Government, agencies must establish performance management systems that hold senior executives accountable (within their assigned areas of responsibility and control) for their individual performance and for organizational performance by—

(1) Encouraging excellence in senior executive performance;

(2) Aligning executive performance plans with the results-oriented goals required by the Government Performance and Results Act Modernization Act of 2010 (GPRAMA) or other strategic planning initiatives;

(3) Setting and communicating individual and organizational goals and expectations that clearly fall within the executive's area of responsibility and control;

(4) Reporting on the success of meeting organizational goals (including any factors that may have impacted success);

(5) Systematically appraising senior executive performance using measures that balance organizational results with customer and employee perspectives, and other perspectives as appropriate; and

(6) Using performance appraisals as a basis for pay, awards, development, retention, removal, and other personnel decisions.

(c) *Savings provision.* Agencies without OPM approval to use the basic SES appraisal system issued by U.S. Office of Personnel Management (OPM) and the Office of Management and Budget on January 4, 2012, must design, obtain OPM approval for, and implement systems conforming to the requirements of this subpart no later than one year after October 26, 2015. No provision of this subpart will affect any administrative proceedings related to any action initiated under a provision of this chapter before October 26, 2015.

§ 430.302 Coverage.

This subpart applies to—

(a) All senior executives covered by subchapter II of chapter 31 of title 5, United States Code; and

(b) Agencies as defined in § 430.303.

§ 430.303 Definitions.

In this subpart—

Agency means an agency as that term is defined in 5 U.S.C. 3132(a)(1) and an Office of Inspector General, which is a separate agency for all provisions of the Senior Executive Service under the Inspector General Act of 1978 (5 U.S.C. App 6(d)).

Annual summary rating means the overall rating level that an appointing authority assigns at the end of the appraisal period after considering (1) the initial summary rating, (2) any input from the executive or a higher level review, and (3) the applicable Performance Review Board's recommendations. This is the official final rating for the appraisal period.

Appointing authority means the department or agency head, or other official with authority to make appointments in the Senior Executive Service (SES).

Appraisal period means the established period of time for which a senior executive's performance will be appraised and rated.

Critical element means a key component of an executive's work that contributes to organizational goals and results and is so important that unsatisfactory performance of the element would make the executive's overall job performance unsatisfactory.

Initial summary rating means an overall rating level the supervisor derives, from appraising the senior executive's performance during the appraisal period in relation to the critical elements and performance standards and requirements, and forwards to the Performance Review Board.

Oversight official means the agency head or the individual specifically designated by the agency head who provides oversight of the performance management system and issues performance appraisal guidelines.

Performance means the accomplishment of the work described in the senior executive's performance plan.

Performance appraisal means the review and evaluation of a senior executive's performance against critical elements and performance standards and requirements.

Performance management system means the framework of policies and practices that an agency establishes under subchapter II of chapter 43 of title 5, United States Code, subpart A, and this subpart for planning, monitoring, developing, evaluating, and rewarding both individual and organizational performance and for using resulting performance information in making personnel decisions.

Performance requirement means a description of what a senior executive must accomplish, or the competencies demonstrated, for a critical element. A performance requirement establishes the criteria to be met to be rated at a specific level of performance and generally includes quality, quantity, timeliness, cost savings, manner of performance, or other factors.

Performance standard means a normative description of a single level of performance within five such described levels of performance ranging from unsatisfactory performance to outstanding performance. Performance standards provide the benchmarks for developing performance requirements against which actual performance will be assessed.

Progress review means a review of the senior executive's progress in meeting the performance requirements. A progress review is not a performance rating.

Senior executive performance plan means the written critical elements and performance requirements against which performance will be evaluated during the appraisal period by applying the established performance standards. The plan includes all critical elements, performance standards, and performance requirements, including any specific goals, targets, or other measures established for the senior executive.

Strategic planning initiatives means agency strategic plans as required by the GPRA Modernization Act of 2010, annual performance plans, organizational work plans, and other related initiatives.

System standards means the OPM-established requirements for performance management systems.

§ 430.304 SES performance management systems.

(a) To encourage excellence in senior executive performance, each agency must develop and administer one or more performance management systems for its senior executives in accordance with the system standards established in § 430.305.

(b) Performance management systems must provide for—

(1) Identifying executives covered by the system;

(2) Monitoring progress in accomplishing critical elements and performance requirements and conducting progress reviews at least once during the appraisal period, including informing executives on how well they are performing;

(3) Establishing an official performance appraisal period for which an annual summary rating must be prepared;

(4) Establishing a minimum appraisal period of at least 90 days;

(5) Ending the appraisal period at any time after the minimum appraisal

period is completed, but only if the agency determines there is an adequate basis on which to appraise and rate the senior executive's performance and the shortened appraisal period promotes effectiveness; and

(6) Establishing criteria and procedures to address performance of senior executives who are on detail, temporarily reassigned, or transferred as described at § 430.312(c)(1), and for other special circumstances established by the agency.

§ 430.305 System standards for SES performance management systems.

(a) Each agency performance management system must incorporate the following system standards:

(1) Use critical elements based on OPM-validated executive competencies to evaluate executive leadership and results, including the quality of the executive's performance;

(2) Align performance requirements with agency mission and strategic planning initiatives;

(3) Define performance standards for each of the summary rating performance levels, which also may be used for the individual elements or performance requirements being appraised;

(4) Appraise each senior executive's performance at least annually against performance requirements based on established performance standards and other measures;

(5) Derive an annual summary rating through a mathematical method that ensures executives' performance aligns with level descriptors contained in performance standards that clearly differentiate levels above fully successful, while prohibiting a forced distribution of rating levels for senior executives;

(6) Establish five summary performance levels as follows:

(i) An outstanding level;

(ii) An exceeds fully successful level;

(iii) A fully successful level;

(iv) A minimally satisfactory level; and

(v) An unsatisfactory level;

(7) Include equivalency statements in the system description for agency-specific terms for the five summary performance levels aligning them with the five performance levels required in § 430.305(a)(6); and

(8) Use performance appraisals as a basis to adjust pay, reward, retain, and develop senior executives or make other personnel decisions, including removals as specified in § 430.312.

(b) An agency may develop its own performance management system for senior executives in accordance with the requirements of this section.

(c) OPM may establish, and refine as needed, a basic performance management system incorporating all requirements of this section, which agencies may adopt, with limited adaptation, for performance management of its senior executives.

§ 430.306 Planning and communicating performance.

(a) Each senior executive must have a performance plan that describes the individual and organizational expectations for the appraisal period that clearly fall within the senior executive's area of responsibility and control.

(b) Supervisors must develop performance plans in consultation with senior executives and communicate the plans to them in writing, including through the use of automated systems, on or before the beginning of the appraisal period.

(c) A senior executive performance plan must include—

(1) *Critical elements.* Critical elements must reflect individual performance results or competencies as well as organizational performance priorities within each executive's respective area of responsibility and control, and be based on OPM-validated executive competencies.

(2) *Performance standards.* Performance plans must include the performance standards describing each level of performance at which a senior executive's performance can be appraised. Performance standards describe the general expectations that must be met to be rated at each level of performance and provide the benchmarks for developing performance requirements.

(3) *Performance requirements.* At a minimum, performance requirements must describe expected accomplishments or demonstrated competencies for fully successful performance by the executive. An agency may establish performance requirements associated with other levels of performance as well. These performance requirements must align with agency mission and strategic planning initiatives. Performance requirements must contain measures of the quality, quantity, timeliness, cost savings, or manner of performance, as appropriate, expected for the applicable level of performance.

(d) Agencies may require a review of senior executive performance plans at the beginning of the appraisal period to ensure consistency of agency-specific performance requirements. Such reviews may be performed by the Performance Review Board (PRB) or another body of the agency's choosing.

§ 430.307 Monitoring performance.

Supervisors must monitor each senior executive's performance throughout the appraisal period and hold at least one progress review. At a minimum, supervisors must inform senior executives during the progress review about how well they are performing with regard to their performance plan. Supervisors must provide advice and assistance to senior executives on how to improve their performance. Supervisors and senior executives may also discuss available development opportunities for the senior executive.

§ 430.308 Appraising performance.

(a) Agencies must establish appropriate timelines for communicating performance plans, conducting appraisals, and assigning and communicating annual summary ratings.

(b) At least annually, agencies must appraise each senior executive's performance in writing, including through the use of automated systems, and assign an annual summary rating at the end of the appraisal period.

(c) Agencies must appraise a senior executive's performance on the critical elements and performance requirements in the senior executive's performance plan.

(d) Agencies must base appraisals of senior executive performance on both individual and organizational performance as it applies to the senior executive's area of responsibility and control, taking into account factors such as—

(1) Results achieved in accordance with agency mission and strategic planning initiatives;

(2) Overall quality of performance rendered by the executive,

(3) Performance appraisal guidelines that must be based upon assessments of the agency's performance and are provided by the oversight official to senior executives, rating and reviewing officials, PRB members, and appointing authorities at the conclusion of the appraisal period and before completion of the initial summary ratings;

(4) Customer perspectives;

(5) Employee perspectives;

(6) The effectiveness, productivity, and performance results of the employees for whom the senior executive is responsible;

(7) Leadership effectiveness in promoting diversity, inclusion and engagement as set forth, in part, under section 7201 of title 5, United States Code; and

(8) Compliance with the merit system principles set forth under section 2301 of title 5, United States Code.

§ 430.309 Rating performance.

(a) When rating senior executive performance, each agency must—

(1) Comply with the requirements of this section, and

(2) Establish a PRB as described at § 430.311.

(b) Each performance management system must provide that an appraisal and rating for a career appointee's performance may not be made within 120 days after the beginning of a new President's term.

(c) When an agency cannot prepare an annual summary rating at the end of the appraisal period because the senior executive has not completed the minimum appraisal period or for other reasons, the agency must extend the executive's appraisal period. Once the appropriate conditions are met, the agency will then prepare the annual summary rating.

(d) Senior executive performance appraisals and ratings are not appealable.

(e) Procedures for rating senior executives must provide for the following:

(1) *Initial summary rating.* The supervisor must develop an initial summary rating of the senior executive's performance, in writing, including through the use of automated systems, and share that rating with the senior executive. The senior executive may respond in writing.

(2) *Higher-level review (HLR).* A senior executive may ask for a higher-level official to review the initial summary rating before the rating is given to the PRB. The agency must provide each senior executive an opportunity for review of the initial summary rating by an employee, or (with the consent of the senior executive) a commissioned officer in the uniformed services on active duty in the agency, in a higher level in the agency.

(i) A single review by an official at a higher level who did not participate in determining the executive's initial summary rating will satisfy this requirement. An official providing HLR may not change the initial summary rating but may recommend a different rating to the PRB. HLR may be provided by an official who is at a higher level in the agency than the appointing authority who will approve the final rating under paragraph (e)(4) of this section.

(ii) When an agency cannot provide review by a higher-level official for an executive who receives an initial summary rating from the agency head because no such official exists in the agency, the agency must offer an alternative review as it determines appropriate, except that the review may not be provided by a member of the PRB or an official who participated in determining the initial summary rating.

(iii) If a senior executive declines review by agency-designated higher-level officials, the agency may offer an alternative review but it not obligated to do so. The agency must document the executive's declination of the HLR opportunity provided by the agency before offering an alternative review.

(iv) Copies of findings and recommendations of the HLR official or the official performing an alternative review under paragraph (e)(2)(ii) through (iii) of this section must be given to the senior executive, the supervisor, and the PRB.

(3) *PRB review.* The PRB must receive and review the initial summary rating, the senior executive's response to the initial rating if made, and findings and recommendations of any HLR or any alternative review under paragraph (e)(2) of this section before making recommendations to the appointing authority, as provided in § 430.311.

(4) *Annual summary rating.* The appointing authority must assign the annual summary rating of the senior executive's performance after considering the applicable PRB's recommendations. This rating is the official final rating for the appraisal period and must be communicated to the executive in writing, including through the use of automated systems, in accordance with the timelines developed under § 430.308(a).

(5) *Shortened appraisal periods.* The procedures of this section apply whenever an agency terminates an appraisal period under § 430.304(b)(5).

§ 430.310 Details and job changes.

(a) When a senior executive is detailed or temporarily reassigned for 120 days or longer, the gaining organization must set performance goals and requirements for the detail or temporary assignment. The gaining organization must appraise the senior executive's performance in writing, including through the use of automated systems, and this appraisal must be considered when deriving the initial summary rating.

(b) When a senior executive is reassigned or transferred to another agency after completing the minimum appraisal period, the supervisor must appraise the executive's performance in writing, including through the use of automated systems, before the executive leaves and provide this information to the executive.

(c) The most recent annual summary rating and any subsequent appraisals must be transferred to the gaining agency or organization. The gaining supervisor must consider the rating and appraisals when deriving the initial summary rating at the end of the appraisal period.

§ 430.311 Performance Review Boards (PRBs).

Each agency must establish one or more PRBs to make recommendations to the appointing authority on the performance of its senior executives.

(a) *Membership.* (1) Each PRB must have three or more members who are appointed by the agency head, or by another official or group acting on behalf of the agency head. Agency heads are encouraged to consider diversity and inclusion in establishing their PRBs.

(2) PRB members must be appointed in a way that assures consistency, stability, and objectivity in SES performance appraisal.

(3) When appraising a career appointee's performance or recommending a career appointee for a performance-based pay adjustment or performance award, more than one-half of the PRB's members must be SES career appointees.

(4) The agency must publish notice of PRB appointments in the **Federal Register** before service begins.

(b) *Functions.* (1) Each PRB must consider agency performance as communicated by the oversight official through the performance appraisal guidelines when reviewing and evaluating the initial summary rating, any senior executive's response, and any higher-level official's findings and recommendations on the initial summary rating or the results of an alternative review. The PRB may conduct any further review needed to make its recommendations. The PRB may not review an initial summary rating to which the executive has not been given the opportunity to respond in writing, including through the use of automated systems.

(2) The PRB must make a written recommendation, including through the use of automated systems, to the appointing authority about each senior executive's annual summary rating, performance-based pay adjustment, and performance award.

(3) PRB members may not take part in any PRB deliberations involving their own appraisals, performance-based pay adjustments, and performance awards.

§ 430.312 Using performance results.

(a) Agencies must use performance appraisals as a basis for adjusting pay, granting awards, retaining senior executives, and making other personnel decisions. Performance appraisals also will be a factor in assessing a senior executive's continuing development needs.

(b) Agencies are required to provide appropriate incentives and recognition (including pay adjustments and performance awards under part 534, subpart D) for excellence in performance.

(c) A career executive may be removed from the SES for performance reasons, subject to the provisions of part 359, subpart E, as follows:

(1) An executive who receives an unsatisfactory annual summary rating must be reassigned or transferred within the SES, or removed from the SES;

(2) An executive who receives two unsatisfactory annual summary ratings in any 5-year period must be removed from the SES; and

(3) An executive who receives less than a fully successful annual summary rating twice in any 3-year period must be removed from the SES.

§ 430.313 Training and evaluation.

(a) To assure effective implementation of agency performance management systems, agencies must provide appropriate information and training to agency leadership, supervisors, and senior executives on performance management, including planning and appraising performance.

(b) Agencies must periodically evaluate the effectiveness of their performance management system(s) and implement improvements as needed. Evaluations must provide for both assessment of effectiveness and compliance with relevant laws, OPM regulations, and OPM performance management policy.

(c) Agencies must maintain all performance-related records for no fewer than 5 years from the date the annual summary rating is issued, as required in 5 CFR 293.404(b)(1).

§ 430.314 OPM review of agency systems.

(a) Agencies must submit proposed SES performance management systems to OPM for approval. Agency systems must address the system standards and requirements specified in this subpart.

(b) OPM will review agency systems for compliance with the requirements of law, OPM regulations, and OPM performance management policy, including the system standards specified at § 430.305.

(c) If OPM finds that an agency system does not meet the requirements and intent of subchapter II of chapter 43 of title 5, United States Code, or of this subpart, OPM will identify the requirements that were not met and direct the agency to take corrective action, and the agency must comply.

PART 534—PAY UNDER OTHER SYSTEMS

■ 3. The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 3161(d), 5307, 5351, 5352, 5353, 5376, 5382, 5383, 5384, 5385, 5541, 5550a, sec. 1125 of the National Defense Authorization Act for FY 2004, Pub. L. 108–136, 117 Stat. 1638 (5 U.S.C. 5304, 5382, 5383, 7302; 18 U.S.C. 207); and sec. 2 of Pub. L. 110–372, 122 Stat. 4043 (5 U.S.C. 5304, 5307, 5376).

■ 4. In § 534.505, revise paragraph (c)(1) to read as follows:

§ 534.505 Written Procedures.

* * * * *

(c) * * *

(1) Any pay-setting action under § 534.506 or any pay increase under § 534.507 that results in a rate of basic pay that is within the highest 10 percent of the applicable rate range under § 534.504. A rate of basic pay equal to or above the amount derived using the following rules is considered to be within the highest 10 percent of the applicable pay range (in 2015, $177,166 or above if the applicable system is certified, or $164,026 or above if the applicable system is not certified or performance appraisal does not apply):

(i) Subtract the minimum rate of basic pay from the maximum rate of basic pay for the applicable rate range under § 534.504 (in 2015, $183,300 − $121,956 = $61,344 if the applicable system is certified, or $168,700 − $121,956 = $46,744 if the applicable system is not certified or performance appraisal does not apply);

(ii) Multiply the amount derived in paragraph (c)(1)(i) of this section by 0.10 (in 2015, $61,344 − 0.10 = $6,134 if the applicable system is certified, or $46,744 − 0.10 = $4,674 if the applicable system is not certified or performance appraisal does not apply); and

(iii) Subtract the amount derived in paragraph (c)(1)(ii) of this section from the maximum rate of basic pay applicable under § 534.504 (in 2015, $183,300 − $6,134 = $177,166 if the applicable system is certified, or $168,700 − $4,674 = $164,026 if the applicable system is not certified or performance appraisal does not apply);

* * * * *

[FR Doc. 2015–24405 Filed 9–24–15; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1221

[AMS–LPS–15–0055]

Sorghum Promotion, Research, and Information Program

AGENCY: Agricultural Marketing Service; USDA.

ACTION: Announcement of the continuation of the sorghum promotion.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing that sorghum producers voting in a national referendum from March 23, 2015, through April 21, 2015, have approved the continuation of the Sorghum Promotion, Research, and Information Order (Order).

DATES: Effective September 25, 2015.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Director, Research and Promotion Division; Livestock, Poultry, and Seed Program, AMS, USDA, Room 2608–S; 1400 Independence Avenue SW., Washington, DC 20250–0251; Telephone 202/720–5705; Fax 202/720–1125; or email to *Kenneth.Payne@ams.usda.gov,* or Craig Shackelford, Marketing Specialist; Research and Promotion Division; Livestock, Poultry, and Seed Program, AMS, USDA; 22 Jamesport Lane; White, GA 30184; Telephone: (470) 315–4246; or email to *craig.shackelford@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Commodity Promotion, Research, and Information Act of 1996 (Act)(7 U.S.C. 7411–7425), the Department of Agriculture conducted a referendum from March 23, 2015, through April 21, 2015, among eligible sorghum producers and importers to determine if the Order would continue to be effective. A final rule was published in the November 18, 2010, **Federal Register** (75 FR 70573) outlining the procedures for conducting the referendum.

Of the 1,202 valid ballots cast, 1,160 or 96.5 percent favored the program and 42 or 3.5 percent opposed continuing the program. For the program to continue, it must have been approved by at least a majority of those eligible persons voting for approval who were engaged in the production or importation of sorghum during the period January 1, 2011, through December 31, 2014.

Therefore, based on the referendum results, the Secretary of Agriculture has determined that the required majority of eligible voters who voted in the

nationwide referendum from March 23, 2015, through April 21, 2015, voted to continue the Order. As a result, the Sorghum Checkoff Program will continue to be funded by a mandatory assessment on producers and importers at the rate of 0.6 percent of net market value of grain sorghum and 0.35 percent of net market value for sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage. Imports of such products will also be assessed, although, very limited imports exist at this time.

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the information collection requirements have been approved under OMB number 0581–0093.

STATE REFERENDUM RESULTS

[March 23, 2015, through April 21, 2015]

State	Yes votes	No votes	Total eligible votes
Alabama	0	0	0
Alaska	0	0	0
Arizona	0	0	0
Arkansas	41	0	41
California	0	0	0
Colorado	49	2	51
Connecticut	0	0	0
Delaware	0	0	0
Florida	0	0	0
Georgia	0	0	0
Hawaii	0	0	0
Idaho	0	0	0
Illinois	11	2	13
Indiana	0	0	0
Iowa	2	0	2
Kansas	281	14	295
Kentucky	2	0	2
Louisiana	34	0	34
Maine	0	0	0
Maryland	3	0	3
Massachusetts	0	0	0
Michigan	0	0	0
Minnesota	0	0	0
Mississippi	1	0	1
Missouri	4	0	4
Montana	0	0	0
Nebraska	27	0	27
Nevada	0	0	0
New Hampshire	0	0	0
New Jersey	0	0	0
New Mexico	27	1	28
New York	0	0	0
North Carolina	4	0	4
North Dakota	0	0	0
Ohio	0	0	0
Oklahoma	57	1	58
Oregon	0	0	0
Pennsylvania	0	0	0
Rhode Island	0	0	0
South Carolina	1	0	1
South Dakota	34	0	34
Tennessee	0	0	0
Texas	580	22	602
Utah	0	0	0
Vermont	0	0	0
Virginia	2	0	2
Washington	0	0	0

STATE REFERENDUM RESULTS—Continued

[March 23, 2015, through April 21, 2015]

State	Yes votes	No votes	Total eligible votes
West Virginia	0	0	0
Wisconsin	0	0	0
Wyoming	0	0	0
Total	1,160	42	1,202

Authority: 7 U.S.C. 7411–7425.

Dated: September 18, 2015.

Rex A. Barnes,

Associated Administrator, Agricultural Marketing Service.

[FR Doc. 2015–24223 Filed 9–24–15; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–3057; Airspace Docket No. 15–ASO–9]

Amendment of Class E Airspace; Mackall AAF, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends Class E Airspace at Mackall Army Airfield (AAF), NC, bringing current the regulatory text under the airspace designation for Mackall AAF, NC, by replacing the acronym ''NCB'' with ''NDB''. This is an administrative change to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, December 10, 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 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/airtraffic/publications/*. For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783.

The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of 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: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

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 amends Class E airspace at Mackall AAF, NC.

History

In a review of the airspace, the FAA found the airspace description for Mackall AAF, NC, as published in FAA Order 7400.9Z, Airspace Designations and Reporting Points, does not match the FAA's charting information. This administrative change coincides with the FAA's aeronautical database for Class E Airspace Designated as an Extension to a Class D Surface Area.

Class E airspace designations are published in paragraphs 6004 of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations 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 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order 7400.9Z lists

Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by replacing the acronym ''NCB'' with ''NDB'' in the regulatory text of the Class E airspace designated as an extension to Class D at Mackall AAF, NC. This is an administrative change merely amending the description for Mackall AAF, NC, to be in concert with the FAAs aeronautical database, and does not affect the boundaries, or operating requirements of the airspace, therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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. Therefore, this regulation: (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.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, 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 further clarifies the description of controlled airspace at Mackall AAF, NC.

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 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D Surface Area.

* * * * *

ASO NC E4 Mackall AAF, NC [Amended]

Mackall AAF, NC
(Lat. 35°02'12'' N., long. 79°29'51'' W.)
Mackall NDB
(Lat. 35°01'41'' N., long. 79°29'08'' W.)

That airspace extending upward from the surface within 3 miles each side of the 295° bearing from the Mackall NDB, extending from the 4.2-mile radius of Mackall AAF to 7 miles northwest of the NDB. This Class E 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.

Issued in College Park, Georgia, on September 16, 2015.

Jim Dickinson,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2015–24152 Filed 9–24–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1210; Airspace Docket No. 12–ASO–42]

Establishment of Class E Airspace; Poplarville-Pearl River County Airport, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E Airspace at Poplarville, MS. to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) serving Poplarville-Pearl River County Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport. The FAA found that Class E airspace already exists for another airport in Poplarville, MS, and, therefore, is changing the title and airspace designation in this final rule to include the airport name. Also, a minor adjustment is made to the geographic coordinates of the airport.

DATES: Effective 0901 UTC, December 10, 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 7400.9Z, 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 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, 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 FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636,

Atlanta, Georgia 30320; telephone (404) 305–6364.

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 Class E airspace at Poplarville-Pearl River County Airport, Poplarville, MS.

History

On June 22, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface at Poplarville-Pearl River County Airport, Poplarville, MS. (80 FR 35601). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found the airport designation Poplarville, MS, is already being used for another airport, and, therefore, has changed the title and designation to Poplarville-Pearl River County Airport, Poplarville, MS. The geographic coordinates are also adjusted. Except for editorial changes, and the changes noted above, this rule is the same as published in the NPRM.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order 7400.9Z 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 E airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Poplarville-Pearl River County Airport, Poplarville, MS, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Poplarville-Pearl River County Airport. The title of this rule and the airspace designation is changed from Poplarville, MS, to Poplarville-Pearl River County Airport, MS, and the geographic coordinates of the airport are adjusted to be in concert with the FAAs aeronautical database.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this 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 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

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

* * * * *

ASO MS E5 Poplarville-Pearl River County Airport, MS [New]

Poplarville-Pearl River County Airport, MS (Lat. 30°47′12″ N., long. 89°30′16″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Poplarville-Pearl River County Airport.

Issued in College Park, Georgia, on September 16, 2015.

Jim Dickinson,

Acting Manager, Operations Support Group, Eastern Service Center, Operations Support Group.

[FR Doc. 2015–24153 Filed 9–24–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 193

[Docket No.: FAA–2014–0142]

RIN 2120–AA66

Federal Contract Tower Safety Action Program (SAFER–FCT) and Air Traffic Safety Action Program for Engineers & Architects, Staff Support Specialists, Aviation Technical System Specialists (Series 2186) and Flight Procedures Team (ATSAP–X)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Order Designating Information as Protected from Disclosure; No comments received.

SUMMARY: This action affirms the order published in the **Federal Register** on April 3, 2015, regarding the application of Title 14, Code of Federal Regulations (14 CFR) Part 193, Federal Contract Tower SAFER–FCT Program and the Air Traffic Organization Engineers and Architects, Staff Support Specialist (Series 2186) and Flight Procedures Team (hereinafter ''Region X'') ATSAP–X Program. The Notice proposed that safety information provided to the FAA under the SAFER–FCT and ATSAP–X programs be designated by an FAA Order as protected from public disclosure in accordance with the provisions of 14 CFR part 193, Protection of Voluntarily Submitted Information. The designation is intended to encourage persons to voluntarily provide information to the FAA under the SAFER–FCT and ATSAP–X, so the FAA can learn about and address aviation safety hazards and implement, as appropriate corrective measures for events or safety issues.

DATES: Effective date: September 25, 2015.

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

FOR FURTHER INFORMATION CONTACT: For questions concerning this action, contact Ms. Coleen Hawrysko, Group Manager, Air Traffic Organization (ATO) Safety Programs, Federal Aviation Administration, 490 L'Enfant Plaza, Suite 7200, Washington, DC 20024; telephone (202) 267–8807, email: *coleen.hawrysko@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Under Title 49 of the United States Code (49 U.S.C.), section 40123, certain voluntarily provided safety and security information is protected from disclosure in order to encourage persons to provide the information. In accordance with 14 CFR part 193, Protection of Voluntarily Submitted Information, the FAA must issue an Order that specifies why the agency finds that the information should be protected. If the Administrator issues an Order designating information as protected under 49 U.S.C. 40123, that information will not be disclosed under the Freedom of Information Act (Title 5 of the United States Code (5 U.S.C.), section 552) or other laws, except as provided in 49 U.S.C. 40123, 14 CFR part 193, and the Order designating the information as protected. This Order is issued under part 193; section 193.11, which sets out the notice procedure for designating information as protected.

On April 3, 2015, the FAA published a notice of proposed order designating information provided under the SAFER–FCT and ATSAP–X programs as protected from disclosure under 49 U.S.C. 40123 and 14 CFR part 193. 80 FR 18168. The FAA noted that the designation of protected information is intended to encourage persons to voluntarily provide information to the FAA under the SAFER–FCT and ATSAP–X, so the FAA can learn about and address aviation safety hazards of which it was unaware or more fully understand and implement corrective measures for events or safety issues known by it through other means. The FAA invited public comment. No comments were submitted to the docket.

Applicability

The designation is applicable to any FAA office that receives information covered under this designation from SAFER–FCT and ATSAP–X, both of which will be incorporated in FAA Order JO 7200.20, Voluntary Safety Reporting Programs. Any other government agency that receives SAFER–FCT and ATSAP–X information covered under the designation from the FAA is subject to the requirements of 49 U.S.C. 40123 regarding nondisclosure of the information. Under § 193.7(e), each such agency must stipulate in writing, that it will abide by the requirements of section 40123, the provisions of part 193, and the Order designating SAFER–FCT and ATSAP–X as protected from public disclosure under 14 CFR part 193.

3. Summary

a. Qualified Participants. Region X employees who are covered under the Consolidated Collective Bargaining agreement (CBA) between NATCA and the FAA effective May 22, 2013, or its successor, and other employees identified in FAA Order 7200.22 which will be incorporated in FAA Order 7200.20, are eligible to complete a ATSAP–X report for events that occur while acting in that capacity. Vendor employees Union or Non-Union who are covered under the FAA and the Federal Contract Tower September 2011 contract, or its successor, and other employees identified in FAA Order 7200.20 are eligible to complete a SAFER–FCT report for events that occur while acting in that capacity.

b. Voluntarily-provided Information Protected from Disclosure Under the Proposed Designation. Except for SAFER–FCT or ATSAP–X reports that involve possible criminal conduct, substance abuse, controlled substances, alcohol, or intentional falsification, the following information would be protected from disclosure:

(1) the content of any report concerning an aviation safety or security matter that is submitted by a qualified participant under the SAFER–FCT or ATSAP–X that is accepted into either program, including the SAFER–FCT or ATSAP–X report, and the name of the submitter of the report. Notwithstanding the foregoing, mandatory information about occurrences that are required to be reported under FAA Orders or ATO guidance is not protected under this designation, unless the same information has also been submitted or reported under other procedures prescribed by the Agency. The exclusion is necessary to assure that the information protected under this designation has been voluntarily submitted. It also permits changes to ATO Orders and guidance without requiring a change to this designation.

(2) Any evidence gathered by the Event Review Committee during its investigation of a safety- or security-related event reported under SAFER–FCT or ATSAP–X, including the SAFER–FCT or ATSAP–X investigative file.

Note: The type of information or circumstances under which the information listed above would not be protected from disclosure is discussed in paragraph 3.b of this Order.

c. Ways to Participate. FAA employees who are qualified participants register for, and submit a report into, the system.

d. Duration of this Information-Sharing Program. This program continues as long as it is provided for by Order or a collective bargaining agreement.

4. Findings. The FAA designates information received from a SAFER–FCT or ATSAP–X submission as protected under 49 U.S.C. 40123 and 14 CFR 193.7, based on the following findings:

a. *Summary of why the FAA finds that the information will be provided voluntarily. The* FAA finds that the information will be provided voluntarily. This finding is supported by the significant increase in reports of safety-related matters since the implementation of voluntary safety reporting programs. No FAA or Vendor employee is required to participate in the SAFER–FCT or ATSAP–X.

b. *Description of the type of information that may be voluntarily provided under the program and a summary of why the FAA finds that the information is safety- related.*

(1) The following types of reports are ordinarily submitted under the SAFER–FCT or ATSAP–X:

i. *Noncompliance reports.* Noncompliance reports identify specific instances of a failure to follow FAA directives.

ii. *Aviation safety concern reports.* Aviation safety concerns that do not involve specific noncompliance with FAA directives. These may include, but are not limited to potential safety events or perceived problems with policies, procedures, and equipment.

(2) Region X employees support the design, delivery and efficiency of flight services throughout the National Airspace System (NAS) facilities, systems and equipment. Reports submitted by these employees under ATSAP–X ordinarily involve matters or observations occurring during the performance of their job responsibilities, and therefore the information submitted is inherently safety related. Vendor employees provide and support the provision of air traffic services at Federal Contract Tower facilities throughout the NAS. Reports submitted by these employees under SAFER–FCT ordinarily involve occurrences or problems identified or experienced during the performance of their job responsibilities which directly affect safety.

c. *Summary of why the FAA finds that the disclosure of the information would inhibit persons from voluntarily providing that type of information.*

The FAA finds that disclosure of the information would inhibit the voluntary provision of that type of information. Employees are unwilling to voluntarily provide detailed information about safety events and concerns, including those that might involve their own failures to follow Agency directives and policies, if such information could be released publicly. If information is publicly disclosed, there is a strong likelihood that the information could be misused for purposes other than to address and resolve the reported safety concern. Unless the FAA can provide assurance that safety-related reports will be withheld from public disclosure, employees will not participate in the programs.

d. *Summary of why the receipt of that type of information aids in fulfilling the FAA's safety responsibilities.* The FAA finds that receipt of information in SAFER–FCT or ATSAP–X reports aids in fulfilling the FAA's safety responsibilities. Because of its capacity to provide early identification of needed safety improvements, this information offers significant potential for addressing hazards that could lead to incidents or accidents. In particular, one of the benefits of both the SAFER–FCT and ATSAP–X is that they encourage the submission of narrative descriptions of occurrences that provide more detailed information than is otherwise available. The SAFER–FCT and ATSAP–X have produced safety-related data that is not available from any other source. Receipt of this previously unavailable information has provided the FAA with an improved basis for modifying procedures, policies, and regulations to improve safety and efficiency.

e. *Consistencies and inconsistencies with FAA safety responsibilities.* The FAA finds that withholding SAFER–FCT and ATSAP–X information from public release is consistent with the FAA's safety responsibilities, because it encourages individuals to provide important safety information that it otherwise might not receive.

(1) Withholding SAFER–FCT and ATSAP–X information from disclosure, as described in this designation, is consistent with the FAA's safety responsibilities. Without the Agency's ability to assure that the detailed information reported under these programs, which often explains why the event occurred or describes underlying problems, will not be disclosed, the information will not be provided to the FAA. Employees are concerned that public release of the information could result in potential misuses of the information that could affect them negatively. If the FAA does not receive the information, the FAA and the public will be deprived of the opportunity to make the safety improvements that receipt of the information otherwise enables. Corrective action under SAFER–FCT and ATSAP–X can be accomplished without disclosure of protected information. For example, for acceptance under both programs, the reporting employee must comply with ERC recommendations for corrective action, such as additional training for an employee. If the employee fails to complete corrective action in a manner satisfactory to all members of the ERC, the event may be referred to an appropriate office within the FAA for any additional investigation, reexamination, and/or action, as appropriate.

(2) The FAA may release SAFER–FCT or ATSAP–X information submitted to the agency, as specified in Part 193 and this Order. For example, to explain the need for changes in FAA policies, procedures, and regulations, the FAA may disclose de-identified, summarized information that has been derived from SAFER–FCT or ATSAP–X reports or extracted from the protected information listed under paragraph 5b. The FAA may disclose de-identified, summarized SAFER–FCT or ATSAP–X information that identifies a systemic problem in the NAS, when a party needs to be advised of the problem in order to take corrective action. Under the current version of FAA Order N JO 7200.20, reported events and possible violations may be subject to investigation, reexamination, and/or action. Although the report itself and the content of the report are not used as evidence, the FAA may use the knowledge of the event or possible violation to generate an investigation, and, in that regard, the information is not protected from disclosure. To withhold information from such limited release would be inconsistent with the FAA's safety responsibilities. In addition, reports that appear to involve possible criminal activity, substance abuse, controlled substances, alcohol, or intentional falsification will be referred to an appropriate FAA office for further handling. The FAA may use such reports for enforcement purposes, and will refer such reports to law enforcement agencies, if appropriate. To withhold information in these circumstances would be inconsistent with the agency's safety responsibilities because it could prevent, or at least diminish the FAA's ability to effectively address egregious misconduct.

f. *Summary of how the FAA will distinguish information protected under part 193 from information the FAA receives from other sources.*

(1) All employee SAFER–FCT and ATSAP–X reports are clearly labeled as such. Each employee must submit their own report.

5. *Designation.* The FAA designates the information described in paragraph 4b to be protected from disclosure in accordance with 49 U.S.C., section 40123 and 14 CFR part 193.

Issued in Washington, DC on September 18, 2015.

Michael P. Huerta,

Administrator, Federal Aviation Administration.

[FR Doc. 2015–24438 Filed 9–24–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM15–4–000; Order No. 814]

Disturbance Monitoring and Reporting Requirements Reliability Standard

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission approves Reliability Standard PRC–002–2 (Disturbance Monitoring and Reporting Requirements) submitted by the North American Electric Reliability Corporation. The purpose of Reliability Standard PRC–002–2 is to have adequate data available to facilitate analysis of bulk electric system disturbances.

DATES: *Effective Date:* This rule will become effective November 24, 2015.

FOR FURTHER INFORMATION CONTACT:

Juan R. Villar (Technical Information), Office of Electric Reliability, Division of Reliability Standards and Security, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 536–2930, *Juan.Villar@ferc.gov.*

Alan Rukin (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8502, *Alan.Rukin@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Order No. 814

Final Rule

(Issued September 17, 2015)

1. Pursuant to section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission) approves Reliability Standard PRC–002–2 (Disturbance Monitoring and Reporting Requirements).[1] The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted Reliability Standard PRC–002–2 for approval. The purpose of Reliability Standard PRC–002–2 is to have adequate data available to facilitate analysis of bulk electric system disturbances. In addition, the Commission approves the associated violation risk factors and violation severity levels, implementation plan, and effective date proposed by NERC. The Commission also approves the retirement of Reliability Standard PRC–018–1 due to its consolidation with Reliability Standard PRC–002–2.

I. Background

A. Section 215 and Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[2] Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight or by the Commission independently.[3] In 2006, the Commission certified NERC as the ERO pursuant to FPA section 215.[4]

B. Order No. 693

3. On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC, including Reliability Standard PRC–018–1.[5] Reliability Standard PRC–018–1 requires the installation of disturbance monitoring equipment and the reporting of disturbance data in accordance with comprehensive requirements.[6]

4. In Order No. 693, the Commission determined that proposed Reliability Standard PRC–002–1 was a ''fill-in-the-blank'' Reliability Standard because it required Regional Reliability Organizations to establish requirements for installation of disturbance monitoring equipment and report disturbance data to facilitate analyses of events and verify system models.[7] The Commission stated that it would not approve or remand proposed Reliability Standard PRC–002–1 until NERC submitted additional necessary information to the Commission.[8]

C. NERC Petition and Reliability Standard PRC–002–2

5. On December 15, 2014, NERC submitted a petition seeking Commission approval of proposed Reliability Standard PRC–002–2.[9] NERC contended that Reliability Standard PRC–002–2 is just, reasonable, not unduly discriminatory or preferential, and in the public interest. NERC explained that Reliability Standard PRC–002–2 consolidates the requirements of unapproved Reliability Standard PRC–002–1 and currently-effective Reliability Standard PRC–018–1.[10]

6. NERC stated that it is important to monitor and analyze disturbances to plan and operate the Bulk-Power System to avoid instability, separation and cascading failures.[11] NERC maintained that Reliability Standard PRC–002–2 improves reliability by providing personnel with necessary data to enable more effective post event analysis, which can also be used to verify system models.[12] Moreover, NERC explained that the Reliability Standard ''focuses on ensuring that the requisite data is captured and the Requirements constitute a results-based approach to capturing data.''[13]

7. NERC stated that, in the United States, Reliability Standard PRC–002–2 will apply to planning coordinators in the Eastern Interconnection, planning coordinators or the reliability coordinator in the Electric Reliability Council of Texas (ERCOT) Interconnection, and the reliability coordinator in the Western Interconnection, which are collectively referred to as ''Responsible Entities.'' Reliability Standard PRC–002–2 will also apply to transmission owners and generation owners.

8. NERC stated that Reliability Standard PRC–002–2 includes 12 requirements. Requirement R1 requires transmission owners: (1) To identify bulk electric system buses, *e.g.,* substations, for which sequence of events recording and fault record data is required; (2) to notify other owners of bulk electric system elements connected to those particular bulk electric system buses where sequence of events recording and fault record data will be necessary; and (3) to re-evaluate all bulk

[1] 16 U.S.C. 824o.

[2] *Id.* 824o(c), (d).

[3] *Id.* 824o(e).

[4] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *order on compliance,* 118 FERC ¶ 61,190, *order on reh'g,* 119 FERC ¶ 61,046 (2007), *rev. denied sub nom. Alcoa Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[5] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. and Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[6] *Id.* PP 1550–1551.

[7] *Id.* P 1451.

[8] *Id.* P 1456.

[9] Reliability Standard PRC–002–2 is not attached to this final rule. The Reliability Standard is available on the Commission's eLibrary document retrieval system in Docket No. RM15–4–00 and is posted on NERC's Web site, *available* at *http://www.nerc.com.*

[10] NERC Petition at 15.

[11] *Id.* at 13. NERC defines a ''Disturbance'' as: ''(1) an unplanned event that produces an abnormal system condition; (2) any perturbation to the electric system; [or] (3) the unexpected change in [area control error] that is caused by the sudden failure of generation or interruption of load.'' *Id.* (quoting Glossary of Terms Used in NERC Reliability Standards at 30).

[12] *Id.* at 15.

[13] *Id.* at 14–15.

electric system buses every five years. Requirement R2 requires transmission owners and generation owners to collect sequence of events data. Requirement R3 and Requirement R4 require transmission owners and generation owners to collect fault recording data and parameters of that data. Requirement R5 through Requirement R9 lay out thresholds where dynamic disturbance recording data are required and provide more specifics on its collection.[14] Requirement R10 requires transmission owners and generation owners to time synchronize the recordings. According to NERC, Requirement R10 provides the synchronization requirements in response to Recommendation No. 28 from the final report on the August 2003 blackout issued by the U.S.-Canada Power System Outage Task Force (Blackout Report).[15] Requirement R11 requires transmission owners and generation owners to provide sequence of events recording, fault recording and dynamic disturbance recording data upon request and establishes specific guidelines to ensure that data can be used in the analysis of events. Requirement R12 requires transmission owners and generation owners to restore the recording capability of the equipment used to record disturbances, if this capability is interrupted.

9. NERC proposed an implementation plan that includes an effective date for Reliability Standard PRC–002–2 that is the first day of the first calendar quarter that is six months after the date that the Commission approves the Reliability Standard. Concurrent with the effective date, the implementation plan calls for the retirement of currently-effective Reliability Standard PRC–018–1 and ''pending'' Reliability Standard PRC–002–1.[16]

D. Notice of Proposed Rulemaking

10. On April 16, 2015, the Commission issued a Notice of Proposed Rulemaking proposing to approve Reliability Standard PRC–002–2.[17] The NOPR also proposed to approve the associated violation risk factors and violation severity levels, implementation plan, and effective date proposed by NERC.

11. In response to the NOPR, NERC filed initial comments in support of the NOPR. Bonneville Power Administration (Bonneville) and American Public Power Association (APPA) filed comments addressing aspects of Reliability Standard PRC–002–2 and the NOPR.[18] NERC filed reply comments in response to Bonneville and APPA's comments. Below, we address the issues raised in Bonneville and APPA's comments.

II. Discussion

12. Pursuant to FPA section 215(d)(2), the Commission approves Reliability Standard PRC–001–2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We also approve the associated violation risk factors, violation severity levels, implementation plan, and effective date proposed by NERC. In addition, we approve the retirement of Reliability Standard PRC–018–1 due to its consolidation with Reliability Standard PRC–002–2.[19]

13. Reliability Standard PRC–002–2 enhances reliability by imposing mandatory requirements concerning the monitoring and reporting of disturbances. Reliability Standard PRC–002–2 provides greater continent-wide consistency regarding collection methods for data used in the analysis of disturbances on the Bulk-Power System. Specifically, Reliability Standard PRC–002–2 enhances reliability by consistently requiring covered entities to collect time-synchronized information and to report disturbances on the Bulk-Power System. Accordingly, we determine that Reliability Standard PRC–002–2 satisfies the relevant directive in Order No. 693.[20]

14. We address below Bonneville's comments regarding the methodology used in Reliability Standard PRC–002–2 to identify bulk electric system buses that require data recording and, in Section V below, APPA's comments regarding the NOPR's Regulatory Flexibility Act certification.

Methodology for Identifying Applicable Bulk Electric System Buses NOPR

15. The NOPR proposed to approve Reliability Standard PRC–002–2 because the Reliability Standard enhances reliability by imposing mandatory requirements concerning the monitoring and reporting of disturbances and provides greater continent-wide consistency regarding collection methods for data used in the analysis of disturbances on the Bulk-Power System. The NOPR did not raise concerns regarding the methodology used in Reliability Standard PRC–002–2 for identifying bulk electric system buses that require data recording.

Comments

16. Bonneville states that it supports using digital fault recorders for sequence of events recordings and fault recordings, but Bonneville does not support the methodology used to identify bulk electric system buses that require data recording.[21] Bonneville claims that NERC's petition did not provide a technical justification for the 1,500 Mega Volt Amps (MVA) calculated three-phase short circuit threshold in Reliability Standard PRC–002–2.[22] Bonneville states that previous drafts of the Reliability Standard ''used more logical criteria that the industry has utilized in the past, such as the number of lines connected to a bus.''[23]

17. Bonneville also contends that the methodology used in Reliability Standard PRC–002–2 does not allow for adequate consideration of the unique characteristics of an individual utility's

[14] NERC Petition, Ex. A (Proposed Reliability Standard PRC–002–2), Attachment 1, Step 8 states:

[Sequence of events recordings] and [fault recording] data is required at additional [bulk electric system] buses on the list determined in Step 6. The aggregate of the number of [bulk electric system] buses determined in Step 7 and this Step will be at least 20 percent of the [bulk electric system] buses determined in Step 6.

The additional [bulk electric system] buses are selected, at the [t]ransmission [o]wner's discretion, to provide maximum wide-area coverage for [Sequence of events recordings] and [fault recording] data. The following [bulk electric system] bus locations are recommended:

Electrically distant buses or electrically distant from other [disturbance monitoring equipment] devices.

Voltage sensitive areas.

Cohesive load and generation zones.

[Bulk electric system] buses with a relatively high number of incident [t]ransmission circuits.

[Bulk electric system] buses with reactive power devices.

Major [f]acilities interconnecting outside the [t]ransmission [o]wner's area.

[15] NERC Petition at 35–36 (quoting *U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations* at 162 (Apr. 2004), *available at http://energy.gov/sites/prod/files/oeprod/DocumentsandMedia/BlackoutFinal-Web.pdf*).

[16] *Id.* at Ex. B (Implementation Plan).

[17] *Disturbance Monitoring and Reporting Requirements Reliability Standard,* Notice of Proposed Rulemaking, 80 FR 22,441 (Apr. 22, 2015), 151 FERC ¶ 61,042 (2015) (NOPR).

[18] Mr. Eric S. Morris's comments did not specifically address issues concerning Reliability Standard PRC–002–2 or the NOPR.

[19] As noted above, the Commission in Order No. 693 did not approve proposed Reliability Standard PRC–002–1 but, rather, took no action on the Reliability Standard pending the receipt of additional information. Order No. 693, FERC Stats. and Regs. ¶ 31,242 at P 1456. Accordingly, with the approval of Reliability Standard PRC–002–2, proposed Reliability Standard PRC–002–1 is ''retired,'' *i.e.,* withdrawn, and no longer pending before the Commission.

[20] Order No. 693, FERC Stats. and Regs. ¶ 31,242 at P 1456 (''the ERO should consider whether greater consistency can be achieved'' regarding disturbance monitoring and reporting).

[21] Bonneville Comments at 2–3.

[22] *Id.* at 3.

[23] *Id.*

system.[24] Bonneville acknowledges that Reliability Standard PRC–002–2, Requirement R1 (in Attachment 1, Step 8) allows for the selection of additional bulk electric system buses ''at the Transmission Owner's discretion, to provide maximum wide-area coverage for [sequence of events] and [fault recording] data.'' [25] However, Bonneville contends that such discretion ''may not result in consistent or repeatable results.'' [26] Bonneville also questions how this provision would be audited.[27] Bonneville recommends replacing the methodology in Reliability Standard PRC–002–2 with an existing methodology used in other Reliability Standards to identify critical facilities and the bulk electric system buses associated with those facilities, such as the high, medium, and low impact designations used in Reliability Standard CIP–005–5.1.[28]

18. In its reply comments, NERC states that Reliability Standard PRC–002–2 provides a technically sound basis for identifying which buses require data collection.[29] NERC contends that MVA levels more accurately measure the reliability impact of a particular bus than counting the number of transmission lines connected to the bus.[30] NERC explains that that the standard drafting team established the MVA threshold by sending an information request to all transmission owners and generator owners requesting data on bus fault magnitude for three-phase bolted faults on buses operated at 100 kV and higher.[31] NERC states that the standard drafting team performed a median value analysis and concluded that the appropriate threshold is 1,500 MVA.[32]

19. NERC explains that it included Step 8 of the bus identification methodology in Reliability Standard PRC–002–2 to allow for the engineering judgment of a transmission owner to account for the unique characteristics of its system and to ensure adequate data capture for proper event analysis.[33] NERC notes that Step 8 also provides criteria to guide an entity's decision and that, given this objective criteria, auditors will have a firm basis to assess whether the transmission owner satisfied its obligation under Step 8.[34] In response to Bonneville's alternative approach, NERC contends that the selection methodology in Reliability Standard CIP 005–5.1 contemplates cybersecurity issues and does not contemplate the optimum location of disturbance monitoring.[35]

Commission Determination

20. We are not persuaded by Bonneville's concerns regarding the methodology used to identify bulk electric system buses that require data recording. As described in NERC's reply comments, NERC has provided adequate technical justification, through the use of survey data and statistical analysis, for the 1,500 MVA threshold in Reliability Standard PRC–002–2. We also find that the methodology in Reliability Standard PRC–002–2 adequately addresses the unique characteristics of individual utility systems by allowing for the selection of additional buses in Step 8 and that the decisions to add buses under Step 8 are auditable.

III. Information Collection Statement

21. The collection of information addressed in this final rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[36] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[37] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

22. *Public Reporting Burden:* The number of respondents below is based on an examination of the NERC compliance registry for transmission owners and generation owners and the estimation of how many entities from that registry will be affected. At the time of Commission review of Reliability Standard PRC–002–2, 324 transmission owners and 915 generation owners in the United States are registered in the NERC compliance registry. The Commission notes that many generation sites share a common generation owner. Due to the nature of this task, it is likely generator owners will manage this information aggregation task using a centralized staff. Therefore, we estimate that one-third of the generation owners (305) will have to meet the requirements contained in Reliability Standard PRC–002–2. We estimate that all 324 registered transmission owners will need to comply with requirement R1 in Reliability Standard PRC–002–2 once every five years. We further estimate that two-thirds (216) of the registered transmission owners will need to comply with the remaining requirements contained in Reliability Standard PRC–002–2. Finally, we find the number of ''Responsible Entities'' in the United States to equal 50, based on the NERC compliance registry.[38] The following table illustrates the burden to be applied to the information collection.[39]

Requirement and respondent category for PRC–002–2	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2)=(3)	Average burden hours & cost per response [40] (4)	Annual burden hours & total annual cost (3)*(4)=(5)
R1. Each Transmission Owner.	324	[41] 0.2	64.8	(Eng.) 24 hrs. ($1,568.16); (R.K.) 12 hrs. ($401.04).	2,333 hrs. (1,555 Eng., 778 R.K.); $127,605 ($101,618 Eng., $25,987 R.K.).

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.* at 4.

[29] NERC Reply Comments at 5–6.

[30] *Id.* at 6–7.

[31] *Id.* at 7–8.

[32] *Id.* at 8.

[33] *Id.* at 8–9.

[34] *Id.* at 9.

[35] *Id.*

[36] 44 U.S.C. 3507(d).

[37] 5 CFR 1320.11.

[38] As discussed above, Reliability Standard PRC–002–2 defines the term ''Responsible Entity'' to include planning coordinators in the Eastern Interconnection, the reliability coordinator in the Western Interconnection, and planning coordinators or the reliability coordinator in the ERCOT Interconnection.

[39] In the burden table, engineering is abbreviated as ''Eng.'' and record keeping is abbreviated as ''R.K.''

[40] The estimates for cost per response are derived using the following formula: Burden Hours per Response * $/hour = Cost per Response. The $65.34/hour figure for an engineer and the $33.42/hour figure for a record clerk are based on the average salary plus benefits data from Bureau of Labor Statistics.

[41] In the NOPR, we estimated that each transmission owner would respond annually. In this final rule, we have revised the table to reflect that Reliability Standard PRC–002–2 requires transmission owners to comply every fifth year. We have revised the calculated values in column 5 of this row and the total row accordingly.

Requirement and respondent category for PRC–002–2	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2)=(3)	Average burden hours & cost per response [40] (4)	Annual burden hours & total annual cost (3)*(4)=(5)
R2. Each Transmission Owner and Generator Owner.	521	1	521	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	7,294 hrs. (5210 Eng., 2084 R.K.); $410,069 ($340,422 Eng., $69,647 R.K.).
R3 & R4. Each Transmission Owner and Generator Owner.	521	1	521	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	7,294 hrs. (5210 Eng., 2084 R.K.); $410,069 ($340,422 Eng., $69,647 R.K.).
R5. Each Responsible Entity.	50	1	50	(Eng.) 24 hrs. ($1,568.16); (R.K.) 12 hrs. ($401.04).	1,800 hrs. (1200 Eng., 600 R.K.); $98,460 ($78,408 Eng., $20,052 R.K.).
R6. Each Transmission Owner.	216	1	216	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	3,024 hrs. (2160 Eng., 864 R.K.); $170,009 ($141,134 Eng., $28,875 R.K.).
R7. Each Generator Owner.	305	1	305	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	4,270 hrs. (3050 Eng., 1220 R.K.); $240,059 ($199,287 Eng., $40,772 R.K.).
R8. Each Transmission Owner and Generator Owner.	521	1	521	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	7,294 hrs. (5210 Eng., 2084 R.K.); $410,069 ($340,422 Eng., $69,647 R.K.).
R9. Each Transmission Owner and Generator Owner.	521	1	521	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	7,294 hrs. (5210 Eng., 2084 R.K.); $410,069 ($340,422 Eng., $69,647 R.K.).
R10. Each Transmission Owner and Generator Owner.	521	1	521	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	7,294 hrs. (5210 Eng., 2084 R.K.); $410,069 ($340,422 Eng., $69,647 R.K.).
R11. Each Transmission Owner and Generator Owner.	521	1	521	(Eng.) 8 hrs. ($522.72); (R.K.) 4 hrs. ($133.68).	6,252 hrs. (4168 Eng., 2084 R.K.); $341,984 ($272,337 Eng., $69,647 R.K.).
R12. Each Transmission Owner and Generator Owner [42].	52	1	52	(Eng.) 10 hrs. ($653.40); (R.K.) 4 hrs. ($133.68).	728 hrs. (520 Eng., 208 R.K.); $40,928 ($33,977 Eng., $6,951 R.K.).
Total					54,877 hrs. (38,703 Eng., 16,174 R.K.); $3,069,390 ($2,528,871 Eng., $540,519 R.K.).

Title: FERC–725G2 [43] Disturbance Monitoring and Reporting Requirements.

Action: Revision to existing collection.

OMB Control No: 1902–0281.

Respondents: Business or other for profit, and not for profit institutions.

Frequency of Responses: Annually.

Necessity of the Information: Reliability Standard PRC–002–2 sets forth requirements for disturbance monitoring and reporting requirements that will ensure adequate data are available to facilitate analysis of bulk electric system disturbances.

Internal review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

23. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

24. Comments on the requirements of this rule may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Please reference OMB Control No. 1902–0281, FERC–725G2 and Docket No. RM15–4–000 in your submission.

IV. Environmental Analysis

25. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[44] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[45] The actions here fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act

26. The Regulatory Flexibility Act of 1980 (RFA) [46] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) revised its size standards (effective January 22, 2014) for electric utilities from a standard based on megawatt hours to a standard based on the number of employees, including affiliates.

[42] The Commission estimates that 10 percent (or 52) of the 521 registered entities will have to restore recording capability or institute a corrective action plan (CAP) each year.

[43] FERC–725G2 is temporarily being used because FERC–725G (OMB Control No. 1902–0252) is currently pending review at OMB.

[44] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[45] 18 CFR 380.4(a)(2)(ii).

[46] 5 U.S.C. 601–612.

NOPR

27. The Commission proposed that, under SBA's new standards, some transmission owners and generation owners might fall under the following category and associated size threshold: electric bulk power transmission and control at 500 employees; hydroelectric power generation at 500 employees; fossil fuel electric power generation at 750 employees; nuclear electric power generation at 750 employees.

28. The Commission estimated that the number of applicable small entities will be minimal due to the gross MVA thresholds embedded into Reliability Standard PRC–002–2. The gross MVA thresholds focus information collection on bulk electric system facilities having Interconnection-wide impacts worthy of collecting. We estimated that Reliability Standard PRC–002–2 will apply to approximately 521 entities in the United States.[47] The Commission applied the MVA thresholds above to estimate that approximately 52 (or 10 percent) are small entities. The Commission estimated for these small entities, Reliability Standard PRC–002–2, Requirement R1 may need to be evaluated and documented every five years with costs of $9,847 for each evaluation.[48] From this set of small entities, the Commission estimated that five percent, or only two or three small entities, may be affected by the other requirements, *i.e.,* Requirements R2 through R12, of Reliability Standard PRC–002–2. The Commission proposed that based on a prior industry-sponsored survey, annual compliance costs will average $100,000–$160,000 for entities subject to these requirements.[49]

Comments

29. APPA contends that the NOPR understates the impact that Reliability Standard PRC–002–2 will have on small entities by underestimating the number or small entities affected and by not addressing the ''discriminatory distribution of implementation costs'' on small entities.[50] APPA bases its assertion on information provided by one APPA member and not on a formal survey of its members or independent analysis.[51] APPA states that its unnamed member, a municipal joint action agency, has determined that ten of its members qualify as small entities and that eight of these entities would be subject to the requirements of Reliability Standard PRC–002–2. APPA further claims that ''if the Commission were to extrapolate from the information outlined above to the estimated 52 small [transmission operators] across the country, it would clearly show that a substantial number of small entities are affected by proposed reliability standard PRC–002–2.'' [52]

30. APPA also contends that Reliability Standard PRC–002–2 will place an undue burden on small entities because they do not currently have sequence of events recording or fault recording data recorders installed on their bulk electric system buses.[53] APPA contrasts this with larger entities that may have already installed those data recorders.[54] APPA also maintains that small entities' buses likely would not be selected for monitoring if they were included in a larger data set analyzed on a wide-area basis.[55] APPA further states that the methodology in Reliability Standard PRC–002–2 unduly discriminates against small entities because entities with fewer than 10 qualifying buses will have to monitor a greater percentage of their buses than larger entities, which are responsible to monitor only 10 percent of their buses.[56] APPA requests that if the Commission does not require changes to Reliability Standard PRC–002–2, the Commission should direct NERC to provide an alternative compliance methodology for small entities that would allow them to find an equally effective method to gather data from upstream buses to reduce the burden on small entities.[57]

31. In its reply comments, NERC contends that Reliability Standard PRC–002–2 does not place an undue burden on small entities.[58] NERC states that Reliability Standard PRC–002–2 does not explicitly require the installation of fault recording data recorders on all identified buses.[59] NERC explains that transmission owners need not install devices to meet the requirements of Reliability Standard PRC–002–2 as long as the transmission owner can obtain the required data from other sources such as other buses.[60] NERC contends that APPA's comment that the Reliability Standard should identify either regional or sub-regional bus locations as appropriate for disturbance monitoring is flawed because transmission owners are in the best position to determine the location of the buses due to their knowledge of their systems.[61]

Commission Determination

32. The RFA requires an analysis when a rule will have significant economic impact on a substantial number of small entities. The comments submitted by APPA do not justify altering the RFA certification proposed in the NOPR.

33. We are not persuaded by APPA's claims regarding the number of small entities likely to be affected by Reliability Standard PRC–002–2. APPA relied on an unverified report from a single unnamed entity to claim that eight small entities (rather than the two or three estimated in the NOPR) would be affected by Reliability Standard PRC–002–2. Even if we were to assume that APPA is correct regarding the eight small entities, we find that eight small entities out of 52 estimated small entities is not a substantial number of small entities. Further, aside from the number of small entities affected, APPA does not address the NOPR's estimate that Reliability Standard PRC–002–2 will not impose a significant economic impact on applicable small entities.

34. With respect to APPA's claim that Reliability Standard PRC–002–2 imposes ''discriminatory distribution of implementation costs on small entities,'' [62] we agree with NERC that APPA's comments are premised on the incorrect assertion that Reliability Standard PRC–002–2 requires the installation of recording devices. As noted in NERC's reply comments, Reliability Standard PRC–002–2 gives applicable entities ''the flexibility to either install devices on their systems or, to reduce their financial burden, obtain the necessary data through other means (*e.g.,* by working with their interconnected neighbors).'' [63]

35. Accordingly, we certify that Reliability Standard PRC–002–2 will not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

36. In addition to publishing the full text of this document in the **Federal**

[47] This number consists of the 216 transmission owners and the 305 generation owners; however, it does not include the 50 ''Responsible Entities.'' *See supra* n.38.

[48] The costs associated with evaluation will occur every fifth year. By dividing the estimated costs of evaluation by five, we estimate the annual cost to be $1,969.40.

[49] *See* NERC Petition Ex. G (Record of Development) at 257 of pdf file, providing link to: NERC Cost Effective Analysis Process (CEAP) Pilot for NERC Project 2007–11—Disturbance Monitoring—PRC–002–2 at 8 (Apr. 9, 2014).

[50] APPA Comments at 3.

[51] *Id.*

[52] *Id.*

[53] *Id.* at 3–4.

[54] *Id.* at 4.

[55] *Id.* at 4–6.

[56] *Id.* at 6–7.

[57] *Id.* at 7.

[58] NERC Reply Comments at 9–11.

[59] *Id.* at 9.

[60] *Id.* at 9–10.

[61] *Id.* at 11.

[62] *Id.* at 3.

[63] *Id.* at 10.

Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

37. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

38. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

39. The final rule is effective November 24, 2015. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule is being submitted to the Senate, House, and Government Accountability Office.

By the Commission.

Issued: September 17, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24278 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

[TD 9740]

RIN 1545–BL23

Reliance Standards for Making Good Faith Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the standards for making a good faith determination that a foreign organization is a charitable organization that is not a private foundation, so that grants made to that foreign organization may be qualifying distributions and not taxable expenditures. The regulations also make additional changes to conform the final regulations to statutory amendments made by the Deficit Reduction Act of 1984 and the Pension Protection Act of 2006. The regulations will affect private foundations seeking to make good faith determinations.

DATES: *Effective date:* These regulations are effective on September 25, 2015.

Applicability date: For the dates of applicability, see §§ 53.4942(a)–3(f) and 53.4945–5(f)(3).

FOR FURTHER INFORMATION CONTACT: Ward L. Thomas, (202) 317–6173 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in these final regulations is the good faith determination set forth in §§ 53.4942(a)–3(a)(6) and 53.4945–5(a)(5). The collection of information contained in these regulations is reflected in the collection of information for Form 990–PF, ''Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation,'' that has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), under control number 1545–0052. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law.

Background

This document contains amendments to 26 CFR part 53 under chapter 42, subtitle D of the Internal Revenue Code (Code). To avoid certain excise taxes under chapter 42, a private foundation (referred to in this preamble as a ''foundation'' or ''grantor'') [1] must make a minimum level of ''qualifying distributions'' (as defined in section 4942 of the Code) each year and must avoid making taxable expenditures (as defined in section 4945). A foundation generally may treat grants made for charitable purposes to certain foreign organizations as qualifying distributions under section 4942 if the foundation makes a good faith determination that the foreign organization is an organization described in sections 501(c)(3) and 509(a)(1), (a)(2), or (a)(3) (a ''public charity'') that is not a ''disqualified supporting organization'' described in section 4942(g)(4)(A)(i) or (ii), or is an organization described in sections 501(c)(3) and 4942(j)(3) (an ''operating foundation,'' also known as a ''private operating foundation''). Similarly, foundations may treat grants for charitable purposes to certain foreign organizations as other than taxable expenditures under section 4945 without having to exercise expenditure responsibility if the foundation makes a good faith determination that the foreign organization is a public charity (other than a disqualified supporting organization) or is an operating foundation described in section 4940(d)(2) (an ''exempt operating foundation''). In this preamble, a foreign grantee that is a public charity or operating foundation that may receive a qualifying distribution (or a grant for which expenditure responsibility is not required) is referred to as a ''qualifying public charity.'' [2] This good faith determination is commonly known as an ''equivalency determination.''

Longstanding regulations under both sections 4942 and 4945 provide that a foundation will ordinarily be considered to have made a ''good faith determination'' if the determination is based on an affidavit of the grantee or on an opinion of counsel of either the grantor or the grantee. The affidavit or opinion must set forth sufficient facts concerning the operations and support of the grantee for the IRS to determine that the grantee would be likely to qualify as a public charity or an operating foundation. See §§ 53.4942(a)–3(a)(6) and 53.4945–5(a)(5). In this preamble, we refer to this rule, which gives assurance to

[1] The regulations under section 4942 refer to ''distributing foundations'' making distributions to ''donee organizations,'' whereas the regulations under section 4945 refer to ''grantor foundations'' making or paying grants to ''grantee organizations.'' For simplicity, this preamble refers to grantors making grants or distributions to grantee organizations, in reference to both Code sections.

[2] The class of qualifying public charities for purposes of section 4945 is a slightly smaller subset of those for purposes of section 4942. Thus, grants to foreign organizations determined to be operating foundations that are not exempt operating foundations, and grants by operating foundations to foreign organizations determined to be disqualified supporting organizations, may be qualifying distributions under section 4942 but the grantor must nevertheless exercise expenditure responsibility to avoid excise taxes under section 4945 on such grants.

foundations meeting the rule that their grants to foreign organizations will ordinarily be considered to be qualifying distributions and not taxable expenditures, as the ''special rule.''

Revenue Procedure 92–94, 1992–2 CB 507, provides further guidance by providing a ''simplified procedure'' that foundations may follow, both for making ''good faith determinations'' under §§ 53.4942(a)–3(a)(6) and 53.4945–5(a)(5), and for making similar ''reasonable judgments'' under § 53.4945–6(c)(2)(ii) that a foreign organization is described in section 501(c)(3) (or in section 4947(a)(1), and thus treated under section 4947(a)(1) as described in section 501(c)(3) for purposes of chapter 42 of the Code). Under the revenue procedure, if the grantor's determination that a foreign organization is described in section 501(c)(3) or section 4947(a)(1) of the Code and is either a public charity or an operating foundation is based on a ''currently qualified'' affidavit prepared by the grantee containing the information specified in the revenue procedure, then the foundation will be deemed to have made a good faith determination (for purposes of §§ 53.4942(a)–3(a)(6) and 53.4945–5(a)(5)) and a reasonable judgment (for purposes of § 53.4945–6(c)(2)(ii)). If a foundation possesses information that suggests the affidavit may not be reliable, it must consider that information in determining whether the affidavit is currently qualified.

Revenue Procedure 92–94 provides that an affidavit will be considered currently qualified if: (1) The facts it contains reflect the grantee organization's latest complete accounting year (or the affidavit is updated to reflect the grantee organization's current data) and (2) the relevant substantive requirements of sections 501(c)(3) and 4947(a)(1) and sections 509(a)(1), (2), or (3) or section 4942(j)(3) remain unchanged. If a grantee's status under the relevant Code sections does not depend on financial support, which can change from year to year, an affidavit need be updated only by asking the grantee to amend the description of any facts in the original affidavit that have changed. If the facts have not changed, an attested statement by the grantee to that effect is enough to update an affidavit. However, if a grantee's status as a public charity or operating foundation depends on financial support, the affidavit must be updated at least every other year by asking the grantee to provide an attested statement containing enough financial data to establish that it continues to meet the requirements of the applicable Code section.

On September 24, 2012, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–134974–12) in the **Federal Register** (77 FR 58796) that contained proposed regulations regarding the standards for making a good faith determination that a foreign organization is a qualifying public charity, so that grants made to the foreign organization may be qualifying distributions and not taxable expenditures. The proposed regulations would have modified the special rule in §§ 53.4942(a)–3(a)(6) and 53.4945–5(a)(5) by generally expanding the class of advisors upon whose advice foundations may ordinarily rely in making good faith determinations beyond the attorneys for the grantor and grantee to ''qualified tax practitioners'' (including attorneys, CPAs, and enrolled agents subject to the requirements of Circular 230). In addition, the proposed regulations would have clarified that a determination based on written advice is ordinarily considered made in good faith if the foundation's reliance on the written advice meets the requirements of § 1.6664–4(c)(1), which are the standards for reasonable reliance in good faith on professional tax advice for penalty relief purposes. The proposed regulations also would have updated the regulations to reflect legislative changes regarding qualifying public charities.

The proposed revisions to the regulations were intended to facilitate grantmaking by foundations to foreign organizations by making it easier and less costly for foundations to obtain written advice from qualified tax practitioners to assure that a grant will ordinarily be considered a qualifying distribution (and not a taxable expenditure). The preamble to the proposed regulations explained that expanding the class of practitioners on whose written advice a foundation may base a good faith determination was expected to decrease the cost of seeking professional advice regarding these determinations, enabling foundations to engage in international philanthropy in a more cost-effective manner. At the same time, expressly allowing reliance for purposes of the special rule on a broader spectrum of professional tax advisors was expected to encourage more foundations to obtain written tax advice, thus promoting the quality of the determinations being made. To facilitate this, foundations were permitted to rely on the provisions of the proposed regulations for grants made on or after September 24, 2012.

The preamble to the proposed regulations specifically requested comments on three issues. First, comments were requested on whether a time limit for reliance on an affidavit or written advice would be appropriate, and if so, the proper length of such a time limit. Second, comments were sought on whether Rev. Proc. 92–94 should be modified to take into account changes to the public support test regulations for public charity qualification that were finalized in 2011 (TD 9549; 76 FR 55745). Third, although the proposed regulations did not change the ability of foundations to rely on grantee affidavits for purposes of the special rule, the Treasury Department and the IRS notified the public that they were considering whether it would be appropriate to remove reliance on affidavits for purposes of the special rule, or to restrict it (for example, by permitting use of affidavits only for grants below a certain dollar amount or by requiring supporting information), and requested comments.

No public hearing was requested or held; however, 11 comments from the public were received. All comments are available at *www.regulations.gov* or upon request. After consideration of the comments, the proposed regulations are adopted as amended by this Treasury decision.

Summary of Comments and Explanation of Provisions

Commenters were generally supportive of the proposed regulations, with several expressing their hope or expectation that the proposed regulations would reduce barriers to, and streamline the process of, international grantmaking. Commenters noted that expanding the class of professionals upon whose written advice a foundation may base its good faith determination would reduce the costs of making equivalency determinations by enabling the sector to take advantage of economies of scale to increase the quality and efficiency of good faith determinations regarding foreign grantees. The majority of comments focused primarily on the three issues for which comments specifically were requested: (1) The circumstances under which it would be appropriate for foundations to rely on grantee affidavits in making equivalency determinations, (2) the permitted reliance period for an affidavit or advisor's written advice, and (3) modification of Rev. Proc. 92–94.

The final regulations balance two important considerations: (1) Removing barriers to international grantmaking by foundations (as well as by entities

treated like foundations for these purposes) and (2) ensuring that foundations' good faith determinations are informed by a sufficient understanding of the applicable law, are based on all relevant factual information, and are likely to be correct. The Treasury Department and IRS take note that, according to publicly available data, foundations (acting in reliance on the proposed regulations, as permitted) now may obtain written advice of a qualified tax practitioner for purposes of making a good faith determination at a substantially lower cost than was previously available, in part due to economies of scale experienced by organizations employing qualified tax practitioners specializing in providing written advice to several grantors.

The major areas of comment and the revisions are discussed in this preamble.

Expanded Class of Advisors

In accordance with the proposed regulations and public comments, the final regulations modify the special rule to expand the class of advisors providing written advice on which foundations may ordinarily rely to qualified tax practitioners, including CPAs and enrolled agents (as well as attorneys) who are subject to the standards of practice before the IRS set out in Circular 230. A qualified tax practitioner may include an attorney serving as a foundation's in-house counsel, as well as a foundation's outside counsel. Because Circular 230 requires that, to practice before the IRS, an attorney or CPA must be licensed in a state, territory, or possession of the U.S., and an enrolled agent must be enrolled by the IRS, the final regulations effectively require that the advisor be authorized to practice in a state, territory, or possession of the U.S. or as an enrolled agent. In addition, like the proposed regulations, the final regulations provide that a determination based on the written advice of a qualified tax practitioner ordinarily will be considered as made in good faith if the foundation's reliance meets the requirements of § 1.6664–4(c)(1). As noted in the preamble to the proposed regulations, § 1.6664–4(c)(1) provides that all pertinent facts and circumstances must be taken into account in determining whether a taxpayer has reasonably relied in good faith on written advice, but a foundation's reliance on written advice is not reasonable and in good faith if the foundation knows, or reasonably should have known, that a qualified tax practitioner lacks knowledge of the relevant aspects of U.S. tax law (which, in this context, would include the U.S. tax law of charities). Moreover, a foundation may not rely on written advice if it knows, or has reason to know, that relevant facts were not disclosed to the qualified tax practitioner or that the written advice is based on a representation or assumption that the foundation knows, or has reason to know, is unlikely to be true.

Reliance on Opinion of Foreign Counsel

One commenter suggested that the final regulations clarify that foundations and qualified tax practitioners may obtain advice from foreign counsel on questions of foreign law when making good faith determinations. The final regulations, consistent with the proposed regulations, provide that, for purposes of the special rule, if a foundation's determination is based on the written advice of a qualified tax practitioner, the foundation will ordinarily be considered to have made a good faith determination. The Treasury Department and the IRS are concerned that, standing alone, an opinion of foreign counsel, who may or may not have expertise in U.S. tax law, may not ordinarily be a sufficient basis for a determination of a foreign organization's status. Thus, under the final regulations, foundations basing their determination on an opinion of counsel of the grantor or grantee will no longer come within the special rule unless the counsel is a qualified tax practitioner. However, neither the proposed regulations nor the final regulations proscribe the use of foreign counsel in otherwise seeking to make a good faith determination, including use of foreign counsel in gathering information relevant to the determination. The standards of practice before the IRS and requirements for written advice address reliance by qualified tax practitioners on foreign counsel for questions of foreign law. Sections 10.22(b), 10.35(a), and 10.37(b) of Circular 230 generally permit a practitioner to consult with and rely on other experts in appropriate circumstances. It follows, therefore, that a foundation may reasonably rely on written advice received from a qualified tax practitioner in accordance with § 1.6664–4(c)(1) that in turn reasonably relies on advice or assistance from foreign counsel as to questions of foreign law or other matters within such counsel's expertise.

Reliance on Grantee Affidavits

The preamble to the proposed regulations requested comments on whether a foundation's ability to base a good faith determination on an affidavit should be removed, and if not, whether the use of such affidavits should be restricted. In the preamble, the Treasury Department and the IRS expressed their concern that, for purposes of the special rule, grantee affidavits, standing alone, are not always as reliable a basis for making good faith determinations as written advice from qualified tax practitioners and asked for comments. Several comments were received in response to this request.

Most commenters that addressed the issue recommended that foundations continue to be permitted to base a good faith determination on an affidavit of a foreign organization attested to by a principal officer of the foreign organization. These commenters noted that grantee affidavits are often a reliable means of collecting facts about the organization and operations of the foreign grantee, even if, as one commenter noted, on matters of U.S. tax law a grantmaker cannot ordinarily rely on a foreign organization's conclusion that the grantee has a particular tax status. Several commenters noted that the current procedures outlined in Rev. Proc. 92–94 require that affidavits include significant detail and specific accompanying information, which, in their experience, ensures that a foundation has a clear picture of the organization and operation of the foreign organization before making a determination based on the affidavit. However, these commenters also noted that, in their experience, it was often necessary for someone at the foundation (presumably with knowledge of U.S. tax law) to work closely with a foreign organization to ensure that the principal officer attesting to the affidavit understands exactly what is called for and that the affidavit is appropriately completed.

Many commenters stated that foundations should not be required to obtain professional tax advice and requested assurance that a foundation could continue to make good faith determinations without having to engage counsel or another qualified tax practitioner, especially if the foundation or the grant is small. One commenter noted that engaging a qualified tax practitioner may impose substantial costs on a foundation, particularly if the foundation makes repeated grants to the same organization. Another commenter stated that it would be excessive for the regulations to suggest that a grantmaker must ordinarily use professional advisors in order for a determination to be in good faith, but noted that if a grantmaker goes without professional advice, it is fair for the IRS to review its conclusions and its process for reaching

those conclusions to see if the grantmaker has complied with the good faith determination standard in the regulations.

One commenter favored eliminating the grantee affidavit as a free-standing means for making equivalency determinations. In the commenter's experience, the staff and volunteers of most, but not all, foreign grantees have neither the training nor the experience with U.S. tax law needed to make determinations called for by Rev. Proc. 92–94. Therefore, the commenter believed it is important to eliminate reliance on the grantee affidavit.

The Treasury Department and the IRS agree that a grantee affidavit may be a reliable basis for forming a good faith determination in appropriate situations, for example, if the grantee has sufficient knowledge of U.S. tax law to ensure that the affidavit is appropriately completed and contains all relevant information. However, many foreign organizations may lack knowledge of U.S. tax law of charities, as noted by one commenter. In addition, although some foundations have knowledge of U.S. tax law sufficient to assess the reliability of grantee affidavits, to assist foreign grantees in completing the affidavits properly (if necessary), and to appropriately apply the law to the facts stated in the affidavit, the Treasury Department and IRS do not believe that such knowledge of U.S. tax law is universal. Accordingly, the Treasury Department and IRS do not think it is appropriate to ordinarily consider a good faith determination to have been made solely because it is based on a grantee affidavit. Therefore, under the final regulations, a grantee affidavit is not included in the special rule as a basis upon which a determination ordinarily will be considered a good faith determination.

The final regulations do not, however, foreclose the use of grantee affidavits as a source of information in otherwise making a good faith determination. Nor does elimination of the affidavit for purposes of the special rule mean that the foundation must obtain written advice from a qualified tax practitioner in order to make a good faith determination. For example, a foundation manager with understanding of U.S. charity tax law may under the general rule make a good faith determination that a foreign grantee is a qualifying public charity based on the information in an affidavit supplied by the grantee. Furthermore, foundation managers or their in-house counsel may themselves be qualified tax practitioners, whose written advice may be reasonably relied upon for determinations to come within the special rule.

One commenter suggested that to ensure that affidavits of foreign organizations provide a reliable basis for making a good faith determination, the IRS should further clarify what supporting documentation must be provided by a foreign organization and when private foundations may in good faith rely on the responses of foreign organizations. This commenter recommended that the IRS amplify Rev. Proc. 92–94 to state explicitly when the response of the foreign organization is sufficient and when additional supporting documentation (for example, a copy of the relevant law) should be requested from the organization. The Treasury Department and the IRS have concluded, however, that due to the many possible factual differences in foreign organizations' structures, governance, operations, financial support, and relevant local laws and practices, it would be difficult to provide specific guidance governing affidavits and supporting documentation in various situations.

Some commenters raised concerns that removing reliance on grantee affidavits for purposes of the special rule would increase costs for foundations and inhibit international grantmaking, particularly for those grantors making many small grants to foreign organizations. However, commenters generally agreed with the Treasury Department and IRS that the changes proposed in the regulations could lower the cost of obtaining professional advice on equivalency determinations by expanding the class of advisors who may provide written advice to foundation managers. Indeed, based on publicly available information, it appears that foundations relying on the proposed rules (as permitted) are now able to obtain professional advice from qualified tax practitioners to come within the special rule at a significantly reduced cost. Furthermore, under the final regulations, grantee affidavits remain a cost-effective way of obtaining information relevant to making good faith determinations and foundations may continue to rely on them when making determinations to the extent reliance is reasonable and appropriate under the facts and circumstances. Accordingly, the Treasury Department and IRS believe that the final regulations achieve the balance of facilitating international grantmaking while still ensuring that equivalency determinations are appropriately made.

To mitigate the effects of elimination of reliance on grantee affidavits for purposes of the special rule, the final regulations provide a 90-day transition period similar to that set forth in § 53.4945–5(f)(2) (dealing with the implementation of the expenditure responsibility rules). During this 90-day period, foundations may distribute grants in accordance with the former regulations regarding the use of grantee affidavits and opinions of counsel of the grantor or grantee. In addition, under the final regulations, if a grant is distributed pursuant to a written commitment made prior to the applicability date of the final regulations and the grantor made a determination in good faith based on the prior regulations, the distribution is treated as compliant as long as the grant is paid out to the grantee within five years.

Period for Reliance on Written Advice

The preamble to the proposed regulations requested comments on whether a time limit for reliance on written advice is appropriate, and if so, suggestions for the length of time that should be considered reasonable. Most commenters responded affirmatively to this request and favored guidance setting forth a definite period for reliance on written advice, with most suggesting a period of generally two years (starting from the date of the written advice or the time of the factual information on which the written advice is based).

More specifically, commenters recommended that foundations be able to rely on written advice that a foreign organization meets a public support test under § 1.170A–9(f)(4)(vii)(B) or § 1.509(a)–3(c)(1)(i) for periods similar to those in the rules applicable to publicly supported organizations that have been recognized by the IRS as exempt under section 501(c)(3) and described in section 170(b)(1)(A)(vi) or 509(a)(2).[3] For example, one commenter noted that for section 170(b)(1)(A)(vi) and section 509(a)(2) organizations, if an organization meets the public support test for a five-year test period, then for most purposes, including for purposes of sections 4942 and 4945, the organization is treated as publicly supported for the two tax years immediately following the end of the five-year support test period. *See* § 1.170A–9(f)(4)(vii)(B) and § 1.509(a)–3(c)(1)(i). Thus, if an organization meets a public support test for a five-year test period ending in 2014, the organization

[3] These rules provide that a publicly supported organization that fails to meet the applicable public support test for two consecutive years will be treated as a private foundation as of the first day of the second consecutive taxable year only for purposes of sections 507, 4940, and 6033.

is also considered publicly supported in 2015 and (for most purposes) 2016.

Commenters also noted that Rev. Proc. 92–94, section 4.05, provides a general two-year period for reliance on an affidavit with regard to a foreign grantee's public support status, such that it is ordinarily necessary to obtain a full update of financial information to determine public support under sections 170(b)(1)(A)(vi) and 509(a)(2) only every other year. Citing these provisions, some commenters requested that the final regulations permit reliance for two tax years after the end of the foreign organization's last tax year of financial information used to determine the organization's public support. Thus, for example, commenters suggested that a 2012 equivalency determination based on financial information from 2007–2011 should be sufficient to demonstrate that the organization would be considered a public charity for both 2012 and 2013, resulting in a period of reliance of up to two years, depending on when in 2012 the determination was made. One commenter suggested that reliance should extend only until the 15th day of the fifth month after the end of the first year following the test period—in the example above, until May 15, 2013—and that a qualified tax practitioner should have to review the foreign grantee's sources of financial support for 2012 before issuing advice that the organization can be treated as publicly supported for the remainder of 2013.

For other qualifying public charities, which do not have a public support requirement, such as schools or hospitals, one commenter requested a reliance period of five years, with a requirement to get a certificate after three years that the relevant law and facts have not changed in any material respect. Another commenter suggested that a foundation be able to rely on advice if the information (other than that for the public support requirement) is current in the present or immediately preceding accounting period of the grantee.

The Treasury Department and the IRS agree with commenters that providing a specific timeframe for reliance on written advice for purposes of the special rule will provide clarity for foundations seeking to meet the requirements of the rule and will promote determinations that are consistently based on current information. Therefore, the final regulations provide that, for purposes of the special rule, written advice of a qualified tax practitioner serving as the basis for a good faith determination must be ''current.'' Written advice will be considered current if, as of the date of the distribution, the relevant law on which the advice was based has not changed since the date of the written advice and the factual information on which the advice was based is from the organization's current or prior year. However, consistent with rules for determinations of public support over a five-year test period for U.S. public charities, written advice that an organization satisfied the public support requirements under section 170(b)(1)(A)(vi) or section 509(a)(2) based on support over a test period of five years will be treated as current for the two years of the grantee immediately following the end of the five-year test period. For purposes of these rules, an organization's year refers to its taxable year for U.S. tax purposes, or its annual accounting period if it does not have a U.S. taxable year. Additional guidance and examples illustrating the application of these rules may be provided in the update to Rev. Proc. 92–94, discussed further in the next section of this preamble.

It should be noted that the rules regarding when written advice will be considered current apply only for purposes of the special rule. Although this standard reflects a belief that it will usually be reasonable to rely on written advice of a qualified tax practitioner if the advice and underlying facts are no more than two years old (provided the foundation does not know or have reason to know that such information is no longer accurate), it is possible that written advice that is not current for purposes of the special rule may, under some facts and circumstances, reasonably serve as the basis for a good faith determination under the general rule. The age of the facts underlying the written advice would be a consideration in determining whether a good faith determination has been made.

Qualified tax practitioners must, of course, satisfy all requirements for written advice under Circular 230 as of the date of issuance of the written advice (including requirements regarding the factual basis for the advice). The rules regarding when written advice will be considered current for purposes of making distributions to grantees do not alter the Circular 230 standards applicable to qualified tax practitioners, which provide that the practitioner must base the written advice on reasonable factual assumptions and reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know. To avoid any implication that the reliance period under the special rule would permit written advice to be based on outdated factual information, the final regulation has been revised to clarify that the written advice must contain sufficient facts to permit the IRS to determine that the grantee would be likely to qualify as a public charity at the time the advice is written.

Update of Rev. Proc. 92–94

The preamble to the proposed regulations also requested comments on whether Rev. Proc. 92–94 should be modified to take into account changes in the public support test and whether additional guidelines regarding appropriate timeframes for gathering information should be provided. Most commenters recommended updating Rev. Proc. 92–94 and noted that it is frequently used by qualified tax practitioners for gathering factual information on which to base their written advice. Commenters also recommended that an updated revenue procedure address several key issues relating to foreign organizations, including foreign school compliance with Rev. Proc. 75–50, 1975–2 CB 587, the nature of support from foreign governments, and foreign hospital compliance with section 501(r) (subsequently addressed at § 1.501(r)–1(b)(17)).

The IRS intends to publish an updated revenue procedure, revised to reflect the changes implemented in these regulations as well as changes to the public support tests for section 170(b)(1)(A)(vi) and 509(a)(2) organizations set forth in final regulations implementing the redesign of Form 990, published in the **Federal Register** (TD 9549; 76 FR 55746) on September 8, 2011. The Treasury Department and the IRS will consider the issues raised by commenters in developing the updated revenue procedure.

Reliance on Written Advice Shared by Another Foundation

One commenter asked for confirmation that a foundation could share the written advice of its in-house counsel or other qualified tax practitioner with other foundations, and that the other foundations could make their determinations based on the shared advice, without incurring excise taxes.

Written advice relating to the grantee's status for purposes of an equivalency determination is based on the facts and circumstances of the grantee, and not on the facts and circumstances of the grantor foundation that received the advice. Therefore, it is possible that the conclusions reached in

the written advice one foundation received from a qualified tax practitioner could reasonably be used by another foundation to make a good faith determination about the same grantee. This may be the case, for example, if the foundation with whom the written advice is shared knows the qualified tax practitioner well and is familiar with the due diligence practices of the foundation that provided the facts to the qualified tax practitioner and received the written advice. However, when written advice obtained by one foundation is later shared with a second foundation (or shared even further with other foundations), the foundation seeking to base its good faith determination on the written advice may have no knowledge of the qualified tax practitioner that gave the advice or whether all material facts were disclosed to the practitioner. Although reliance on shared advice of a trusted tax practitioner that is based on all the material facts may be economical, and in some cases may be reasonable and appropriate, the Treasury Department and the IRS are concerned that, in other cases, the foundation receiving the advice may not be in a position to appropriately evaluate the reliability of the written advice that was shared. Thus, the final regulations do not prohibit a foundation from using written advice shared with it by another foundation in making a good faith determination if it is reasonable to do so under all the facts and circumstances (including the age of the facts supporting the written advice). However, the final regulations clarify that for a foundation seeking the benefit of the special rule, the written advice a foundation relies on in making its determination must be received from the qualified tax practitioner (rather than from another foundation).

Equivalency Determinations by Sponsoring Organizations of Donor Advised Funds

Commenters suggested that the Treasury Department and the IRS clarify that sponsoring organizations of donor advised funds can use these final regulations to make equivalency determinations for purposes of distributions from donor advised funds to foreign organizations. Until further guidance is issued, sponsoring organizations of donor advised funds may use these regulations as guidance in making equivalency determinations (applying the definition of ''disqualified supporting organization'' under section 4966(d)(4) in lieu of section 4942(g)(4)(A)(i) or (ii)).[4]

Reliance by Public Charities

One commenter proposed that the final regulations also allow public charities to make equivalency determinations to avoid the requirements imposed on them by Rev. Rul. 68–489, 1968–2 CB 210, for grants to organizations not exempt under section 501(c)(3). That ruling permits a section 501(c)(3) organization to distribute funds to organizations not exempt under section 501(c)(3) if the grantor organization ensures use of the funds for section 501(c)(3) purposes by limiting distributions to specific projects in furtherance of its own exempt purposes, retains control and discretion as to the use of the funds, and maintains records establishing that the funds were used for section 501(c)(3) purposes. The commenter's proposal is outside the scope of this regulations project, but it may be considered in future guidance.

Equivalency Determinations for Domestic Grantees and Foreign Government Grantees

One commenter requested that the equivalency determination procedures be made expressly applicable to grantees in the U.S. as well as foreign grantees if the domestic grantee is not required to obtain a determination from the IRS or the determination is pending with the IRS. Another commenter requested clarification that a foundation could use the same procedures to determine the status of grantees that are foreign governments, agencies or instrumentalities of foreign governments, or international organizations (which are treated as section 509(a)(1) organizations under § 53.4945–5(a)(4)(iii), even if they are not described in section 501(c)(3), so long as the grant is made exclusively for charitable purposes). Both of these suggestions are beyond the scope of this regulations project but may be considered in future guidance.

Parallel Changes to Similar Regulations

Commenters suggested that the Treasury Department and the IRS make corresponding changes to other regulations that provide for determinations similar to equivalency determinations. Section 53.4945–6(c)(2) requires generally that a grant made to an organization not described in section 501(c)(3) be maintained in a separate charitable fund, unless made to a foreign organization that in the reasonable judgment of a foundation manager is described in section 501(c)(3) (other than section 509(a)(4)). Section 1.1441–9 sets forth exemptions from withholding of tax on exempt income of foreign tax-exempt organizations, and allows a withholding agent to accept an opinion from a U.S. counsel concluding that a foreign organization is described in section 501(c)(3) and is not a private foundation, supported by an affidavit of the organization. For more than 20 years, under Rev. Proc. 92–94, a foundation has been able to make the reasonable judgment required by § 53.4945–6(c)(2) by following the same procedure for making a good faith determination under §§ 53.4942(a)–3(a)(6) and 53.4945–5(a)(5). The Treasury Department and the IRS anticipate that any revised version of that revenue procedure will continue to provide that foundations may meet the requirements of § 53.4945–6(c)(2) by meeting the requirements of §§ 53.4942(a)–3(a)(6) and 53.4945–5(a)(5). The suggested changes to § 1.1441–9 are beyond the scope of this regulations project, but may be considered in future guidance.

Amendments to Regulations Conforming to Statutory and Regulatory Changes

The final regulations also include several amendments to conform the regulations to prior statutory changes. Specifically, changes were made to §§ 53.4942(a)–3(a)(2)(i), 53.4942(a)–3(a)(6)(i), 53.4945–5(a)(1), 53.4945–5(a)(5)(i), 53.4945–5(a)(6)(ii), and 53.4945–5(b)(5). Section 4945(d)(4) was amended in 1984 to treat exempt operating foundations under section 4940(d)(2) as organizations that may receive grants for which expenditure responsibility is not required. Sections 4942 and 4945(d)(4) were amended in

[4] This is consistent with the Joint Committee on Taxation, Technical Explanation of H.R. 4, the ''Pension Protection Act of 2006'' (JCX–38–06, Aug. 3, 2006) at p. 349, which provides:

For purposes of the requirement that a distribution be ''to'' an organization described in section 170(b)(1)(A), in general, it is intended that rules similar to the rules of Treasury regulation § 53.4945–5(a)(5) apply. Under such regulations, for purposes of determining whether a grant by a private foundation is ''to'' an organization described in section 509(a)(1), (2), or (3) and so not a taxable expenditure under section 4945, a foreign organization that otherwise is not a section 509(a)(1), (2), or (3) organization is considered as such if the private foundation makes a good faith determination that the grantee is such an organization. Similarly, under the provision, if a sponsoring organization makes a good faith determination (under standards similar to those currently applicable for private foundations) that a distributee organization is an organization described in section 170(b)(1)(A) (other than a disqualified supporting organization), then a distribution to such organization is not considered a taxable distribution.

2006 to eliminate certain section 509(a)(3) supporting organizations from the class of organizations that may receive distributions treated as qualifying distributions and that may receive grants for which expenditure responsibility is not required. Changes to conform the regulations to these statutory changes were made in §§ 53.4942(a)–3(a)(6)(i) and 53.4945–5(a)(5)(i) of the proposed regulations, and the changes to the other parts of §§ 53.4942(a)–3 and 53.4945–5 are being made in the final regulations for consistency. Similarly, for purposes of consistency with the changes in the proposed regulations being implemented in these final regulations, § 53.4945–5(b)(5) is being updated to allow written advice from a qualified tax practitioner for purposes of this provision, as well as grantee affidavits and opinions of counsel of the grantee, which continue to be permitted for the purposes of § 53.4945–5(b)(5).

Effective/Applicability Date and Transition Relief

The final regulations apply generally to distributions made after the date of publication of this Treasury decision in the **Federal Register**. However, a good faith determination may continue to be made in accordance with the prior regulations for any distribution to a foreign organization within 90 days after such date. Also, a foundation that has made a written commitment on or before the date of publication of these final regulations in the **Federal Register** may make distributions to the foreign organization, in fulfillment of that commitment and pursuant to a determination made in good faith in accordance with the prior regulations, for up to five years from the date of publication.

Availability of IRS Documents

For copies of recently issued revenue procedures, revenue rulings, notices and other guidance published in the Internal Revenue Bulletin, please visit the IRS Web site at *http://www.irs.gov* or contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. The collection of information is in §§ 53.4942(a)–3(a)(6) and 53.4945–5(a)(5) and is part of the collection of information for Form 990–PF. The equivalency determination process set forth in these regulations provides foundations with an optional procedure for determining that foreign organizations are qualifying public charities. The Treasury Department and the IRS believe that the economic impact of the proposed regulations on grantors making equivalency determinations has already been a reduction in cost of obtaining written tax advice, by expanding the class of practitioners whose written advice may form the basis of good faith determinations. The final regulations finalize this policy. The final regulations continue to permit grantee affidavits to be used in making good faith determinations under the general rule (although without the same level of reliance as under the special rule) and it is expected that affidavits will continue to be used for such purpose with small grants. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses, and no comment was received.

Drafting Information

The principal author of these regulations is Ward L. Thomas of the Office of Associate Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 53 is amended as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 53 continues to read in part as follows:

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

■ **Par. 2.** Section 53.4942 (a)–3 is amended by:

■ 1. Revising paragraphs (a)(2) introductory text, (a)(2)(i), and (a)(6).

■ 2. Adding paragraph (f).

The revisions and addition read as follows:

§ 53.4942(a)–3 Qualifying distributions defined.

(a) * * *

(2) *Definition.* The term ''qualifying distribution'' means:

(i) Any amount (including program related investments, as defined in section 4944(c), and reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(1) or (2)(B), other than any contribution to:

(*a*) A private foundation which is not an operating foundation (as defined in section 4942(j)(3)), except as provided in paragraph (c) of this section;

(*b*) An organization controlled (directly or indirectly) by the contributing private foundation or one or more disqualified persons with respect to such foundation, except as provided in paragraph (c) of this section; or

(*c*) An organization described in section 4942(g)(4)(A)(i) or (ii), if paid by a private foundation that is not an operating foundation;

* * * * *

(6) *Certain foreign organizations*—(i) *In general.* A distribution for purposes described in section 170(c)(2)(B) to a foreign organization, which has not received a ruling or determination letter that it is an organization described in section 509(a)(1), (a)(2), or (a)(3) or in section 4942 (j)(3), will be treated as a distribution made to an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii)) or in section 4942(j)(3) if the distributing foundation has made a good faith determination that the donee organization is an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii)) or in section 4942(j)(3). A determination ordinarily will be considered a good faith determination if the determination is based on current written advice received from a qualified tax practitioner concluding that the donee is an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii)) or in section 4942(j)(3), and if the foundation reasonably relied in good faith on the written advice in accordance with the requirements of § 1.6664–4(c)(1) of this

chapter. The written advice must set forth sufficient facts concerning the operations and support of the donee organization for the Internal Revenue Service to determine that the donee organization would be likely to qualify as an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii)) or in section 4942(j)(3) as of the date of the written advice. For purposes of this section, except as provided in the next sentence, written advice will be considered current if, as of the date of distribution, the relevant law on which the advice is based has not changed since the date of the written advice and the factual information on which the advice is based is from the donee's current or prior taxable year (or annual accounting period if the donee does not have a taxable year for United States federal tax purposes). Written advice that a donee met the public support test under section 170(b)(1)(A)(vi) or section 509(a)(2) for a test period of five years will be treated as current for purposes of distributions to the donee during the two taxable years (or, as applicable, annual accounting periods) of the donee immediately following the end of the five-year test period.

(ii) *Definitions.* For purposes of this paragraph (a)(6)—

(*a*) The term ''foreign organization'' means any organization that is not described in section 170(c)(2)(A).

(*b*) The term ''qualified tax practitioner'' means an attorney, a certified public accountant, or an enrolled agent, within the meaning of 31 CFR 10.2 and 10.3, who is subject to the requirements in 31 CFR part 10.

* * * * *

(f) *Effective/applicability date and transition relief.* Paragraphs (a)(2)(i) and (a)(6) of this section are effective on and apply with respect to distributions made after September 25, 2015. However, foundations may continue to rely on the provisions of paragraph (a)(6) of this section as contained in 26 CFR part 53, revised April 1, 2015, with respect to distributions made on or before December 24, 2015 pursuant to a good faith determination made in accordance with such provisions. Also, foundations may continue to rely on the provisions of paragraph (a)(6) of this section as contained in 26 CFR part 53, revised April 1, 2015, with respect to distributions pursuant to a written commitment made on or before September 25, 2015 and pursuant to a good faith determination made on or before such date in accordance with such provisions if the committed amount is distributed within five years of such date.

■ **Par. 3.** Section 53.4945–5 is amended by:

■ 1. Revising paragraphs (a)(1), (a)(5), (a)(6)(ii), and (b)(5).

■ 2. Adding paragraph (f)(3).

The revisions and addition read as follows:

§ 53.4945–5 Grants to organizations.

(a) *Grants to nonpublic organizations*—(1) *In general.* Under section 4945(d)(4) the term ''taxable expenditure'' includes any amount paid or incurred by a private foundation as a grant to an organization (other than an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii)) or in section 4940(d)(2)), unless the private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h). However, the granting foundation does not have to exercise expenditure responsibility with respect to amounts granted to organizations described in section 4945(f).

* * * * *

(5) *Certain foreign organizations*—(i) *In general.* If a private foundation makes a grant to a foreign organization, which does not have a ruling or determination letter that it is an organization described in section 509(a)(1), (a)(2), or (a)(3) or in section 4940(d)(2), the grant will nonetheless be treated as a grant made to an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii)) or in section 4940(d)(2) if the grantor private foundation has made a good faith determination that the grantee organization is an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii)) or in section 4940(d)(2). A determination ordinarily will be considered a good faith determination if the determination is based on current written advice received from a qualified tax practitioner concluding that the grantee is an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii)) or in section 4940(d)(2), and if the foundation reasonably relied in good faith on the written advice in accordance with the requirements of § 1.6664–4(c)(1) of this chapter. The written advice must set forth sufficient facts concerning the operations and support of the grantee organization for the Internal Revenue Service to determine that the grantee organization would be likely to qualify as an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii)) or in section 4940(d)(2) as of the date of the written advice. For purposes of these rules, except as provided in the next sentence, written advice will be considered current if, as of the date of the grant payment, the relevant law on which the advice is based has not changed since the date of the written advice and the factual information on which the advice is based is from the grantee's current or prior taxable year (or annual accounting period if the grantee does not have a taxable year for United States federal tax purposes). Written advice that a grantee met the public support test under section 170(b)(1)(A)(vi) or section 509(a)(2) for a test period of five years will be treated as current for purposes of grant payments to the grantee during the two taxable years (or, as applicable, annual accounting periods) of the grantee immediately following the end of the five-year test period. See paragraphs (b)(5) and (6) of this section for additional rules relating to foreign organizations.

(ii) *Definitions.* For purposes of this paragraph (a)(5)—

(*a*) The term ''foreign organization'' means any organization that is not described in section 170(c)(2)(A).

(*b*) The term ''qualified tax practitioner'' means an attorney, a certified public accountant, or an enrolled agent, within the meaning of 31 CFR 10.2 and 10.3, who is subject to the requirements in 31 CFR part 10.

(6) * * *

(ii) *To governmental agencies.* If a private foundation makes a grant to an organization described in section 170(c)(1) and such grant is earmarked for use by another organization, the granting foundation need not exercise expenditure responsibility with respect to such grant if the section 170(c)(1) organization satisfies the Commissioner in advance that:

(*a*) Its grantmaking program is in furtherance of a purpose described in section 170(c)(2)(B), and

(*b*) The section 170(c)(1) organization exercises ''expenditure responsibility'' in a manner that would satisfy this section if it applied to such section 170(c)(1) organization. However, with respect to such grant, the granting foundation must make the reports required by section 4945(h)(3) and paragraph (d) of this section, unless such grant is earmarked for use by an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an

organization described in section 4942(g)(4)(A)(i) or (ii)), or in section 4940(d)(2).

(b) * * *

(5) *Certain grants to foreign organizations.* With respect to a grant to a foreign organization (other than an organization described in section 509(a)(1), (a)(2), or (a)(3) (other than an organization described in section 4942(g)(4)(A)(i) or (ii)) or in section 4940(d)(2) or treated as so described pursuant to paragraph (a)(4) or (5) of this section), paragraph (b)(3)(iv) or (b)(4)(iv) of this section shall be deemed satisfied if the agreement referred to in paragraph (b)(3) or (4) of this section imposes restrictions on the use of the grant substantially equivalent to the limitations imposed on a domestic private foundation under section 4945(d). Such restrictions may be phrased in appropriate terms under foreign law or custom and ordinarily will be considered sufficient if an affidavit or opinion of counsel (of the grantor or grantee) or written advice of a qualified tax practitioner is obtained stating that, under foreign law or custom, the agreement imposes restrictions on the use of the grant substantially equivalent to the restrictions imposed on a domestic private foundation under paragraph (b)(3) or (4) of this section.

* * * * *

(f) * * *

(3) *Effective/applicability date of paragraphs (a)(1), (a)(5), (a)(6)(ii), and (b)(5) and transition relief.* Paragraphs (a)(1), (a)(5), (a)(6)(ii), and (b)(5) of this section are effective on and apply with respect to grants paid after September 25, 2015. However, foundations may continue to rely on paragraph (a)(5) as contained in 26 CFR part 53, revised April 1, 2015, with respect to grants paid on or before December 24, 2015 pursuant to a good faith determination made in accordance with such provisions. Also, foundations may continue to rely on paragraph (a)(5) as contained in 26 CFR part 53, revised April 1, 2015, with respect to grants paid pursuant to a written commitment made on or before September 25, 2015 and pursuant to a good faith determination made on or before such date in accordance with such provisions if the committed amount is paid out within five years of such date.

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: September 16, 2015.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2015–24346 Filed 9–23–15; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4041A, and 4281

RIN 1212–AB28

Multiemployer Plans; Electronic Filing Requirements; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) published in the **Federal Register** of September 17, 2015 (80 FR 55742) a final rule to amend its regulations to require electronic filing of certain multiemployer notices. This document corrects two inadvertent errors in the amendatory language.

DATES: Effective October 19, 2015.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*klion.catherine@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, or Donald McCabe (*mccabe.donald@pbgc.gov*), Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Correction

The following corrections are made to FR Doc. 2015–23361, published at page 55742 in the issue of September 17, 2015 (80 FR 55742):

■ 1. On page 55745, column 2, amendatory instruction 2 and its amendatory text are corrected to read as follows:

■ 2. In § 4000.3, add paragraph (b)(4) to read as follows:

§ 4000.3 What methods of filing may I use?

* * * * *

(b) * * *

(4) When making filings to PBGC under parts 4041A, 4245, and 4281 of this chapter (except for notices of benefit reductions and notices of restoration of benefits under part 4281), you must submit the information required under these parts electronically in accordance with the instructions on the PBGC's Web site, except as otherwise provided by the PBGC.

* * * * *

§ 4281.3 [Corrected]

■ 2. On page 55745, column 2, instruction 7, in revised paragraph (b), ''4281.43(e)'' is corrected to read ''4281.43(c)''.

Issued in Washington, DC, this 21st day of September 2015.

Catherine B. Klion,

Assistant General Counsel for Regulatory Affairs, Office of the General Counsel.

[FR Doc. 2015–24343 Filed 9–24–15; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2015–0400]

RIN 1625–AA08

Special Local Regulations; Temporary Change for Recurring Marine Event in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement periods of special local regulations for a recurring marine event in the Fifth Coast Guard District. These regulations apply to the Ocean City Maryland Offshore Grand Prix, a recurring marine event, which will take place this year on October 3–4, 2015. Special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the North Atlantic Ocean near Ocean City, MD, during the event.

DATES: This rule is effective from October 3, 2015, to October 4, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2015–0400]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

This marine event is regulated at 33 CFR 100.501. On July 16, 2015, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations; Temporary Change for Recurring Marine Event in the Fifth Coast Guard District'' in the **Federal Register** (80 FR 42069). We received no comments on the proposed rule. No public meeting was requested, and none was held.

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**. The Coast Guard received late notice from event planners of the date change. Because of this late notice, it is impracticable to publish the final rule more than thirty days before the event. In addition, it is unnecessary to have a thirty day delayed effective date for this rule, because the change will not meaningfully effect waterways users. This event occurs every year and is well known in the community. During the comment period regarding the changed date for the NPRM, no comments were received. The Coast Guard will provide advance notifications to users of the affected waterways of the regulated area via marine information broadcasts and local notice to mariners.

B. Basis and Purpose

The legal basis and authorities for this rulemaking establishing a special local regulation are found in 33 U.S.C. 1233, which authorize the Coast Guard to establish and define special local regulations. The Captain of the Port Baltimore is establishing a special local regulation for the waters of the North Atlantic Ocean, near Ocean City, MD, to protect event participants, spectators and transiting vessels during the Ocean City Maryland Offshore Grand Prix.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received no comments in response to the NPRM. No public meeting was requested and none was held.

Through this regulation, the Coast Guard is temporarily changing the enforcement period of special local regulations for a recurring marine event in the Fifth Coast Guard District. This rule changes the enforcement periods for the ''Ocean City Maryland Offshore Grand Prix'' marine event that is listed at 33 CFR 100.501, Table to § 100.501. This regulation temporarily changes the enforcement periods for this marine event for 2015 only. The enforcement dates for 2015 are October 3rd and 4th, 2015.

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, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: The regulated area will be in effect from 10:30 a.m. to 5:30 p.m. on October 3, 2015 and from 10:30 a.m. to 5:30 p.m. on October 4, 2015, the regulated area has been narrowly tailored to impose the least impact on general navigation, yet provide the level of safety deemed necessary, and advance notifications will be made to the maritime community via marine information broadcasts and local notices to mariners, so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rule. 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 or operators of vessels intending to operate or transit through or within, or anchor in, the area where the marine event is being held.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons stated under paragraph D.1., Regulatory Planning and Review.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a 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 the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have

analyzed this rule under that Order and determined that this rule 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

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

This action is not a ''significant energy action'' 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. In § 100.501, amend the Table to § 100.501 by suspending line No. (b.)21 and adding line No. (b.)24 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

* * * * *

Table to § 100.501

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

No.	Date	Event	Sponsor	Location
*	*	*	*	* * *
(b.) Coast Guard Sector Baltimore—COTP Zone				
*	*	*	*	* * *
24.	October 3 and 4, 2015.	Ocean City Maryland Offshore Grand Prix.	Offshore Performance Assn. Racing, LLC.	The waters of the North Atlantic Ocean commencing at a point on the shoreline at latitude 38°25′42″ N., longitude 075°03′06″ W.; thence east southeast to latitude 38°25′30″ N., longitude 075°02′12″ W., thence south southwest parallel to the Ocean City shoreline to latitude 38°19′12″ N., longitude 075°03′48″ W.; thence west northwest to the shoreline at latitude 38°19′30″ N., longitude 075°05′00″ W.
*	*	*	*	* * *

Dated: August 27, 2015.

Lonnie P. Harrison, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

[FR Doc. 2015–24323 Filed 9–24–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0423]

RIN 1625–AA09

Drawbridge Operation Regulation; Rancocas Creek, Centerton, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation that governs the operation of the SR#38 Bridge in Centerton (Burlington County Route 635) over Rancocas Creek, mile 7.8, at Mt. Laurel, Westampton and Willingboro Townships in Burlington County, NJ. The new rule will change the current regulation and allow the bridge to remain in the closed position for the passage of vessels. There have been no requests for openings since the early 1990's. This rule also reflects a name change.

DATES: This rule is effective October 26, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2015–0423. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jim Rousseau, Fifth Coast Guard District Bridge Administration Division, Coast Guard; telephone 757–398–6557, email: *james.l.rousseau2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code

A. Regulatory History and Information

On July 6, 2015, we published a notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulation; Rancocas Creek, Centerton, NJ'' in the **Federal Register** (80 FR 38417). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The current operating schedule for the SR#38 bridge is set out in 33 CFR 117.745(b) which allows the SR#38 Bridge to operate as follows: From April 1 through October 31 open on signal from 7 a.m. to 11 p.m. From November 1 through March 31 from 7 a.m. to 11 p.m. open on signal if at least 24 hours notice is given. Year round from 11 p.m. to 7 a.m. need not open for the passage of vessels.

The bridge owner, County of Burlington, NJ requested a change in the operation regulation for the SR#38 Bridge, mile 7.8, across Rancocas Creek in Mt. Laurel, NJ and that its name is changed to what it is known locally. The County of Burlington provided information to the Coast Guard about the lack of any openings of the draw spans dating back to the early 1990's. The bridge is currently closed to navigation and vehicular traffic due to emergency repairs and emergency inspections since May 2015. The last requested opening was in the early 1990's as an emergency request. There have been monthly openings as per maintenance requirements. The Coast Guard will allow the above mentioned Bridge to remain in the closed to navigation position in accordance with 33 CFR 117.39. In the closed to navigation position, the bridge need not open for the passage of vessels.

In the closed-to-navigation position, the SR#38 Bridge has vertical clearances of six feet above mean high water. Vessels which can safely transit under the bridge in the closed to navigation position can do so at any time.

C. Discussion of Comments, Changes and the Final Rule

In order to align the operating schedule of the SR#38 bridge with observed marine traffic the proposed change amended the regulation by adding a paragraph (c) to state ''that the bridge need not open.'' The lack of requests for vessel openings of the drawbridge for over 20 years illustrates that the vessels that use this waterway can safely navigate while the bridge is in the closed-to-navigation position. The current regulation also incorrectly identifies the bridge as the SR#38 Bridge. The proposed change would change the name to the Centerton County Route 635 Bridge. All language in existing paragraph (b) would remain the same except for the removal of the SR#38 bridge reference.

While the proposed rule allowed the bridge to remain closed to navigation, it did not alleviate the bridge owner of his responsibility under 33 CFR 117.7.

The Coast Guard received no comments in response to the notice of proposed rulemaking. As a result, no changes have been made to this final rule.

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 or 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, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Based on County of Burlington bridge tender logs, there will not be any vessels impacted by this proposed change. No bridge openings have been requested in over 20 years.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. This rule would affect the following entities, some of which might be small entities: owners and operators of vessels intending to transit in that portion of Rancocas Creek that cannot transit under the Centerton Bridge during mean high water. Due to the fact that there have been no requests for openings in nearly 20 years, this final rule will not have a significant economic impact on a substantial number of small entities. 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.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this final rule. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard. The Coast Guard will not retaliate against small entities that question or complain about this final rule or any policy or action of the Coast Guard.

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 the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this 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

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 might 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

This action is not a ''significant energy action'' 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 guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.745, revise paragraph (b) introductory text and add paragraph (c) to read as follows:

§ 117.745 Rancocas Creek.

* * * * *

(b) The drawspan for the Riverside-Delanco/SR#543 Drawbridge, mile 1.3 at Riverside must operate as follows:

* * *

(c) The draw of the Centerton County Route 635 Bridge, mile 7.8, at Mt. Laurel, need not open for the passage of vessels.

Dated: September 15, 2015.

Robert J. Tarantino,

Captain, United States Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 2015–24333 Filed 9–24–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0767]

Drawbridge Operation Regulation; Hood Canal, Port Gamble, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation; extension and modification.

SUMMARY: The Coast Guard has extended and modified a temporary deviation from the operating schedule that governs the Hood Canal Floating Drawbridge across Hood Canal (Admiralty Inlet), mile 5.0, near Port Gamble, WA. The temporary deviation is now effective until 7 p.m. on October 19, 2015 and allows the bridge to open the draw span half-way, 300 feet; as opposed to all the way, which is 600 feet, with at least one hour's notice and only at or near slack tide.

DATES: The temporary deviation published in the **Federal Register** on August 21, 2015 (80 FR 50768), and as modified herein, is effective from September 25, 2015, until 7 p.m. on October 19, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0767] is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil*.

SUPPLEMENTARY INFORMATION: On August 21, 2015 the Coast Guard published a notice of temporary deviation at 80 FR 50768 from the operating schedule that governs the Hood Canal Floating Drawbridge across Hood Canal (Admiralty Inlet), mile 5.0, near Port Gamble, WA allowing the bridge to open the draw span half-way, 300 feet; as opposed to all the way, which is 600 feet. The Coast Guard is extending the end date of the previously published temporary deviation until 7 p.m. on October 19, 2015 as additional time is necessary for the Washington State Department of Transportation to complete the replacement of the bridge's draw span anchors. The temporary deviation is also modified to require opening with at least one hour's notice and only at or near slack tide. The former clarifies that the requirement for at least one hour's notice from the normal operating schedule is still in place during the temporary deviation and the latter is necessary to ensure the bridge does not move when opened during draw span anchor replacement. All other information provided in the temporary deviation published on August 21, 2015 at 80 FR 50768 continues to apply.

Dated: September 22, 2015.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2015–24363 Filed 9–24–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2014–0796; EPA–R01–OAR–2014–0862; A–1–FRL–9933–92–Region 1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Nonattainment New Source Review and Prevention of Significant Deterioration Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on November 15, 2012. This revision amends New Hampshire's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs to make the programs consistent with the federal requirements. EPA is also conditionally approving a commitment from the state to submit revised regulations addressing three elements of EPA's PSD and NNSR programs that were not submitted with the November 15, 2012 submittal. EPA is also approving revisions to two definitions related to New Hampshire's permitting programs that were submitted on July 1, 2003. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on October 26, 2015.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2014–0796 and EPA–R01–OAR–2014–0862. All documents in the docket are listed on the *www.regulations.gov* Web site. 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 through *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact 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 legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

FOR FURTHER INFORMATION CONTACT: Brendan McCahill, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109—3912, telephone number (617) 918–1652, Fax number (617) 918–0652, email *mccahill.brendan@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. What action is EPA approving in this document?
III. Final Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Background and Purpose

On January 21, 2015 (80 FR 2860), EPA published a Notice of Proposed Rulemaking (NPR) for the State of New

Hampshire. The NPR proposed to approve a November 15, 2012 SIP submittal revising the state's PSD program under PART Env-A 619, ''Prevention of Significant Deterioration.'' The NPR also proposed to approve a July 21, 2003 SIP submittal revising the following definitions under PART Env-A 101, ''Definitions;'' (1) ''minor permit amendment,'' and (2) ''state permit to operate.''

On April 24, 2015 EPA (80 FR 22956), EPA published a separate NPR for the state of New Hampshire. The NPR proposed to approve a separate portion of the November 15, 2012 SIP submittal revising the state's NNSR program under PART Env-A 618, ''Nonattainment New Source Review'' The NPR also reaffirmed EPA's January 21, 2015 proposed approval of the November 15, 2012 SIP submittal revising PART Env-A 619, ''Prevention of Significant Deterioration'' and the July 21, 2003 SIP submittal revising PART Env-A 101, ''Definitions.''

In addition, the April 24, 2015 NPR proposed to conditionally approve the New Hampshire Department of Environmental Services' (NHDES) commitment to submit revised regulations addressing the following three provisions of the federal NNSR and PSD programs:

- Provisions at 40 CFR 51.165(a)(5)(i) that state approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, State or Federal law;
- Provisions at 40 CFR 51.165(a)(6) and (a)(7) that meet the federal regulations applicable to projects at major stationary sources that are not major modifications based on the actual-to-projected actual test but have a ''reasonable possibility'' of resulting in a significant emission increase; and
- Provisions at 40 CFR 51.166(q)(2)(iv) requiring notice of a draft PSD permit to state air agencies whose lands may be affected by emissions from the permitted source.

The specific requirements for the two SIP submittals and the rationale for EPA's proposed actions are explained in the January 21, 2015 and April 24, 2015 NPRs and will not be restated here. EPA did not receive any public comments on the April 24, 2015 NPR.

II. What action is EPA approving in this document?

EPA is approving and incorporating into the SIP, PART Env-A 618, ''Nonattainment New Source Review'' and PART Env-A 619, ''Prevention of Significant Deterioration'' that New Hampshire submitted on November 15, 2012. EPA is approving New Hampshire's definitions of ''minor permit amendment,'' and ''state permit to operate'' under PART Env-A 101, ''Definitions'' into the SIP.

Additionally, EPA is approving the commitment letter submitted by the NHDES on March 20, 2015, in which the NHDES committed to adopt revised NNSR and PSD regulations to address three provisions required by the federal NNSR and PSD program regulations. In that letter, NHDES committed to adopt these revisions no later than one year from the date of EPA's conditional approval, and to submit them to EPA for approval into the SIP.

III. Final Action

EPA is approving New Hampshire's July 23, 2003 SIP submittal amending the definitions of ''minor permit amendment,'' and ''state permit to operate'' under PART Env-A 101, ''Definitions.''

EPA is approving New Hampshire's November 15, 2012 SIP submittal amending PART Env-A 618, ''Nonattainment New Source Review'' and PART Env-A 619, ''Prevention of Significant Deterioration.'' With this action, PART Env-A 618 and PART Env-A 619 will supersede all other NNSR and PSD Program regulations currently approved in New Hampshire's SIP.

EPA is conditionally approving NHDES's commitment to adopt and submit to EPA by September 26, 2016 revised NNSR and PSD regulations which address the following provisions of the federal NNSR and PSD program regulations:

- Provisions at 40 CFR 51.165(a)(5)(i),
- Provisions at 40 CFR 51.165(a)(6) and (a)(7), and
- Provisions at 40 CFR 51.166(q)(2)(iv).

If the State fails to do so, the State's commitment to address these three provisions will become a disapproval on that date. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved New Hampshire SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the State's SIP submittal of the revised NNSR and PSD regulations which address the three provisions. If EPA approves the submittal, the three provisions will be fully approved in their entirety and will replace the conditional approval in the SIP.

If the conditional approval is converted to a disapproval, such action will trigger EPA's authority to impose sanctions under section 110(m) of the CAA at the time EPA issues the final disapproval or on the date the State fails to meet its commitment. In the latter case, EPA will notify the State by letter that the conditional approval has been converted to a disapproval and that EPA's sanctions authority has been triggered. In addition, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c).

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of PART Env-A 618, ''Nonattainment New Source Review;'' PART Env-A 619, ''Prevention of Significant Deterioration;'' and PART Env-A 101, ''Definitions'' described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

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 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 (Publ. 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 24, 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 section 307(b)(2).)

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.

Dated: August 27, 2015.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations 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.*

Subpart EE—New Hampshire

■ 2. Section 52.1519 is amended by adding paragraph (a)(5) to read as follows:

§ 52.1519 Identification of plan—conditional approval.

(a) * * *

* * * * *

(5) On November 15, 2012, the New Hampshire Department of Environmental Services (NHDES) submitted to a request to amend New Hampshire's Chapter Env-A 600 ''Statewide Permit System'' as a revision to New Hampshire's State Implementation Plan. The amendment included revisions to the state's Nonattainment New Source Review (NNSR) and the Prevention of Significant Deterioration (PSD) programs. On March 20, 2015, New Hampshire submitted a letter to EPA committing to adopt revised regulations which address the provisions at 40 CFR 51.165(a)(5)(i) and (a)(6) and (7) and 51.166(q)(2)(iv) required for EPA to fully approve New Hampshire's NNSR and PSD Programs.

* * * * *

■ 3. In § 52.1520, the table in paragraph (c) is amended by revising the entries for Env-A 100 ''Organizational Rules: Definitions'' and Env-A 600 ''Statewide Permit System'' to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW HAMPSHIRE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date [1]	Explanations
Env-A 100	Organizational Rules: Definitions.	May 3, 2003	September 25, 2015 [Insert **Federal Register** citation].	Adding definition of ''Minor permit amendment'' and ''State permit to operate.''
*	*	*	*	*
Env-A 600	Statewide Permit System.	September 1, 2012	September 25, 2015 [Insert **Federal Register** citation].	Approve revisions to Env-A 618 ''NNSR'' & Env-A 619 ''PSD Program'' and withdrawal of Env-A 610 and 622 ''NNSR Program,'' and Env-A 623 ''PSD Program.''
*	*	*	*	*

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * *

[FR Doc. 2015–23176 Filed 9–24–15; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0369; FRL–9933–22–Region 9]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and the Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act (CAA or the Act), we are approving local rules that address volatile organic compound (VOC) emissions from the transfer of gasoline into vehicle fuel tanks, and from the transfer or dispensing of liquefied petroleum gas (LPG).

DATES: These rules are effective on November 24, 2015 without further notice, unless EPA receives adverse comments by October 26, 2015. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2015–0369, by one of the following methods:

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

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

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: James Shears, EPA Region IX, (213) 244–1810, *shears.james@epa.gov*.

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

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rules?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. EPA recommendations to further improve the rules
D. Public comment and final action
III. Incorporation by Reference
IV. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted/ revised	Submitted
MBUAPCD	1002	Transfer of Gaslone into Vehicle Fuel Tanks	12/17/14	04/07/15
VCAPCD	74.33	Liquefied Petroleum Gas Transfer or Dispensing	01/13/15	04/07/15

On April 30, 2015, EPA determined that the submittals for MBUAPCD Rule 1002 and VCAPCD Rule 74.33 each met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved an earlier version of MBUAPCD Rule 1002 into the SIP on January 2, 2008 (73 FR 48). There is no previous version of VCAPCD Rule 74.33 in the SIP.

C. What is the purpose of the submitted rules?

Section 110(a) of the CAA requires States to submit regulations that control VOCs, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. VOC rules were developed as part of the local agencies' programs to control these pollutants. MBUAPCD Rule 1002 is designed to limit emissions of VOCs from the transfer of gasoline into vehicle fuel tanks. In order to simplify the source testing section of the SIP-approved rule, the Stage II vapor recovery compliance test procedures are removed from the rule language, and instead the rule requires owners and operators of gasoline dispensing facilities to adhere to the applicable California Air Resources Board (CARB) Executive Order for gasoline testing procedures. The corresponding testing cycles are included in the gasoline facility permits. VCAPCD Rule 74.33 is designed to limit fugitive VOC emissions from the transfer or dispensing of LPG. It describes related equipment and operation requirements, leak detection

and repair program requirements, and recordkeeping and reporting requirements. EPA's technical support documents (TSDs) have more information about the MBUAPCD and VCAPCD rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

These rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). EPA policy that we use to evaluate enforceability requirements consistently includes the Bluebook (''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988), the Little Bluebook (''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001), and ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

B. Do the rules meet the evaluation criteria?

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

C. EPA Recommendations to Further Improve the Rules

Our TSD for MBUAPCD describes additional rule revisions that we recommend for the next time the local agency modifies the rule. We have no recommendations for VCAPCD Rule 74.33 at this time.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by October 26, 2015, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on November 24, 2015. This will incorporate these rules into the federally enforceable SIP.

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

III. Incorporation by Reference

In these rules, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR part 51.5, the EPA is finalizing the incorporation by reference of the MBUAPCD and VCAPCD rules described in the amendments to 40 CFR part 52 set forth below. The EPA made, and will continue to make, these documents available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive 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 rules 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 rules do not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 24, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 11, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(461) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(461) New and amended regulations were submitted on April 7, 2015 by the Governor's designee.

(i) Incorporation by Reference.

(A) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 1002, ''Transfer of Gasoline into Vehicle Fuel Tanks,'' revised on December 17, 2014.

(B) Ventura County Air Pollution Control District.

(*1*) Rule 74.33, ''Liquefied Petroleum Gas Transfer or Dispensing,'' adopted on January 13, 2015.

* * * * *

[FR Doc. 2015–24106 Filed 9–24–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0133; FRL–9934–72–Region 4]

Approval and Promulgation of Implementation Plans; Florida; Combs Oil Company Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the State Implementation Plan (SIP) submitted by the State of Florida through the Department of Environmental Protection (DEP) on July 31, 2009. The revision grants a variance to the Combs Oil Company, located in Naples, Florida. This source specific revision relieves the Combs Oil Company of the requirement to comply with the Florida rule governing installation and operation of vapor collection and control systems on loading racks at bulk gasoline plants. EPA is approving Florida's July 31, 2009, source specific SIP revision.

DATES: This rule will be effective October 26, 2015.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2015–0133. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *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. Mr. Lakeman can be reached by phone at (404) 562–9043 or via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Florida Rule 62–296.418 requires bulk gasoline plants which began operation on or after August 1, 2007, to install and operate vapor collection and control systems on their loading racks. The rule became effective on May 9, 2007, and was submitted to EPA as a proposed SIP revision on May 31, 2007. EPA approved the SIP revision on June 1, 2009 (74 FR 26103).

On May 30, 2007, Combs Oil Company submitted a petition for variance from the requirements of Rule 62–296.418(2)(b)2, Florida Administrative Code (F.A.C.), for its new bulk gasoline plant. The company operates an existing bulk gasoline plant in Naples, Florida. The new plant would replace the existing plant and be constructed at a different site in the area.

Under Section 120.542 of the Florida Statutes, the DEP may grant a variance when the person subject to a rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means, or when application of a rule would create a substantial hardship or violate principles of fairness. The DEP determined that Combs Oil Company had demonstrated that principles of fairness would be violated because the facility would have begun operations prior to August 1, 2007, but for delays in building and relocating to the new facility related to hurricanes, which were beyond the control of the company. Therefore, the DEP issued an Order Granting Variance to Combs Oil Company on August 20, 2008, relieving the company from the requirements of Rule 62–296.418(2)(b)2., F.A.C., for its proposed new facility.

In a notice of proposed rulemaking (NPR) published on July 20, 2015, EPA proposed to approve Florida's July 31, 2009, SIP revision granting a variance to the Combs Oil Company, located in Naples, Florida. *See* 80 FR 42763. The details of Florida's submittal and the rationale for EPA's actions are explained in the NPR. Comments on the proposed rulemaking were due on or before August 19, 2015. No adverse comments were received.

II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing incorporate by reference of ''Combs Oil Company Source Specific Variance'' order granting variance on August 20, 2008. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 4 office (see the **ADDRESSES** section of this preamble for more information).

III. Final Action

EPA is approving a source specific SIP revision submitted by the Florida DEP on July 31, 2009. The revision grants a variance to the Combs Oil Company, located in Naples, Florida. This source specific revision relieves the Combs Oil Company of the requirement to comply with the Florida rule governing installation and operation of vapor collection and control systems on loading racks at bulk gasoline plants. It should be noted that approval of the variance for Combs Oil Company only relieves them from the requirements of Rule 62–296.418(2)(b)2 F.A.C., for its new bulk gasoline plant, it does not relieve them from any requirements established in 40 CFR parts 60 and 63.

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 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 approves a 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.

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 November 24, 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* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: September 16, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart K—Florida

■ 2. Section 52.520(d), is amended by adding a new entry for ''Combs Oil Company'' at the end of the table to read as follows:

§ 52.520 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED FLORIDA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	Explanation
*	*	*	*	*
Combs Oil Company	.....	7/31/2009	9/25/2015 [Insert citation of publication].	Order Granting Variance from Rule 62–296.418(2)(b)2.

* * * * *

[FR Doc. 2015–24325 Filed 9–24–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0113; FRL–9934–53–Region 4]

Air Plan Approval; GA; Removal of Stage II Gasoline Vapor Recovery Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving changes to the Georgia State Implementation Plan (SIP) submitted by the State of Georgia, through the Georgia Environmental Protection Division, on January 22, 2015, to remove Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State and to allow for the decommissioning of existing Stage II equipment.

DATES: This rule will be effective October 26, 2015.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2015–0113. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section (formerly Regulatory Development Section), Air Planning and Implementation Branch (formerly Air Planning 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: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sheckler's telephone number is (404) 562–9222. She can also be reached via electronic mail at *sheckler.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 13, 1992, the State of Georgia submitted a SIP revision to address the Stage II requirements [1] for the Atlanta 1-Hour Ozone Area.[2] EPA approved that SIP revision, containing Georgia's Stage II rule (Georgia Rule 391–3–1–.02(2)(zz)—*Gasoline Dispensing Facilities—Stage II*) in a notice published on February 2, 1996. *See* 61 FR 3819. On January 22, 2015, the State submitted a SIP revision to EPA with a request to remove its Stage II rule from the Georgia SIP thereby eliminating Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State and allowing for the decommissioning of existing Stage II equipment. EPA published a proposed rulemaking on July 16, 2015, to approve that SIP revision. The details of Georgia's submittal and the rationale for EPA's action are explained in the NPR. *See* 80 FR 42076. The comment period for this proposed rulemaking closed on August 17, 2015. EPA did not receive any comments, adverse or otherwise, during the public comment period.

II. Final Action

EPA is taking final action to approve the January 22, 2015, SIP revision submitted by Georgia and remove Georgia Rule 391–3–1–.02(2)(zz) from the SIP. This action removes Stage II vapor control requirements for new and upgraded gasoline dispensing facilities and allows for the decommissioning of existing Stage II equipment. EPA has determined that Georgia's January 22, 2015, SIP revision related to the State's Stage II rules is consistent with the CAA and EPA's regulations and guidance.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *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 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) 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.*);

[1] Stage II is a system designed to capture displaced vapors that emerge from inside a vehicle's fuel tank, when gasoline is dispensed into the tank. There are two basic types of Stage II systems, the balance type and the vacuum assist type.

[2] On November 6, 1991, EPA designated the following counties in and around metropolitan Atlanta as a serious ozone nonattainment area for the 1-hour ozone NAAQS (referred to as the ''Atlanta 1-Hour Ozone Area''): Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale. 56 FR 56694. The ''serious'' classification triggered various statutory requirements for the Atlanta 1-Hour Ozone Area, including the requirement pursuant to section 182(b)(3) of the CAA for the Area to require all owners and operators of gasoline dispensing systems to install and operate Stage II. EPA redesignated the Atlanta 1-Hour Ozone Area to attainment for the 1-hour ozone NAAQS, effective June 14, 2005. *See* 70 FR 34660 (June 15, 2005).

- 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.

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 November 24, 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* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

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

Dated: September 10, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart L—Georgia

■ 2. In § 52.570, the table in paragraph (c) is amended by removing the entry for ''391–3–1–.02(2)(zz).''

[FR Doc. 2015–24186 Filed 9–24–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0163; FRL–9934–73–Region 4]

Approval and Promulgation of Implementation Plans; Mississippi: Miscellaneous Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of a State Implementation Plan (SIP) revision submitted by the Mississippi Department of Environmental Quality (MDEQ), to EPA on July 25, 2010. The SIP revision includes multiple changes to Mississippi's SIP to add definitions in accordance with federal regulations and to implement clarifying language.

DATES: This rule will be effective October 26, 2015.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2013–0163. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *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. Mr. Lakeman can be reached by phone at (404) 562–9043 or via electronic mail at *lakeman.sean@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 25, 2010, MDEQ submitted a SIP revision to EPA for approval into the Mississippi SIP.[1] This SIP revision includes multiple changes to Mississippi's air pollution control regulation APC–S–1, entitled ''Air

[1] On May 5, 2015, Mississippi withdrew the portion of this SIP revision that modified APC–S–1, Section 14 related to Mississippi's Clean Air Interstate Rule provisions. A copy of the letter withdrawing this portion of Mississippi's submission is in the docket for today's rulemaking. Regarding the changes to APC–S–1, Section 8 related to hazardous air pollutants, EPA is not acting on the revisions related to the vacated Clean Air Mercury Rule in Paragraph 4. As noted in the SIP revision narrative, the change to Section 8, Paragraph 1 regarding the National Emission Standards for Hazardous Air Pollutants and the change to Section 6, Paragraph 1 regarding the New Source Performance Standards are included in the same state rulemaking package as the changes identified above but are not part of the SIP revision.

Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants,'' to add and amend definitions in accordance with federal regulations and to implement clarifying language. Specifically, these changes include amendments to Section 2—''Definitions'' and Section 3—''Specific Criteria for Sources of Particulate Matter.''

In a notice of proposed rulemaking (NPR) published on July 20, 2015, EPA proposed to approve the portions of Mississippi's June 25, 2010, SIP revision that modify Sections 2 and 3 of APC–S–1. *See* 80 FR 42774. The details of Mississippi's submittal and the rationale for EPA's actions are explained in the NPR. Comments on the proposed rulemaking were due on or before August 19, 2015. No adverse comments were received.

II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporate by reference of certain changes to Mississippi's air pollution control regulation APC–S–1, entitled ''Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants.'' Specifically, these changes include the amendments to Section 2—''Definitions'' and Section 3—''Specific Criteria for Sources of Particulate Matter'' which were State effective on February 9, 2009. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 4 office (see the **ADDRESSES** section of this preamble for more information).

III. Final Action

EPA is approving the portions of Mississippi's July 25, 2010, SIP submission revising Sections 2 and 3 of Rule APC–S–1 to add and amend definitions in accordance with federal regulations and to implement clarifying language. EPA has preliminarily determined that these changes to the Mississippi SIP are in accordance with the Clean Air Act (CAA or Act) and EPA policy and regulations.

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 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 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 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.

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 November 24, 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* section 307(b)(2).

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, Volatile organic compounds.

Dated: September 16, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart Z—Mississippi

■ 2. Section 52.1270(c), is amended under APC–S–1 Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants by revising the entries for ''Section 2'' and ''Section 3'' to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSISSIPPI REGULATIONS

State citation	Title/Subject	State effective date	EPA Approval date	Explanation
APC–S–1 Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants				
*	*	*	*	*
Section 2	Definitions	2/9/2009	9/25/2015 [Insert citation of publication].	
Section 3	Specific Criteria for Sources of Particulate Matter	2/9/2009	9/25/2015 [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 2015–24324 Filed 9–24–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R07–OAR–2015–0427; FRL–9934–68–Region 7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Missouri; Control of Mercury Emissions From Electric Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Missouri State Plan received May 7, 2013. This revision rescinds the state rule and associated state plan controlling mercury emissions from electric generating units. This rule is being rescinded because the Federal Clean Air Mercury Rule, which is the basis for this rule and associated plan, has been vacated and removed from the Code of Federal Regulations. This action will make Missouri's State Plan consistent with Federal regulations.

DATES: This direct final rule will be effective November 24, 2015, without further notice, unless EPA receives adverse comment by October 26, 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–2015–0427, by one of the following methods:

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

2. *Email: Bhesania.amy@epa.gov.*

3. *Mail or Hand Delivery:* Amy Bhesania, 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–205–0427. 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.

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 a.m. to 4:30 p.m., 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: Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7147, or by email at *bhesania.amy@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. Have the requirements for approval of a Section 111(d) plan revision been met?
III. What action is EPA taking?

I. What is being addressed in this document?

EPA is taking direct final action to approve a revision to the Missouri State Plan received May 7, 2013. This revision rescinds Missouri state rule 10 CSR 10–6.368, *Control of Mercury Emissions from Electric Generating Units,* and associated state plan. The state rule and plan was originally incorporated into the Missouri State

Plan on January 7, 2008, (73 FR 3194) following the March 15, 2005, promulgation of the Federal Clean Air Mercury Rule (CAMR) which permanently capped and reduced mercury emissions from coal-fired power plants through a regional mercury trading program (70 FR 28606). On February 8, 2008, the D.C. Circuit Court vacated EPA's rule removing power plants from the Clean Air Act (CAA) list of sources of hazardous air pollutants, and at the same time, the Court vacated the Clean Air Mercury Rule. *New Jersey* v. *EPA,* 517 F.3d 574 (D.C. Cir. 2008). On February 16, 2012, EPA replaced CAMR with the Mercury and Air Toxics Standards (MATS rule) (77 FR 9304). Missouri has accepted delegation of this standard (80 FR 10596). Therefore, this rule and associated plan is being rescinded and removed from the Missouri State Plan to make the plan consistent with Federal regulations.

II. Have the requirements for approval of a Section 111(d) plan revision been met?

The Missouri Air Conservation Commission adopted the rescission of 10 CSR 10–6.368 on February 5, 2013. No comments were received on this state action. The Missouri Air Conservation Commission has full legal authority to develop rules pursuant to section 643.050 of the Missouri Air Conservation Law. The State followed all applicable administrative procedures in proposing and adopting the rule actions. After publication by the Missouri Secretary of State in the Code of State Regulations, the rescission of the rule became effective May 30, 2013. The State of Missouri submitted the rule and rescission to us for approval pursuant to section 111(d). We have evaluated the state plan rescission against criteria in 40 CFR part 60, subpart B ''Adoption and Submittal of State Plans for Designated Facilities.'' The state plan rescission meets all of the applicable requirements.

III. What action is EPA taking?

EPA is taking direct final action to approve a revision to the Missouri State Plan to rescind Missouri state rule 10 CSR 10–6.368, *Control of Mercury Emissions from Electric Generating Units,* and associated state plan.

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the State Plan revision if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based 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 November 24, 2015. Filing a petition for reconsideration by the Administrator of this direct final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 14, 2015.

Mark Hague,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 62 as set forth below:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart AA—Missouri

§ 62.6362 [Removed]

■ 2. Section 62.6362 is removed and reserved.

[FR Doc. 2015–24339 Filed 9–24–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2010–0606; FRL–9934–33–OW]

RIN 2040–AF16

Water Quality Standards Regulatory Revisions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is removing a sentence regarding the effective date for judicial review purposes in the preamble to a final rule that appeared in the **Federal Register** of August 21, 2015 (80 FR 51019). EPA included this sentence in the preamble to the final rule in error. Since the final rule does not fall within any of the actions listed in Clean Water Act section 509, it was not necessary to specify an effective date for judicial review purposes in the preamble. With this correction there is no delay in the effective date for purposes of judicial review, and parties choosing to do so may therefore seek judicial review at this time.

DATES: This correction is effective as of August 21, 2015.

FOR FURTHER INFORMATION CONTACT: Janita Aguirre, Standards and Health Protection Division, Office of Science and Technology (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington DC 20460; telephone number: (202) 566–1860; fax number: (202) 566–0409; email address: *WQSRegulatoryClarifications@epa.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2015–19821 appearing on page 51020 in the **Federal Register** of Friday, August 21, 2015, the following correction is made:

On page 51022, in the second column, under the heading entitled *E. When does this action take effect?,* in the first paragraph, line 2, remove ''For judicial review purposes, this rule is promulgated as of 1 p.m. EST (Eastern Standard Time) on the effective date, which will be 60 days after the date of publication of the rule in the **Federal Register**.''

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: September 18, 2015.

Kenneth J. Kopocis,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2015–24314 Filed 9–24–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–8401]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Bret Gates, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4133.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and

public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region III				
Pennsylvania: Aleppo, Township of, Greene County.	421667	June 28, 1979, Emerg; August 24, 1984, Reg; October 16, 2015, Susp.	Oct. 16, 2015 ...	Oct. 16, 2015
Carmichaels, Borough of, Greene County ...	420475	July 2, 1975, Emerg; September 28, 1979, Reg; October 16, 2015, Susp.	.....* do	Do.
Center, Township of, Greene County	421668	November 18, 1975, Emerg; May 1, 1986, Reg; October 16, 2015, Susp.	.....do	Do.
Clarksville, Borough of, Greene County	420476	December 3, 1975, Emerg; September 16, 1981, Reg; October 16, 2015, Susp.	.....do	Do.
Cumberland, Township of, Greene County ..	421188	January 27, 1976, Emerg; July 1, 1986, Reg; October 16, 2015, Susp.	.....do	Do.
Dunkard, Township of, Greene County	422431	February 22, 1984, Emerg; October 5, 1984, Reg; October 16, 2015, Susp.	.....do	Do.
Franklin, Township of, Greene County	422595	February 7, 1977, Emerg; February 17, 1989, Reg; October 16, 2015, Susp.	.....do	Do.
Freeport, Township of, Greene County	422432	September 29, 1980, Emerg; September 24, 1984, Reg; October 16, 2015, Susp.	.....do	Do.
Gilmore, Township of, Greene County	422433	August 8, 1978, Emerg; August 24, 1984, Reg; October 16, 2015, Susp.	.....do	Do.
Gray, Township of, Greene County	421669	February 4, 1976, Emerg; September 24, 1984, Reg; October 16, 2015, Susp.	.....do	Do.
Greene, Township of, Greene County	421670	September 7, 1979, Emerg; August 24, 1984, Reg; October 16, 2015, Susp.	.....do	Do.
Greensboro, Borough of, Greene County	420477	December 2, 1975, Emerg; March 2, 1989, Reg; October 16, 2015, Susp.	.....do	Do.
Jackson, Township of, Greene County	421671	April 30, 1981, Emerg; August 24, 1984, Reg; October 16, 2015, Susp.	.....do	Do.
Jefferson, Township of, Greene County	421672	December 2, 1975, Emerg; September 16, 1981, Reg; October 16, 2015, Susp.	.....do	Do.
Monongahela, Township of, Greene County	421673	July 6, 1979, Emerg; August 24, 1984, Reg; October 16, 2015, Susp.	.....do	Do.
Morgan, Township of, Greene County	421674	January 19, 1977, Emerg; July 1, 1986, Reg; October 16, 2015, Susp.	.....do	Do.
Morris, Township of, Greene County	421675	December 30, 1975, Emerg; August 24, 1984, Reg; October 16, 2015, Susp.	.....do	Do.
Perry, Township of, Greene County	422434	March 16, 1976, Emerg; May 1, 1986, Reg; October 16, 2015, Susp.	.....do	Do.
Rices Landing, Borough of, Greene County	420479	December 16, 1975, Emerg; July 16, 1981, Reg; October 16, 2015, Susp.	.....do	Do.
Richhill, Township of, Greene County	421676	November 28, 1975, Emerg; August 24, 1984, Reg; October 16, 2015, Susp.	.....do	Do.

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Springhill, Township of, Greene County	421677	March 13, 1981, Emerg; August 24, 1984, Reg; October 16, 2015, Susp.	do	Do.
Washington, Township of, Greene County	421678	April 4, 1977, Emerg; August 3, 1984, Reg; October 16, 2015, Susp.	do	Do.
Wayne, Township of, Greene County	421679	April 8, 1981, Emerg; August 24, 1984, Reg; October 16, 2015, Susp.	do	Do.
Waynesburg, Borough of, Greene County	420480	April 30, 1975, Emerg; June 17, 1986, Reg; October 16, 2015, Susp.	do	Do.
Whiteley, Township of, Greene County	421680	December 21, 1978, Emerg; September 10, 1984, Reg; October 16, 2015, Susp.	do	Do.
Region V				
Wisconsin: Bell Center, Village of, Crawford County.	550068	August 16, 1978, Emerg; March 5, 1990, Reg; October 16, 2015, Susp.	do	Do.
Crawford County, Unincorporated Areas	555551	March 19, 1971, Emerg; April 20, 1973, Reg; October 16, 2015, Susp.	do	Do.
De Soto, Village of, Crawford and Vernon Counties.	550069	December 15, 1980, Emerg; January 16, 1981, Reg; October 16, 2015, Susp.	do	Do.
Ferryville, Village of, Crawford County	555553	April 16, 1971, Emerg; May 26, 1972, Reg; October 16, 2015, Susp.	do	Do.
Gays Mills, Village of, Crawford County	550071	April 12, 1973, Emerg; June 15, 1978, Reg; October 16, 2015, Susp.	do	Do.
Germantown, Village of, Washington County	550472	July 15, 1975, Emerg; May 3, 1982, Reg; October 16, 2015, Susp.	do	Do.
Hartford, City of, Dodge and Washington Counties.	550473	April 17, 1975, Emerg; December 4, 1984, Reg; October 16, 2015, Susp.	do	Do.
Lynxville, Village of, Crawford County	555563	April 3, 1971, Emerg; March 16, 1973, Reg; October 16, 2015, Susp.	do	Do.
Prairie du Chien, City of, Crawford County	555573	May 22, 1970, Emerg; May 22, 1970, Reg; October 16, 2015, Susp.	do	Do.
Richfield, Village of, Washington County	550518	N/A, Emerg; September 30, 2008, Reg; October 16, 2015, Susp.	do	Do.
Slinger, Village of, Washington County	550587	October 16, 1986, Emerg; November 20, 2013, Reg; October 16, 2015, Susp.	do	Do.
Soldiers Grove, Village of, Crawford County	550074	April 9, 1971, Emerg; April 3, 1984, Reg; October 16, 2015, Susp.	do	Do.
Steuben, Village of, Crawford County	555580	May 21, 1971, Emerg; April 20, 1973, Reg; October 16, 2015, Susp.	do	Do.
Washington County, Unincorporated Areas.	550471	May 28, 1975, Emerg; September 1, 1983, Reg; October 16, 2015, Susp.	do	Do.
Wauzeka, Village of, Crawford County	555586	April 9, 1971, Emerg; April 20, 1973, Reg; October 16, 2015, Susp.	do	Do.
Region VII				
Iowa: Burlington, City of, Des Moines County.	190114	April 15, 1975, Emerg; July 2, 1981, Reg; October 16, 2015, Susp.	do	Do.
Des Moines County, Unincorporated Areas.	190113	N/A, Emerg; July 20, 1993, Reg; October 16, 2015, Susp.	do	Do.
Letts, City of, Louisa County	190311	N/A, Emerg; September 2, 1993, Reg; October 16, 2015, Susp.	do	Do.
Region VIII				
Montana: Columbus, Town of, Stillwater County.	300109	April 9, 1997, Emerg; August 2, 1997, Reg; October 16, 2015, Susp.	do	Do.
Stillwater County, Unincorporated Areas	300078	August 26, 1975, Emerg; November 15, 1985, Reg; October 16, 2015, Susp.	do	Do.
North Dakota: Belmont, Township of, Traill County.	380653	July 12, 1982, Emerg; August 5, 1986, Reg; October 16, 2015, Susp.	do	Do.
Beulah, City of, Mercer County	380066	March 14, 1975, Emerg; January 5, 1978, Reg; October 16, 2015, Susp.	do	Do.
Bingham, Township of, Traill County	380640	February 8, 1980, Emerg; August 5, 1986, Reg; October 16, 2015, Susp.	do	Do.
Caledonia, Township of, Traill County	380638	January 3, 1980, Emerg; August 5, 1986, Reg; October 16, 2015, Susp.	do	Do.
Eldorado, Township of, Traill County	380645	April 25, 1980, Emerg; August 19, 1986, Reg; October 16, 2015, Susp.	do	Do.
Elm River, Township of, Traill County	380636	September 13, 1979, Emerg; August 5, 1986, Reg; October 16, 2015, Susp.	do	Do.
Hazen, City of, Mercer County	380067	August 13, 1974, Emerg; December 15, 1977, Reg; October 16, 2015, Susp.	do	Do.
Hebron, City of, Morton County	380071	April 9, 1974, Emerg; September 5, 1979, Reg; October 16, 2015, Susp.	do	Do.

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Herberg, Township of, Traill County	380621	September 25, 1978, Emerg; August 5, 1986, Reg; October 16, 2015, Susp.	.....do	Do.
Kelso, Township of, Traill County	380644	April 11, 1980, Emerg; August 5, 1986, Reg; October 16, 2015, Susp.	.....do	Do.
Mandan, City of, Morton County	380072	April 4, 1974, Emerg; September 30, 1987, Reg; October 16, 2015, Susp.	.....do	Do.
Mercer County, Unincorporated Areas	380294	October 20, 1993, Emerg; May 4, 1998, Reg; October 16, 2015, Susp.	.....do	Do.
Morton County, Unincorporated Areas	380148	September 13, 1973, Emerg; September 30, 1987, Reg; October 16, 2015, Susp.	.....do	Do.
Stavanger, Township of, Traill County	380642	February 29, 1980, Emerg; August 5, 1986, Reg; October 16, 2015, Susp.	.....do	Do.
Three Affiliated Tribes, Dunn, McKenzie, McLean, Mercer and Mountrail Counties..	380721	August 23, 2000, Emerg; August 19, 2010, Reg; October 16, 2015, Susp.	.....do	Do.
Traill County, Unincorporated Areas	380130	June 30, 1997, Emerg; May 4, 1998, Reg; October 16, 2015, Susp.	.....do	Do.
Zap, City of, Mercer County	380068	April 7, 1975, Emerg; July 16, 1979, Reg; October 16, 2015, Susp.	.....do	Do.
Region IX				
Arizona: Cottonwood, City of, Yavapai County.	040096	May 5, 1975, Emerg; September 16, 1981, Reg; October 16, 2015, Susp.	.....do	Do.

.....* do = Ditto.
Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Suspension.

Dated: September 8, 2015.

Roy E. Wright

Deputy Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2015–24433 Filed 9–24–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 141212999–5843–01]

RIN 0648–BE73

Magnuson-Stevens Act Provisions; Fishery Management Council Freedom of Information Act Requests Regulations; Technical Amendments to Regulations

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

ACTION: Final rule; technical amendments.

SUMMARY: NMFS is hereby making technical amendments without altering the substance of the regulations governing the operation of Regional Fishery Management Councils (Councils) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The intent of this action is to update existing Council regulations to reflect the current procedure for processing Freedom of Information Act (FOIA) requests received by Councils. These changes will make our rules more internally consistent and easier to use.

DATES: This final rule is effective October 26, 2015.

ADDRESSES: 1315 East West Highway, SSMC3, Room #10843, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Steven Goodman at 301–427–8732, *steven.goodman@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Recently, the Department of Commerce (DOC) published a proposed rule and a final rule in the **Federal Register** (79 FR 11025, February 27, 2014; 79 FR 62553, October 20, 2014) implementing revisions to DOC FOIA regulations. The DOC FOIA regulations were revised to clarify, update and streamline the language of several procedural provisions, including using FOIAonline, a web-based tracking and processing tool for FOIA requests. NOAA now uses FOIAonline to receive, securely manage and respond to FOIA requests submitted by the public.

NMFS has existing regulations for handling FOIA requests received by the Councils entitled ''Freedom of Information Act (FOIA) requests.'' 50 CFR 600.155. These regulations provide that the NOAA FOIA Officer will prepare a Form CD–244, ''FOIA Request and Action Record,'' for FOIA requests received by a Council.

Corrections

NMFS is revising regulations at § 600.155(a) and (b) to reflect the use of FOIAonline. This action specifically amends the regulations to remove the requirement to prepare a Form CD–244 and to clarify that, after FOIA requests received by a Council are coordinated with the appropriate NMFS Regional Office (Region), the Region then forwards the request to the NOAA FOIA officer who enters the FOIA request into FOIAonline. No other changes are being considered or implemented.

Classification

The NMFS Assistant Administrator has determined that this rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This rule has been determined to be not significant for purposes of Executive Order 12866.

This rule pertains solely to agency procedure and corrects existing regulations to reflect the current practice for processing FOIA requests received by a Council. It makes no changes to the substantive legal rights, obligations, or interests of affected parties. This rule therefore is a ''rule of agency organization, procedure or practice'' and is therefore exempt from the notice-and-comment requirements of the Administrative Procedure Act at 5 U.S.C. 553(b)(A).

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Reporting and recordkeeping requirements.

Dated: September 21, 2015.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 600 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

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

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

■ 2. Section 600.155 is revised to read as follows:

§ 600.155 Freedom of Information Act (FOIA) requests.

(a) FOIA requests received by a Council should be coordinated promptly with the appropriate NMFS Regional Office. The Region will forward the request to the NOAA FOIA Officer to secure a FOIA number and log the request into FOIAonline. The Region will also obtain clearance from the NOAA General Counsel's Office concerning initial determination for denial of requested information.

(b) FOIA request processing will be controlled and documented in the Region. The requests should be forwarded to the NOAA FOIA Officer who will enter the request into FOIAonline. The request will be assigned an official FOIA number and due date. In the event the Region determines that the requested information is exempt from disclosure, in full or in part, under the FOIA, the denial letter prepared for the Assistant Administrator's signature, along with the ''Foreseeable Harm'' Memo and list of documents to be withheld, must be cleared through the NMFS FOIA Liaison. Upon completion, a copy of the signed letter transmitting the information to the requester should be posted to FOIAonline by NMFS.

[FR Doc. 2015–24364 Filed 9–24–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150316270–5270–01]

RIN 0648–XE187

Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #30 Through #36

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

ACTION: Modification of fishing seasons; request for comments.

SUMMARY: NMFS announces seven inseason actions in the ocean salmon fisheries. These inseason actions modified the commercial and recreational salmon fisheries in the area from the U.S./Canada border to Cape Falcon, OR.

DATES: The effective dates for the inseason actions are set out in this document under the heading Inseason Actions. Comments will be accepted through October 13, 2015.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2015–0001, by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0001*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle WA 98115–6349.

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 will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323.

SUPPLEMENTARY INFORMATION:

Background

In the 2015 annual management measures for ocean salmon fisheries (80 FR 25611, May 5, 2015), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, beginning May 1, 2015, and 2016 salmon fisheries opening earlier than May 1, 2016. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions). The state management agencies that participated in the consultations described in this document were: Oregon Department of Fish and Wildlife (ODFW) and Washington Department of Fish and Wildlife (WDFW).

Management of the salmon fisheries is generally divided into two geographic areas: north of Cape Falcon (U.S./Canada border to Cape Falcon, OR) and south of Cape Falcon (Cape Falcon, OR, to the U.S./Mexico border). The inseason actions reported in this document affect fisheries north of Cape Falcon. The north of Cape Falcon area is further subdivided into four management subareas: Neah Bay Subarea (U.S./Canada border to Cape Alava, WA), La Push Subarea (Cape Alava, WA, to Queets River, WA), Westport Subarea (Queets River, WA, to Leadbetter Point, WA), and Columbia River Subarea (Leadbetter Point, WA, to Cape Falcon, OR). All times mentioned refer to Pacific daylight time.

Inseason Actions

Inseason Action #30

Description of action: Inseason action #30 reduced the landing and possession limit for Chinook salmon in the commercial salmon fishery north of Cape Falcon from 40 to 35 Chinook salmon per vessel per open period. This action superseded inseason action #29 (80 FR 53015, September 2, 2015).

Effective dates: Inseason action #30 took effect on August 28, 2015, and remained in effect until superseded by inseason action #34 on September 4, 2015.

Reason and authorization for the action: The Regional Administrator (RA) considered fishery effort and Chinook salmon landings to date, and determined that reducing the landing and possession limit at this time was necessary to maintain the season schedule set preseason, while allowing access to remaining Chinook salmon quota without exceeding the quota. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #30 occurred on August 27, 2015. Participants in this consultation were staff from NMFS, Council, WDFW, and ODFW.

Inseason Action #31

Description of action: Inseason action #31 modified the daily bag limit in the recreational salmon fishery in the Columbia River Subarea to allow retention of two Chinook salmon per day; previously only one Chinook salmon could be retained.

Effective dates: Inseason action #31 took effect on August 29, 2015, and remains in effect until the end of the recreational salmon fishing season, or until superseded by further inseason action.

Reason and authorization for the action: The RA considered fishery effort and Chinook salmon landings to date and determined that the subarea guideline had sufficient Chinook salmon available to increase the daily bag limit at this time without exceeding the guideline. Inseason action to modify recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

Consultation date and participants: Consultation on inseason action #31 occurred on August 27, 2015. Participants in this consultation were staff from NMFS, Council, WDFW, and ODFW.

Inseason Action #32

Description of action: Inseason action #32 adjusted the remaining coho quota in the recreational salmon fishery north of Cape Falcon, on an impact-neutral basis by subarea, from mark-selective to non-mark-selective. The adjusted non-mark-selective coho quotas by management subarea, as of the effective date, are:

- Neah Bay Subarea: 4,100
- La Push Subarea: 625
- Westport Subarea: 13,000
- Columbia River Subarea: 15,300

Effective dates: Inseason action #32 took effect on September 4, 2015, and remains in effect until the end of the 2015 recreational salmon fishery.

Reason and authorization for the action: The annual management measures (80 FR 25611, May 5, 2015) provide for inseason action to modify the regulations that restrict retention of unmarked coho. To accommodate modifying the regulations from a mark-selective to non-mark-selective coho fishery while still achieving management objectives, including not exceeding allowable impacts on constraining stocks, the Council's Salmon Technical Team (STT) calculated the necessary adjustments to the coho quota on an impact-neutral basis for the constraining stocks for each subarea. For the Neah Bay Subarea, impacts to the Thompson River (Canada) coho stock were most constraining. For the LaPush Subarea, impacts to Thompson River (Canada) and Queets River coho stocks were most constraining. For the Westport Subarea, impacts to Queets River coho were most constraining. For the Columbia River Subarea, impacts to Columbia River natural coho were most constraining. The RA approved the STT's impact-neutral conversion of the remaining recreational mark-selective coho quota to non-mark-selective coho quota. Modification of quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #32 occurred on September 2, 2015. Participants in this consultation were staff from NMFS, Council, WDFW, and ODFW.

Inseason Action #33

Description of action: Inseason action #33 modified daily bag limits in the recreational salmon fishery north of Cape Falcon to allow retention of unmarked coho salmon.

Effective dates: Inseason action #33 took effect on September 4, 2015, and remains in effect until the end of the recreational salmon fishing season, or until superseded by further inseason action. The portion of this action that applies to the Neah Bay Subarea was superseded by inseason action #35 on September 11, 2015.

Reason and authorization for the action: The annual management measures (80 FR 25611, May 5, 2015) provide for inseason action to modify the regulations that restrict retention of unmarked coho. The RA considered fishery effort, coho catch to date, and the non-mark-selective quota conversions implemented under inseason action #32, and determined that modifying the fishery to allow retention of unmarked coho could be implemented within the allowable impacts on the constraining stocks and without exceeding the non-mark-selective coho quota. Inseason action to modify limited retention regulations is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #33 occurred on September 2, 2015. Participants in this consultation were staff from NMFS, Council, WDFW, and ODFW.

Inseason Action #34

Description of action: Inseason action #34 increased the landing and possession limit for Chinook salmon in the commercial salmon fishery north of Cape Falcon from 35 to 40 Chinook salmon per vessel per open period. This action superseded inseason action #30.

Effective dates: Inseason action #34 took effect on September 4, 2015, and remains in effect until the end of the 2015 commercial salmon fishery, or until superseded by further inseason action.

Reason and authorization for the action: The RA considered fishery effort and Chinook salmon landings to date, both of which decreased substantially since the implementation of inseason action #30, largely due to unfavorable weather conditions. The RA determined that increasing the landing and possession limit would allow access to remaining Chinook quota without exceeding the quota. Modification of quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #34 occurred on September 2, 2015. Participants in this consultation were staff from NMFS, Council, WDFW, and ODFW.

Inseason Action #35

Description of action: Inseason action #35 reinstated the prohibition on retaining unmarked coho in the recreational salmon fishery in the Neah Bay Subarea. This action superseded that portion of inseason action #33 that applied to the Neah Bay Subarea.

Effective dates: Inseason action #35 took effect on September 11, 2015, and remains in effect through the end of the 2015 recreational salmon fishery, or until superseded by further inseason action.

Reason and authorization for the action: The RA considered effort and coho landings to date, both of which increased dramatically in the Neah Bay Subarea after the implementation of inseason action #33. The RA determined that it was necessary to reinstate mark-selective coho regulations to avoid exceeding the coho quota in the Neah

Bay Subarea. Inseason action to modify limited retention regulations is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #35 occurred on September 9, 2015. Participants in this consultation were staff from NMFS, Council, WDFW, and ODFW.

Inseason Action #36

Description of action: Inseason action #36 implemented an impact-neutral quota trade between the commercial and recreational salmon fisheries north of Cape Falcon. The first part of the trade transferred 3,000 mark-selective coho quota from the commercial fishery to the recreational fishery, which resulted in an addition of 1,700 mark-selective coho recreational quota added to the Neah Bay Subarea on an impact-neutral basis. The second part of the trade transferred 1,500 Chinook salmon from the recreational guidelines of the Westport and Columbia River Subareas, which resulted in an addition of 1,000 Chinook quota added to the commercial fishery south of Queets River.

Effective dates: Inseason action #36 took effect on September 11, 2015, and remains in effect until the end of the 2015 commercial and recreational salmon fisheries, or until modified by further inseason action.

Reason and authorization for the action: The annual management measures (80 FR 25611, May 5, 2015) provide for quota transfers between the recreational and commercial salmon fisheries north of Cape Falcon if there is agreement among the areas' representatives on the Salmon Advisory Subpanel (SAS), and if the transfer would not result in exceeding the preseason impact expectations on any salmon stocks. The RA considered landings and effort to date and the recommendations of the SAS, and took this action to sustain fisheries while remaining within overall quotas and impacts to coho and Chinook salmon stocks. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #36 occurred on September 9, 2015. Participants in this consultation were staff from NMFS, Council, WDFW, and ODFW.

All other restrictions and regulations remain in effect as announced for the 2015 ocean salmon fisheries and 2016 salmon fisheries opening prior to May 1, 2016 (80 FR 25611, May 5, 2015) and as modified by prior inseason actions.

The RA determined that the best available information indicated that coho and Chinook salmon catch to date and fishery effort supported the above inseason actions recommended by the states of Washington and Oregon. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the time the action was effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (80 FR 25611, May 5, 2015), the West Coast Salmon Fishery Management Plan (Salmon FMP), and regulations implementing the Salmon FMP, 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook salmon catch and effort assessments and projections were developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information, ensuring that conservation objectives and ESA consultation standards are not exceeded. The AA also finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the Salmon FMP and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: September 22, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–24442 Filed 9–24–15; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 186
Friday, September 25, 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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 340

[Docket No. APHIS–2015–0070]

Changes to Requirements for Field Testing Regulated Genetically Engineered Wheat

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is seeking public comment regarding plans to require the authorization of field testing of regulated genetically engineered (GE) wheat under permit. Currently, GE wheat field trials are authorized under notification. Authorizing GE wheat field trials under permit will help prevent future compliance issues, protect plant health and the environment, and allow for flexibility in the length of the volunteer monitoring period and the specific permit conditions to address how volunteers of GE wheat will be appropriately managed.

DATES: We will consider all comments that we receive on or before October 26, 2015.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docket Detail;D=APHIS-2015-0070.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0070, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0070* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Windsberg, Lead Management and Program Analyst, Regulatory Operations Programs, BRS, APHIS, 4700 River Road Unit 91, Riverdale, MD 20737; 301–851–3109.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) administers regulations regarding genetically engineered (GE) organisms in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe are Plant Pests'' (referred to below as the regulations). The current regulations govern the introduction (importation, interstate movement, or release into the environment) of certain GE organisms termed ''regulated articles.'' Regulated articles are essentially GE organisms which might pose a risk as a plant pest. APHIS first promulgated these regulations in 1987 under the authority of the Federal Plant Pest Act and the Plant Quarantine Act, two acts that were subsumed into the Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) in 2000, along with other provisions.

Certain regulated articles may be introduced into the environment without a permit if developers follow the requirements for authorizations under notification in § 340.3. These requirements include, among other things, that, when the introduction of regulated articles is an environmental release, regulated articles must be planted in such a way that they are not inadvertently mixed with non-regulated plant materials of any species which are not part of the environmental release. In addition, the field trial must be conducted such that the regulated article will not persist in the environment, and no offspring can be produced that could persist in the environment.

In 2013 and 2014, APHIS responded to, and investigated, the detection of the unauthorized release of regulated GE wheat found growing in fields in Oregon and Montana, respectively. As part of its response to these incidents, APHIS has carefully assessed its regulatory requirements for field trials of GE wheat and determined that it is necessary to enhance those requirements. Therefore, we are advising the public that we have determined that field trials of GE wheat should be authorized only with a permit. This change will help prevent future compliance issues, protect plant health and the environment, and allow for flexibility in the length of the volunteer monitoring period and the specific permit conditions used to address how volunteers of GE wheat will be appropriately managed. Requiring authorization with a permit also allows APHIS to require the submission of volunteer monitoring reports on a regular basis.

Due to the change in authorization allowed for GE wheat trials, we are requesting public review and comment on this change. To better help us determine specific permit conditions and volunteer monitoring requirements, we are particularly interested in receiving comments regarding biological or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments. We also request that, when possible, commenters provide relevant information regarding specific localities or regions as wheat growth, crop management, and crop utilization may vary considerably by geographic region.

After the comment period closes, APHIS will review all written comments received during the comment period. APHIS will notify the public through an announcement on our Web site of the effective date of our decision whether to authorize GE wheat field trials only with a permit and any additional information regarding any change if APHIS decides to authorize wheat only under permits. APHIS will also announce on our Web site information regarding a stakeholder meeting to answer questions from developers on how to comply with this change.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 23rd day of September 2015.

Michael C. Gregoire,

Associate Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–24553 Filed 9–24–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3970; Directorate Identifier 2015–SW–006–AD]

RIN 2120–AA64

Airworthiness Directives Airbus Helicopters (Previously Eurocopter France)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2014–12–51 for Airbus Helicopters (previously Eurocopter France) Model EC130B4 and EC130T2 helicopters. AD 2014–12–51 currently requires repetitively inspecting the tailboom to Fenestron junction frame (junction frame) for a crack. This proposed AD would retain the requirements of AD 2014–12–51, change the applicability from helicopters with certain hours time-in-service (TIS) to junction frames with certain hours TIS, and add a compliance time for sling cycles to the junction frame inspection interval. These proposed actions are intended to detect a crack and to prevent failure of the junction frame, which could result in loss of the Fenestron and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by November 24, 2015.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov*. Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments 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 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3970; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub*. You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; email *robert.grant@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

On July 24, 2014, we issued AD 2014–12–51, Amendment 39–17921 (79 FR 45335, August 5, 2014), which was sent previously as an Emergency AD to all known U.S. owners and operators of Airbus Helicopters Model EC130B4 and EC130T2 helicopters. AD 2014–12–51 applies to helicopters with 690 or more hours TIS and requires, within 10 hours TIS, dye-penetrant inspecting certain areas of the junction frame for a crack. AD 2014–12–51 also requires, at intervals not exceeding 25 hours TIS, either repeating the dye-penetrant inspection or performing a borescope inspection of certain areas of the junction frame for a crack. If there is a crack, AD 2014–12–51 requires replacing the junction frame. Those actions are intended to detect a crack and to prevent failure of the junction frame, which could result in loss of the Fenestron and subsequent loss of control of the helicopter.

AD 2014–12–51 was prompted by AD No. 2014–0145–E, dated June 6, 2014, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition on Airbus Helicopters Model EC130B4 and EC130T2 helicopters. EASA advises of two incidents of crack propagation through the junction frame that initiated in the lower right-hand side between the web and the flange where the lower spar of the tailboom is joined. EASA states the cracks were of a significant length and not visible from the outside of the helicopter. EASA advises that this condition, if not detected, could lead to structural failure, possibly resulting in Fenestron detachment and consequent loss of control of the helicopter. As a result, EASA AD No. 2014–0145–E required a one-time visual inspection of the junction frame for a crack and a repetitive borescope inspection of the junction frame for a crack.

EASA revised AD No. 2014–0145–E with AD No. 2014–0145R1, dated June 13, 2014. EASA AD No. 2014–0145R1 changes the compliance time by removing a calendar day requirement and by determining the time accumulated on the junction frame instead of on the helicopter. EASA AD No. 2014–0145R1 also allows the recurring inspection to be accomplished either by performing the borescope inspection or by repeating the visual inspection.

Actions Since AD 2012–12–51 Was Issued

Since we issued AD 2014–12–51 (79 FR 45335, August 5, 2014), EASA issued AD No. 2015–0033–E dated February 24, 2015 (EAD 2015–0033–E), which supersedes AD No. 2014–0145–E and AD No. 2014–0145R1. EASA determined that an inspection interval defined in sling cycles is necessary in

addition to the existing flight hour inspection interval. EASA also acknowledges an alternative method to inspect from the outside of the tailboom. EASA AD No. 2015–0033–E therefore retains the previous inspection requirements of EASA AD No. 2014–0145R1 and allows for an alternate external visual inspection method, which can be accomplished by a pilot, in combination with the internal inspections.

This NPRM would retain the dye penetrant and borescope inspections in AD 2014–12–51 but would revise the compliance times. We have determined that applicable helicopters are those with 690 hours TIS accumulated on the junction frame instead of on the helicopter, and that it is necessary to include an inspection interval defined in sling cycles.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other helicopters of the same type design.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Helicopters Emergency Alert Service Bulletin No. 05A017, Revision 2, dated February 20, 2015 (EASB 05A017), for Model EC130B4 and EC130T2 helicopters. EASB 05A017 describes alternate procedures for inspecting outside the tailboom for a crack at reduced inspection intervals in combination with the internal inspections at extended intervals. EASB 05A017 also specifies adding sling cycles to the existing flight hour inspection interval for helicopters that perform external load-carrying operations. EASA issued AD No. 2015–0033–E mandating the requirements in EASB 05A017 to ensure the continued airworthiness of these helicopters.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by means identified in the Addresses Section of this proposed AD.

Other Related Service Information

We have also reviewed Airbus Helicopters Service Bulletin No. EC130–53–029, Revision 0, dated February 20, 2015 (SB EC130–53–029), which contains procedures to cut out the skin and splice at the junction frame to facilitate the external inspection specified in EASB 05A017.

Proposed AD Requirements

This proposed AD would require:

• Before the junction frame reaches 700 hours TIS or within 10 hours TIS, whichever comes later, removing the horizontal stabilizer, cleaning the junction frame, and dye-penetrant inspecting around the circumference of the junction frame for a crack, paying particular attention to the area around the 4 spars.

• Within 25 hours TIS or 390 sling cycles, whichever comes first, after the dye-penetrant inspection proposed by this AD, and thereafter at intervals not exceeding 25 hours TIS or 390 sling cycles, whichever comes first, either repeating the dye-penetrant inspection of this proposed AD or, if the area is clean, using a borescope, inspecting around the circumference of the junction frame for a crack.

Differences Between This Proposed AD and the EASA AD

The EASA AD includes alternate compliance instructions for helicopters modified with a cut-out in production by Airbus Helicopters Modification 350A087421 or in service by compliance with SB EC130–53–029. This proposed AD would not.

Interim Action

We consider this proposed AD to be an interim action. If final action is later identified, we might consider further rulemaking then.

Costs of Compliance

We estimate that this proposed AD would affect 208 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of $85 per hour, dye-penetrant inspecting the junction frame would require 1 work-hour, for a cost per helicopter of $85, and a total cost of $17,680 for the fleet, per inspection cycle. Borescope inspecting the junction frame would require .5 work-hour, for a cost per helicopter of $43 and a total cost of $8,944 for the fleet, per inspection cycle.

If required, replacing the junction frame would require 50 work-hours, and required parts would cost $60,000, for a cost per helicopter of $64,250.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2014–12–51, Amendment 39-17921 (79 FR 45335, August 5, 2014), and adding the following new AD:

Airbus Helicopters (previously Eurocopter France): Docket No. FAA–2015–3970; Directorate Identifier 2015–SW–006–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model EC130B4 and EC130T2 helicopters with a tailboom to fenestron junction frame (junction frame) that has 690 or more hours time-in-service (TIS), certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in the junction frame. This condition could result in failure of the junction frame, which could result in loss of the Fenestron and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes AD 2014–12–51, Amendment 39–17921 (79 FR 45335, August 5, 2014).

(d) Comments Due Date

We must receive comments by November 24, 2015.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Before the junction frame reaches 700 hours TIS or within 10 hours TIS, whichever occurs later, remove the horizontal stabilizer, clean the junction frame, and dye-penetrant inspect around the circumference of the junction frame for a crack in the areas shown in Figure 1 of Airbus Helicopters EC130 Emergency Alert Service Bulletin No. 05A017, Revision 2, dated February 20, 2015 (EASB 05A017). Pay particular attention to the area around the 4 spars (item b) of Figure 1 of EASB 05A017. An example of a crack is shown in Figure 3 of EASB 05A017.

(2) Within 25 hours TIS or 390 sling cycles, whichever occurs first after the inspection required by paragraph (f)(1) of this AD, and thereafter at intervals not exceeding 25 hours TIS or 390 sling cycles, whichever occurs first, either perform the actions of paragraph (f)(1) of this AD or, if the area is clean, using a borescope, inspect around the circumference of the junction frame for a crack in the areas shown in Figure 2 of EASB 05A017. Pay particular attention to the area around the 4 spars (item b) of Figure 2 of EASB 05A017. An example of a crack is shown in Figure 3 of EASB 05A017. For purposes of this AD, a sling cycle is defined as one landing with or without stopping the rotor or one external load-carrying operation; an external load-carrying operation occurs each time a helicopter picks up an external load and drops it off.

(3) If there is a crack, before further flight, replace the junction frame.

(g) Special Flight Permits

Special flight permits are prohibited.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(i) Additional Information

(1) Airbus Helicopters Service Bulletin No. EC130–53–029, Revision 0, dated February 20, 2015, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0033–E, dated February 24, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2015–3970.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 5302: Rotorcraft Tailboom.

Issued in Fort Worth, Texas, on September 17, 2015.

James A. Grigg,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015–24251 Filed 9–24–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0027; Directorate Identifier 2010–NM–127–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for The Boeing Company Model 777–200 and –300 series airplanes, equipped with Rolls-Royce Model RB211–Trent 800 engines. The notice of proposed rulemaking (NPRM) proposed to require repetitive inspections of the thrust reverser (T/R) structure and sealant, and related investigative and corrective actions if necessary. The NPRM was prompted by reports of T/R events related to thermal damage of the T/R inner wall. This action revises the NPRM by proposing to add different repetitive inspections requirements for T/R halves with a thermal protective system installed. This action also revises the NPRM by proposing to require installation of serviceable T/R halves, which would terminate the repetitive inspections in this SNPRM. This SNPRM also proposes to revise the inspection or maintenance program by incorporating new airworthiness limitations. We are proposing this SNPRM to detect and correct a degraded T/R inner wall panel, which could lead to failure of the T/R and adjacent components and their consequent separation from the airplane, and which could result in a rejected takeoff (RTO) and cause asymmetric thrust and consequent loss of control of the airplane during reverse thrust operation. If a T/R inner wall overheats, separated components could cause structural damage to the airplane, damage to other airplanes, or possible injury to people on the ground. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this SNPRM by November 9, 2015.

ADDRESSES: You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2011–0027.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2011–0027; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0027; Directorate Identifier 2010–NM–127–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain Model 777–200 and –300 series airplanes. The NPRM published in the **Federal Register** on January 20, 2011 (76 FR 3561). The NPRM proposed to require repetitive inspections for degradation of T/R structure and sealant, and related investigative and corrective actions if necessary.

Actions Since NPRM (76 FR 3561, January 20, 2011) Was Issued

Since we issued the NPRM (76 FR 3561, January 20, 2011), we have received additional reports of thermal damage of the T/R inner wall on Rolls-Royce Model RB211–Trent 800 engines.

The preamble to the NPRM (76 FR 3561, January 20, 2011) specified that we considered those proposed requirements ''interim action,'' and that the manufacturer was developing a modification to address the unsafe condition. That NPRM explained that we might consider further rulemaking if a modification were developed, approved, and available. The manufacturer now has developed a thermal protection system (TPS) and inner wall. We have determined that further rulemaking is indeed necessary. This proposed AD also would require a revision to the maintenance or inspection program to incorporate new airworthiness limitations. We have determined the following actions are necessary to address the identified unsafe condition:

- For airplanes with pre-TPS insulation blankets, part number P/N 315W5113–(XX) and 315W5010–(XX): The interim actions and repetitive inspections are specified Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010.
- For airplanes with TPS insulation blankets, P/N 315W5115–(XX): The interim repetitive inspections (non-destructive test (NDT) and electronic engine control (EEC) repetitive inspections only) are specified in Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015; and Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013.
- For all airplanes: The final terminating action, installing serviceable T/R halves, is specified in Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014.
- For all airplanes: New airworthiness limitations, Airworthiness Limitations 78–AWL–01 and 78–AWL–02, that need to be incorporated in the maintenance or inspection program are specified in Boeing 777 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, Revision dated October 2014.

Related Service Information Under 1 CFR Part 51

We reviewed the following service information. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this SNPRM.

- Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010. This service information describes procedures for a review of the airplane maintenance records to determine whether sealant was added to insulation blankets around compression pad fittings and powered door opening system (PDOS) fittings; inspections of the T/R structure; and related investigative and corrective actions.
- Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014. This service information describes procedures for installing serviceable T/R halves.
- Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015; and Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013. This service information describes, among other actions, procedures for inspections of the T/R structure, and related investigative and corrective actions. Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013, also describes, for airplanes on which the actions specified Boeing Special Attention Service Bulletin 777–78–0071, dated November 29, 2009, have been done, procedures for installation of

click bond covers and bracket, a general visual inspection of the compression fitting for incorrect pin orientation, and related investigative and corrective actions.

• Airworthiness Limitations 78–AWL–01, Thrust Reverser Thermal Protection System; and 78–AWL–02, Thrust Reverser Inner Wall; as specified in Boeing 777 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, Revision dated October 2014. Airworthiness Limitation 78–AWL–01 describes an inspection of the T/R TPS on both engines. Airworthiness Limitation 78–AWL–02 describes an inspection of the T/R inner wall.

Comments

We gave the public the opportunity to comment on the NPRM (76 FR 3561, January 20, 2011). The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM (76 FR 3561, January 20, 2011)

Boeing concurred with the contents of the NPRM (76 FR 3561, January 20, 2011).

Requests To Include Terminating Action

American Airlines (AAL), Delta Air Lines, and Air New Zealand requested that we revise the NPRM (76 FR 3561, January 20, 2011) to allow installation of a TPS, which is described in Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013. The commenters proposed that the TPS installation terminate the proposed repetitive inspections of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, which are specified in the NPRM.

We partially agree with the request. We agree to provide a terminating action for the inspections specified in this proposed AD. However, we do not agree that installation of a TPS as described in Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013, would provide an adequate level of safety to completely address the identified unsafe condition. Instead, we have determined that installing serviceable T/R halves as specified in Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014, is terminating action for the inspections specified in this proposed AD. We have also determined that installing serviceable T/R halves (see Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014, for definition of serviceable) and revising the maintenance or inspection program to incorporate new airworthiness limitations addresses the identified unsafe condition. We have added the proposed requirement to install serviceable T/R halves to paragraph (l) of this AD and we have added the proposed requirement to revise the maintenance or inspection program to paragraph (n) of this AD.

Request To Correct Work Package Reference

AAL requested that we revise paragraph (i) of the proposed AD, which incorrectly referred to the compliance time for Work Packages 2 and 5 ''or Work Packages 2 and 6.'' The correct reference is to the compliance time for Work Packages 2 and 5 ''or Work Packages 5 and 6.''

We agree with this request, and have changed the references accordingly in paragraph (h)(2) in this proposed AD, which was paragraph (i) in the original proposed AD.

We also note a similar typographical error in the preamble of the NPRM (76 FR 3561, January 20, 2011), in the ''Relevant Service Information'' section, under the subsection titled ''Work Package 6'' for Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010. That subsection incorrectly specified that Work Package 6 may be done as an option to Work Package 2, if the shorter repetitive inspection intervals specified in ''Work Package 2'' are followed. The correct intervals are specified in ''Work Package 6.'' The ''Relevant Service Information'' section is not repeated in this proposed AD, however, so we have not changed this proposed AD regarding this issue. We have provided a general description of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010 in the ''Related Service Information under 1 CFR part 51'' section of this proposed AD.

Request To Remove Certain Service Bulletin Exception

AAL requested that we remove paragraph (k) from the proposed AD, which explained that where the Condition column in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, referred to ''total flight cycles,'' it means ''total flight cycles as of the effective date of this AD.'' AAL was concerned that total flight cycles are stated to be total flight cycles on the airplane rather than total flight cycles on the T/R half. AAL reported that it is not uncommon for the total flight cycles of the T/R half to differ from the total flight cycles of the airframe, because T/Rs are line-replacement units.

We partially agree. We agree that those compliance times, in terms of total flight cycles, should apply to each T/R half, although we had inadvertently specified total flight cycles on the airplane. We disagree, however, to remove paragraph (k) of the original proposed AD, which is paragraph (h)(4) in this proposed AD. The intent of paragraph (h)(4) of this proposed AD is to provide a relative starting date from which to establish the compliance time; no such starting point was provided in the service information. We have retained the exception in paragraph (h)(4) in this proposed AD, but changed ''airplanes with the specified total flight cycles'' to ''each T/R half with the specified total flight cycles as of the effective date of this AD.''

Requests To Allow Future Aircraft Maintenance Manual (AMM) Revisions

AAL stated that Boeing intends to revise AMM 78–31–06, which is referenced in Work Package 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010. AAL recommended that we revise paragraph (g)(1) of the proposed AD to allow the use of any revision of that AMM during the inspection specified in Work Package 1. AAL stated that the AD does not specify which revision levels of AMM 78–31–06 are acceptable for this inspection.

We disagree that it is necessary to revise the NPRM (76 FR 3561, January 20, 2011) in response to this request. Use of a specific revision level of an AMM is not required during the accomplishment of the actions specified in Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010. An operator can therefore use a new AMM revision during that inspection without requesting FAA approval of an alternative method of compliance (AMOC). We have not changed this proposed AD regarding this issue.

Request To Allow Organization Designation Authorization (ODA) Approval of Repairs

AAL was concerned about the effect on its operation of the proposed requirement for FAA approval of certain repairs. AAL recommended that we revise the NPRM (76 FR 3561, January 20, 2011) to provide Boeing repair approval authority. AAL added that Boeing's technical and engineering

support can support any situation and avoid grounding an airplane.

We partially agree with the request. We agree to allow Boeing repair approval authority for structural aspects of the repair, but the FAA must approve non-structural aspects of any repair. We have added new paragraph (r)(3) in this proposed AD to delegate the authority to the Boeing Commercial Airplanes ODA to approve AMOCs for structural repairs that may be conditionally required by this AD.

Request To Allow Flexibility in Work Accomplishment

AAL requested that we revise the NPRM (76 FR 3561, January 20, 2011) to allow airlines the flexibility to reorganize the proposed actions in such a way as to meet the work requirements and more easily fit the work into airline practices. AAL stated that forcing all airlines to do the actions strictly in alignment with the work package sequence in the service information could lead to confusion and the increased potential for noncompliance.

We agree with the intent of the request. Paragraph (g) of this proposed AD refers to Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, as the appropriate source of service information for doing the actions in that paragraph. Note 2 of paragraph 3.A., ''General Information,'' of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, states, ''You can do each Work Package independently or at the same time. Refer to Service Bulletin Paragraph 1.E, Compliance, for when to do the work packages.'' Therefore, for paragraph (g) of this proposed AD, operators are already allowed to combine work packages or otherwise adjust the procedure sequence as necessary to fit their work plan, provided the configuration meets the type design of the airplane before it is returned to service and the work package is done within the compliance time specified in Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010. We have not revised this proposed AD regarding this issue.

Request To Allow Alternative Sealant Curing

AAL reported that Boeing has agreed to develop alternative methods for sealant curing that would reduce the time to achieve an adequate cure. AAL therefore requested that we revise paragraph (g) of the proposed AD to allow use of this alternative sealant curing method.

We disagree with the request. While acceptable alternative cure methods might exist, the commenter did not supply sufficient information on the proposed cure process to allow the FAA to approve that process as part of the AD. Operators may propose alternative cure methods via the AMOC process as specified in paragraph (r) of this proposed AD. We have not changed this proposed AD regarding this issue.

FAA's Determination

We are proposing this SNPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the NPRM (76 FR 3561, January 20, 2011). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed Requirements of This SNPRM

This SNPRM would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between this SNPRM and the Service Information.'' Refer to Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010; Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014; Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015; and Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013; for details on the procedures and compliance times.

The phrase ''related investigative actions'' is used in this SNPRM. ''Related investigative actions'' are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this SNPRM. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This SNPRM and the Service Information

Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013, describe procedures for a general visual inspection of the perforated side of the T/R inner wall aft of the IP8 and the HP3 bleed port exits for color that is different than the normal T/R perforated wall color; a general visual inspection of the compression fitting for incorrect pin orientation; and a general visual inspection of the EEC wire bundles and clips for damage. However, this SNPRM would require detailed inspections instead of general visual inspections. Detailed inspections are necessary in order to adequately determine if the specified condition exists. This difference has been coordinated with Boeing.

Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014, specifies a compliance time of 5 years for doing the installation, but this SNPRM would require a compliance time of 48 months to ensure the safety of the fleet in light of the identified unsafe condition. This difference has been coordinated with Boeing.

Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013, specifies a compliance time of 4 years for installation of click bond covers and bracket, and washer replacement; and for the general visual inspection of the compression fitting for incorrect pin orientation, a compliance time of 2,000 flight-cycles after accomplishing a certain work package (these actions are for airplanes on which the actions specified Boeing Special Attention Service Bulletin 777–78–0071, dated November 29, 2009, have been done). This SNPRM would require these actions to be done prior to or concurrently with the inspection specified in paragraph (i) of this SNPRM. These actions must be done first in order to accomplish the inspections specified in paragraph (i) of this SNPRM. We have coordinated this difference with Boeing.

Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010; Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013; Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015; and Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014; specify contacting the manufacturer for instructions on how to repair certain conditions. Instead, this SNPRM would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes ODA whom we have authorized to make those findings.

Other Related Rulemaking

On March 31, 2005, we issued AD 2005–07–24, Amendment 39–14049 (70 FR 18285, April 11, 2005), for certain Boeing Model 777–200 and –300 series

airplanes. AD 2005–07–24 requires inspecting the T/Rs for damage of the insulation blankets, the inner wall, and the compression and drag link fittings; and repair if necessary. AD 2005–07–24 also requires applying sealant to certain areas of the T/R. AD 2005–07–24 was prompted by two reports of T/R failure. Investigation revealed that the inner wall of the T/Rs had collapsed from exposure to hot engine core compartment air. We issued AD 2005–07–24 to prevent failure of a T/R and adjacent components and their consequent separation from the airplane, which could result in a rejected takeoff (RTO) and cause asymmetric thrust and consequent loss of control of the airplane during reverse thrust operation. If an RTO does not occur, these separated components could cause structural damage to the airplane or damage to other airplanes and possible injury to people on the ground.

This SNPRM would terminate the actions required by paragraphs (f), (g), and (h) of AD 2005–07–24, Amendment 39–14049 (70 FR 18285, April 11, 2005), by accomplishment of any of the following actions specified in this SNPRM:

- The actions specified in Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010 (paragraph (g) of this SNPRM).
- Certain inspections and actions specified in Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015; and Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013 (paragraphs (i), (j), and (k) of this SNPRM).
- The installation specified in Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014 (paragraph (l) of this SNPRM).

Costs of Compliance

We estimate that this proposed AD affects 55 of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts cost	Cost per product	Fleet cost
Actions per Boeing Alert Service Bulletin 777-78A0065, Revision 2, dated May 6, 2010.	Up to 79 work-hours, per T/R half.	85	$0	Up to $6,715 per T/R half.	$0 (No airplanes on the U.S. Register are in the configuration specified in Boeing Alert Service Bulletin 777-78A0065, Revision 2, dated May 6, 2010.)
Actions per Boeing Special Attention Service Bulletin 777-78-0071, Revision 2, dated July 23, 2013.	Up to 48 work-hours, per T/R half.	85	$0	Up to $4,080 per T/R half.	Up to $897,600 (4 T/R halves per airplane).
Inspections per Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015.	Up to 39 work-hours, per T/R half.	85	$0	Up to $3,315 per T/R half.	$0 (No airplanes on the U.S. Register are in the configuration specified in Boeing Service Bulletin 777-78-0082, Revision 1, dated June 15, 2015.)
Maintenance or Inspection Program Revision.	1 work-hour	85	$0	$85	$4,675.
T/R half installation per Boeing Alert Service Bulletin 777-78A0094, dated July 29, 2014.	Up to 206 work-hours, per T/R half.	85	Up to $400,651 per T/R half. [1]	Up to $418,161 per T/R half.	Up to $91,995,420 (4 T/R halves per airplane).[2]

[1] The cost of parts is split into two major parts: (1) TPS blankets and (2) inner wall structure. The vast majority of the cost associated with the TPS upgrade has already been completed. In addition, nearly half of the inner wall structure modification has already been done.

[2] The fleet cost estimate above is based on just a general estimate for a given airplane with two engines having two T/R halves for each engine. Not all tasks required by this SNPRM and specified in the service information would need to be done for a given T/R half. For a given TR half, it may only be necessary to accomplish certain actions or none for compliance, depending on its configuration status. We have no data to determine any given T/R half configuration to determine the cost for each T/R half to do the applicable actions for that T/R half. The majority of this cost has already been incurred.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this SNPRM.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2011–0027; Directorate Identifier 2010–NM–127–AD.

(a) Comments Due Date

We must receive comments by November 9, 2015.

(b) Affected ADs

This AD affects AD 2005–07–24, Amendment 39–14049 (70 FR 18285, April 11, 2005).

(c) Applicability

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, equipped with Rolls-Royce Model RB211–Trent 800 engines.

(d) Subject

Air Transport Association (ATA) of America Code 78, Engine exhaust.

(e) Unsafe Condition

This AD was prompted by reports of thrust reverser (T/R) events related to thermal damage of the T/R inner wall. We are issuing this AD to detect and correct a degraded T/R inner wall panel, which could lead to failure of the T/R and adjacent components and their consequent separation from the airplane, and which could result in a rejected takeoff (RTO) and cause asymmetric thrust and consequent loss of control of the airplane during reverse thrust operation. If a T/R inner wall overheats, separated components could cause structural damage to the airplane, damage to other airplanes, or possible injury to people on the ground.

(f) Compliance

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

(g) Records Review, Inspections, and Related Investigative and Corrective Actions for Airplanes With Pre-Thermal Protection System (TPS) Insulation Blankets (Part Numbers (P/Ns) 315W5113–(XX) and 315W5010–(XX)) Installed

For airplanes with pre-TPS insulation blankets, P/Ns 315W5113–(XX) and 315W5010–(XX): Except as required by paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD, at the applicable time in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, review the airplane maintenance records to determine whether sealant was added to insulation blankets around the compression pad fittings and the powered door opening system (PDOS) fitting; do the applicable actions specified in paragraphs (g)(1), (g)(2), (g)(3), (g)(4), (g)(5), and (g)(6) of this AD; and do all applicable related investigative and corrective actions; in accordance with the applicable work packages of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, except as required by paragraph (h)(5) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the applicable inspections, replacement, and installations required by paragraphs (g)(1), (g)(2), (g)(3), (g)(4), (g)(5), and (g)(6) of this AD thereafter at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010.

(1) Do a detailed inspection of all T/R inner wall insulation blanket edges, grommet holes, penetrations, and seams for sealant that is cracked, has gaps, is loose, or is missing; do a general visual inspection of click bond studs, blanket studs, and temporary fasteners; and replace sealant as applicable.

(2) Do the actions specified by either paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) Do a full inner wall panel non-destructive test (NDT) inspection for delamination and disbonding of each T/R half, and do a general visual inspection for areas of thermal degradation.

(ii) Do a limited area NDT inspection of the inner wall panel of each T/R half for delamination and disbonding, and do a general visual inspection for areas of thermal degradation.

(3) Do a general visual inspection of the T/R perforated wall aft of the intermediate pressure compressor 8th stage (IP8) and the high pressure compressor 3rd stage (HP3) bleed port exits for a color that is different from that of the general area.

(4) Do a detailed inspection of the PDOS lug bushings on the upper number 1 compression pad fittings to detect hole elongation, deformation, and contact with the PDOS actuator; and install a PDOS actuator rod and sealant.

(5) Do an NDT inspection for unsatisfactory number 1 upper and numbers 1 and 2 lower compression pad fittings.

(6) Install and seal insulation blankets.

(h) Exceptions to Specifications of Boeing Alert Service Bulletin 777–78A0065, Revision 2, Dated May 6, 2010

(1) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, specifies a compliance time ''after the date on the original issue of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where table 2 of paragraph 1.E., ''Compliance,'' in Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, specifies a compliance time of ''2,000 flight cycles after the date of the operator's own inspections,'' for doing Work Packages 2 and 5, or Work Packages 5 and 6, this AD requires compliance within 2,000 flight cycles after the date of the operator's own inspections, or within 12 months after the effective date of this AD, whichever occurs later.

(3) Where the Condition column in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, refers to a T/R half that has or has not been inspected before ''the date on this service bulletin,'' this AD requires compliance for each corresponding T/R half that has or has not been inspected before the effective date of this AD.

(4) Where the Condition column in tables 2 and 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, refers to ''total flight cycles,'' this AD applies to each T/R half with the specified total flight cycles as of the effective date of this AD.

(5) Where Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (r) of this AD.

(i) Repetitive NDT and Additional Inspections for Airplanes With TPS Insulation Blankets (P/N 315W5115–(XX)) Installed

For airplanes with TPS insulation blankets, P/N 315W5115–(XX): Within 2,000 flight cycles after doing any NDT inspection specified in Boeing Special Attention Service Bulletin 777–78–0071; or within 2,000 flight cycles after doing any NDT inspection specified in Boeing Service Bulletin 777–78–0082; or within 30 days after the effective date of this AD; whichever occurs latest; do the inspections specified in paragraphs (i)(1) and (i)(2) of this AD, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013, or in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015, as applicable; except as required by paragraph (m) of this AD. Do all applicable related investigative and corrective actions before further flight.

Repeat the inspections specified in paragraphs (i)(1) and (i)(2) of this AD thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013; or Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015; as applicable.

(1) Do an NDT inspection of the full T/R inner wall panel for delaminations and disbonds.

(2) Do a detailed inspection of the perforated side of the T/R inner wall aft of the IP8 and the HP3 bleed port exits for color that is different from the normal T/R perforated wall color.

(j) Concurrent Requirements for Paragraph (i) of This AD

For airplanes with TPS insulation blankets, part number P/N 315W5115–(XX) on which any action specified in Boeing Special Attention Service Bulletin 777–78–0071 have been done but the actions specified paragraphs (j)(1) and (j)(2) of this AD have not been done: Prior to or concurrently with doing the inspection required by paragraph (i) of this AD, do the actions specified in paragraphs (j)(1) and (j)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013, except as required by paragraph (m) of this AD.

(1) Install click bond covers and bracket and replace the washers.

(2) Do a detailed inspection of the compression fitting for incorrect pin orientation, and do all applicable related investigative and corrective actions. Do all applicable related investigative and corrective actions before further flight.

(k) Repetitive Electronic Engine Control (EEC) Wire Bundle Inspections for Airplanes With TPS Insulation Blankets (P/N 315W5115–(XX)) Installed

For airplanes with TPS insulation blankets, part number P/N 315W5115–(XX): Do the inspections specified in paragraph (k)(1) or (k)(2) of this AD, as applicable.

(1) For airplanes on which any inspection specified in Boeing Special Attention Service Bulletin 777–78–0071 has been done: Within 2,000 flight hours after doing a detailed inspection of the EEC wire bundles and clips specified in Boeing Special Attention Service Bulletin 777–78–0071, or within 500 flight hours after the effective date of this AD, whichever occurs later; do a detailed inspection of the EEC wire bundles and clips for damage, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013, except as required by paragraph (m) of this AD. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at the applicable time specified in table 5 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013.

(2) For airplanes on which any inspection specified in Boeing Service Bulletin 777–78–0082 has been done: Within 2,000 flight hours after doing a detailed inspection of the EEC wire bundles and clips specified in Boeing Special Attention Service Bulletin 777–78–0082, or within 500 flight hours after the effective date of this AD, whichever occurs later; do a detailed inspection for damage of the EEC wire bundles and clips, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015, except as required by paragraph (m) of this AD. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015.

(l) T/R Inner Wall Installation

Within 48 months after the effective date of this AD: Install serviceable T/R halves, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014, except as required by paragraph (m) of this AD. The definition of a serviceable T/R half is specified in Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014. Accomplishing the installation specified in this paragraph and the revision to the maintenance or inspection program required by paragraph (n) of this AD terminates the actions required by paragraphs (g), (i), (j), and (k) of this AD.

(m) Exceptions to Service Information Specified in Paragraphs (i), (j), (k), and (l) of This AD

Where Boeing Alert Service Bulletin 777–78A0094, dated July 29, 2014; Boeing Service Bulletin 777–78–0082, Revision 1, dated June 15, 2015; and Boeing Special Attention Service Bulletin 777–78–0071, Revision 2, dated July 23, 2013; specify to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (r) of this AD.

(n) Revise the Maintenance or Inspection Program

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate Airworthiness Limitations 78–AWL–01, Thrust Reverser Thermal Protection System; and 78–AWL–02, Thrust Reverser Inner Wall; as specified in Boeing 777 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, Revision dated October 2014.

(1) The initial compliance time for Airworthiness Limitation 78–AWL–01, Thrust Reverser Thermal Protection System, as specified in Boeing 777 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, Revision dated October 2014, is concurrent with the next inspection required by paragraph (i) of this AD, or within 30 days after the effective date of this AD, whichever occurs later.

(2) The initial compliance time for Airworthiness Limitation 78–AWL–02, Thrust Reverser Inner Wall, as specified in Boeing 777 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, Revision dated October 2014, is at the applicable time specified in paragraph (n)(2)(i) or (n)(2)(ii) of this AD.

(i) For airplanes on which any inspections required by paragraph (i) of this AD are done: Concurrent with the next inspection required by paragraph (i) of this AD; or within 30 days after the effective date of this AD; whichever occurs later.

(ii) For airplanes on which the installation required by paragraph (l) of this AD is done: The later of the times specified in paragraph (n)(2)(ii)(A) and (n)(2)(ii)(B) of this AD.

(A) Within 1,125 days or 6,000 flight cycles, whichever occurs first after accomplishing the installation required by paragraph (l) of this AD.

(B) Within 30 days after the effective date of this AD.

(o) No Alternative Actions or Intervals

After the the maintenance or inspection program, as applicable, has been revised as required by paragraph (n) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (r) of this AD.

(p) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 777–78A0065, dated June 23, 2008; or Boeing Alert Service Bulletin 777–78A0065, Revision 1, dated January 29, 2009. This service information is not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions specified in paragraph (i) of this AD, if those actions were performed before the effective date of this AD using any service information specified in paragraphs (p)(2)(i), (p)(2)(ii), and (p)(2)(iii) of this AD. This service information is not incorporated by reference in this AD.

(i) Boeing Service Bulletin 777–78–0082, dated November 9, 2011.

(ii) Boeing Special Attention Service Bulletin 777–78–0071, dated November 25, 2009.

(iii) Boeing Special Attention Service Bulletin 777–78–0071, Revision 1, dated September 8, 2010.

(3) This paragraph provides credit for the actions specified in paragraph (j) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 777–78–0071, Revision 1, dated September 8, 2010. This service information is not incorporated by reference in this AD.

(4) This paragraph provides credit for the actions specified in paragraph (k)(2) of this AD, if those actions were performed before the effective date of this AD using Boeing

Service Bulletin 777–78–0082, dated November 9, 2011. This service information is not incorporated by reference in this AD

(q) Terminating Action for AD 2005–07–24, Amendment 39–14049 (70 FR 18285, April 11, 2005)

Accomplishing the actions specified in paragraph (q)(1), (q)(2), or (q)(3) of this AD terminates the actions required by paragraphs (f), (g), and (h) of AD 2005–07–24, Amendment 39–14049 (70 FR 18285, April 11, 2005).

(1) The actions required by paragraph (g) of this AD.

(2) The inspections required by paragraphs (i) and (k) of this AD, and, as applicable, the actions required by paragraph (j) of this AD.

(3) The installation specified in paragraph (l) of this AD.

(r) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (s)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any structural repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(s) Related Information

(1) For more information about this AD, contact Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 16, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–24344 Filed 9–24–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3942; Directorate Identifier 2014–SW–064–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2014–07–04R1 for certain Sikorsky Model S–92A helicopters. AD 2014–07–04R1 currently requires repetitive inspections in the upper deck area for incorrectly installed clamps and chafing between the electrical wires and the hydraulic lines and replacing any unairworthy wires or hydraulic lines. Since we issued AD 2014–07–04R1, the manufacturer has developed an alteration that corrects the unsafe condition described in AD 2014–07–04R1. This proposed AD would require altering the wiring system in the upper deck area. These proposed actions are intended to prevent a fire in an area of the helicopter without extinguishing capability and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by November 24, 2015.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments 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 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3942; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800-Winged-S or 203–416–4299; email *sikorskywcs@sikorsky.com.* You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, Texas 76177.

FOR FURTHER INFORMATION CONTACT: Ian Lucas, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7757; email *ian.lucas@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this

proposal in light of the comments we receive.

Discussion

On March 28, 2014, we issued AD 2014–07–04, Amendment 39–17818 (79 FR 21385, April 16, 2014), for certain serial-numbered Sikorsky Model S92A helicopters. AD 2014–07–04 required repetitively inspecting the upper deck area for incorrectly installed clamps and chafing between the electrical wires and the hydraulic lines, replacing any unairworthy wires or hydraulic lines, and correcting any clamps that were installed incorrectly. Due to typographical errors when the AD was published, an incorrect serial number and an incorrect reference to the service information appeared in the text of the rule. On August 21, 2014, we issued AD 2014–07–04R1, Amendment 39–17964 (79 FR 54893, September 15, 2014), to correct these errors.

Actions Since AD 2014–07–04R1 Was Issued

Since we issued AD 2014–07–04R1 (79 FR 54893, September 15, 2014), Sikorsky has developed an alteration to correct the unsafe condition described in AD 2014–07–04R1. The alteration creates separate engine inlet and alternating current (AC) generator feeder lines, which were previously combined as an assembly. The new engine inlet feeder lines are rerouted through the cabin to the AC power distributors. The alteration also involves removing certain hydraulic to electrical clamps, which support the top deck main harnesses, and adding independent electrical brackets to create greater separation from the hydraulic lines. These proposed actions are intended to alter the wiring installation in the upper deck to prevent chafing between the electrical lines and hydraulic hoses. This condition, if not prevented, could result in a fire in an area of the helicopter without extinguishing capability and subsequent loss of control of the helicopter.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of this same type design.

Related Service Information Under 1 CFR Part 51

Sikorsky has issued Special Service Instructions SSI No. 92–070A, Revision A, dated April 25, 2014 (SSI 92–070A), which contains procedures to alter the wiring system in the upper deck area to prevent chafing. This service information is reasonably available because the interested parties have access to it through their normal course of business or by means identified in the Addresses Section of this proposed AD.

Other Related Service Information

We also reviewed Alert Service Bulletin ASB 92–20–003, Basic Issue, dated May 5, 2014 (ASB 92–20–003). ASB 92–20–003 specifies a one-time modification of the upper deck wiring harnesses to prevent possible chafing by complying with SSI 92–070A.

Proposed AD Requirements

This proposed AD would require altering the wiring system in the upper deck area.

Differences Between This Proposed AD and the Service Information

The service information provides a compliance date of November 5, 2015; the proposed AD would require a compliance time of 150 hours TIS. Also, the service information requires submitting certain documentation to the manufacturer, and the proposed AD would not.

Costs of Compliance

We estimate that this proposed AD would affect 20 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work hour. Rerouting the upper deck wiring system and replacing and installing new parts would take 58 work hours and $8,000 in required parts, for a total cost of $12,930 per helicopter and $258,600 for the fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2014–07–04R1, Amendment 39–17964 (79 FR 54893, September 15, 2014), and adding the following new AD:

Sikorsky Aircraft Corporation: Docket No. FAA–2015–3942; Directorate Identifier 2014–SW–064–AD.

(a) Applicability

This AD applies to Model S–92A helicopters, serial number 920006 through 920084, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an incorrectly installed clamp that does not

provide adequate clearance to prevent chafing between the high voltage electrical lines and the hydraulic hoses. This condition could result in a fire in an area of the helicopter without extinguishing capability and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes AD 2014–07–04R1, Amendment 39–17964 (79 FR 54893, September 15, 2014).

(d) Comments Due Date

We must receive comments by November 24, 2015.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

Within 150 hours time-in-service, reroute the left hand and right hand upper deck wiring system by complying with the Instructions, paragraph B, of Sikorsky Aircraft Corporation Special Service Instructions SSI No. 92–070A, Revision A, dated April 25, 2014.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Ian Lucas, Aviation Safety Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7757; email *ian.lucas@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

Sikorsky Aircraft Corporation Alert Service Bulletin ASB 92–20–003, Basic Issue, dated May 5, 2014, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800-Winged-S or 203–416–4299; email *sikorskywcs@sikorsky.com.*

You may review the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, Texas 76177.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 2910 Main Hydraulic System.

Issued in Fort Worth, Texas, on September 17, 2015.

James A. Grigg,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015–24148 Filed 9–24–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3956; Directorate Identifier 2015–CE–032–AD]

RIN 2120–AA64

Airworthiness Directives; Alpha Aviation Concept Limited Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Alpha Aviation Concept Limited Model R2160 airplanes that would supersede AD 2008–09–01. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a need to revise the maintenance program to include the revised airworthiness limitations for the internal wing structure and wing attachment inspections. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 9, 2015.

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

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

For service information identified in this proposed AD, contact Alpha Aviation Holdings Limited, Steele Road, RD 2 Hamilton Airport, Hamilton 3282, New Zealand, telephone: +64 7 843 9877; fax: +64 7 929 2878; Internet: *http://www.alphaaviation.co.nz/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3956; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–3956; Directorate Identifier 2015–CE–032–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On April 11, 2008, we issued AD 2008–09–01, Amendment 39–15481 (73

FR 21519; April 22, 2008) (''AD 2008–09–01''). That AD required actions intended to address an unsafe condition on certain Alpha Aviation Concept Limited Model R2160 airplanes and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country.

Since we issued AD 2008–09–01, Alpha Aviation Concept Limited developed a longer life limit for the wing structure and wing attachments and transferred the life limit information from the related service information to the airplane maintenance manual. Subsequently, Alpha Aviation Concept Limited discovered that the analysis that allowed the life limit increase was incorrect and the previous life limit and inspection provisions of the related service bulletin should be retained.

The Civil Aviation Authority (CAA), which is the aviation authority for New Zealand, has issued AD DCA/R2000/43, dated August 7, 2015 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> This AD introduces a change to the airworthiness limitations for the internal wing structure and wing attachment inspections. These inspection intervals were increased and added to Section 3.2—Airworthiness Limitations of the applicable Service Manual in January 2015. Section 3.2 of the respective Service Manuals has now been revised to revert to the original inspection intervals.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3956.

Related Service Information Under 1 CFR Part 51

Alpha Aviation Concept Limited has issued Alpha Aviation APEX R2000 Service Manual, S/N 001 to 378, and Alpha Aviation R2000 Service Manual. These service manuals include a revision to Section 3: Airworthiness Limitations, Time Limits, & Maintenance Inspections, Issued August 2015. These revisions now include periodic internal wing structure and wing attachment inspections. A copy of these revisions to the Airworthiness Limitations section of the applicable service manuals are reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of the Proposed AD

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

Costs of Compliance

We estimate that this proposed AD will affect 9 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,295, or $255 per product.

In addition, we estimate that any necessary follow-on actions would take about 12 work-hours and require parts costing $1,326, for a cost of $2,346 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15481 (73 FR 21519; April 22, 2008), and adding the following new AD:

Alpha Aviation Concept Limited: Docket No. FAA–2015–3956; Directorate Identifier 2015–CE–032–AD.

(a) Comments Due Date

We must receive comments by November 9, 2015.

(b) Affected ADs

This AD supersedes AD 2008–09–01, Amendment 39–15481 (73 FR 21519; April 22, 2008) (''AD 2008–09–01'').

(c) Applicability

This AD applies to Alpha Aviation Concept Limited Model R2160 airplanes, serial numbers (S/Ns) 001 through 378, and 160A–06001 and subsequent, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 5: Time Limits.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe

condition on an aviation product. The MCAI describes the unsafe condition as a need to revise the maintenance program to include the revised airworthiness limitations for the internal wing structure and wing attachment inspections. We are issuing this AD to prevent failure of the wing structure and fuselage attachment due to undetected fatigue and corrosion.

(f) Actions and Compliance

Unless already done, before further flight after the effective date of this AD, insert the following into the Airworthiness Limitations section of the FAA-approved maintenance program (*e.g.,* maintenance manual). These revisions to the Limitations sections incorporate the wing spar inspection upon the accumulation of 3,500 hours time-in-service (TIS) and requires a repetitive inspection thereafter every 750 hours TIS (the requirements of AD 2008–09–01):

(1) For S/Ns 001 through 378: Insert paragraph 3.4.9, Wing 3500 hr Inspection, on pages 3–3 and 3–4, dated August 2015, of Section 3: Airworthiness Limitations, Time Limits, & Maintenance Inspections, dated August 2015, of the APEX R2000 Service Manual S/N 001 to 378, Alpha Aviation Ltd.

(2) For S/Ns 160A–06001 and subsequent: Insert paragraph 3.4.9, Wing 3500 hr Inspection, on pages 3–3 and 3–4, dated August 2015, of Section 3: Airworthiness Limitations, Time Limits, & Maintenance Inspections, all dated August 2015, of the R2000 Service Manual, Alpha Aviation Ltd.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI Civil Aviation Authority (CAA) AD DCA/R2000/43, dated August 7, 2015, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3956. For service information related to this AD, contact Alpha Aviation Holdings Limited, Steele Road, RD 2 Hamilton Airport, Hamilton 3282, New Zealand, telephone: +64 7 843 9877; fax: +64 7 929 2878; Internet: *http://www.alphaaviation.co.nz/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on September 17, 2015.

Melvin Johnson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–24149 Filed 9–24–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No.FAA–2015–3084; Airspace Docket No. 15–AGL–13]

Proposed Establishment of Class E Airspace; International Falls, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM), correction.

SUMMARY: This action makes a correction to the NPRM published in the **Federal Register** of August 27, 2015, proposing to establish Class E en route domestic airspace in the International Falls, MN area. Exclusionary reference to Canadian airspace was omitted from the regulatory text.

DATES: Comments due date remains October 13, 2015.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2015–3084/Airspace Docket No. 15–AGL–13, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of 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: Raul Garza, Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–868–2927.

SUPPLEMENTARY INFORMATION:

History. A notice of proposed rulemaking was published in the **Federal Register** of August 27, 2015 (80 FR 51972). In the regulatory text of the proposed rule, exclusionary language was inadvertently omitted from the legal description of the airspace. This action makes the correction. The legal description is rewritten for clarity.

Proposed Amendment Correction

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** of August 27, 2015 (80 FR 51972), FR Docket 2015–21087, the legal description on page 51973, column 2, beginning at line 31, is corrected to read as follows:

§ 71.1 [Amended]

AGL MN E6 International Falls, MN [Corrected]

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 49°00′00″ N., long. 095°00′00″ W.; to lat. 49°00′00″ N., long. 093°30′00″ W.; to lat. 48°06′30″ N., long. 090°06′00″ W.; to lat. 47°53′00″ N., long. 090°55′00″ W.; to lat. 48°34′00″ N., long. 094°00′00″ W.; to lat. 48°40′00″ N., long. 095°00′00″ W., thence to the point of beginning, excluding that airspace within Federal airways and within Canadian airspace.

Issued in Fort Worth, TX, on September 9, 2015.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–24159 Filed 9–24–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 801, and 1100

[Docket No. FDA–2015–N–2002]

RIN 0910–AH19

Clarification of When Products Made or Derived From Tobacco Are Regulated as Drugs, Devices, or Combination Products; Amendments to Regulations Regarding ''Intended Uses''

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing regulations to describe the circumstances in which a product made or derived from tobacco that is intended for human consumption will be subject to regulation as a drug, device, or a combination product under the Federal Food, Drug, and Cosmetic Act (the FD&C Act). This action is intended to provide direction to regulated industry and to help avoid consumer confusion.

DATES: Submit either electronic or written comments on this proposed rule by November 24, 2015. See section IV.B of this document for the proposed effective date of a final rule based on this proposed rule.

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–2002 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 ''Request for Comments'' 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 Godfrey or Darin Achilles, Office of Regulations, Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave, Silver Spring, MD 20993–0002, 877–287–1373, *CTPRegulations@fda.hhs.gov.*

Executive Summary

Purpose of the Proposed Rule

The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) amends the FD&C Act and provides FDA with the authority to regulate tobacco products. Section 201(rr) of the FD&C Act (21 U.S.C. 321(rr)), as amended by the Tobacco Control Act, defines the term ''tobacco product'' as any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product). Excluded from the definition of a tobacco product is any article that is a drug, device, or combination product. Any article that is a drug, device, or combination product will be regulated as such rather than as a tobacco product.

Because some ambiguity surrounds the circumstances under which a product that is made or derived from tobacco would be regulated as a drug, device, or combination product, and the circumstances under which it would be regulated as a tobacco product, FDA is initiating this rulemaking to provide clarity regarding our interpretation of the drug and device definitions in the FD&C Act with respect to products made or derived from tobacco. This rulemaking will provide assistance for entities intending to market products made or derived from tobacco. FDA expects the rule will also assist investigators planning to use products made or derived from tobacco for an investigational use in determining the investigational use requirements that apply to their proposed studies. The rulemaking will increase clarity regarding the types of claims and other evidence that make a product made or derived from tobacco subject to regulation as a drug, device or combination product, helping consumers distinguish products made or derived from tobacco that are intended for medical use from products marketed for other uses.

In addition, FDA is taking the opportunity to propose corresponding changes to existing regulations at §§ 201.128 and 801.4 (21 CFR 201.128 and 801.4), and to conform them to how the Agency currently applies these regulations to drugs and devices generally.

Summary of the Major Provisions of the Regulatory Action

Conceptually, the proposed rule follows the disease prong and the structure/function prong (with certain enumerated limitations) of the statutory definitions of ''drug'' and ''device'' (section 201(g) and (h) of the FD&C Act). Under the proposed rule, a product made or derived from tobacco and intended for human consumption would be regulated as a drug, device, or combination product in two circumstances: (1) If the product is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease; or (2) if the product is intended to affect the structure or any function of the body in any way that is different from effects of nicotine that were commonly and legally claimed in the marketing of cigarettes and smokeless tobacco products prior to March 21, 2000. The proposed rule also attempts to clarify remaining circumstances where a product would be or could be regulated as a tobacco product.

In addition, FDA is proposing to amend its existing intended use regulations for drugs and devices by inserting in §§ 201.128 and 801.4 a reference to the proposed rule to clarify the interplay between these regulations and this proposed rule, and to conform §§ 201.128 and 801.4 to reflect how the Agency currently applies them to drugs and devices.

Costs and Benefits

The proposed rule would generate some benefit by reducing the ambiguity in the development and marketing of products made or derived from tobacco. The proposed rule is not expected to impose significant additional costs on manufacturers who make products made or derived from tobacco, or on drug and device manufacturers generally.

SUPPLEMENTARY INFORMATION:

I. Background

A. Definition of ''Tobacco Product''

The Tobacco Control Act was enacted on June 22, 2009 (Pub. L. 111–31), amending the FD&C Act and providing FDA with the authority to regulate tobacco products. Section 101(a) of the Tobacco Control Act amends section 201 of the FD&C Act by adding paragraph (rr), which defines the term ''tobacco product.'' In general, a ''tobacco product'' is defined as any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product). Section 201(rr)(2) of the FD&C Act excludes from the definition of a tobacco product any article that is defined as a drug under section 201(g)(1), a device under section 201(h), or a combination product described in section 503(g) of the FD&C Act (21 U.S.C 353(g)). Section 201(rr)(3) of the FD&C Act explains that any article that is a drug, device, or combination product will be regulated under chapter V of the FD&C Act (the authorities for drugs and devices) rather than chapter IX (the authorities for tobacco products).[1]

B. Drug/Device/Combination Product Definitions

1. Medical Product Definitions

As noted in section I.A of this document, the definition of ''tobacco product'' excludes anything that is a ''drug,'' ''device,'' or ''combination product'' under the FD&C Act. The FD&C Act defines ''drug'' (in relevant part) as an article intended either: (1) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease (referred to as the ''disease prong'' of the definition), or (2) to affect the structure or any function of the body (the ''structure/function prong'') (section 201(g)(1) of the FD&C Act). The FD&C Act defines a ''device'' (in relevant part) as an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, intended either: (1) For use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, or (2) to affect the structure or any function of the body, and which does not achieve its primary intended purposes through chemical action within or on the body of man and which is not dependent on being metabolized for the achievement of its primary intended purposes (section 201(h) of the FD&C Act).[2] Combination products are products that constitute a combination of a drug, device, or biological product (section 503(g) of the FD&C Act). Under the FD&C Act, the Secretary's determination of the primary mode of action of a combination product determines which Center at FDA will have primary jurisdiction over the product (section 503(g) of the FD&C Act).

FDA has previously interpreted the exclusion in the tobacco product definition to mean that if a product made or derived from tobacco is determined to have a drug or device ''intended use,'' it will be regulated as a medical product, not as a tobacco product. As discussed in greater detail in this document, this interpretation was qualified in *Sottera, Inc.* v. *Food & Drug Administration,* 627 F.3d 891 (D.C. Cir. 2010), in which the D.C. Circuit applied the holding of *Food & Drug Administration* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 156 (2000), to all tobacco products. Thus, the determination of whether a product is a medical product or a tobacco product will be based on the FD&C Act and associated regulations and will also take into account relevant legal precedent (further described in section I.C of this document).

2. How Intended Use Is Determined

In determining a product's intended use, the Agency may look to ''any . . . relevant source,'' including but not limited to the product's labeling, promotional claims, and advertising (see, *e.g., Action on Smoking and Health* v. *Harris,* 655 F.2d 236, 239 (D.C. Cir. 1980); *United States* v. *Storage Spaces Designated Nos. ''8'' and ''49,''* 777 F.2d 1363, 1366 (9th Cir. 1985), *Hanson* v. *United States,* 417 F. Supp. 30, 35 (D. Minn.), *aff'd,* 540 F.2d 947 (8th Cir. 1976)). For example, FDA may take into account any claim or statement made by or on behalf of a manufacturer that explicitly or implicitly promotes a product for a particular use (see, *e.g.,* § 201.128 (drugs), § 801.4 (devices)).

To establish a product's intended use, FDA is not bound by the manufacturer or distributor's subjective claims of intent, but rather can consider objective evidence, which may include a variety of direct and circumstantial evidence. Thus, FDA may also take into account any circumstances surrounding the distribution of the product or the context in which it is sold (*see id.; see also U.S.* v. *Travia,* 180 F.Supp.2d 115, 119 (D.D.C. 2001)). In the context of medical products, generally, circumstantial evidence often ensures that FDA is able to hold accountable firms that attempt to evade FDA medical product regulation by avoiding making express claims about their products. As FDA has previously stated, however, the Agency would not regard a firm as intending an unapproved new use for an approved or cleared medical product based solely on the firm's knowledge that such product was being prescribed or used by doctors for such use (Ref. 5).

Thus, when a product made or derived from tobacco is marketed or distributed for an intended use that falls within the drug/device definitions, it would be regulated as a medical product, subject to the limitations discussed further in this document. Courts have recognized that products made or derived from tobacco marketed with ''disease'' claims and certain ''structure/function'' claims are drugs (*see United States* v. *46 Cartons . . . Containing Fairfax Cigarettes,* 113 F.Supp. 336, 337, 338 (D. N.J. 1953) (cigarettes marketed for the prevention of respiratory diseases); *United States* v. *354 Bulk Cartons . . . Trim Reducing-Aid Cigarettes,* 178 F.Supp. 847, 851 (D. N.J. 1959) (cigarettes marketed for weight reduction)).

C. History of 1996 Rulemaking and Relevant Litigation

Although the courts have recognized that tobacco-derived products can be regulated as medical products under the FD&C Act in certain circumstances, courts have also held that there are limitations on how the drug and device definitions can be applied to products made or derived from tobacco. This section provides a summary of FDA regulatory action and related litigation relevant to those limitations.

In 1996, FDA issued a regulation restricting the sale and distribution of cigarettes and smokeless tobacco to children and adolescents (the 1996 rule) (61 FR 44396, August 28, 1996). This rule included FDA's determination that it had jurisdiction over cigarettes and smokeless tobacco under the FD&C Act. The basis for this determination was that cigarettes and smokeless tobacco were intended to affect the structure or function of the body, within the FD&C Act definitions of the terms ''drug'' and ''device,'' because nicotine has significant pharmacological effects. In

[1] Section 201(rr)(4) of the FD&C Act prohibits a tobacco product from being marketed in combination with any other article or product regulated under the FD&C Act. This rulemaking does not address section 201(rr)(4).

[2] In this proposed rule, the cited language may be referred to as the ''drug/device definitions.''

addition, FDA found that cigarettes and smokeless tobacco were combination products consisting of the drug nicotine and device components intended to deliver nicotine to the body. In the 1996 rule, FDA concluded that cigarettes and smokeless tobacco should be regulated under the device authorities of the FD&C Act. The 1996 rule was challenged in court by a group of tobacco manufacturers, retailers, and advertisers on the grounds that FDA lacked jurisdiction to regulate tobacco products ''as customarily marketed;'' that the regulations exceeded FDA's authority to regulate devices; and that the advertising restrictions violated the First Amendment.

The Supreme Court struck down the 1996 rule in *Food & Drug Administration* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 156 (2000), holding that FDA lacked jurisdiction over tobacco products ''as customarily marketed.'' The Court found that Congress intended to exclude tobacco products from FDA's jurisdiction. In *Brown & Williamson,* the Court determined that tobacco products could not be made safe and effective for their intended uses, and therefore, FDA would have to remove them from the market, but that Congress had foreclosed such action (529 U.S. at 135–139). The Court also observed that Congress, in enacting statutes to regulate the labeling and advertising of conventional tobacco products, such as cigarettes and smokeless tobacco, had ''effectively ratified FDA's long-held position'' that the Agency lacked jurisdiction to regulate tobacco products ''absent claims of therapeutic benefit by the manufacturer'' (529 U.S. at 144).

In 2008 and early 2009, FDA detained multiple shipments of electronic cigarettes from overseas manufacturers and denied them entry into the United States on the ground that electronic cigarettes were unapproved drug-device combination products under the FD&C Act. In April 2009, plaintiffs sought a preliminary injunction to enjoin FDA from regulating electronic cigarettes as drug-device combination products and from denying entry of those products into the United States.[3] Between the filing of the lawsuit and a decision on the motion for a preliminary injunction, Congress passed the Tobacco Control Act and the President signed it into law. The District Court subsequently granted a preliminary injunction, relying on *Brown & Williamson* and the recently enacted Tobacco Control Act (*Smoking Everywhere, Inc.* v. *FDA,* 680 F. Supp. 2d 62 (D.D.C. 2010)). FDA appealed the decision and the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) affirmed in *Sottera, Inc.* v. *Food & Drug Administration,* 627 F.3d 891 (D.C. Cir. 2010).[4] The D.C. Circuit determined that the decision in *Brown & Williamson* was not limited to tobacco products that were the subject of the specific federal legislation discussed in that case. The D.C. Circuit found that under the Tobacco Control Act, all products made or derived from tobacco and intended for human consumption that are ''marketed for therapeutic purposes'' are subject to FDA's drug and/or device provisions, whereas ''customarily marketed tobacco products'' are subject to regulation as ''tobacco products'' (*Sottera,* 627 F.3d at 898–899; *see also Brown & Williamson,* 529 U.S. at 144–156).

The Court in *Brown & Williamson* frequently referred to ''tobacco products as customarily marketed,'' but never defined that phrase. The Court contrasted that phrase with ''claims of therapeutic benefit'' (*see, e.g.,* 529 U.S. at 127, 158), which it also did not define. Neither of these terms is used in the FD&C Act. In *Sottera,* the D.C. Circuit relied on *Brown & Williamson* and repeated these phrases in describing contrasting types of products. The court in *Sottera* specifically equated ''therapeutic uses'' with the disease prong of the drug/device definitions in the FD&C Act and said that customarily marketed tobacco products were sold without therapeutic claims (627 F.3d at 894) and should be regulated as tobacco products under the FD&C Act, as amended by the Tobacco Control Act. But neither court provided specific guidance about what might constitute claims of therapeutic benefit, nor did they explain the relationship between ''tobacco products as customarily marketed'' and the structure/function prong of the drug/device definitions of the FD&C Act. In addition, no court has addressed whether certain structure/function claims for products made or derived from tobacco that generally were not made for ''tobacco products as customarily marketed'' should be treated as drug or device claims.[5]

II. Purpose of Rulemaking

Because some ambiguity surrounds the circumstances under which a product that is made or derived from tobacco would be regulated as a drug, device, or combination product, and the circumstances under which it would be regulated as a tobacco product, we are initiating this rulemaking to provide clarity regarding our interpretation of the drug/device definitions in the FD&C Act with respect to products made or derived from tobacco. We believe that this rulemaking will provide assistance for entities intending to market products made or derived from tobacco and for entities that plan to study these products. For example, the rule is expected to help sponsors determine which FDA Center should be consulted as they develop their products and make appropriate premarket submissions to bring new products to market. FDA expects the rule will also assist investigators planning to use products made or derived from tobacco for an investigational use in determining the investigational use requirements that apply to their proposed studies. In addition, we believe it is important to avoid consumer confusion about which products are intended for medical uses versus recreational or other uses. The rulemaking will increase clarity regarding the types of claims and other evidence that make a product made or derived from tobacco subject to regulation as a drug or device, which we expect will help consumers distinguish products made or derived from tobacco that are intended for medical use from products marketed for other uses. Finally, the rulemaking will provide clarity for drug and device manufacturers generally regarding FDA's interpretation and application of its existing intended use regulations.

In both the *Brown & Williamson* and *Sottera* decisions, the courts set forth (but did not define) two poles—''tobacco products as customarily marketed'' and ''claims of therapeutic benefit''—and found that the ''customarily marketed'' pole was not within FDA's drug/device jurisdiction, but that the ''therapeutic benefit'' pole was within FDA's drug/device jurisdiction. As noted in section I.C of this document, the terminology used by the courts in establishing these two poles is not the terminology used by the FD&C Act in defining drugs and devices. Instead, the FD&C Act's drug and device definitions reference, in

[3] The original district court case was filed by Smoking Everywhere, Inc., and the case was joined by Sottera, Inc., which does business as NJOY.

[4] On January 24, 2011, the D.C. Circuit denied the government's petitions for rehearing and rehearing en banc (by the full court). *See Sottera* v. *FDA,* No. 10–5032 (D.C. Cir. Jan. 24 2011) (per curiam).

[5] In *Sottera,* there are a few instances where the court's opinion could be read to suggest that all products made or derived from tobacco that do not have therapeutic claims are tobacco products as customarily marketed (627 F.3d at 895, 898–899). However, to the extent that the issue of drug/device jurisdiction over structure/function intended uses that are not related to the commonly understood effects of nicotine was not before the court, this reading is dicta in any case.

relevant part, diagnosis, cure, mitigation, treatment, or prevention of disease (disease prong) and effects on the structure or any function of the body (structure/function prong). In addition, while certain products and claims may fall clearly at one pole or the other, a spectrum of products and claims may fall somewhere between the two poles. In the sections that follow, we describe our interpretation of the jurisdictional lines established by the FD&C Act's drug, device, and tobacco product definitions as informed by the decisions in *Brown & Williamson* and *Sottera.*

A. Claims About Products Made or Derived From Tobacco That Fall Within the Disease Prong

1. Disease Prong Claims

As discussed in section I.B, articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease are drugs, devices, or combination products under the FD&C Act. Products made or derived from tobacco have historically been regulated as medical products when they are marketed for intended uses that fall within the disease prong. For example, FDA has approved a number of drug products made or derived from tobacco as nicotine replacement therapies with indications to reduce withdrawal symptoms, including nicotine craving, associated with quitting smoking. Accordingly, FDA has long considered claims related to smoking cessation in the context of curing or treating nicotine addiction and its symptoms to be within FDA's ''disease prong'' jurisdiction.

FDA has also taken enforcement action against products made or derived from tobacco that were marketed with claims of therapeutic benefit but that did not have approved new drug applications. For example, FDA seized cigarettes on the grounds that they were misbranded drugs when the manufacturer represented that the cigarettes were effective in preventing respiratory diseases, common cold, influenza, pneumonia, and various other ailments. (*United States* v. *46 Cartons . . . Containing Fairfax Cigarettes,* 113 F.Supp. 336, 337, 338 (D. N.J. 1953)).

The ''therapeutic benefit'' language used by the *Brown & Williamson* and *Sottera* courts has a logical relationship to the disease prong of the drug/device definition, in that ''therapeutic'' can be defined as ''relating to the treatment of disease or disorders by remedial agents or methods or to providing or assisting in a cure.'' [6] As part of this rulemaking, FDA is clarifying the categories of claims relevant to products made or derived from tobacco that FDA considers to fall within the disease prong in light of the *Sottera* and *Brown & Williamson* decisions. As discussed previously, claims related to smoking cessation have long been recognized as claims conferring drug or device jurisdiction. Smoking cessation claims have also long been associated with curing or treating nicotine addiction and its symptoms. For example, the approved labeling for nicotine replacement therapies includes the following statements: ''Purpose: Stop smoking aid; Use: Reduces withdrawal symptoms, including nicotine craving, associated with quitting smoking.'' [7] Against this backdrop, smoking cessation claims on any product generally create a strong suggestion of therapeutic benefit to the user that generally will be difficult to overcome absent clear context indicating that the product is not intended for use to cure or treat nicotine addiction or its symptoms, or for another therapeutic purpose.

Given the availability of FDA-approved drugs for smoking cessation, FDA believes that consumers are particularly susceptible to confusion where products made or derived from tobacco that otherwise appear to be products intended for recreational use make claims related to quitting smoking. Therefore, FDA considers claims related to smoking cessation to require careful scrutiny. Where products making claims related to quitting smoking also attempt to disclaim that use in some way, FDA intends to view such disclaimers skeptically because of the likelihood of consumer confusion. In most cases, FDA does not believe that disclaimers will sufficiently mitigate consumer confusion related to the intended therapeutic use of the product.

FDA proposes to treat several other categories of claims for products made or derived from tobacco as falling within the disease prong of the drug/device definition. These categories of claims are discussed further in section IV (Description of Proposed Regulation). We note that sections 911(c) and 918 of the FD&C Act (21 U.S.C. 387k(c) and 387r), as amended by the Tobacco Control Act, contemplate that products intended for the treatment of tobacco dependence and for relapse prevention, among other things, may be subject to FDA's drug/device jurisdiction.

2. Distinction Between Disease Prong Claims and Modified Risk Claims

Through this rulemaking, FDA is also clarifying the relationship between FDA's regulation of a certain category of tobacco products—modified risk tobacco products (MRTPs)—and FDA's regulation of medical products that are intended to mitigate disease. MRTPs are tobacco products that are sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products (section 911(b)(1) of the FD&C Act). The phrase ''sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products'' refers to a tobacco product:

1. That represents in its label, labeling, or advertising, either implicitly or explicitly, that:

- The tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products;
- the tobacco product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or
- the tobacco product or its smoke does not contain or is free of a substance;

2. That uses the descriptors ''light,'' ''mild,'' ''low,'' or similar descriptors in its label, labeling, or advertising; [8] or

3. For which the tobacco product manufacturer has taken any action directed to consumers through the media or otherwise, other than by means of the tobacco product's label, labeling, or advertising, after June 22, 2009, respecting the product that would be reasonably expected to result in consumers believing that the tobacco product or its smoke may present a lower risk of disease or is less harmful

[6] See, *e.g.,* Merriam-Webster Online Dictionary, available at *http://www.merriam-webster.com/dictionary/therapeutic.*

[7] See, *e.g.,* approved labeling for Nicoderm CQ, Nicorette, Habitrol.

[8] Although cigarettes had been marketed with such descriptors before the Tobacco Control Act was enacted, as of June 22, 2010, manufacturers were prohibited from manufacturing for sale or distribution any tobacco products for which the label, labeling, or advertising contains the descriptors ''light,'' ''low,'' or ''mild,'' or any similar descriptor, without an FDA order in effect under section 911(g) of the FD&C Act (section 911(b)(3) of the FD&C Act). Furthermore, as of July 22, 2010, manufacturers, including importers of finished tobacco products, were prohibited from introducing into the domestic commerce of the United States any tobacco product for which the label, labeling, or advertising contains the descriptors ''light,'' ''low,'' or ''mild,'' or any similar descriptor, irrespective of the date of manufacture, without an FDA order in effect under section 911(g) of the FD&C Act (id).

than one or more commercially marketed tobacco products, or presents a reduced exposure to, or does not contain or is free of, a substance or substances.

See section 911(b)(2) of the FD&C Act.[9]

Because MRTPs have the potential to be marketed as less harmful than other tobacco products, including as presenting a lower risk of tobacco-related disease than another tobacco product, FDA recognizes that there might be questions about how these products relate to FDA's medical product jurisdiction over products made or derived from tobacco that are intended for use in disease mitigation. MRTPs may have the ultimate effect of lowering disease risk for users who would otherwise use another, more harmful tobacco product. However, an important distinction between MRTPs and medical products is that, while medical products approved for disease mitigation act affirmatively to combat a disease or health condition, MRTPs present *relatively* less risk of disease (*e.g.,* by presenting reduced exposure to harmful constituents relative to another tobacco product), but do not affirmatively act to mitigate or otherwise treat disease. In addition, while medical products approved for disease mitigation are determined to be both safe and effective for their approved use, MRTPs are reviewed based, in part, on a ''benefit the health of the population as a whole'' standard, and like other tobacco products, still expose users to inherent (if reduced) harms.

For purposes of illustration, claims of modified risk might include claims like ''contains less nicotine than [tobacco product X]'', ''using [MRTP] reduces your risk of lung cancer compared to using [tobacco product X]'', and ''lower level of nitrosamines than other smokeless tobacco products.'' In contrast, a claim that a product ''inhibits the progression of disease in adult patients with chronic obstructive pulmonary disease (COPD)'' is not an appropriate modified risk claim, but would be appropriate for a medical product approved for such an indication.

[9] No smokeless tobacco product shall be considered to be sold or distributed for use to reduce harm or the risk of tobacco-related disease solely because its label, labeling, or advertising uses the following phrases: ''smokeless tobacco,'' ''smokeless tobacco product,'' ''not consumed by smoking,'' ''does not produce smoke,'' ''smokefree,'' ''smoke-free,'' ''without smoke,'' ''no smoke,'' or ''not smoke'' (section 911(b)(2)(C) of the FD&C Act).

B. Claims About Products Made or Derived From Tobacco That Fall Within the Structure/Function Prong

As discussed in sections I.B and I.C of this document, the drug/device definitions in the FD&C Act include articles ''intended to affect the structure or any function of the body,'' and FDA's assertion of jurisdiction over cigarettes and smokeless tobacco in 1996 was predicated on the pharmacological effects of nicotine on the structure or function of the body. In addition, as explained previously, the Court in *Brown & Williamson* rejected that assertion of jurisdiction, finding that Congress did not intend for FDA to have jurisdiction over cigarettes ''as customarily marketed.''

Based on the *Brown & Williamson* holding and the *Sottera* court's application of that holding to all tobacco products, FDA believes that the appropriate inquiry in determining whether a particular product made or derived from tobacco is ''customarily marketed''—and therefore outside of FDA's drug/device jurisdiction—is to determine whether any claims related to structure/function relate to effects of nicotine that were commonly and legally claimed in the marketing of cigarettes and smokeless tobacco products prior to the date of the Supreme Court's decision in *Brown & Williamson* (March 21, 2000).

For example, claims related to satisfaction, pleasure, enjoyment, and refreshment have been recognized as euphemisms for the delivery of a pharmacologically active dose of nicotine. While these claims relate to effects on the structure or function of the body, FDA does not consider these tobacco satisfaction and enjoyment claims to fall within its drug and device regulatory authority. Similarly, FDA does not consider claims suggesting that a tobacco product provides an alternative way of obtaining the effects of nicotine, or that a tobacco product will provide the same effects as another tobacco product—such as ''satisfying smoking alternative,'' ''provides all the pleasure of smoking,'' ''get your nicotine fix,'' or ''provides smokers the same delight, physical and emotional feelings''—to fall within its drug and device authority; however, we invite comment on this.

The *Brown & Williamson* and *Sottera* decisions do not reach the issue of intended uses that fall outside the disease prong of the drug/device definition *and* that are outside the area of ''customarily marketed'' tobacco product claims. FDA believes certain structure/function claims for products made or derived from tobacco continue to fall within our drug/device regulatory authority. FDA believes these structure/function claims fall into two main categories: (1) Claims that are unrelated to the pharmacological effects of nicotine, and (2) claims that were not commonly and legally made for cigarettes and smokeless tobacco products (*i.e.,* the products addressed in the 1996 rule) prior to the Supreme Court's decision in *Brown & Williamson.* Thus, to the extent manufacturers intend products made or derived from tobacco to be used to affect the structure or function of the body in some manner that is not related to the effects of nicotine commonly and legally claimed prior to March 21, 2000, FDA would consider these intended uses to remain within its drug/device jurisdiction under the proposed rule. For example, if a product made or derived from tobacco is marketed with structure/function claims such as ''maintain healthy lung function,'' ''relieve tension,'' ''restore mental alertness,'' ''maintain memory,'' ''support the immune system,'' or ''promote weight loss,'' FDA would consider such intended uses to fall within its drug/device jurisdiction.

FDA believes that it is important to distinguish structure/function intended uses that were not commonly and legally claimed in the marketing of cigarettes and smokeless tobacco products prior to the decision in *Brown & Williamson.* Structure/function intended uses are a long-standing and important aspect of FDA's medical product jurisdiction, grounded in the statutory definitions of ''drug'' and ''device'' in the FD&C Act. We recognize that products made or derived from tobacco are unique because of the regulatory regime for tobacco products under the FD&C Act, and that some products made or derived from tobacco making certain structure/function claims are now outside our drug/device jurisdiction. However, we believe it is important from a public health perspective, and consistent with the FD&C Act and case law, to preserve our traditional medical product authority over products made or derived from tobacco whose intended use includes effects on the structure or function of the body that are distinct from the pharmacological effects of nicotine that were commonly and legally claimed before March 21, 2000.

FDA believes this proposed rule will provide clarity to manufacturers about how products made or derived from tobacco will be regulated if they are marketed or distributed for certain intended uses. This clarification will

allow regulated industry to plan accordingly during the product development and postmarketing phases and will help researchers understand the applicable regulatory requirements associated with the investigational use of products made or derived from tobacco.

In addition, we believe this proposed rule will help to avoid consumer confusion about which products made or derived from tobacco are intended for a medical use (*i.e.,* as a drug/device) versus for a recreational use. Specifically, FDA wishes to avoid situations where products intended to be sold as tobacco products are marketed with the same claims as products sold as drugs or devices. If tobacco products are marketed in ways that make them hard to distinguish from certain medical products, consumers may use tobacco products, which are inherently dangerous, in place of FDA-approved medical products that have been determined to be safe and effective for their intended use.

C. Proposed Changes to Existing ''Intended Use'' Regulations

FDA is also proposing changes to §§ 201.128 and 801.4. First, the proposed rule would insert a reference to § 1100.5 to clarify the interplay between these regulations and the proposed rule. Second, as discussed previously, the Agency does not regard a firm as intending an unapproved new use for an approved or cleared medical product based solely on that firm's knowledge that such product was being prescribed or used by doctors for such use (see Ref. 5). Accordingly, FDA is taking this opportunity to amend §§ 201.128 and 801.4 to better reflect FDA's interpretation and application of these regulations. These changes would not reflect a change in FDA's approach regarding evidence of intended use for drugs and devices. These clarifying changes to the intended use regulations would apply to drugs and devices generally, and not just to products made or derived from tobacco and intended for human consumption.

III. Legal Authority

Among the provisions of the FD&C Act that provide authority for this proposed rule are sections 201, 503(g), and 701(a) of the FD&C Act (21 U.S.C. 321, 353(g), 371(a)). Section 201 of the FD&C Act defines ''drug,'' ''device,'' and ''tobacco product'' (subsections (g)(1), (h), and (rr)(1)), and section 503(g) of the FD&C Act provides that combination products are those ''that constitute a combination of a drug, device, or biological product.'' Under section 701(a) of the FD&C Act, FDA has authority to issue regulations for the efficient enforcement of the FD&C Act.

FDA regulates the manufacture, sale, and distribution of drugs, devices, combination products, and tobacco products under the authority of the FD&C Act. Although the regulatory pathways for each product category differ, each product category is subject to similar types of regulatory requirements. For example, FDA's regulatory authority for drugs, devices, combination products, and tobacco products includes authority to review and authorize the marketing of new products as well as to oversee product labeling and advertising. Thus, whether a product meets the definition of a drug, device, or tobacco product under the FD&C Act and this proposed regulation, the manufacture, sale, and distribution of the product are subject to the applicable requirements of the FD&C Act.

IV. Description of Proposed Regulation

A. Exclusion From Tobacco Product Regulation (Proposed § 1100.5)

As described in section II of this document, the goal of this proposed rule, when finalized, is to provide clarity regarding the types of intended uses of products made or derived from tobacco that may fall within the drug/device definitions and therefore cause those products to be regulated as medical products under the FD&C Act. In describing these intended uses, the proposed rule aims to assist regulated entities in the research and development of products made or derived from tobacco by clarifying which regulatory framework (*i.e.,* the drug/device frameworks or the tobacco framework) will apply to particular products based on their intended use. The proposed rule is also intended to reduce consumer confusion regarding which products are intended for medical use (*i.e.,* as a drug, device, or combination product) and which may be marketed for recreational or other purposes. The proposed rule reflects the legal and regulatory considerations discussed in sections I and II of this document, including the *Brown & Williamson* and *Sottera* holdings. Finally, the proposed rule would amend the existing intended use regulations for drugs and devices by inserting in §§ 201.128 and 801.4 a reference to § 1100.5 to clarify the interplay among these regulations and this proposed rule.

The proposed codified language states the circumstances in which a product made or derived from tobacco would be excluded from the definition of ''tobacco product'' and be subject to regulation as a drug, device, or combination product. Under the proposed rule, this exclusion could apply in two circumstances: (1) If the product is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease; or (2) if the product is intended to affect the structure or any function of the body, in any way that is different from effects of nicotine that were commonly and legally claimed in the marketing of cigarettes and smokeless tobacco products prior to March 21, 2000.

Conceptually, the proposed codified language follows the disease prong and the structure/function prong (with certain limitations) of the drug and device definitions.

1. Disease Prong

Proposed § 1100.5(a) follows the disease prong. The proposed paragraph elaborates on the statutory language for the disease prong by describing several categories of intended uses that would cause a product made or derived from tobacco to be regulated as a medical product. The categories identified in proposed § 1100.5(a) are not intended to constitute an exhaustive list; nor are these categories necessarily mutually exclusive. In addition, these categories are intended to capture concepts, rather than to suggest that the use (or omission) of particular words is dispositive with respect to FDA's medical product jurisdiction. These categories are included as examples of types of intended uses that we believe are particularly relevant for products made or derived from tobacco and that fall within the disease prong.

2. Structure/Function Prong

Proposed § 1100.5(b) follows the structure/function prong, but with some changes to reflect the court decisions in *Brown & Williamson* and *Sottera.* Specifically, the language in proposed § 1100.5(b) beginning ''in any way that is different from . . . '' reflects the fact that, under *Brown & Williamson* and *Sottera,* certain structure/function claims about the effects of nicotine will not confer drug/device jurisdiction to the extent they reflect those made for ''customarily marketed'' tobacco products. This language also references ''the marketing of cigarettes and smokeless tobacco products'' because these were the product categories considered by the Supreme Court in *Brown & Williamson.* March 21, 2000, is the date of the Supreme Court's ruling in *Brown & Williamson.*

FDA believes that it is important to include a date limitation in proposed § 1100.5(b) to provide greater certainty about the universe of structure/function claims the Agency intends to consider when determining whether a product made or derived from tobacco is ''customarily marketed.'' This bright-line limitation also avoids creating a shifting standard that will cause confusion among consumers and regulated industry. FDA intends to look to the marketing of cigarettes and smokeless tobacco products prior to March 21, 2000, to determine the types of structure/function claims that constitute customary tobacco product marketing. Examples of these types of claims include those related to satisfaction, pleasure, enjoyment, and refreshment (*e.g.,* ''[Brand X] refreshes while you smoke''). Cigarettes and smokeless tobacco products provide a reasonable proxy for determining how nicotine-related structure/function claims were conveyed in tobacco product marketing generally. The proposed codified language, however, applies to all products made or derived from tobacco, not just cigarettes and smokeless tobacco. The proposed codified language also applies regardless of whether a product made or derived from tobacco has been deemed to be subject to the tobacco product authorities in the FD&C Act.

3. Intended Use

As noted in section I.B.2 of this document, intended use may be determined from any relevant source and is not based solely on claims made in a product's labeling or advertising materials. For purposes of illustration, however, claims such as ''treatment of tobacco dependence,'' ''wean yourself off of nicotine,'' ''for people who wish to quit smoking,'' ''stop smoking aid,'' ''prevent relapse,'' or ''stay quit'' generally would fall within the intended uses described in proposed § 1100.5(a).[10]

Claims such as ''to reduce withdrawal symptoms,'' ''helps reduce symptoms including things like [list of withdrawal symptoms]'' and ''relieve withdrawal symptoms while you are on the plane'' would be associated with an intended use for relief of nicotine withdrawal symptoms, and would also fall within the intended uses described in proposed § 1100.5(a). Withdrawal symptoms that are medically recognized as relevant to nicotine addiction may be determined by reference to standard classification and diagnostic tools such as the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM–5) and the tenth revision of the International Statistical Classification of Diseases and Related Health Problems (ICD–10).

Certain structure/function claims that were not commonly and legally made in the marketing of cigarettes and smokeless tobacco products before March 21, 2000, such as ''promotes weight loss,'' would fall within the intended uses described in proposed § 1100.5(b).

In contrast to the examples of medical product intended use claims given in the previous paragraphs, certain other claims made about products made or derived from tobacco would not on their own create an intended use that falls within the proposed codified language.[11] For example, claims such as ''smoke free, spit free tobacco pleasure'' or ''full taste and satisfaction'' may be associated with the marketing of tobacco products for refreshment, satisfaction, or enjoyment. Claims such as ''great tasting tobacco satisfaction when you can't smoke,'' ''satisfying tobacco alternative,'' or ''provides the look, feel, and experience of a cigarette'' may be associated with the marketing of tobacco products as smoking substitutes. And claims such as ''healthier alternative to smoking,'' ''contains less nicotine than [another product],'' or ''reduces your risk of lung cancer compared to cigarettes'' might be associated with MRTPs, as discussed in section II.A of this document.

In addition, as discussed previously, a manufacturer's knowledge that an approved or cleared medical product is being used for an unapproved use, would not by itself establish a medical product intended use. To clarify FDA's policy on this point, as well as the interplay among §§ 201.128, 801.4, and proposed 1100.5, FDA is proposing revisions to §§ 201.128 and 801.4.

For products made or derived from tobacco that are intended for investigational use, FDA will consider whether the product is being used in a clinical investigation for an intended use that brings it within the proposed codified language. If it is, the product would meet the definition of ''investigational new drug'' in § 312.3 (21 CFR 312.3), and the clinical investigation would be subject to the applicable requirements in 21 CFR part 312.[12] Products made or derived from tobacco that are intended for investigational use but that do not meet the definition of ''investigational new drug'' in § 312.3 may be subject to regulation as investigational tobacco products under section 910(g) of the FD&C Act (21 U.S.C. 397j(g)). FDA encourages sponsors and researchers with questions about whether a product being used in a clinical investigation would be subject to regulation as an ''investigational new drug'' or as an ''investigational tobacco product'' to contact either the Center for Drug Evaluation and Research or the Center for Tobacco Products.

B. Proposed Effective Date

The Agency proposes that any final rule based on this proposal will become effective 30 days after the date of publication of the final rule in the **Federal Register**. During the pendency of this rulemaking, manufacturers will continue to be under an obligation to comply with all applicable provisions of the FD&C Act and applicable regulations.

V. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VI. National Environmental Policy Act

FDA has determined under 21 CFR 25.30(h) and (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore,

[10] These and other specific claims mentioned in this document are provided solely as examples. Other claims not mentioned in this document could also reflect an intended use described in the proposed codified language. In addition, as discussed elsewhere in this document, FDA intends to consider the full context of claims for products made or derived from tobacco in making jurisdictional determinations.

[11] As previously, the specific claims mentioned in this paragraph are provided solely as examples. Other claims not mentioned here could fall outside the intended uses described in proposed § 1100.5.

[12] Note that studies performed to meet statutory requirements in chapter IX of the FD&C Act relating to the impact of tobacco products on cessation behavior are not required to be designed as clinical investigations subject to the investigational new drug application (IND) requirements in 21 CFR part 312. Whether a study is considered a clinical investigation of an ''investigational new drug'' would depend on the study's design and specific objectives.

neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

A. Introduction and Summary

1. Introduction

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. By clarifying when products made or derived from tobacco will be subject to regulation as medical products, the ambiguity that currently exists in the regulatory environment will be reduced. We cannot predict how many companies will revise labeling, advertising, or other marketing materials for their products following issuance of this rule. We note, however, that this regulation is intended to provide clarity regarding existing jurisdictional lines for products made or derived from tobacco and for drug and device manufacturers regarding FDA's interpretation and application of its existing intended use regulations; as such, any need to revise labeling, advertising, or other marketing materials or submit applications should have predated the regulation. Therefore, the Agency proposes to certify that the proposed rule will not have a significant economic burden on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the 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 one year.'' The current threshold after adjustment for inflation is $144 million (Ref. 1), using the most current (2014) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

2. Summary

The proposed rule would reduce the ambiguity in the market for products made or derived from tobacco and clarify FDA's interpretation and application of its existing intended use regulations. The rule clarifies the types of claims and other evidence that would result in these products being regulated as medical products rather than tobacco products. The reduction in ambiguity should increase appropriate market participation and thus increase welfare in the market, including greater clarity and less confusion for producers and consumers. While these clarifications would impact future marketing strategies, it is not expected to result in significant changes to current marketing costs.

B. Preliminary Regulatory Impact Analysis

1. Benefits

Adopting the proposed rule would clarify the regulatory status of products made or derived from tobacco and how FDA interprets and applies its existing intended use regulations. This is expected to reduce the ambiguity associated with submitting a new product for approval or marketing authorization, or with initiating research of a new product. It is expected that industries are ambiguity averse.

Ambiguity aversion is preference of certainty over uncertainty (Ref. 2). It is assumed that industries developing and manufacturing products made or derived from tobacco prefer a regulatory environment with greater certainty than one with greater ambiguity. Previous research has shown that reduction in the uncertainty of financial markets increases participation by both traders and investors (Refs. 3 and 4). The proposed rule is expected to reduce ambiguity, and this reduction in ambiguity will encourage investment and innovation.

2. Costs

The proposed rule is not expected to impose significant additional costs on drugs, devices, or tobacco products. FDA's regulatory authority for drugs, devices, and tobacco products includes authority to review and authorize marketing of new products, as well as to oversee product labeling and advertising. Thus, whether a product meets the definition of a drug, device, or tobacco product under the FD&C Act and this proposed regulation, its manufacture, sale, and distribution is subject to the applicable requirements of the FD&C Act. Companies may revise marketing practices to conform to the rulemaking and to ensure they are incurring the appropriate costs for their product type. We do not have evidence that this will affect many currently marketed products and as such is unlikely to impose significant new costs.

The proposed rule does not extend FDA's authority to additional products and it does not impose any additional labeling requirements on currently regulated products. The proposed rule does not change the way FDA regulates medical products or tobacco products; it clarifies the applicable regulatory framework for products made or derived from tobacco and FDA's interpretation and application of its existing intended use regulations. This will reduce ambiguity for firms potentially seeking marketing authorization for a product as a drug, device, or tobacco product, will assist those seeking to study products made or derived from tobacco, and will help consumers differentiate between products that are intended for medical use and products marketed for other uses.

3. Summary and Discussion

The proposed rule is expected to reduce regulatory ambiguity in the research, development and marketing of drugs, devices, and tobacco products, as well as consumer confusion in the marketplace. The reduction in ambiguity will encourage investment and innovation. The proposed rule may affect marketing strategies, but is only clarifying when products made or derived from tobacco will be regulated as drugs or devices and FDA's interpretation and application of its existing intended use regulations. Accordingly, any costs to revise marketing strategies predated the rule, and as such the rule itself is not expected to impose significant costs.

C. Small Entities Effects

The Regulatory Flexibility Act requires Agencies to prepare a regulatory flexibility analysis if a proposed rule would have a significant effect on a substantial number of small businesses, non-profit organizations, local jurisdictions, or other entities. The proposed rule would reduce ambiguity in the regulatory environment for products made or derived from tobacco. We do not expect this clarification to significantly increase costs associated

with marketing products made or derived from tobacco, and thus certify that the proposed rule would not significantly affect a substantial number of small businesses, non-profit organizations, local jurisdictions, or other entities.

VIII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IX. Request for Comments

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 titled ''Category (Required),'' on the ''Your Information'' page on *http://www.regulations.gov.* For this proposed rule, 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.

X. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m. Monday through Friday, and are available electronically at *http://www.regulations.gov.* (FDA has verified the Web site address in this reference section, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. U.S. Department of Commerce, Bureau of Economic Analysis. *National Income and ProductAccounts, Table 1.1.9 Implicit Price Deflators for Gross Domestic Product,* December 23, 2014 (*http://www.bea.gov/national/Index.htm#gdp).*
2. Ellsberg, D. ''Risk, Ambiguity, and the Savage Axioms.'' *The Quarterly Journal of Economics* 75, no. 4: 643–669, November 1961.
3. Easley, D., and M. O'Hara. ''Ambiguity and Nonparticipation: The Role of Regulation.'' *Review of Financial Studies* 22, no. 5: 1817–1843, 2009.
4. Dimmock, S. G., R. Kouwenberg, O. S. Mitchell, et al. ''Ambiguity Aversion and Household Portfolio Choice: Empirical Evidence.'' *NBER Working Paper Series,* Working Paper 18743, January 2013.
5. Defendant's Memorandum of Points and Authorities In Support of Motion to Dismiss or Summary Judgment. *Allergan Inc.,* v. *United States of America, et. al.,* 1:09-cv-01879–JDB (D.D.C. Jan. 11, 2010).

List of Subjects

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 1100

Combination products, Devices, Drugs, Smoking, Tobacco.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR chapter I be amended as follows:

PART 201—LABELING

■ 1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Revise § 201.128 to read as follows:

§ 201.128 Meaning of ''intended uses''.

The words *intended uses* or words of similar import in §§ 201.5, 201.115, 201.117, 201.119, 201.120, 201.122, and 1100.5 of this chapter refer to the objective intent of the persons legally responsible for the labeling of drugs. The intent is determined by such persons' expressions or may be shown by the circumstances surrounding the distribution of the article. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. It may be shown, for example, by circumstances in which the article is, with the knowledge of such persons or their representatives, offered and used for a purpose for which it is neither labeled nor advertised. The intended uses of an article may change after it has been introduced into interstate commerce by its manufacturer. If, for example, a packer, distributor, or seller intends an article for different uses than those intended by the person from whom he received the drug, such packer, distributor, or seller is required to supply adequate labeling in accordance with the new intended uses.

PART 801—LABELING

■ 3. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

■ 4. Revise § 801.4 to read as follows:

§ 801.4 Meaning of intended uses.

The words *intended uses* or words of similar import in §§ 801.5, 801.119, 801.122, and 1100.5 of this chapter refer to the objective intent of the persons legally responsible for the labeling of devices. The intent is determined by such persons' expressions or may be shown by the circumstances surrounding the distribution of the article. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. It may be shown, for example, by circumstances in which the article is, with the knowledge of such

persons or their representatives, offered and used for a purpose for which it is neither labeled nor advertised. The intended uses of an article may change after it has been introduced into interstate commerce by its manufacturer. If, for example, a packer, distributor, or seller intends an article for different uses than those intended by the person from whom he received the device, such packer, distributor, or seller is required to supply adequate labeling in accordance with the new intended uses.

PART 1100—TOBACCO PRODUCTS SUBJECT TO FDA AUTHORITY

■ 5. The authority citation for 21 CFR part 1100 continues to read as follows:

Authority: 21 U.S.C. 387a(b), 387f(d); Secs. 901(b) and 906(d), Pub. L. 111–31; 21 CFR 16.1 and 1107.1; 21 CFR 1.1, 1.20, 14.55, 17.1, and 17.2. Section 1100.5 is issued under 21 U.S.C. 321, 353(g), and 371(a); 21 CFR 1.1.

■ 6. Part 1100, as proposed to be added on April 25, 2014 (79 FR 23142 at 23202), is amended by adding § 1100.5 to read as follows:

§ 1100.5 Exclusion from tobacco regulation.

If a product made or derived from tobacco that is intended for human consumption is intended for use for any of the purposes described in paragraph (a) or (b) of this section, the product is not a tobacco product as defined in section 201(rr) of the Federal Food, Drug, and Cosmetic Act and will be subject to regulation as a drug, device, or combination product.

(a) The product is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, including use in smoking cessation, the cure or treatment of nicotine addiction, relapse prevention, relief of nicotine withdrawal symptoms, or prevention or mitigation of disease;

(b) The product is intended to affect the structure or any function of the body in any way that is different from effects related to nicotine that were commonly and legally claimed in the marketing of cigarettes and smokeless tobacco products prior to March 21, 2000.

Dated: September 16, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–24313 Filed 9–24–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket Number: OSHA–2015–0006]

RIN 1218–AC84

Clarification of Employer's Continuing Obligation To Make and Maintain an Accurate Record of Each Recordable Injury and Illness; Extension of Comment Period

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of proposed rule; extension of comment period.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is extending the deadline for submitting comments on the proposed rule: Clarification of Employer's Continuing Obligation To Make and Maintain an Accurate Record of Each Recordable Injury and Illness.

DATES: The comment due date for the proposed rule published in the **Federal Register** on July 29, 2015 (80 FR 45116) is extended. Comments must be submitted (postmarked, sent, or received) by October 28, 2015.

ADDRESSES: Submit comments and additional material using any of the following methods:

Electronically. You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the instructions on the Web site for making electronic submissions.

Facsimile. If your submission, including attachments, does not exceed ten pages, you may fax it to the OSHA Docket Office at (202) 693–1648. OSHA does not require hard copies of documents transmitted by facsimile. However, if you have supplemental attachments that are not delivered by facsimile, you must submit those attachments, by the applicable deadline, to the OSHA Docket Office, Technical Data Center, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210. Any such attachment must clearly identify the sender's name, the date of submission, the title of the rulemaking (Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness), and the docket number (OSHA–2015–0006) so that the docket Office can add the attachment(s) to the appropriate facsimile submission.

Regular or express mail, hand delivery, or messenger (courier) service. You may submit comments to the OSHA Docket Office, Docket Number OSHA–2015–0006, Technical Data Center, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone: (202) 693–2350. (OSHA's TTY number is (877) 889–5627). Please contact the OSHA Docket Office for information about Department of Labor security procedures that could affect the delivery of materials by express mail, hand delivery, and messenger or courier service. Also note that security-related procedures may delay the Agency's receipt of comments submitted by regular mail. The Docket Office will accept deliveries by hand, express mail, or messenger and courier service during the Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m.

Instructions for submitting comments: All submissions must include the Agency's name (OSHA), the title of the rulemaking (Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness), and the docket number (OSHA–2015–0006). OSHA will place comments and other material, including any personal information you provide, in the public docket without revision, and the comments and other materials will be available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting statements and information that you do not want made available to the public or that contain personal information (about yourself or others) such as Social Security numbers, birthdates, and medical data. For additional information on the rulemaking process, see the Background heading in the **SUPPLEMENTARY INFORMATION** part of this document.

Docket: To read or download comments or other material in the docket, go to Docket Number OSHA–20015–0006 at *http://www.regulations.gov* or to the OSHA Docket Office at the address provided previously. The electronic docket for this proposed rule, established at *http://www.regulations.gov,* lists all of the documents in the docket. However, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT: General information and press inquiries: Contact Frank Meilinger, Director, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *Meilinger.francis2@dol.gov.* Technical inquiries: Contact William Perry, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3718, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1950; email *perry.bill@dol.gov.*

Copies of this **Federal Register** notice and news releases: Electronic copies of these documents are available at OSHA's Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OSHA published a notice of proposed rulemaking on July 15, 2015, titled ''Clarification of Employer's Continuing Obligation To Make and Maintain an Accurate Record of Each Recordable Injury and Illness.'' The notice stated that comments were due by September 28, 2015. The National Association of Home Builders requested that the deadline for submitting comments be extended by 60 days to provide additional time for interested parties to engage in ''legal analysis, as well as careful review and discussion'' of the proposed rule. See Ex. OSHA–2015–006–0004. OSHA believes an extension of 30 days is reasonable. Therefore, to allow commenters adequate time to prepare complete and accurate comments on the proposed rule, OSHA is, with this notice, extending the deadline for submitting comments in response to the proposed rule to October 28, 2015.

II. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice pursuant to 29 U.S.C. 657, 673; 5 U.S.C. 553; and Secretary of Labor's Order No. 1–2012 (77 FR 3912; January 25, 2012), and 29 CFR 1911.

Signed at Washington, DC, on September 21, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–24319 Filed 9–24–15; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0369; FRL 9933–33–21–Region 9]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and the Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from the transfer of gasoline into vehicle fuel tanks, and from the transfer or dispensing of liquefied petroleum gas (LPG). We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act).

DATE: Any comments on this proposal must arrive by October 26, 2015.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2015–0369, by one of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: James Shears, EPA Region IX, (213) 244–1810, *shears.james@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule(s): MBUAPCD Rule 1002 and VCAPCD Rule 74.33. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 11, 2015.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2015–24104 Filed 9–24–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R07–OAR–2015–0427; FRL–9934–67–Region 7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Missouri; Control of Mercury Emissions From Electric Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Missouri State Plan received May 7, 2013. This revision rescinds the state rule and associated state plan controlling mercury emissions from electric generating units. This rule is being proposed for rescision because the Federal Clean Air Mercury Rule, which is the basis for this rule and associated plan, has been vacated and removed from the Code of Federal Regulations. This action will make Missouri's State Plan consistent with Federal regulations.

DATES: Comments on this proposed action must be received in writing by October 26, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0427, by mail to Amy Bhesania, 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: Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7147, or by email at *bhesania.amy@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 62

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 14, 2015.

Mark Hague,

Acting Regional Administrator, Region 7.

[FR Doc. 2015–24336 Filed 9–24–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1147]

Proposed Flood Elevation Determinations for Butler County, Pennsylvania (All Jurisdictions)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed rule concerning proposed flood elevation determinations for Butler County, Pennsylvania (All Jurisdictions).

DATES: This withdrawal is effective on September 25, 2015.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1147, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On October 5, 2010, FEMA published a proposed rule at 75 FR 61382, proposing flood elevation determinations along one or more flooding sources in Butler County, Pennsylvania (All Jurisdictions). FEMA is withdrawing the proposed rule.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: September 10, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2015–24418 Filed 9–24–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1153]

Proposed Flood Elevation Determinations for Mercer County, New Jersey (All Jurisdictions)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed rule concerning proposed flood elevation determinations for Mercer County, New Jersey (All Jurisdictions).

DATES: This withdrawal is effective on September 25, 2015.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1153 to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance

and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On November 9, 2010, FEMA published a proposed rule at 75 FR 68740–68741, proposing flood elevation determinations along one or more flooding sources in Mercer County, New Jersey. FEMA is withdrawing the proposed rule because FEMA has issued a Revised Preliminary Flood Insurance Rate Map and Flood Insurance Study report, featuring updated flood hazard information. A Notice of Proposed Flood Hazard Determinations was published in the **Federal Register** on August 1, 2014 at 79 FR 44848 and in the local newspaper of each affected community following issuance of the Revised Preliminary Flood Insurance Rate Map.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: September 9, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2015–24421 Filed 9–24–15; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51 and 63

[GN Docket No. 13–5, RM–11358; WC Docket No. 05–25, RM–10593; FCC 15–97]

Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers and Special Access for Price Cap Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission takes further action on a rulemaking it initiated in January 6, 2015, to help guide and accelerate the technological revolutions that are underway involving the transitions from networks based on TDM circuit-switched voice services running on copper loops to all-IP multi-media networks using copper, co-axial cable, wireless, and fiber as physical infrastructure. This Further Notice of Proposed Rulemaking (FNPRM) is only one of a series of Commission actions to protect core values and ensure the success of these technology transitions. In this FNPRM, we take steps to ensure that competition continues to thrive and to protect consumers during transitions. These steps will help to ensure that the technology transitions continue to succeed.

DATES: Submit comments on or before October 26, 2015. Submit reply comments on or before November 24, 2015.

ADDRESSES: You may submit comments, identified by GN Docket No. 13–5, RM–11358, WC Docket No. 05–25, RM–10593, by any of the following methods:

- Federal Communications Commission's Web site: *http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michele Levy Berlove, Wireline Competition Bureau, Competition Policy Division, (202) 418–1477, or send an email to *michele.berlove@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in GN Docket No. 13–5, RM–11358, WC Docket No. 05–25, RM–10593, FCC 15–97, adopted August 6, 2015 and released August 7, 2015. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It is available on the Commission's Web site at *http://www.fcc.gov.*

I. Introduction

1. Communications networks are rapidly transitioning away from the historic provision of time-division multiplexed (TDM) services running on copper to new, all-Internet Protocol (IP) multimedia networks using copper, co-axial cable, wireless, and fiber as physical infrastructure. Our actions today further the technology transitions underway in our Nation's fixed communications networks that offer the prospect of innovative and improved services to consumers and businesses alike. The core goals of the January 2014 *Technology Transitions Order* frame our approach here. In the *Technology Transitions Order,* we emphasized the importance of speeding market-driven technological transitions and innovations while preserving the core statutory values as codified by Congress: competition, consumer protection, universal service, and public safety. Furthering these core values will accelerate customer adoption of technology transitions. Today, we take the next step in advancing longstanding competition and consumer protection policies on a technologically-neutral basis in order to ensure that the deployment of innovative and improved communications services can continue without delay.

2. Industry is investing aggressively in modern telecommunications networks and services. Overall, according to data supplied by USTelecom and AT&T, capital expenditures by broadband providers topped $75 billion in 2013 and continue to increase. AT&T recently announced that by the year 2020, 75 percent of its network will be controlled by software. To do this, AT&T is undergoing a massive effort to train about 130,000 of its employees on software-defined networking architecture and protocols. AT&T has also expanded its wireline IP broadband network to 57 million customer locations, as well as extended fiber to 725,000 business locations. Moreover, Verizon passes more than 19.8 million premises with its all-fiber network—the largest such network in the country—and it projects that soon about 70 percent of the premises in its landline territory will have access to all-fiber facilities. Verizon too has announced an SDN-based strategy ''to introduce new operational efficiencies and allow for the enablement of rapid and flexible service delivery to Verizon's customers.'' And CenturyLink has announced the launch of 1 Gbps broadband service to 16 cities. According to recent reports, CenturyLink's national fiber network upgrade has expanded availability of CenturyLink's gigabit broadband services to nearly 490,000 business locations. These are just a few of many examples in which industry is investing heavily to bring the benefits of new networks and services to customers of all sizes.

3. We recognize that the success of the technology transitions is dependent, among other things, on clear and certain direction from the Commission that preserves the historic values that Congress has incorporated in the Communications Act of 1934, as amended (the Act). In the January 6, 2015 NPRM, 80 FR 450, we sought comment on limited oversight that

would encourage transitions that could otherwise be delayed if a portion of consumers were left behind or competition were allowed to diminish—recognizing that the transitions that are underway are organic processes without a single starting or stopping point. Building on that NPRM, in this item we support the transitions by adopting limited and targeted regulation to preserve competition and to protect consumers, especially those in vulnerable populations who have not yet voluntarily migrated from plain old telephone service (POTS) and other legacy services. In taking these steps, we seek to avoid the need for future regulation and dispute resolution that could cause delays down the road. Carriers involved in the historic transitions have made clear their intention to protect consumers and preserve a competitive marketplace going forward, and the pro-transition rules we adopt today are consistent with those mutually shared goals.

4. *Establishing Clear Standards to Streamline Transitions to an All-IP Environment.* Having established that section 214's discontinuance provisions apply to a service based on a totality-of-the-circumstances functional evaluation, we believe it is prudent to provide additional guidance so that consumers and providers are clear on the meaning of the section 214 standard. Building on the record developed in response to the -NPRM, in this FNPRM we propose specific criteria for the Commission to use in evaluating applications to discontinue retail services pursuant to section 214 of the Act. We believe all stakeholders will benefit from an additional round of focused comment on our specific proposals. As we stated previously, adopting specific criteria will enable the Commission to ensure that we can carry out our statutorily-mandated responsibilities in a technology-neutral manner and provide clear up-front guidance that will minimize complications when carriers seek approval for large-scale discontinuances. With clear standards in place, carriers will not have to guess as to how they can obtain approval to discontinue TDM services once they are ready to do so.

II. Further Notice Of Proposed Rulemaking

A. Establishing Clear Standards To Streamline Transitions to an All-IP Environment

5. We seek comment on specific proposals for possible criteria against which to measure ''what would constitute an adequate substitute for retail services that a carrier seeks to discontinue, reduce, or impair in connection with a technology transition (*e.g.,* TDM to IP, wireline to wireless).'' We sought comment on this topic in the *Notice,* asking wide-ranging questions, and believe that the specific proposals that we raise here will facilitate development of a sufficient record to allow us to fully establish highly effective, clear, and technology-neutral criteria. The Commission remains dedicated to providing carriers the guidance and clarity they need to implement new technologies at scale as quickly as possible. We will benefit from more targeted input in order to adopt rules that are carefully tailored to address the issues presented by the ongoing technology transitions process and that will stand the test of time.

6. Our purpose is to adopt clear criteria that will eliminate uncertainty that could potentially impede the industry from actuating a rapid and prompt transition to IP and wireless technology. We recognize that our existing case-by-case approach may not provide sufficient guidance as to what constitutes an adequate substitute with regard to cutting-edge technology transitions, and we recognize that as a result carriers may be more inclined to pursue half-measures that merely ''test the water.'' Such outcomes reduce innovation and are inconsistent with our overarching goal of advancing the public interest and ensuring ''that we protect consumers, competition, and public safety.''

7. The Commission always has applied certain criteria in evaluating the adequacy of alternative services in the context of section 214 discontinuance applications. The Commission has engaged in a highly fact-specific analysis based on the situation presented and has not codified any specific criteria by which it evaluates the adequacy of substitute services. The record we received in response to questions in the NPRM about adequate substitutes included a range of public interest organizations, state utility commissions, competitive LECs, telecommunications service consumers, and others advocating that we should define attributes of an adequate substitute, and other commenters, particularly larger incumbent LECs, urging us not to do so. Incumbent LECs believe that defining the attributes of an adequate substitute service would discourage carriers from innovating. A number of these commenters argue that the Commission should encourage the development of industry best practices.

8. Commenters have not swayed us from our belief that establishing criteria for evaluating the adequacy of replacement services will benefit industry and consumers alike by providing certainty. Indeed, we believe that by establishing and codifying such criteria, we provide transparency and certainty in an area that has been subject to case-by-case evaluation without formal rule-based guidance. We believe that it is important to ensure that key aspects of service such as connection persistence and quality, 9-1-1 service, and service for individuals with disabilities remain available. We agree with Public Knowledge that establishing clear principles that ensure the availability of key functions post-transition will likely increase public acceptance of alternative technologies, thus decreasing resistance to services based on next-generation technologies.

9. We agree with incumbent LECs that the Commission must evaluate the availability of alternative services from sources other than the carrier seeking section 214 discontinuance authority. Moreover, there seems to be a misplaced belief that the Commission will automatically categorize any change in underlying technology or facility as a discontinuance, reduction, or impairment of service for which a carrier must seek Commission authorization under section 214. It is important to note that the Commission must evaluate the adequacy of those alternative services using the same criteria as those applied to any replacement service offered by the discontinuing carrier. We also reiterate that the availability of adequate substitute services is just one of five factors the Commission looks at in evaluating section 214 discontinuance applications under existing precedent, to be balanced against the other factors in determining whether the public convenience and necessity will be adversely affected by discontinuance of the service at issue. In evaluating an application for discontinuance authority under section 214(a), the Commission considers five factors that are intended to balance the interests of the carrier seeking discontinuance authority and the affected user community: (1) The financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations. The reasonably comparable wholesale

access interim rule that we adopt in the Order applies as a condition on certain grants of discontinuance authority, and as such it applies separately from and subsequent to this balancing test. We therefore believe that adoption of criteria by which to measure the adequacy of available substitute services, which we will look to as part of a larger evaluation of the circumstances surrounding a proposed discontinuance, will not serve to discourage carriers from seeking to innovate and develop new communications technologies.

1. Proposed Criteria

10. Consistent with the NPRM, we tentatively conclude that several of the criteria proposed by Public Knowledge, listed below, are the appropriate criteria for the Commission to consider in determining whether to authorize carriers to discontinue a legacy retail service in favor of a retail service based on a newer technology. These proposed criteria align the Commission's dual incentives of: (1) Meeting the statutory obligations to protect consumers, competition, and the public safety; and (2) resolving discontinuance applications as briskly as possible. As Public Knowledge et al. have noted, ''[w]hen a new technology can be trusted to offer the same or better service than what customers had before (at the same or better price), customers will have no reason to object to the transition.'' We find that having clear, established criteria is consistent with the Commission's obligations and also gives applicants the information they need to ultimately be more responsive to the Commission's concerns regarding adequate substitutes.

11. Specifically, we propose that a carrier seeking to discontinue an existing retail service in favor of a retail service based on a newer technology must demonstrate that any substitute service offered by the carrier or alternative services available from other providers in the affected service area meet the following criteria in order for the section 214 application to be eligible for an automatic grant pursuant to Section 63.71(d) of the Commission's rules: (1) Network capacity and reliability; (2) service quality; (3) device and service interoperability, including interoperability with vital third-party services (through existing or new devices); (4) service for individuals with disabilities, including compatibility with assistive technologies; (5) PSAP and 9-1-1 service; (6) cybersecurity; (7) service functionality; and (8) coverage. Certain commenters support the ten attributes proposed by Public Knowledge. One of those supporters suggests reworking and combining those criteria to focus on retail services, consistent with the Commission's stated emphasis in the NPRM, as follows: ''(1) Reliable and accurate access to E911; (2) constant availability, including during storms and emergencies; (3) adequate call quality; (4) compatibility with health and safety services that use the network; (5) adequate data transmission capability; and (6) affordable to consumers.'' We seek detailed comment on these and other possible criteria below. Although much of the discussion on the proposed criteria focuses on residential end users, we also recognize that the perspective of commercial stakeholders, including enterprise end users, is vitally important. We therefore seek comment from these stakeholders regarding how and to what extent the proposed criteria inform their decision-making process. Are their service concerns identical to those of residential consumers? If not, should different or additional service metrics be considered for their purposes?

12. As an initial matter, we seek comment on when any criteria that we adopt should apply. Should their application be dependent on the nature of the existing service and the newer service to which the carrier is transitioning? What should qualify as a ''service based on a newer technology''? Rather than framing the draft rule in terms of discontinuance of an ''existing'' service in favor of a ''service based on a newer technology,'' should we instead frame it in terms of discontinuance of ''legacy service,'' and if so how should the term ''legacy service'' be defined? Should the criteria apply where the replacement service offered by the requesting carrier or the alternative services available from other providers in the relevant service area are IP-based or wireless? Should they apply where the replacement or alternative service is based on next-generation technologies? If so, how should we define next-generation technologies? For purposes of this FNPRM, we will simply refer to the relevant situations in which a carrier seeks to discontinue an existing retail service in favor of a next-generation service as ''technology transitions,'' but we do not intend to suggest that we have reached a conclusion on when any criteria that we have adopted will apply.

13. We further tentatively conclude that if a carrier certifies in its application that it satisfies all of these criteria, then the application will be eligible for automatic grant pursuant to section 63.71(d) of the Commission's rules as long as other already-adopted applicable requirements for automatic grant are satisfied. However, if the carrier discontinuing a service during a technology transition is unable to file such a certification, or if comments or objections call into question whether a substitute or alternative service satisfies all of the criteria we adopt, then we would not automatically grant the application. Instead, the carrier would be required to submit information demonstrating the degree to which it meets or does not meet each factor, and we would weigh this information in our evaluation of whether a replacement service offered by the applicant or an alternative service offered by another provider in the relevant service area qualifies as an adequate substitute for the existing service for which the carrier seeks discontinuance authorization. We propose that for applications not subject to automatic grant, the adequate substitute evaluation would retain its traditional role as a part of our multi-factor determination of whether to grant a discontinuance application. In other words, outside of the automatic grant context, we propose that we not alter the role that the existence, availability, and adequacy of alternatives plays in our analysis; rather, we propose to channel that analysis through the criteria that we will articulate. We seek comment on this proposed approach. We recognize that with respect to the question of whether automatic grant is available, this proposal affords the adequate substitute factor a new primacy in the section 214 analysis. However, we anticipate that this approach is necessary to ensure consumer protection as technologies transition by providing the Commission sufficient time to evaluate applications that may not provide a completely adequate substitute. Further, this approach permits industry to pursue transitions flexibly because it does not mandate that all criteria must be met and continues to evaluate the adequacy of substitutes as merely one factor in the overall discontinuance analysis.

14. To the extent commenters believe a different approach is preferable, they should describe with specificity the alternative and address how it would adequately protect consumers while providing sufficient industry flexibility. To the extent commenters argue that not all of the criteria should be considered mandatory in order for an application to qualify for automatic granting, they should identify which factors would not be mandatory. If we remove an application from automatic grant, we propose weighing compliance with the criteria as a part of our overall multi-factor analysis of whether to approve a

discontinuance application, and we seek comment on this proposal. Should we require that one replacement or alternative service satisfy every criterion we adopt in order to qualify for automatic grant, or is it sufficient that multiple alternative services are available which collectively satisfy all of the adopted criteria? We also seek comment on the costs and benefits of adopting a rule consistent with our tentative conclusion and on any other proposals suggested in the record. We seek comment on whether requiring this multi-factored showing from the carrier will promote or deter innovation or competition.

15. Where a carrier is seeking to establish the adequacy of alternative retail services in the context of a section 214 discontinuance application by certifying its compliance will all of the criteria such that its application may be eligible for automatic grant, we further tentatively conclude that the certification should be executed by an officer or other authorized representative of the company and be accompanied by a detailed statement explaining the basis for such certification. The certification would be subject to the requirements of section 1.16 of the Commission's rules and be subscribed to as true under penalty of perjury in substantially the form set forth in the rule. We seek comment on whether such an approach would be consistent with the objectives of the revised service discontinuance process, particularly in evaluating the adequacy of alternative services in the context of Section 214 discontinuance applications.

16. We tentatively conclude that in each case in which a carrier must demonstrate the existence of an adequate substitute service, the qualifying service can be a service the carrier offers, or can be an existing service offered by third parties. Under our proposal, references in this sub-section to ''demonstrating'' or otherwise showing that a criterion is met encompass demonstration via certification where the carrier is able to seek eligibility for automatic grant or, otherwise, demonstration via the submission of evidence and information. We also tentatively conclude that a showing as to a first-party or a third-party service will be treated equally, *i.e.,* the criteria would not apply more stringently in one case than the other. We seek comment on these tentative conclusions and on possible alternatives. Would another approach be consistent with our precedent? Should a carrier be permitted to rely on one substitute service as to some factors and a different substitute service as to other factors, or should it be required to show that there is one service that is a fully adequate substitute for the discontinued service?

17. We would prefer to adopt bright-line objective criteria that can be applied on a national basis instead of requiring localized testing of the service to be discontinued and/or the substitute service. We recognize that the criteria that we propose may not fully achieve this goal because of the lack of specific recommendations regarding objective metrics in the record. We further recognize that a localized testing-based approach may be incompatible with our proposal to allow parties to file a simple certification at the time of the application to allow potential automatic grant. We urge all interested parties to provide bright-line objective criteria to the maximum extent possible. For instance, what metrics or standards are incorporated into large commercial or governmental contracts regarding quality of service? However, we caution that we intend to adopt criteria and will adopt a localized testing-based regime if we deem it necessary in the absence of a workable national framework. We seek comment on the relative benefits of objective bright-line criteria and a localized testing approach in this context. If we do adopt a localized testing-based approach, how long a period of testing should we require for the discontinued and/or substitute service?

18. We also seek to further develop the record on whether the application of these criteria should be dependent on the nature of the legacy service and the newer service to which the carrier is transitioning, and specifically on what should qualify as a ''newer'' service. Should the criteria apply where the replacement service offered by the requesting carrier or the alternative services available from other providers in the relevant service area involve fixed, mobile wireless, or fixed wireless technologies that provide VoIP or other IP-based services? Should they apply where the replacement or alternative service is based on next-generation services?

19. *Network Capacity and Reliability.* Networks must have sufficient capacity to meet end user needs. Moreover, reliability has long been a hallmark of this country's communications network. During peak traffic periods, capacity is necessary to ensure reliability; without reliability, capacity is of limited use. Consistent with common usage, we use the term ''reliability'' to describe how often a service is available for the consumer. However, we recognize that technically what we are discussing is ''availability'' of a service, which is defined by the International Telecommunication Union (ITU) as follows: ''Availability of an item to be in a state to perform a required function at a given instant of time or at any instant of time within a given time interval, assuming that the external resources, if required, are provided.'' Public Knowledge proposed that we evaluate availability separately from reliability, but because much of its proposal focused on service during power outages (which is being addressed by the Commission through separate means and because the reliability test that we propose based on its submission also addresses ''availability'' within its technical meaning, we do not propose a separate availability factor. Within a given time interval, assuming that the external resources, if required, are provided.'' We therefore tentatively conclude that any adequate substitute test that we adopt should evaluate whether the replacement or alternative service

> will (a) afford the same or greater capacity as the existing service and (b) afford the same reliability as the existing service even when large numbers of communications, including but not limited to calls or other end-user initiated uses, take place simultaneously, and when large numbers of connections are initiated in or terminated at a communications hub, including but not limited to a wire center. This means that:
> (1) Communications are routed to the correct location
> (2) Connections are completed
> (3) Connection quality does not deteriorate under stress
> (4) Connection setup does not exhibit noticeable latency.

20. We seek comment on this tentative conclusion. Should network capacity and reliability be a part of our adequate substitute evaluation? For purposes of implementing the Connect America Fund Phase II model-based support to price cap carriers, the Wireline Competition Bureau adopted a 100 millisecond latency metric to judge whether a service offering meets the Commission's requirement that service enable the use of real time applications. The Wireline Competition Bureau selected the 100 millisecond standard based on the International Telecommunication Union (ITU) standards. We seek comment on whether to adopt that same metric to judge whether ''noticeable latency'' occurs here and seek comment on that proposal. In addition, we propose to adopt metrics for jitter, packet loss, and through-put to provide a more complete and robust performance measurement of the service being offered to evaluate

successful routing, completion of connections, and quality deterioration and ask commenters to address what specific thresholds should be adopted. The term ''jitter'' is used herein to refer to encompass IPDV (IP Packet Delay Variation) or PDV (Packet Delay Variation) as those terms are defined by ITU and Internet Engineering Task Force (IETF) documents. The term ''packet loss'' used herein to encompass IPLR (IP packet Loss Ratio) as that term is defined by ITU and IETF documents. We also propose that the required metrics be based on the defined standards for various classes of service in ITU–T Y.1541, adjusted for the portion of the network that is the responsibility of the provider. We do not propose to include separate network capacity indicators as part of the adequate substitute test because measuring latency, jitter, packet loss, and speed through-put performance testing during network peak periods can demonstrate whether there is sufficient network capacity and quality. We ask how reliability (availability) can be measured by ''reachability'' tests conducted on a continuous basis. Such measures could include ping or other User Datagram Protocol (UDP)-based tests, such as the FCC Measuring Broadband America program. Other methodologies could also be employed, such as requiring an upper limit over-subscription ratio at defined points in the network, dual homing to at least two different upstream providers, multiple links to a single upstream provider, and a utilization limit above which additional ports and links would be required. We seek comment on this proposed approach and possible alternatives. CWA suggests that in the context of voice communications, ''the ability to access a dial tone within three seconds 98% of the time during the busy season—busy hour should be the minimally acceptable level of service for a network,'' basing this suggestion on ''the same, or substantially similar'' standards maintained by 18 state public utility commissions. We seek comment on whether we should adopt this standard as a part of our evaluation and on whether and how it can apply to non-dial tone services. Should we evaluate availability separately from reliability, and if so how should we evaluate each?

21. *Service Quality.* As one commenter noted, ''[c]onsumers expect their voice communications to be clear, understandable, and free of distortion.'' We believe that this is a reasonable expectation that should not fall by the wayside when a carrier transitions its facilities from the traditional public switched telephone network to use of different technologies, and we do not believe that it should be limited to the quality of voice calls. We therefore tentatively conclude that one criterion in any adequate substitute test that we adopt should be that the carrier demonstrates in its section 214 application that any replacement or alternative service meets the minimum service quality standards set by the state commission responsible for the relevant service area. We seek comment on this proposal. If the relevant state commission has not established such standards or lacks authority to do so, then we seek comment on what standards we should apply. In the Connect America Fund docket, parties have urged the Commission to adopt alternative measures of service quality for recipients of Connect America Fund support, such as requiring voice service to be provided with an ''R Factor'' score at or above a minimum threshold value. We note, however, that the R score is a network planning tool and is not designed to measure actual service quality. R scores ''are only made for transmission planning purposes and not for actual customer opinion prediction (for which there is no agreed-upon model recommended by the ITU–T).'' For data services, should internal network management system (NMS) tools be used to measure speed performance? Are external systems preferable, such as the Measuring Broadband America-based hardware approach? The Measuring Broadband America program is an ongoing nationwide study by the FCC of U.S. consumer broadband performance. The program's hardware approach involves connecting a measuring device to a broadband user's work station and periodically running speed tests to remote targets on the Internet. Are there additional performance metrics that should be considered? We also seek comment on TelePacific's suggestion that ''[a]dditional metrics could include repeat trouble/repair reports, a key metric to determine whether incumbent LECs are fixing their plant, or compliance with [certain] Telcordia Standards . . .'' As an alternative to the approach we propose, can ''network capacity and reliability'' and ''service quality'' be measured by the same performance metrics (*e.g.,* delay, jitter, packet loss, through-put, and availability) such that adopting them as distinct criteria is neither necessary nor desirable?

22. *Device and Service Interoperability.* We tentatively conclude that one criterion in any adequate substitute test that we adopt should be that the carrier demonstrates that its replacement service or the alternative services available from other providers in the relevant service area allow for as much or more interoperability of both voice and non-voice devices, or newer technology-based equivalent devices, as the service to be retired. We seek comment on this tentative conclusion, as well as possible alternatives. To the extent commenters oppose adoption of such a requirement, they should identify with specificity their reasons and explain how we still can ensure that consumers are not harmed by the proposed discontinuance.

23. Certain commenters profess to be confused about what functionalities consumers consider to be essential components of their legacy service. However, the record is already replete with examples of such devices and services. Indeed, AT&T acknowledged in its Proposal for Wire Center Trials that a variety of such third-party devices and services are ''vitally important to its customers.'' And consumer response to Verizon's attempts to use its VoiceLink service as a replacement service for its damaged wireline service in the wake of Super Storm Sandy can leave no doubt regarding what consumers believe to be essential service features. Moreover, the CTC Report contains a discussion regarding the use of various technology standards to allow for ongoing interoperability. According to CTC Technology and Energy (CTC): ''Despite this diversity, the majority of non-voice devices conform to a standard modem technology, such as v.32, v. 34, v.42bis, v.44, v.90, and v.92. Even where a truly proprietary device is used, the signaling and communications and protocol is similar enough to a standard modem that a test of a range of standards should be close enough to determine whether many devices will work on an IP-transitioned line.'' CTC also notes that while older dial-up modems and fax machines fail to transmit properly over VoIP devices, this problem can be mitigated: ''Technology complying with the ITU T.38 standard can mitigate this issue by allowing the VoIP ATA [analog telephone adapter] to decode or 'read the fax or modem signal, transmit the contents to the VoIP device at the far end as IP packets, and re-encode it for the fax or modem at the receiving location.''

24. How should we measure the level of interoperability? Should we require that the service conform to standard modem technology and, if so, how should we define that phrase for

purposes of this criteria? Should we require that any VoIP device used by the network comply with the ITU T.38 standard, as proposed by CTC, or to some other standard? To what extent should we consider consumer trends in evaluating what third-party devices or services a substitute or alternative service should be required to support? Are there other ways in which to ensure the interoperability of third-party devices and services? ADT proposes that we adopt a rule governing the adoption of Managed Facilities-Based Voice Network (MFVN) standards, which it asserts have been used to ensure the continued interoperability of alarm monitoring systems during and after the transition to IP networks. We seek comment on whether the MFVN standards should play a role in our evaluation of the interoperability criteria or, in the alternative, on what role if any it should play in our legal framework for technology transitions. Lastly, we tentatively conclude that functionalities ''in development'' for a replacement service at the time a carrier submits a section 214(a) discontinuance application will not be considered in evaluating the adequacy of the replacement service. We seek comment on this tentative conclusion.

25. *Service for Individuals with Disabilities.* The importance of ensuring that consumers with disabilities can utilize assistive technologies over communications networks is indisputable. There are several possible areas of impact of the transition on people with disabilities, such as (1) degradation of voice service quality that may compromise the ability of users who are hard of hearing to engage in a telephone conversation, and (2) incompatibility of remote transmission technologies over IP-based networks used for the provision of captioning on television or Internet-based video programming. As we noted above, one purpose of adopting criteria for evaluating the adequacy of substitute services is to ensure consumer protection. We tentatively conclude that one criterion in any adequate substitute test that we adopt should be that the carrier demonstrates that its replacement service or the alternative services available from other providers allow at least the same accessibility, usability, and compatibility with assistive technologies as the service being discontinued. We seek comment on this tentative conclusion, as well as possible alternatives. To the extent that people with disabilities must transition to new equipment, we seek comment on what is needed to reduce the burden of obtaining such equipment, particularly for those who do not qualify for existing state and federal equipment distribution programs and for those who are replacing devices not covered by equipment distribution programs (such as individuals with medical devices that are incompatible with IP service). Should we require carriers seeking to discontinue existing services in such contexts to include in their Section 214 applications information regarding the availability of IP-enabled devices that can also be distributed to selected and qualifying recipients under applicable state and federal programs? One commenter noted its ''understanding that technology transitions can be made to properly function with legacy assistive technology devices (*e.g.*, TTY terminals) through appropriate network software modifications, and/or through the general availability of IP-enabled devices that can also be distributed to selected and qualifying recipients under applicable state and federal programs.'' Is this correct?

26. We note that as TDM networks are discontinued in favor of IP-based networks, there is an opportunity to implement IP-based real time text to replace TTY text services, as the key functionalities of both services are similar. We seek comment on whether we should require the implementation of real time text over IP networks and whether we should set an end date for the termination of TTY text services. We also seek comment on the appropriate length of a transition period during which both TTY text services and IP-based real time text would be available. We ask commenters to describe what IP-based real time text service would look like, including applicable standards, and to explain how it will be implemented. In response to the -NPRM, some commenters assert that accessibility is currently the subject of an industry-wide proceeding and thus should not be addressed ''ad hoc'' in this proceeding. We tentatively conclude, however, that we should adopt a standard regarding compatibility with assistive technologies for purposes of evaluating discontinuance applications. We seek comment on this tentative conclusion. We also seek comment on the appropriate timelines for issuing notices that existing services will be discontinued, and that new services may not be compatible with certain equipment. We further seek comment on the means of issuing such notices to ensure effective communication to the full community of people with disabilities.

27. Although we acknowledge the possible impact that the transition to IP networks may have on people with disabilities, we also recognize an opportunity to implement high definition voice (HD voice) service over IP networks. HD voice would be especially beneficial for particular consumers who are hard of hearing to be able to better understand conversations over the telephone, thereby improving accessibility of the network to such consumers and potentially reducing their reliance on intermediary relay services such as captioned telephone service (CTS) and IP captioned telephone service (IP CTS) in favor of mainstream forms of communication. We therefore propose to require providers of IP networks to include HD voice as a feature for users with disabilities and seek comment on our proposal. We ask commenters to discuss timetables for the implementation of HD voice. Lastly, although speech recognition technologies that can accurately convert speech to text are still under development, we seek comment on the state of development of such technologies, which can also assist in the development of an all-inclusive network that will allow users to migrate away from the use of CTS and IP CTS in favor of mainstream forms of communication. In particular, we ask commenters to address the technical barriers to the development of accuracy for such technologies and the length of time that it is expected to take.

28. *PSAP and 9-1-1 Service.* The ability of consumers to contact 9-1-1 and reach the appropriate Public Safety Answering Point (PSAP) and for that PSAP to receive accurate location information for the caller is of the utmost importance. We therefore tentatively conclude that one criterion in any adequate substitute test that we adopt should be that the carrier demonstrates that a substitute service offered by the requesting carrier or alternative services available from other providers in the relevant service area complies with applicable state, Tribal, and federal regulations regarding the availability, reliability, and required functionality of 9-1-1 service. We seek comment on this tentative conclusion as well as any possible alternatives. Specifically, should we base our evaluation on whether substitute services merely comply with any 9-1-1 regulations applicable to such services, or whether they provide as good—or better—9-1-1 functionality as the service(s) they replace? For example, would a fixed wireless service that complies with wireless 9-1-1 automatic

location information (ALI) requirements be an adequate substitute for a traditional landline service that provides ALI to PSAPs at the street-address level, or would such a substitution be inadequate? Would a VoIP service that will not function during a loss of commercial power, or that provides only a limited amount of battery backup for CPE, serve as an adequate substitute to reach 9-1-1 in an emergency? What other factors should we consider for residential services? Further, what considerations should be applied to discontinuance of 9-1-1 network services and components, such as trunks and selective routers, that support the capability of individual consumers to effectively reach 9-1-1? We observe that, without ensuring adequate service to PSAPs, residential 9-1-1 service could be negatively affected.

29. Certain commenters expressed concern that questions regarding 9-1-1 service are being addressed in other proceedings and thus should not be addressed here. We note, however, that our *2014 Policy Statement and Notice of Proposed Rulemaking* on 9-1-1 governance and accountability proposed only that ''covered 911 service providers that seek to discontinue, reduce, or impair existing 911 *service in a way that does not trigger already existing authorization requirements* should be required to obtain Commission approval.'' The Commission further stated that ''[w]e do not . . . intend to create duplicative obligations for entities that are already subject to section 214(a) and associated authorization requirements'' and that any new requirement for covered 9-1-1 service providers ''would apply only when entities seeking to discontinue, reduce, or impair existing 911 service are not already required to obtain approval under other existing Commission rules.'' Accordingly, we disagree that our proposal here to consider access to 9-1-1 as a criterion in our section 214 analysis would duplicate or conflict with additional measures proposed in other proceedings. Although the issues are related and reflect our overarching goal of ensuring that all Americans have reliable access to 9-1-1, we tentatively conclude that the issues raised here with respect to adequate substitution are separate from those under consideration in the 9-1-1 governance proceeding and should therefore proceed independently. We seek comment on this tentative conclusion.

30. *Communications Security.* In the -NPRM, the Commission observed that IP technologies ''can create the potential for network security risks through the exposure of network monitoring and control systems to end users.'' We sought comment ''on whether the Commission should require demonstration, as part of the section 214 discontinuance process, that any IP-supported networks or network components offer comparable communications security, integrity, and reliability.'' Several commenters expressed support for our considering network security as part of this process. We now tentatively conclude that one criterion in any adequate substitute test that we adopt should be that the carrier demonstrates in its application that a substitute service offered by the requesting carrier or alternative services available from other providers in the relevant service area offer comparably effective protection from network security risks. We believe that this approach would adequately protect the interests of consumers, while preserving flexibility for providers to tailor security risk management practices to their unique needs and circumstances. We seek comment on this tentative conclusion, as well as possible alternatives. What factors should we consider in assessing whether a substitute service offers comparably effective protection from network security risks? How should we define the appropriate category of ''network security risks'' for this purpose? Should we consider factors such as those Public Knowledge identifies in its comments? For instance, should we consider the extent to which a proposed substitute service exposes users to a higher risk of spoofed calls or ''man-in-the-middle'' attacks (*e.g.,* interception of fixed wireless calls using an ''IMSI catcher'') that compromise a user's ability to communicate or put personal information at risk? An ''IMSI catcher'' is an eavesdropping device, essentially a fake mobile tower that intercepts cellphone calls and can be used to listen to the cellphone owner's calls, read their texts, and track their movements. Should we consider the vulnerability of a proposed substitute service to physical risks (*e.g.,* weather damage) or human risks (*e.g.,* insider threats)?

31. Would it be sufficient for an applicant to demonstrate that the provider of the substitute service has engaged in implementation of the National Institute for Standards and Technology (NIST) Cybersecurity Framework (NSF) or an equivalent risk management construct? Should an applicant also address the provider's participation in the Communications Sector Coordinating Council or other public-private initiatives to promote more secure communications networks? Should an applicant provide more detailed information regarding the provider's cyber risk management practices in general, its implementation of relevant industry best practices, or its engagement with fellow providers to address shared risks? To what extent may the Commission reasonably expect that applicants to discontinue service are in a position to provide information about the network security risks of an unaffiliated provider of a substitute service? Should the degree of detail required from an applicant depend on whether the provider of a proposed substitute service is affiliated with the applicant? What additional information, if any, would assist the Commission in evaluating the security protections afforded by a proposed substitute service?

32. *Service Functionality.* Consumers have come to expect that they may use their phone service to make calls anywhere to anyone, regardless of the network used by the call recipient. This is not always the case with other types of voice service. They also have come to expect that their phone service provides certain functionalities, such as caller ID, transport of touch tones, and the ability to make calling card, dial-around, collect, or third-party number billed calls, as well as certain non-call functionalities. Enterprise customers also rely on the functionalities available from the services they purchase. We tentatively conclude that one criterion in any adequate substitute test that we adopt should be that the carrier must demonstrate in its Section 214 application that any replacement offered by the requesting carrier or alternative service available from other providers in the relevant service area permit similar service functionalities as the service for which the carrier seeks discontinuance authority. We seek comment on this tentative conclusion, as well as other possible alternatives. We seek comment as well on whether similar functionalities as those provided by legacy services, such as medical alert monitors and credit card processing, are feasible with new technologies and whether new end-user equipment would be required.

33. How should ''service functionality'' be defined? We recognize that we need additional information on this issue. How can we ensure that it will be a technology neutral evaluation? Should we require that if, for instance, a voice service with caller ID is discontinued, a replacement service or alternative service offered by another provider in the relevant service area

must include the option of caller ID? Or if facsimile machines can be used over the existing service, a replacement or other alternative service must afford similar interoperability? Or if a data service is to be discontinued, such capability, or something that performs the same function, must be otherwise available? How do we measure the scope of ''service functionality''? How can carriers gather the information needed regarding functionalities consumers consider to be essential components of their service? How can they gather ''service availability'' information with respect to alternative services offered by other providers in the relevant service area? And how does this proposed criterion correlate to our statement in the *Declaratory Ruling* that the relevant task in defining the scope of a carrier's service ''is to identify the service the carrier actually provides to end users'' and that ''[i]n doing so, the Commission takes a functional approach that evaluates the totality of the circumstances''?

34. *Coverage.* Inherent in our longstanding evaluation of the existence, availability, and adequacy of alternative services is the question of whether the substitute service is available to the persons to whom the discontinued service has been available. Our evaluation of the nature of the substitute service is for naught if the service simply is not available to the affected customers. We therefore tentatively conclude that one criterion in any adequate substitute test that we adopt should be that the carrier demonstrates in its application that the substitute service will remain available in the affected service area to the persons to whom the discontinued service had been available. We seek comment on this tentative conclusion. Should we adopt a *de minimis* threshold by percentage of prior population or geographic area reached for which loss of coverage is tolerable?

35. Public Knowledge suggests that we focus specifically on wireline coverage when evaluating the adequacy of the substitute service. We recognize that as illustrated by consumer response to Verizon's attempt to replace the wireline network destroyed by Super Storm Sandy with its wireless VoiceLink service, a significant portion of consumers view coverage equivalent to that traditionally found in wireline telephony as essential. And commenters noted the importance of the availability of wireline coverage to rural consumers, for whom there tend to be fewer available options. Should we look differently at technologies that offer the level of coverage traditionally afforded by wireline telephony from those that do not, and if so how?

2. Consumer Education

36. As discussed in the *Order* above, we remain concerned about the level of consumer education and outreach around technology transitions generally. A discontinuance of an existing service on which customers presently rely creates an especially great need for customer education. It was for that reason that the January 2014 *Technology Transitions Order,* the Commission set forth an expectation that providers conducting any experiment would ''engage in customer outreach and education efforts.'' Accordingly, we propose to require that part of the evaluation of a section 214 application to discontinue a legacy retail service should include whether the carrier has an adequate customer education and outreach plan. We seek comment on this proposal, and also on whether there are particular metrics and guidance the Commission can and should provide concerning what would constitute an adequate education and outreach plan. We also seek comment on how best to work with the state commissions and Tribal governments on such education and outreach plans.

3. Other Issues

37. *Other Criteria.* Based on the record received to date, we tentatively conclude that we should not adopt the following proposals by commenters to include the following criteria in the section 214 process: (1) Operability during emergencies, including power outages, because this issue is being addressed by the Commission through separate means; (2) adequate transmission capability, because end users and carriers should be free to reach agreement on services at a wide range of transmission capacities; (3) affordability, because the evaluation process in this context should focus on the nature of the service and because cost is not part of the equation in determining whether an available alternative service constitutes an adequate substitute for the service sought to be discontinued; and (4) connection persistence, because the Commission today takes other action to address that issue. We recognize the concerns about the often increased costs associated with a transition from a TDM-based service to an IP-based service. And we take such concerns into account when evaluating section 214 applications for discontinuance authority. We seek comment on these tentative conclusions. Could any of these criteria be reformulated in such a way that would warrant adoption? Should we adopt any other criteria not listed above?

38. *Rural LEC Exemption.* If we determine that it is appropriate to adopt any or all of the proposed criteria, should we include an exemption for some or all of them for rural LECs, as proposed by TCA? If so, should that exemption apply to all criteria? Or should the exemption apply to only certain criteria and, if so, which ones? And what criteria would a carrier have to meet to qualify for such an exemption? Would it be appropriate to apply it to LECs with fewer than two percent of the Nation's subscriber lines in the aggregate nationwide? Would some other measure be appropriate? We note that certain commenters assert that rural LECs should be exempt from any criteria for evaluating substitute services because of the often very limited options available in rural locales. Other commenters are concerned about any such exemption given the relative scarcity of alternatives available in many rural areas.

39. *Market Power Analysis.* NASUCA proposes that, when determining the adequacy of substitutes, it would be appropriate to use the ''traditional antitrust formula for determining substitutability, used in the *Qwest Phoenix Forbearance Order.''* In the *Qwest Phoenix Forbearance Order,* the Commission evaluated Qwest's petition for forbearance using a market power analysis that is similar to that used by the Commission in many prior proceedings and by the Federal Trade Commission and the Department of Justice in antitrust reviews. Under this approach, the Commission ''separately evaluate[d] competition for distinct services, for example differentiating among the various retail services purchased by residential and small, medium, and large business customers, and the various wholesale services purchased by other carriers.'' The Commission also considered ''how competition varie[d] within localized areas in the [relevant market].'' To what extent would this market power analysis help inform an evaluation of whether adequate substitutes exist? What specific parts of the market power analysis would be beneficial when determining whether adequate substitutes exist?

B. Section 214(a) Discontinuance Process

40. In the -NPRM, the Commission sought comment on whether it should revise section 63.71 of its rules, which establishes the procedures that carriers must follow to obtain section 214(a)

approval for discontinuances, including notification to affected customers. We noted our effort to strike the right balance between providing carriers the ability to schedule TDM discontinuance as part of their transition plans, and the need for carrier-customers to plan for the transition as well as prepare their end user customers for possible changes to offerings that depend on the discontinuing carrier's last-mile inputs. We received some comment in response to the NPRM regarding what parties believe is a sufficient notice period. In response to the NPRM, XO and Birch et al. recommend requiring that carriers provide advance notice of discontinuance before filing an application with the Commission, while the Competitive Carriers Association recommends a longer discontinuance process. AT&T alternatively argues that any expanded notice is not necessary because the Commission has the option to remove a section 214 application from streamlined processing.

41. We find we need a more complete record on this issue before determining whether to adopt any additional modifications to Section 63.71 of our rules. Accordingly, we seek further comment on whether we should update Section 63.71, including the costs and benefits of any changes. Section 63.71(b) states that a carrier shall file its 214 application ''on or after the date on which notice has been given to all affected customers.'' Section 63.71(d) provides that applications shall be automatically granted on the 31st day after filing an application for non-dominant carriers and the 60th day for dominant carriers, unless the Commission notifies the applicant that the grant will not be automatically effective. Should we update the earliest date by which the Commission may grant approval, either for dominant or non-dominant carriers or for both? We emphasize we wish to maintain a streamlined process for carriers that satisfy our existing criteria for such treatment and the adequate substitutes proposal discussed above if adopted. Should we require advance notice of discontinuance or are the existing procedures in section 63.71 sufficient? As noted above, parties recommend various revisions to the notice for discontinuance of TDM-based services used as wholesale inputs. While we seek comment on those proposals, we also seek comment on whether to align timing for notices of discontinuance with notices of copper retirement. In the *Order,* we extend the notice of copper retirement to interconnecting carriers and non-residential retail customers to at least 180 days and the notice period to residential retail customers to at least 90 days based upon our conclusion that these time periods strike the right balance between the planning needs of competitive carriers and customers and the need for incumbent LECs to be able to move forward in a timely fashion with their business plans. We seek comment on whether this same rationale applies for discontinuances of TDM-based service to carrier-customers that may need to modify their end-user contracts to accommodate the discontinuance. We also seek comment on whether modification of section 63.71 to extend notice would conflict with any other Commission rules and procedures.

42. We also seek comment on whether we should revise our rules to explicitly allow email-based notice or other forms of electronic or other notice of discontinuance to customers. We recognize that email may be the preferred method of notice for both the carriers seeking discontinuance and consumers. We seek comment as to whether there are efficiencies of electronic distribution such that we should make a rule change to include it as a method of delivery. Would email or other electronic forms of notice harm or disadvantage any end users? Should alternative forms of notice be permissible only with customer consent, and if so what should be permissible methods to obtain consent? Are there factors the Commission should take into consideration for certain groups of customers, such as accessible formats? Are there any other issues we should consider to ensure all affected consumers receive adequate notice? For example, how should notice be provided when consumers lack access to broadband?

C. Section 214(a) Discontinuance Notice to Tribal Governments

43. In the *Order* above, we extend notice of copper retirements to include notice to the public utility commission and the governor of the state in which the retirement will occur and to the Secretary of Defense, consistent with our current section 214 discontinuance rules. We also extend notice of copper retirements to affected Tribal governments so they may prepare for network changes affecting their communities. Here, we tentatively conclude that the same justification applies in the section 214 context of a discontinuance, reduction or impairment of a service. Tribal governments should be in a position to prepare and address any concerns from consumers in their Tribal communities. We also tentatively conclude that it is appropriate to make the notice requirements for section 214 discontinuance applications and copper retirement network changes consistent, as both involve changes to the Nation's communications networks and affect different groups of consumers. We therefore seek comment on including notice to Tribal governments as part of our section 214 discontinuance application process. Specifically, we seek comment on our tentative conclusion that we should revise rule 63.71(a) to include notice to Tribal governments in order to make our copper retirement and service discontinuance notice requirements consistent. Rule 63.71 requires that applications to discontinue, reduce or impair service to a community provide notice to the ''Governor of the State in which the discontinuance, reduction, or impairment of service is proposed, and also to the Secretary of Defense.'' We tentatively conclude that we should include any Tribal Nations in the state in which discontinuance, reduction, or impairment of service is proposed regardless of the reason for the discontinuance. To be clear, the proposed notice requirement would be permanent (barring future Commission action) and would not terminate with the reasonably comparable wholesale access condition at the conclusion of the Commission's special access proceeding. We seek comment on this proposal, including its costs and benefits. We seek comment on whether a different or limited scope of notice to Tribal governments would be appropriate. We seek comment on our proposal and if there are any legal, regulatory or procedural impairments to our extension of notice to Tribal governments. Are there any other issues of notice, such as form or content that are unique to Tribal governments the Commission should consider?

D. Copper Retirement Process—Good Faith Communication Requirement

44. In the Order above, we eliminate the objection procedures previously available to interconnecting carriers upon receipt of a copper retirement notice and instead adopt a requirement that incumbent LECs work with interconnecting entities in good faith to ensure that those entities have the information needed to allow them to accommodate the transition with no disruption of service to their end user customers. Should we provide specific objective criteria by which to evaluate this good faith requirement to ensure that all parties are aware of their respective rights and obligations? And

what recourse should be available to an interconnecting entity who believes that an incumbent LEC is not acting in good faith? If the Commission finds an incumbent LEC has failed to fulfill the good faith communication requirement, should the retirement be postponed by an additional 90 days (beyond the 180-day mark)? Are there limitations on how much and what types of information an incumbent LEC should be required to provide to an interconnecting entity?

E. Termination of Interim Reasonably Comparable Wholesale Access Condition

45. As discussed above, to support the current technology transitions, we seek to avoid delays due to diminished competition by imposing light-handed regulation through the interim reasonably comparable wholesale access condition. The Commission will have adopted and implemented the rules and policies that end the reasonably comparable wholesale access interim rule when: (1) It identifies a set of rules and/or policies that will ensure rates, terms, and conditions for special access services are just and reasonable; (2) it provides notice such rules are effective in the **Federal Register**; and (3) such rules and/or policies become effective. We recognize, however, that the special access proceeding will not address the status of commercial wholesale platform services such as AT&T's Local Service Complete and Verizon's Wholesale Advantage that include incumbent LEC loops, transport and local circuit switching.

46. We accordingly seek comment on how to facilitate continuation of commercial wholesale platform services, which we believe serve an important business need for enterprises that seek, among other things, ''the ability to obtain service from a single supplier at their disparate retail locations nationwide.'' Granite explains that it and other similarly-situated competitive carriers ''serve multi-location business customers that have modest demands for voice services at each location by combining value-added services with underlying TDM-based telephone services purchased at wholesale from incumbent LECs.'' Granite recently submitted a study prepared by Charles River Associates that finds, based on Granite's own estimate of the per-line added value that its service provides to customers, that loss of wholesale access to incumbents' voice services would result in customer harm of between $4.443 and 10.168 billion per year. We note that this study is additionally premised on the expectation that absent regulatory action by the Commission, wholesale arrangements between companies like Granite and incumbent providers will not occur. We seek comment on that underlying assumption and on the incentives of incumbents to enter into, or not enter into, IP-based wholesale arrangements for voice service. We recognize that incumbents are currently offering such commercial arrangements in TDM on a voluntary basis and we encourage such arrangements and hope they continue to be standard wholesale offerings, including in IP. Verizon, for example, points out that ''[c]ommercial UNE–P replacement products are market-based responses to competitive pressures, and in the six wire centers that Verizon migrated to all-fiber facilities, Verizon provided Wholesale Advantage—[Verizon's] UNE–P commercial replacement product—onto the new fiber facilities with no change in rates, terms, or conditions.'' We further recognize the benefits of agreements reached through market negotiations.

47. However, to the extent that the Commission finds that wholesale arrangements for voice service are unlikely to occur in the future on a marketplace basis, would it be appropriate for the Commission to require reasonably comparable wholesale access for commercial wholesale platform services for a further interim period beyond completion of the special access proceeding? If the Commission does extend this requirement, for how long should it be extended and should its substance be revised? Should the timeframe be connected to any pending Commission proceeding?

III. Procedural Matters

A. Ex Parte Presentations

48. This proceeding shall continue to be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Filing Instructions

49. Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed by paper or by using the Commission's Electronic Comment Filing System (ECFS).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Because more than one docket or rulemaking number appears in the caption of this proceeding, filers must 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 a.m. to 7 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.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

C. Paperwork Reduction Act Analysis

50. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

D. Initial Regulatory Flexibility Analysis

51. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the FNPRM contained herein. The analysis is found below. We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the FNPRM and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

A. Need for, and Objectives of, the Proposed Rules

52. Building on the record developed in response to the NPRM, in the FNPRM the Commission proposes specific criteria for the Commission to use in evaluating the adequacy of substitute services in connection with applications to discontinue retail services pursuant to section 214 of the Communications Act of 1934, as amended. The Commission believes all stakeholders will benefit from an additional round of comments focused on its specific proposals. Adopting specific criteria will enable the Commission to ensure that it can carry out its statutorily-mandated responsibilities in a technology-neutral manner and provide clear up-front guidance that will minimize complications when carriers seek approval for large-scale discontinuances. The Commission also seeks further comment on what constitutes a sufficient notice period for affected customers in connection with a section 214 discontinuance application and whether it should revise its rules to explicitly allow email-based notice or other forms of electronic or other notice of discontinuance to customers. And the Commission seeks comment on including notice to Tribal governments as part of the section 214 discontinuance application process. The Commission also seeks comment on defining what constitutes ''good faith'' in connection with the requirement adopted in the Order that incumbent LECs act in good faith to provide interconnecting entities with information needed in order to accommodate planned copper retirements. Finally, the Commission seeks comment on how to facilitate continuation of commercial wholesale platform services after technology transitions.

53. First, the FNPRM seeks additional comment on possible criteria against which to measure ''what would constitute an adequate substitute for retail services that a carrier seeks to discontinue, reduce, or impair in connection with a technology transition (*e.g.,* TDM to IP, wireline to wireless)'' in order ''to ensure that we protect consumers, competition, and public safety.'' The Commission continues to believe that establishing criteria for evaluating the adequacy of replacement services will benefit industry and consumers by providing certainty. Because the record as developed thus far does not provide sufficient clarity to allow the Commission to fully establish clear criteria, the Commission seeks additional comment on specific proposals so that it has the benefit of more targeted input in order to adopt rules that are carefully tailored to address the issues presented by the ongoing technology transitions process and that will stand the test of time. The FNPRM also seeks comment on effective ways to ensure compliance with the criteria and tentatively proposes requiring an officer or other authorized public representative to certify the accuracy of the statements in the application regarding the criteria. The availability of adequate substitute services is one of five factors the Commission looks at in evaluating section 214 discontinuance applications under existing precedent, to be balanced against the other factors in determining whether the public convenience and necessity will be adversely affected by discontinuance of the service at issue.

54. Second, the FNPRM seeks additional comment on whether and how the Commission should adopt modifications to Section 63.71 of our rules, including the costs and benefits of any changes. In the NPRM, the Commission sought comment on whether it should revise section 63.71 of its rules, which establishes the procedures that carriers must follow to obtain section 214(a) approval for discontinuances, including notification to affected customers and the earliest dates by the Commission may grant approval of discontinuance applications. Although some entities filed comments, in the FNPRM the Commission determines that we need a more complete record on this issue. The FNPRM also seeks more general comment on whether it should revise its rules to explicitly allow email-based notice or other forms of electronic or other notice of discontinuance to customers and on whether there are factors the Commission should take into consideration for certain groups of customers, such as accessibility formats, or any other issues that the Commission should consider to ensure that all affected consumers receive adequate notice.

55. Third, the FNPRM tentatively concludes that the Commission should extend the notice requirements for discontinuances, reductions, or impairments of service to affected Tribal governments and seeks comment on including notice to Tribal governments as part of our section 214 discontinuance application process. Specifically, the FNPRM seeks comment on the tentative conclusion that the Commission should revise section 63.71(a) of its rules to include notice to Tribal governments in order to make its copper retirement and service discontinuance notice requirements consistent. The FNPRM tentatively concludes that the Commission should include any Tribal Nations in the state in which discontinuance, reduction, or

impairment of service is proposed regardless of the reason for the discontinuance, and seeks comment on this, including its costs and benefits. Finally, the FNPRM seeks comment on whether a different or limited scope of notice to Tribal governments would be appropriate and whether there are any other issues of notice, such as form or content, unique to Tribal governments that the Commission should consider.

56. Fourth, the FNPRM notes that, in the attached Report and Order, the Commission eliminates the objection procedures previously available to interconnecting carriers upon receipt of a copper retirement notice and instead adopts a requirement that incumbent LECs work with interconnecting entities in good faith to ensure that those entities have the information needed to allow them to accommodate the transition with no disruption of service to their end user customers. The FNPRM seeks comment on whether the Commission should provide specific objective criteria by which to evaluate this good faith requirement to ensure that all parties are aware of their respective rights and obligations. The FNPRM also seeks comment on what recourse should be available to an interconnecting entity who believes that an incumbent LEC is not acting in good faith and whether there are limitations on how much and what types of information an incumbent LEC should be required to provide to an interconnecting entity.

57. Finally, the FNPRM notes that to support the current technology transitions, we seek to avoid delays due to diminished competition by imposing light-handed regulation through the interim reasonably comparable wholesale access condition. The FNPRM seeks comment on how to facilitate continuation of commercial wholesale platform services, which the Commission believes serve an important business need for enterprises that seek, among other things, ''the ability to obtain service from a single supplier at their disparate retail locations nationwide.'' The Commission seeks comment on whether to the extent that the Commission finds that wholesale arrangements for voice service are unlikely to occur in the future on a marketplace basis, it would be appropriate for the Commission to require reasonably comparable wholesale access for commercial wholesale platform services for a further interim period beyond completion of the special access proceeding and, if so, for how long.

B. Legal Basis

58. The proposed action is authorized under Sections 1, 2, 4(i), 214, and 251 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 152, 154(i), 214, and 251.

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

59. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

60. The majority of our proposals in the FNPRM will affect obligations on incumbent LECs. Other entities, however, that choose to object to network change notification for copper retirement under our new proposed rules may be economically impacted by the proposals in this FNPRM.

1. Total Small Businesses

61. A small business is an independent business having less than 500 employees. Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA. Affected small entities as defined by industry are as follows.

2. Wireline Providers

62. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

63. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by rules adopted pursuant to the FNPRM.

64. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the FNPRM.

65. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

66. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a

business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and other local service providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

67. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by rules adopted pursuant to the FNPRM.

68. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the FNPRM.

3. Wireless Providers

69. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of wireless firms are small.

70. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

4. Cable Service Providers

71. *Cable and Other Program Distributors.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 3,188 firms in this category that operated for the entire year. Of this total, 2,694 firms had annual receipts of under $10 million, and 504 firms had receipts of $10 million or more. Thus, the majority of these firms can be considered small and may be affected by rules adopted pursuant to the FNPRM.

72. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data shows that there are 660 cable operators in the country. Of this total, all but eleven cable operators nationwide are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

5. All Other Telecommunications

73. The Census Bureau defines this industry as including ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' The SBA has developed a small business size standard for this category; that size standard is $32.5 million or less in average annual receipts. According to Census Bureau data for 2007, there were 2,383 firms in this category that operated for the entire year. Of these, 2,346 firms had annual

receipts of under $25 million and 37 firms had annual receipts of $25 million or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

74. The FNPRM proposes a number of rule changes that will affect reporting, recordkeeping, and other compliance requirements. Each of these changes is described below.

75. The FNPRM seeks comment on specific criteria for the Commission to use in evaluating the adequacy of substitute services in connection with applications to discontinue service pursuant to section 214, specifically seeking comment on possible criteria for evaluating the adequacy of replacement services. The FNPRM also seeks comment on effective ways to ensure compliance with the criteria and tentatively proposes requiring an officer or other authorized public representative to certify the accuracy of the statements in the application regarding the criteria. The FNPRM also seeks comment on whether and how the Commission should adopt modifications to section 63.71 of our rules, including notification to affected customers, and tentatively concludes that the Commission should extend the notice requirements for discontinuances, reductions, or impairments of service to affected Tribal entities. Further, the FNPRM seeks general comment on whether it should revise its rules to allow email-based notice or other forms of electronic or other notice of discontinuance to customers and on whether there are factors the Commission should take into consideration for certain groups of customers, such as accessibility formats, or any other issues that the Commission should consider to ensure that all affected consumers receive adequate notice. Additionally, the FNPRM eliminates the objection procedures previously available to interconnecting carriers upon receipt of a copper retirement notice and instead adopts a requirement that incumbent LECs work with interconnecting entities in good faith to ensure that those entities have the information needed to allow them to accommodate the transition with no disruption of service to their end user customers. The FNPRM seeks comment on what recourse should be available to an interconnecting entity who believes that an incumbent LEC is not acting in good faith and whether there are limitations on how much and what types of information an incumbent LEC should be required to provide to an interconnecting entity. Finally, the Commission seeks comment on how to facilitate continuation of commercial wholesale platform services after technology transitions.

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

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

77. The FNPRM seeks comment on each of its proposed approaches and specifically seeks additional proposals of possible criteria for evaluating the adequacy of replacement services, input on effective ways to ensure compliance with proposed criteria, and comment on whether and how the Commission should adopt modifications to section 63.71 of our rules, including notification to affected customers. The FNPRM also seeks general comment on whether: (1) It should revise its rules to allow email-based notice or other forms of electronic or other notice of discontinuance to customers; (2) there are factors the Commission should take into consideration for certain groups of customers, such as accessibility formats; and (3) there are any other issues that the Commission should consider to ensure that all affected consumers receive adequate notice. And the FNPRM seeks comment on whether it should include Tribal governments in its notice requirements for section 214(a) discontinuance applications. The FNPRM also seeks comment on what recourse should be available to an interconnecting entity who believes that an incumbent LEC that is retiring copper is not acting in good faith to ensure that interconnecting carriers have the information they need, and whether there are limitations on how much and what types of information an incumbent LEC should be required to provide to an interconnecting entity. Finally, the Commission seeks comment on how to facilitate continuation of commercial wholesale platform services after technology transitions.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

78. None.

IV. Ordering Clauses

79. Accordingly, *it is ordered* that, pursuant to Sections 1–4, 201, 214, 251, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 214, 251, 303(r), this Report and Order, Order on Reconsideration, and FNPRM of Proposed Rulemaking *are adopted.*

80. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order and FNPRM of Proposed Rulemaking, including the Final and Initial Regulatory Flexibility Analyses, and this Order on Reconsideration to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 51

Communications, Communications common carriers, Defense communications, Telecommunications, Telephone.

47 CFR Part 63

Cable television, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 63 as follows:

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

■ 1. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

■ 2. Amend § 63.71 by revising paragraph (a) introductory text and (d), to read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers.

* * * * *

(a) The carrier shall notify all affected customers of the planned discontinuance, reduction, or impairment of service and shall notify and submit a copy of its application to the public utility commission and to the Governor of the State in which the discontinuance, reduction, or impairment of service is proposed, to any federally recognized Tribal Nations with authority over the Tribal lands in which the discontinuance, reduction, or impairment of service is proposed, and also to the Secretary of Defense, Attn. Special Assistant for Telecommunications, Pentagon, Washington, DC 20301. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice. Notice shall include the following:

* * * * *

(d) The application to discontinue, reduce, or impair service, if filed by a domestic, non-dominant carrier, shall be automatically granted on the 31st day after its filing with the Commission without any Commission notification to the applicant unless either:

(1) The Commission has notified the applicant that the grant will not be automatically effective, or

(2) The applicant is subject to § 63.602 of this chapter and does not include with its application the certification specified in § 63.602(a) of this chapter. The application to discontinue, reduce or impair service, if filed by a domestic, dominant carrier, shall be automatically granted on the 60th day after its filing with the Commission without any Commission notification to the applicant unless either

(3) The Commission has notified the applicant that the grant will not be automatically effective, or

(4) The applicant is subject to § 63.602 of this chapter and does not include with its application the certification specified in § 63.602(a) of this chapter. For purposes of this section, an application will be deemed filed on the date the Commission releases public notice of the filing.

* * * * *

■ 3. Add § 63.602 to read as follows:

§ 63.602 Additional contents of applications to discontinue, reduce, or impair an existing retail service in favor of a retail service based on a newer technology.

(a) In order to remain eligible for automatic grant, any domestic carrier that seeks to discontinue, reduce, or impair an existing retail service in favor of a retail service based on a newer technology shall include with its application, in addition to any other information required, a certification that there is an adequate substitute service available for the service to be discontinued, reduced, or impaired and that the substitute service provides adequate:

(1) Network capacity and reliability;

(2) Service quality;

(3) Device and service interoperability, including interoperability with vital third-party services and devices;

(4) Service for individuals with disabilities, including compatibility with assistive technologies;

(5) PSAP and 9–1–1 service;

(6) Cybersecurity;

(7) Service functionality; and

(8) Coverage.

(b) Any domestic carrier that seeks to discontinue, reduce, or impair an existing retail service in favor of a retail service based on a newer technology that does not file the certification described in paragraph (a) of this section shall include with its application, in addition to any other information required, supporting evidence regarding the degree to which there is an adequate substitute or substitutes available for the service to be discontinued, reduced, or impaired, and supporting evidence regarding the degree to which the substitute service(s) provide adequate:

(1) Network capacity and reliability;

(2) Service quality;

(3) Device and service interoperability, including interoperability with vital third-party services and devices;

(4) Service for individuals with disabilities, including compatibility with assistive technologies;

(5) PSAP and 9–1–1 service;

(6) Cybersecurity;

(7) Service functionality; and

(8) Coverage.

(c) A certification pursuant to paragraph (a) of this section must:

(1) -Set forth a detailed statement explaining the basis for such certification;

(2) Be executed by an officer or other authorized representative of the applicant; and

(3) Meet the requirements of § 1.16 of this chapter.

[FR Doc. 2015–23623 Filed 9–24–15; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 80, No. 186

Friday, September 25, 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

Commodity Credit Corporation

Notice of Request for Revision of Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request a revision from the Office of Management and Budget (OMB) for a currently approved information collection process in support of the Foreign Market Development Cooperator (Cooperator) Program and the Market Access Program (MAP).

DATES: Comments on this notice must be received by November 24, 2015.

Additional Information or Comments: Contact Mark Slupek, Director, Program Operations Division, Foreign Agricultural Service, Room 6510, 1400 Independence Avenue SW, Washington, DC 20250, (202) 720–4327, fax: (202) 720–9361, email: *podadmin@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Foreign Market Development Cooperator Program and Market Access Program.

OMB Number: 0551–0026.

Expiration Date of Approval: February 29, 2016.

Type of Request: Revision of a currently approved information collection process. The Estimated Number of Respondents and Estimated Total Annual Burden on Respondents are decreasing.

Abstract: The primary objective of the Foreign Market Development Cooperator Program and the Market Access Program is to encourage and aid in the creation, maintenance, and expansion of commercial export markets for U.S. agricultural products through cost-share assistance to eligible trade organizations. The programs are a cooperative effort between CCC and the eligible trade organizations. Currently, there are about 64 organizations participating directly in the programs with activities in more than 100 countries.

Prior to initiating program activities, each Cooperator or MAP participant must submit a detailed application to the Foreign Agricultural Service (FAS) which includes an assessment of overseas market potential; market or country strategies, constraints, goals, and benchmarks; proposed market development activities; estimated budgets; and performance measurements. Prior years' plans often dictate the content of current year plans because many activities are continuations of previous activities. Each Cooperator or MAP participant is also responsible for submitting: (1) Reimbursement claims for approved costs incurred in carrying out approved activities, (2) an end-of-year contribution report, (3) travel reports, and (4) progress reports/evaluation studies. Cooperators or MAP participants must maintain records on all information submitted to FAS. The information collected is used by FAS to manage, plan, evaluate, and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds. Because the number of Participants in MAP and FMD has decreased slightly since 2012, the Estimated Number of Respondents and Estimated Total Annual Burden on Respondents are decreasing.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 hours per response.

Respondents: Non-profit agricultural trade organizations, state regional trade groups, agricultural cooperatives, state agencies, and commercial entities.

Estimated Number of Respondents: 64.

Estimated Number of Responses per Respondent: 68.

Estimated Total Annual Burden on Respondents: 85,304 hours.

Copies of this information collection can be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690–1578.

Request for Comments: Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to: Director, Program Operations Division, Foreign Agricultural Service, Room 6510, STOP 1042, 1400 Independence Avenue SW., Washington, DC 20250. Facsimile submissions may be sent to (202) 720–9361 and electronic mail submissions should be addressed to: *podadmin@fas.usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on September 18, 2015.

Suzanne Palmieri,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 2015–24394 Filed 9–24–15; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[Docket No. FCIC–15–0006]

Notice of Request for Renewal of a Currently Approved Information Collection

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Renewal of approval of an information collection; comment request.

SUMMARY: This notice announces a public comment period on the information collection requests (ICRs) associated with the Multiple Peril Crop Insurance.

DATES: Comments that we receive on this notice will be accepted until close of business November 24, 2015.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–15–0006, by any of the following methods:

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

• *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov,* including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number for this notice. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov*. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received for any 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 the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/#!privacyNotice*.

FOR FURTHER INFORMATION CONTACT: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Title: Multiple Peril Crop Insurance.

OMB Number: 0563–0053.

Expiration Date of Approval: January 31, 2016.

Type of Request: Renewal of a currently approved information collection.

Abstract: The information collection requirements for this renewal package are necessary for administering the Federal crop insurance program. Producers are required to report specific data when they apply for Federal crop insurance and report acreage, yields, and notices of loss. Insurance companies accept applications; issue policies; establish and provide insurance coverage; compute liability, premium, subsidies, and losses; indemnify producers; and report specific data to FCIC as required in Appendix III/M13 Handbook. Commodities for which Federal crop insurance is available are included in this information collection package.

FCIC is requesting the Office of Management and Budget (OMB) to renew the approval of this information collection for an additional 3 years.

The purpose of this notice is to solicit comments from the public concerning this information collection. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.,* permitting electronic submission of responses).

Estimate of Burden: The public reporting burden for this collection of information are estimated to average 0.76 of an hour per response.

Respondents/Affected Entities: Producers and insurance companies reinsured by FCIC.

Estimated Annual Number of Respondents: 590,750

Estimated Annual Number of Responses Per Respondent: 19.2

Estimated Annual Number of Responses: 11,331,829

Estimated Total Annual Burden on Respondents: 8,555,856

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed in Washington, DC, on September 21, 2015.

Brandon C. Willis,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2015–24413 Filed 9–24–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Yavapai Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yavapai Resource Advisory Committee (RAC) will meet in Prescott, Arizona. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub.L 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects.

DATES: The meeting will be held May 13, 2014 at 1:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Prescott Fire Center, 2400 Melville Drive, Prescott, Arizona.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Prescott Fire Center. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Debbie Maneely, RAC Coordiantor, by phone at 928–443–8130 or via email at *dmaneely@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://www.fs.usda.gov/main/prescott/workingtogether/advisorycommittees.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 5, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff

before or after the meeting. Written comments and requests for time for oral comments must be sent to Debbie Maneely, RAC Coordiantor, Prescott National Forest Supervisor's Office, 344 South Cortez Street, Prescott, Arizona 86301; or by email to *dmaneely@fs.fed.us,* or via facsimile to 928–443–8208.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: March 11, 2014.

Teresa A. Chase,

Forest Supervisor.

[FR Doc. 2015–24385 Filed 9–24–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–64–2015]

Foreign-Trade Zone (FTZ) 230—Piedmont Triad Area, North Carolina, Notification of Proposed Production Activity, Deere-Hitachi Construction Machinery Corporation, (Hydraulic Excavators), Kernersville, North Carolina

The Piedmont Triad Partnership, grantee of FTZ 230, submitted a notification of proposed production activity to the FTZ Board on behalf of Deere-Hitachi Construction Machinery Corporation (Deere-Hitachi), located in Kernersville, North Carolina. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 8, 2015.

The Deere-Hitachi facility is located within Site 30 of FTZ 230. The facility is used for the production of hydraulic excavators. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Deere-Hitachi from customs duty payments on the foreign-status components used in export production. On its domestic sales, Deere-Hitachi would be able to choose the duty rate during customs entry procedures that applies to finished and unfinished hydraulic excavators (duty-free) for the foreign-status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Plastic hoses/o-rings/seals; decals; rubber hoses not reinforced or otherwise combined with other materials with fittings; rubber hoses reinforced or otherwise combined only with textile materials; rubber hoses reinforced or otherwise combined with other material; v-belts; rubber floor mats/o-rings/seals/fittings; steel bolts/screws/nuts/spring washers/other washers/cotters/cotter pins/pins/stoppers/springs/tracks; steel parts comprised of pipe clamps, hose clamps, clips, caps and plugs and similar fasteners; steel catches; steel locks; engines; hydraulic cylinders; hydraulic motors; parts for cylinders and motors; pumps; compressors; air conditioner parts; fuel/oil filters; receiver-dryers used in air conditioning systems; air filters; parts of filters; excavator parts comprised of covers, shoes, booms, cabs, counterweights, side frames, brackets, large pins, links, and pipes; control valves; other valves; parts of valves; bushings; pulleys; swing bearings; gaskets made of metal sheeting; horns; alarms; sensors; battery relays; electrical switches; sockets; controllers; wire harnesses; and lighters (duty rates range from duty-free to 5.7%).

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 November 4, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: September 18, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–24451 Filed 9–24–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–36–2015]

Foreign-Trade Zone 122—Corpus Christi, Texas, Authorization of Production Activity, voestalpine Texas, LLC, Subzone 122T, (Hot Briquetted Iron), Portland, Texas

On May 22, 2015, the Port of Corpus Christi Authority, grantee of FTZ 122, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of voestalpine Texas, LLC, within Subzone 122T, in Portland, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (80 FR 32085, 06/05/2015). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–24447 Filed 9–24–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–63–2015]

Foreign-Trade Zone (FTZ) 33—Pittsburgh, Pennsylvania, Notification of Proposed Production Activity, DNP Imagingcomm America Corporation, Subzone 33E, (Thermal Transfer Ribbon Master Rolls), Mount Pleasant, Pennsylvania

DNP Imagingcomm America Corporation (DNP), operator of Subzone 33E, submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 33E, located in Mount Pleasant, Pennsylvania. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 4, 2015.

DNP already has authority to produce thermal transfer ribbon (TTR) and monochrome TTR printer rolls using certain foreign-sourced components within Subzone 33E. The current request would add the production of TTR master rolls using foreign-sourced rolls of polyethylene terephthalate (PET)

film to the scope of authority. Pursuant to 15 CFR 400.14(b), the additional FTZ activity would be limited to the specific foreign-status material and specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt DNP from customs duty payments on the foreign-status rolls of PET film (4.2% duty rate) used in export (an estimated 40 percent of shipments). On its domestic sales, DNP would be able to choose the duty rate during customs entry procedures that applies to TTR master rolls (duty rate 3.7%) for the foreign-status PET film. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The request notes that DNP's proposed activity would involve PET film that is subject to antidumping/countervailing duty (AD/CVD) orders. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders be admitted to the zone in privileged foreign status (19 CFR 146.41). DNP's request indicates that any PET film subject to an AD/CVD order, proceeding, or suspension of liquidation under AD/CVD procedures would be used only in production for export (no TTR master rolls made from PET film subject to AD/CVD orders would be shipped for U.S. consumption).

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 November 4, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*.

FOR FURTHER INFORMATION CONTACT: Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: September 17, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–24453 Filed 9–24–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on October 27, 2015, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Open Session:

1. Opening remarks and introductions.
2. Presentation of papers and comments by the Public.
3. Discussions on results from last, and proposals from last Wassenaar meeting.
4. Report on proposed and recently issued changes to the Export Administration Regulations.
5. Selection of CY 2016 meeting dates.
6. Other business.

Closed Session:

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10 (a) (1) and 10 (a) (3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than October 20, 2015.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 20, 2015, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with matters the premature disclosure of which would be likely to frustrate significantly implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a) (1) and 10(a) (3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: September 21, 2015.

Yvette Springer,

Committee Liaison Officer .

[FR Doc. 2015–24389 Filed 9–24–15; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on October 28 and 29, 2015, 9:00 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Wednesday, October 28

Open Session

1. Welcome and Introductions
2. Working Group Reports
3. Old Business
4. Discussion/Workshop: Wassenaar Arrangement 2013 Plenary Agreements Implementation: Intrusion and Surveillance Items—discussion of the scope of products to be controlled pursuant to the definition of ''intrusion software''
5. Industry Presentation: Proposals to BIS for Wassenaar 2016 Cycle
6. New Business

Thursday, October 29

Closed Session

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on

a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov*, no later than October 21, 2015.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 23, 2015, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 (l0)(d))), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and l0(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: September 21, 2016.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2015–24365 Filed 9–24–15; 8:45 am]

BILLING CODE 3510–JT– P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology and Research Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology and Research Advisory Committee (ETRAC) will meet on October 15–16, 2015, 8:45 a.m., Room 3884, at the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on emerging technology and research activities, including those related to deemed exports.

Agenda

Thursday, October 15

Open Session

1. Welcome and Introductions
2. Discussion and Reports—Wassenaar Arrangement 2013 Plenary Agreements Implementation: Intrusion and Surveillance items proposed technology control under ECCN 4E001.c
3. Background of the Proposed Rule
4. Review of Public Comments on the Proposed Rule
5. Presentations by industry and individuals on proposed ECCN 4E001.c entry to control ''technology for the development of intrusion software''
6. Comments from the Public participating in person or by telephone
7. Presentation on CRISPR/Cas9 concept of editing genes
8. Continued discussions on ECCN 4E001.c

Friday, October 16

Closed Session

9. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and l0(a)(3).

The open sessions will be accessible via teleconference to 25 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than, October 8, 2015.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 25, 2015, pursuant to section l0(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the of which would be likely to frustrate significantly implementation of a proposed agency action as described in 5 U.S.C. 552b(c) (9) (B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)1 and 10(a) (3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: September 21, 2015.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2015–24390 Filed 9–24–15; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–808]

Silicomanganese From Australia: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that silicomanganese from Australia is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (the ''Act''). The period of investigation is January 1, 2014 through December 31, 2014. The estimated weighted-average dumping margins are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* September 25, 2015.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Robert Bolling, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4162 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on March 17, 2015.[1] Pursuant to section 733(c)(1)(A) of the Act, the Department postponed this preliminary LTFV determination by a period of 50 days.[2]

[1] *See Silicomanganese From Australia: Initiation of Less-Than-Fair-Value Investigation,* 80 FR 13829 (March 17, 2015).

[2] *See Silicomanganese From Australia: Postponement of Preliminary Determination of Antidumping Duty Investigation,* 80 FR 35304 (June 19, 2015).

Scope of the Investigation

The scope of this investigation covers all forms, sizes and compositions of silicomanganese, except low-carbon silicomanganese, including silicomanganese briquettes, fines, and slag. Silicomanganese is properly classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Low-carbon silicomanganese is excluded from the scope of this investigation. Low-carbon silicomanganese is classifiable under HTSUS subheading 7202.30.0000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope is dispositive. A full description of the scope of the investigation is contained in the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *https://access.trade.gov,* and is available to all parties in the Department's Central Records Unit, located at room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum[3] can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis,* or determined based entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated dumping margin for all other producers or exporters.

We based our calculation of the ''All Others'' rate on the margin calculated for Tasmanian Electro Metallurgical Company Pty Ltd. (''TEMCO''), the only mandatory respondent in this investigation.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Producer or exporter	Weighted-average dumping margin (percent)
Tasmanian Electro Metallurgical Company Pty Ltd	11.93
All Others	11.93

Disclosure and Public Comment

We will disclose the calculations performed within five days of any public announcement of this notice in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[4] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined. *See* 19 CFR 351.310(d). Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

We received a request from the mandatory respondent, TEMCO, that we postpone the final determination and extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. Accordingly, we are postponing our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[5] The suspension of liquidation described below will be extended accordingly.[6]

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of silicomanganese from Australia as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), we will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds CEP as

[3] *See* Memorandum to Ronald K. Lorentzen, ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Silicomanganese from Australia,'' dated concurrently with this notice. A list of the topics discussed in the Preliminary Decision Memorandum appears in Appendix I, below.

[4] *See* 19 CFR 351.309.

[5] *See* 19 CFR 351.210(b)(2) and (e); *See* also *See* Letter from TEMCO, ''Silicomanganese from Australia: Request for Postponement of Final Determination,'' dated September 8, 2015.

[6] *Id.*

indicated in the chart above.[7] These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission (''ITC'') Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this proceeding is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of silicomanganese from Australia before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of publication of this preliminary determination, as discussed above, the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: September 17, 2015.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Postponement of Preliminary Determination
5. Postponement of Final Determination and Extension of Provisional Measures
6. Scope of the Investigation
7. Scope Comments
8. Discussion of Methodology
   Fair Value Comparisons
   A. Determination of Comparison Method
   B. Results of the Differential Pricing Analysis
9. Product Comparisons
10. Date of Sale
11. Constructed Export Price
12. Normal Value
    A. Comparison Market Viability
    B. Affiliated Party Transactions and Arm's-Length Test
    C. Level of Trade
    D. Cost of Production (COP)
    a. Calculation of COP
    b. Test of Comparison Market Sales Prices
    c. Results of the COP Test
    E. Calculation of Normal Value Based on Comparison Market Prices
    F. Calculation of Normal Value Based on CV
13. Currency Conversion
14. U.S. International Trade Commission Notification
15. Disclosure and Public Comments
16. Verification
17. Conclusion

[FR Doc. 2015–24449 Filed 9–24–15; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–943]

Certain Oil Country Tubular Goods From the People's Republic of China; Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 28, 2015, the United States Court of International Trade (''CIT'') issued its final judgment [1] sustaining the Department of Commerce's (the ''Department'') redetermination [2] issued pursuant to the CIT's remand order in *American Tubular Products, LLC* v. *United States,* Ct. No. 13–00029, Slip Op. 14–116 (CIT September 26, 2014) (''Remand Order''), with respect to the Department's amended final results [3] of the 2010–2011 antidumping duty administrative review of certain oil country tubular goods (''OCTG'') from the People's Republic of China. Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (''*Diamond Sawblades*''), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's amended final results of review and is amending the *AR 1 Final Results* with respect to the margin determined for Jiangsu Chengde Steel Tube Share Co., Ltd. (''Chengde''), an exporter and producer of subject merchandise.

DATES: *Effective Date:* September 7, 2015.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4474.

SUPPLEMENTARY INFORMATION: Subsequent to the publication of the *AR 1 Final Results,* Chengde filed a complaint with the CIT challenging aspects of the methodology used to determine its margin in the *AR 1 Final Results.*

On September 26, 2014, the CIT issued the Remand Order, instructing the Department to re-visit its decision to value most of Chengde's billet as alloy steel in the underlying review. Specifically with respect to Chengde's billets, the Court instructed the Department to: (1) Reevaluate the chemical composition of OCTG sold in certain contracts, (2) explain whether Chengde's mill test certificates prove the chemical properties of OCTG not specifically covered by those certificates, (3) assess whether Chengde's entry summary as provided in American Tubular Products, LLC's application to receive information under administrative protective order proves that the OCTG in one contract was comprised of carbon steel, and (4) recalculate the percentage of Chengde's steel billets that were alloy steel or carbon steel in accordance with this analysis.[4] In addition, at the Department's request, the CIT remanded the additional issue of the surrogate value used to value carbon steel billets to reconsider whether it is aberrational.[5]

On January 28, 2015, the Department issued its Remand Redetermination. Consistent with the CIT's instructions in the Remand Order, the Department recalculated the total quantity of carbon steel billets consumed by Chengde to produce subject merchandise during the period of review and explained why the surrogate value used for carbon steel billets in the *AR 1 Final Results* was not aberrational.[6]

[1] *See American Tubular Products., LLC* v. *United States,* Court No. 13–00029, Slip Op. 15–98 (CIT August 28, 2015) (''*ATP*'').

[2] *See* Final Results of Redetermination Pursuant to Court Remand, *American Tubular Products, LLC* v. *United States,* Court No. 13–00029 (January 28, 2015) (''Remand Redetermination'').

[3] *See Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review;* 2010–2011, 77 FR 74644 (December 17, 2012), as amended by, *Certain Oil Country Tubular Goods From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2010–2011,* 78 FR 9033 (February 7, 2013) (collectively, ''*AR 1 Final Results*'').

[4] *See* Remand Order at 14.

[5] *Id.* at 16–17.

[6] *See* Remand Redetermination at 2.

On August 28, 2015, the CIT issued its decision in *ATP,* in which it sustained the Remand Redetermination, finding that the Department's decision to use an alloy-carbon average as a surrogate for some of Chengde's billet inputs and reliance on Indonesian import data to value high carbon steel was supported by substantial evidence.[7]

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's August 28, 2015, judgment in this case constitutes a final decision of that court that is not in harmony with the Department's *AR 1 Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court decision with respect to this case, the Department is amending the *AR 1 Final Results* with respect to Chengde's weighted-average dumping margin, effective September 7, 2015. The revised dumping margin is as follows:

Exporter	Percent margin
Jiangsu Chengde Steel Tube Share Co., Ltd..	137.62

The Department will continue the suspension of liquidation of the entries at issue pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection (''CBP'') to liquidate entries of subject merchandise based on the revised assessment rates calculated by the Department.

Cash Deposit Requirements

Since the *AR1 Final Results,* the Department has not established a new cash deposit rate for Chengde. As a result, in accordance with section 751(a)(1) of the Act, the Department will instruct CBP to collect a cash deposit of 137.62 percent for entries of subject merchandise exported by Chengde, effective September 7, 2015.

[7] *See ATP* at 11–21.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: September 17, 2015.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–24327 Filed 9–24–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE207

Fisheries of the South Atlantic; South Atlantic Fishery Management Council (SAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a Visioning Workshop in Charleston, SC.

DATES: The Workshop will be held 8:30 a.m. to 5 p.m., Wednesday, October 14, 2015; and 8:30 a.m. to 5 p.m., Thursday, October 15, 2015. Public comment will be held at 4:30 p.m., Wednesday, October 14, 2015; and at 1:30 p.m., Thursday October 15, 2015.

ADDRESSES:

Meeting address: Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29507; phone: (843) 571–1000.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: This workshop is being held for Council members to discuss the further development of a Vision Blueprint (long-term strategic plan) for the South Atlantic snapper grouper fishery. The outcome of the workshop will consist of a Vision Blueprint document outlining strategic goals, objectives, and strategies for managing the snapper grouper fishery going forward. The document will be provided to the Council at the December 2015 Council meeting and is scheduled for approval. Additionally, the Council will discuss an implementation and evaluation plan for periodic review of the Vision Blueprint. Topics of discussion include:

1. Final review and discussion of 2015 public input on the draft Vision Blueprint.
2. Breakout Group Discussion to prioritize short-, mid-, and long-term strategies to be considered under each of the four focus areas (Science, Management, Communication, and Governance) to include:
   a. Sub-regional Management
   b. Reporting/Data Collection
   c. Reducing Discards
   d. Access to the Fishery
   e. Stakeholder Engagement
   f. Habitat/Ecosystems
   g. Allocation
3. Plenary session to summarize breakout group discussions, and
4. Facilitated discussion for developing an evaluation plan for periodic review of the Vision Blueprint.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 22, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–24435 Filed 9–24–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting and hearing.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Commonwealth of the Northern Mariana Islands (CNMI) Mariana Archipelago Fishery Ecosystem Plan (FEP) Advisory Panel (AP) and Hawaii Archipelago FEP AP to discuss and make recommendations on fishery

management issues in the Western Pacific Region.

DATES: The CNMI Mariana Archipelago FEP AP will meet on Wednesday, October 14, 2015, between 6 p.m. and 8 p.m. and the Hawaii Archipelago FEP AP will meet on Thursday, October 15, 2015, between 9 a.m. and 11 a.m. All times listed are local island times. For specific times and agendas, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The CNMI Mariana Archipelago FEP AP will meet at the Micronesian Environmental Services Office on Middle Road in Garapan, Saipan, CNMI. The Hawaii Archipelago FEP AP will meet at the Western Pacific Regional Fishery Management Council Office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813 and by teleconference. The teleconference will be conducted by telephone and by Web. The teleconference numbers are: U.S. toll-free: 1–888–482–3560 or International Access: +1 647 723–3959, and Access Code: 5228220; The webconference can be accessed at *https://wprfmc.webex.com/join/info.wpcouncilnoaa.gov*

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: Public comment periods will be provided in the agenda. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the CNMI Mariana Archipelago FEP AP Meeting

Wednesday, October 14, 2015, 6 p.m.–8 p.m.

1. Welcome and Introductions
2. Review and Approval of the Agenda
3. Issues to be discussed at 164th Council Meeting
   - A. Upcoming Council Action Items
   - i. Specification of Territorial Bottomfish Annual Catch Limits (ACLs)
   - ii. 2016 Territorial Bigeye Tuna Catch Limit Specifications
   - iii. Council review of Mariana FEP and Proposed Changes
   - B. Mariana Archipelago FEP–CNMI Community Activities
4. Mariana Archipelago FEP–CNMI Issues
   - A. Report of the Subpanels
   - i. Island Fisheries Subpanel
   - ii. Pelagic Fisheries Subpanel
   - iii. Ecosystems and Habitat Subpanel
   - iv. Indigenous Fishing Rights Subpanel
   - B. Other Issues
5. Public Hearing
6. Discussion and Recommendations
7. Other Business

Schedule and Agenda for the Hawaii Archipelago FEP AP Meeting

Thursday, October 15, 2015, 9 a.m.–11 a.m.

1. Welcome and Introductions
2. Review and Approval of the Agenda
3. Issues to be discussed at 164th Council Meeting
   - A. Upcoming Council Action Items
   - i. 2016 Territorial Bigeye Tuna Catch Limit Specifications
   - ii. Council review of Hawaii FEP and Proposed Changes
   - B. Hawaii Archipelago FEP Community Activities
4. Hawaii Archipelago FEP Issues
   - A. Subpanel Groups Community Fishery Issues
   - i. Island Fisheries Subpanel
   - ii. Pelagic Fisheries Subpanel
   - iii. Ecosystems and Habitat Subpanel
   - iv. Indigenous Fishing Rights Subpanel
   - B. Other Issues
5. Public Hearing
6. Discussion and Recommendations
7. Other Business

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: September 22, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–24436 Filed 9–24–15; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries From Regional and Third-Country Fabric

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the New 12-Month Cap on Duty- and Quota-Free Benefits.

DATE: *Effective Date:* October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Don Niewiaroski, Jr., International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2496.

SUPPLEMENTARY INFORMATION:

Authority: Title I, Section 112(b)(3) of the Trade and Development Act of 2000 (TDA 2000), Public Law (Pub. L.) 106–200, as amended by Division B, Title XXI, section 3108 of the Trade Act of 2002, Pub. L. 107–210; Section 7(b)(2) of the AGOA Acceleration Act of 2004, Pub. L. 108–274; Division D, Title VI, section 6002 of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), Pub. L. 109–432, and section 1 of The African Growth and Opportunity Amendments (Pub. L. 112–163), August 10, 2012; Presidential Proclamation 7350 of October 2, 2000 (65 FR 59321); Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459); and Title I, Section 103(b)(2) and (3) of the Trade Preferences Extension Act of 2015, Pub. L. 114–27, June 29, 2015.

Title I of TDA 2000 provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating in the United States or one or more beneficiary sub-Saharan African countries. This preferential treatment is also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles, subject to quantitative limitation. Public Law 114–27 extended this special rule for lesser-developed countries through September 30, 2025.

The AGOA Acceleration Act of 2004 provides that the quantitative limitation for the twelve-month period beginning October 1, 2015 will be an amount not to exceed 7 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. *See* Section 112(b)(3)(A)(ii)(I) of TDA 2000, as amended by Section 7(b)(2)(B) of the AGOA Acceleration Act of 2004. Of this overall amount, apparel imported under the special rule for lesser-developed countries is limited to an amount not to exceed 3.5 percent of all apparel articles imported into the United States in the preceding 12-month period. *See* Section 112(b)(3)(B)(ii)(II) of TDA 2000, as amended by Section 6002(a)(3) of TRHCA 2006. The Annex to Presidential Proclamation 7350 of October 2, 2000

directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register**.

For the one-year period, beginning on October 1, 2015, and extending through September 30, 2016, the aggregate quantity of imports eligible for preferential treatment under these provisions is 1,935,096,830 square meters equivalent. Of this amount, 967,548,415 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Joshua Teitelbaum,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2015–24399 Filed 9–24–15; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: 10/26/2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

For Further Information or to Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the service listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

The following service is proposed for addition to the Procurement List for production by the nonprofit agency listed:

Service

Service Type: Custodial and Related Service.
Service Is Mandatory for: GSA PBS Region 4, Benjamin P. Grogan and Jerry L. Dove Federal Building, 2030 SW. 145th Avenue, Miramar, FL
Mandatory Source(s) of Supply: CW Resources, Inc., New Britain, CT.
Contracting Activity: General Services Administration, Public Buildings Service, Acquisition Division/Services Branch, Atlanta, GA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2015–24387 Filed 9–24–15; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletion from the Procurement List.

SUMMARY: This action adds products to the Procurement List that will be furnished by nonprofit agency employing persons who are blind or have other severe disabilities, and deletes a product from the Procurement List previously furnished by such agency.

DATES: *Effective Date:* 10/26/2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 6/19/2015 (80 FR 35320–35321), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the products to the Government.

2. The action will result in authorizing small entity to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

NSN(s)—Product Name(s):
7045–00–NIB–0416—Privacy Shield, 16:9 Aspect Ratio Computer Monitor, 23.0″ Widescreen
7045–00–NIB–0417—Privacy Filter, Framed, Black, 20.0″ Widescreen
Mandatory Purchase For: Total Government Requirement
Mandatory Source(s) of Supply: Wiscraft, Inc., Milwaukee, WI
Contracting Activity: General Services Administration, New York, NY
Distribution: A-List

Deletion

On 8/21/2015 (80 FR 50825–50826), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entity to furnish the product to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product deleted from the Procurement List.

End of Certification

Accordingly, the following product is deleted from the Procurement List:

Product

NSN(s)—Product Name(s): 7520–01–439–3392—Desk Set, Liberty
Mandatory Source of Supply: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: General Services Administration, New York, NY

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2015–24388 Filed 9–24–15; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2015–0041]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for renewal of an existing information collection titled, ''Generic Information Collection Plan for the Development and/or Testing of Model Forms, Disclosures, Tools, and Other Similar Related Materials.''

DATES: Written comments are encouraged and must be received on or before November 24, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- Electronic: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.
- Hand Delivery/Courier: Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov.*

Please do not submit comments to this mailbox.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for the Development and/or Testing of Model Forms, Disclosures, Tools, and Other Similar Related Materials.

OMB Control Number: 3170–0022.

Type of Review: Extension with change of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 21,000.

Estimated Total Annual Burden Hours: 8,925.

Abstract: This is a request to renew OMB's approval for a generic information collection plan that allows the Bureau to conduct qualitative testing of disclosures and related materials relating to the features of consumer financial products and services. The research will result in recommendations for the development of and revisions to such disclosures and related materials. The research activities may be conducted by the Bureau or external parties such as, for example, contractors retained by the Bureau, and will employ cognitive psychological testing methods. This approach has been demonstrated to be feasible and valuable by the Bureau and other agencies in developing disclosures and related materials. The planned research activities will be conducted with the goal of creating effective disclosures and related materials that will help consumers understand the features of consumer financial products and services.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the 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 respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: September 21, 2015.

Linda F. Powell,

Chief Data Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2015–24341 Filed 9–24–15; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the U.S. Army War College Board of Visitors, a subcommittee of the Army Education Advisory Committee. This meeting is open to the public.

DATES: The U.S. Army War College Board of Visitors Subcommittee will meet from 8:15 a.m. to 1:45 p.m. on November 6, 2015.

ADDRESSES: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, PA 17013.

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Martin, the Alternate Designated Federal Officer for the subcommittee, in writing at G3/Department of Academic Operations,

315 Lovell Avenue, Carlisle, PA 17013, by email at *michael.t.martin.civ@mail.mil,* or by telephone at (717) 961–2038.

SUPPLEMENTARY INFORMATION: The subcommittee 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 the meeting is to provide the subcommittee with an overview of the U.S. Army War College Academic Campaign Plan and, academic year 16 curriculum, discuss Middle States and JPME II accreditation, and address other administrative matters.

Proposed Agenda: The subcommittee will review and evaluate information related to the continued academic growth, accreditation, and development of the U.S. Army War College. General deliberations leading to provisional findings will be referred to the Army Education Advisory Committee for deliberation by the Committee under the open-meeting rules.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Michael Martin via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public attending the subcommittee meeting will not be permitted to present questions from the floor or speak to any issue under consideration by the subcommittee. Because the meeting of the subcommittee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter base. Please note that security and gate guards have the right to inspect vehicles and persons seeking to enter and exit the installation. Root Hall is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Michael Martin, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Michael Martin, the subcommittee Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The Alternate Designated Federal Officer will review all submitted written comments or statements and provide them to members of the subcommittee for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Alternate Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. The Alternate Designated Federal Officer will review all comments timely submitted with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. After reviewing any written comments submitted, the subcommittee Chairperson and the Alternate Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Alternate Designated Federal Officer, in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2015–24269 Filed 9–24–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant Exclusive Patent License to Applied Materials; Austin, TX

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: In compliance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i), the Department of the Army hereby gives notice of its intent to grant to Applied Materials; a corporation having its principle place of business at 10000 Spectrum Drive, Austin, TX 78717, exclusive license in the field of semiconductor technology applications relative to the following:

- U.S. Patent Number 8,866,367 entitled ''Thermally oxidized seed layers for the production of {001} textured electrodes and PZT devices and method of making'', Inventors Fox et al, Issue date October 21, 2014.
- U.S. Patent Number 8,966,993 entitled ''Three Dimensional Piezoelectric MEMS'', Inventors Pulskamp et al, Issue date March 3, 2015.
- U.S. Patent Application Number 14/0219,028 entitled ''Stylo-Epitaxial Piezoelectric and Ferroelectric Devices and Method of Manufacturing'', Inventors Fox et al, Filing Date March 19, 2014.

DATES: The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the U.S. Army Research Laboratory receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by the U.S. Army Research Laboratory within fifteen (15) days from the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Send written objections to U.S. Army Research Laboratory Technology Transfer Office, RDRL–DPP/Thomas Mulkern, Building 321 Room 110, Aberdeen Proving Ground, MD 21005–5425.

FOR FURTHER INFORMATION CONTACT: Thomas Mulkern, (410) 278–0889, email: *ORTA@arl.army.mil.*

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2015–24267 Filed 9–24–15; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0053]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 26, 2015.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Procurement Technical Assistance Center Cooperative Agreement Performance Report; DLA Form 1806; OMB Control Number 0704–0320.

Type of Request: Extension.

Number of Respondents: 95.

Responses per Respondent: 4.

Annual Responses: 380.

Average Burden per Response: 7 hours.

Annual Burden Hours: 2660.

Needs and Uses: The information collection requirement is necessary as the Defense Logistics Agency uses the report as the principal instrument for measuring the performance of Cooperative Agreement awards made under 10 U.S.S chapter 142.

Affected Public: Not-for-profit institutions; state, local or tribal government; individuals or households.

Frequency: Quarterly.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: September 22, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–24404 Filed 9–24–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0076]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 26, 2015.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Defense Sexual Assault Incident Database; OMB Control Number 0704–0482.

Type of Request: Extension.

Number of Respondents: 3200.

Responses per Respondent: 1.

Annual Responses: 3200.

Average Burden per Response: 60 minutes.

Annual Burden Hours: 3200 hours.

Needs and Uses: Section 563 of Public Law (Pub. L.) 110–417, the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009, directs the Secretary of Defense to implement a centralized case-level database for the collection and maintenance of information regarding sexual assaults involving members of the Armed Forces, including information, if available, about the nature of the assault, victim, offender, and case outcomes in connection with the assault.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: September 22, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–24396 Filed 9–24–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of a Final Integrated Feasibility Report (Feasibility Study/Environmental Impact Statement/Environmental Impact Report), Los Angeles River Ecosystem Restoration Study, City of Los Angeles, Los Angeles County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Availability.

SUMMARY: The U.S. Army Corps of Engineers (Corps) in conjunction with

the City of Los Angeles (City) announces the availability of a Final Integrated Feasibility Report (IFR), which includes a Final Feasibility Study (FS) and Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Los Angeles River Ecosystem Restoration Study, Los Angeles County, CA, for public review and comment. The study evaluates alternatives for the purpose of restoring 11 miles of the Los Angeles River from approximately Griffith Park to downtown Los Angeles while maintaining existing levels of flood risk management. Restoration measures include creation and re-establishment of historic riparian and freshwater marsh habitat to support increased populations of wildlife and enhance habitat connectivity within the study area, as well as to provide opportunities for regional connectivity to ecological zones such as the Santa Monica Mountains, Verdugo Hills, Elysian Hills, and San Gabriel Mountains. Restoration also includes the re-introduction of ecological and fluvial processes through a more natural hydrologic regime, which reconnects the river to historic floodplains and tributaries, reduces flow velocities, increases infiltration, and improves natural sediment processes. The study also evaluates opportunities for passive recreation that is compatible with the restored environment. The study evaluated the No Action Alternative and five action alternatives, named Alternative 10, 13, 13v, 16, and 20. The recommended plan for restoration in the study area is Alternative 20, the locally preferred plan (LPP), which includes compatible recreation features. The recommended plan includes restoration of habitat within 719 acres of the study area through the following measures and features: riparian habitat corridor restoration throughout the 11 miles; restoration of the Arroyo Seco confluence; restoration of the Verdugo Wash confluence; restoration of riparian habitat, a historic wash and its braided channels in the Los Angeles Trailer and Container (LATC) intermodal facility site; removal of channel concrete and riverbed restoration for 0.75 miles; restoration of freshwater marsh in the Los Angeles State Historic Park; restoration of riparian habitat and reconnection to the historic floodplain in Taylor Yard; river widening in 2 reaches; restoration of 13 minor tributaries through stream daylighting; establishment of side channels; and removal of invasive vegetation throughout the project area. A Notice of Intent for the EIS/EIR was published on November 28, 2008 (73 FR 72455). A Notice of Availability for the Draft IFR was published on October 4, 2013 (78 FR 57624). The public review period for the Draft IFR occurred from September 20, 2013 to November 18, 2013.

DATES: The Final IFR is available for a 30-day review period from September 25, 2015 through October 24, 2015 pursuant to the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). Written comments pursuant to the NEPA will be accepted until the close of public review at close of business on October 24, 2015.

ADDRESSES: Questions or comments concerning the Final IFR may be directed to: Headquarters, U.S. Army Corps of Engineers, Attn: CECW–P (SA), 7701 Telegraph Road, Alexandria, VA 22315–3860.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Takata, U.S. Army Corps of Engineers, Los Angeles District, *Eileen.K.Takata@usace.army.mil* OR Ms. Erin Jones, U.S. Army Corps of Engineers, Los Angeles District, *Erin.L.Jones@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The document is available for review at:

(1) Online: *http://www.spl.usace.army.mil/Missions/CivilWorks/ProjectsStudies/LosAngelesRiverEcosystemRestoration.aspx.*

(2) Arroyo Seco Regional Branch Library; 6145 N. Figueroa Street, Los Angeles, CA 90042; CD and Hard Copy.

(3) Los Angeles Central Library; 630 W 5th Street Los Angeles, CA 90071; CD and Hard Copy.

(4) Atwater Village Branch Library; 3379 Glendale Boulevard, Los Angeles, CA 90039; CD and Hard Copy.

(5) Cypress Park Branch Library; 1150 Cypress Avenue, Los Angeles CA 90065; CD.

(6) Lincoln Heights Branch Library; 2530 Workman Street, Los Angeles, CA 90031; CD.

(7) Chinatown Branch Library; 639 N. Hill Street, Los Angeles, CA 90012; CD.

(8) Little Tokyo Branch Library; 203 S. Los Angeles Street, Los Angeles CA 90012; CD.

(9) Benjamin Franklin Branch Library; 2200 E. First Street, Los Angeles, CA 90033; CD.

Kirk E. Gibbs,

Colonel, U.S. Army, Commander and District Engineer.

[FR Doc. 2015–24273 Filed 9–24–15; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0113]

Agency Information Collection Activities; Comment Request; TEACH Grant: Study of Institutional Practices and Grant Recipient Outcomes and Experiences

AGENCY: Office of Planning, Evaluation and Policy Development (OPEPD), Department of Education (ED) .

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before November 24, 2015.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2015–ICCD–0113. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Brian Fu 202–260–1467 and Joanne Bogart 202–205–7855.

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: TEACH Grant: Study of Institutional Practices and Grant Recipient Outcomes and Experiences.

OMB Control Number: 1875–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Institutions of higher education (IHEs) and individuals.

Total Estimated Number of Annual Responses: 565.

Total Estimated Number of Annual Burden Hours: 283.

Abstract: The U.S. Department of Education (Department) requests OMB clearance for a survey of a purposively selected sample of 65 institutions of higher education, and a sample of 500 randomly selected grant recipients participating in the TEACH Grant program. The surveys will inform a study addressing issues and challenges regarding the implementation of TEACH Grants, which is being conducted in response to a GAO audit addressing the high grant to loan conversion rate among TEACH grant recipients.

Dated: September 21, 2015.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–24326 Filed 9–24–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The EIA has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension, without change, of its Form EIA–886, Annual Survey of Alternative Fuel Vehicles, OMB Control Number 1905–0191. The proposed collection will gather information on the number and type of alternative fueled vehicles (AFVs) and other advanced technology vehicles that vehicle suppliers made available in the previous calendar year and plan to make available in the following calendar year; the number, type and geographic distribution of AFVs in use in the previous calendar year; and the amount and distribution of each type of alternative transportation fuel (ATF) consumed in the previous calendar year.

DATES: Comments regarding this proposed information collection must be received on or before October 26, 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, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

And to Cynthia Amezcua, EI–22, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Fax (202) 586–9753, Email *cynthia.amezcua@eia.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Cynthia Amezcua, EI–22, *cynthia.amezcua@eia.gov*, (202) 586–1658 *http://wwwdev.eia.gov/survey/#eia-886.*

SUPPLEMENTARY INFORMATION:

This information collection request contains: (1) OMB No. 1905–0191; (2) Information Collection Request Title: Annual Survey of Alternative Fueled Vehicles; (3) Type of Request: Extension, without change, of a currently approved collection; (4) Purpose: Form EIA–886 data are collected from suppliers and users of AFVs. EIA uses data from these groups as a basis for estimating total AFV and ATF use in the U.S. These data are needed by Federal and State agencies, fuel suppliers, transit agencies and other fleets to determine if sufficient quantities of AFVs are available for purchase and to provide Congress with a measure of the extent to which the objectives of the Energy Policy Act of 1992 are being achieved. These data serve as market analysis tools for Congress, Federal/State agencies, AFV suppliers, vehicle fleet managers, and other interested organizations and persons. These data are also needed to satisfy numerous public requests for detailed information on AFVs and ATFs (in particular, the number of AFVs distributed by State, as well as the amount and location of the ATFs being consumed).

EIA publishes summary information from the Form EIA–886 database in an annual report on EIA's Web site (*www.eia.gov*). This report covers historical and projected supplies of AFVs, AFV usage by selected user groups, and estimates of total U.S. AFV counts and U.S. consumption of ATFs. These data provide baseline inputs for DOE's transportation sector energy models. They also provide the energy consumption measures for alternative transportation fuels in EIA's State Energy Data System. For example, EIA's National Energy Modeling System (NEMS) has a component model that forecasts transportation sector energy consumption and provides a framework for AFV policy and technology analysis. The data obtained from Form EIA–886 are used to improve the explanatory power of the NEMS Transportation Demand Model by allowing for greater detail in representing AFV types and characteristics; (5) Annual Estimated Number of Respondents: 2,050; (6) Annual Estimated Number of Total Responses: 2,050; (7) Annual Estimated Number of Burden Hours: 8,215; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: EIA estimates that there are no capital and start-up costs associated with this data collection. The information is maintained in the normal course of business. The cost of burden hours to the respondents is estimated to be $591,234 (8,215 burden hours times $71.97 per hour). Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, (FEA Act), and codified at 15 U.S.C. 772(b), and section 503(b)(2) of the Energy Policy Act of 1992, Pub. L. 102–486 (EPACT92) codified at 42 U.S.C. 13253.

Issued in Washington, DC, on September 21, 2015.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2015–24417 Filed 9–24–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Proposed Agency Information Collection

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Agency information collection activities: proposed extension with changes; notice and request for comments; correction.

SUMMARY: EIA published a notice in the **Federal Register** of September 15, 2015, inviting public comment on the proposed three-year extension of its Oil and Gas Reserves System Surveys. This document replaces that notice and corrects an error in the Web site address for the collection instruments and instructions.

EIA invites public comment on the proposed three-year extension of the following Oil and Gas Reserves System Survey Forms that EIA is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995: Revision of Form EIA–23L, *Annual Survey of Domestic Oil and Gas Reserves, Field Level Report*; extension without changes of Form EIA–64A, *Annual Report of the Origin of Natural Gas Liquids Production*; and continued suspension of Form EIA–23S, *Annual Survey of Domestic Oil and Gas Reserves, Summary Level Report.*

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, 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 respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be filed by November 24, 2015. If you anticipate difficulty in submitting comments within that period, contact the person listed in the below **ADDRESSES** Section as soon as possible.

ADDRESSES: Written comments may be sent to Mr. Steven Grape, EI–24, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, by fax at (202) 586–4420, or by email at *steven.grape@eia.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mr. Grape, as listed above. The information collection instruments and instructions are available on the EIA Web site at:

Form EIA–23L, *http://www.eia.gov/survey/#eia-23l,*

Form EIA–23S, *http://www.eia.gov/survey/#eia-23s,*

Form EIA–64A, *http://www.eia.gov/survey/#eia-64a.*

SUPPLEMENTARY INFORMATION: Comments and feedback are requested on the following topics directly related to the proposed changes to Form EIA–23L:

- Field versus County Level Data Detail—EIA currently collects data on a field level basis, but publishes reserves estimates on a State and State subdivision level. Reporting burden to respondents may be reduced, depending on existing record keeping practices, if operators report proved reserves and production data aggregated at a county level. EIA is able to make accurate State and State subdivision level reserves estimates if proved reserves are reported at a county level. Abandoning field-level detail will result in some loss of detail for reserve estimates; however, it will increase the utility of the data by facilitating the matching of other economic data that are only published at the county level.
- Well Counts (by County)—EIA does not currently collect the number of producing wells on Form EIA–23L. EIA proposes to collect well counts by county on Form EIA–23L to assist data quality validation of the production data reported on the form. Collecting well count data by county is consistent with commercially-available production data that is based on well-level reporting in many States and will facilitate data comparisons and data quality evaluations.
- Type Code—EIA is considering deleting the Type Code ''CH'' for Chalk from Schedule B. EIA has Type Codes for certain reservoir types: CV for Conventional, SH for Shale, CB for Coalbed, CH for Chalk, and LP for Other Low Permeability Reservoirs. CH is currently underutilized and EIA proposes to delete Chalk as a reservoir Type Code. The two codes SH and LP have been used interchangeably by operators for tight oil reserves estimates and may be combined for crude oil into a new reservoir Type Code title ''Tight.'' EIA requests comments on the proposal to delete Type Code ''CH'' for Chalk, and combine reservoir Type codes ''SH'' and ''LP'' into a single category ''Tight'' for crude oil only.
- Fuel Types—EIA tracks the proved reserves of four fuel types—two types of liquids; crude oil and lease condensate; and two types of natural gas proved reserves; nonassociated (aka gas well gas) and associated-dissolved (aka casinghead or oil well gas). EIA proposes to continue collecting proved reserves estimates by these four types, instead of combining them into Total Liquids and Total Natural Gas.
- Producing versus Nonproducing Reserves—Currently operators report both producing and nonproducing proved reserves by field on Form EIA–23L. EIA requests comments on the ability to report these data on a county level basis.
- Extensions, New Field Discoveries, and New Reservoir Discoveries in Old Fields—EIA requests comments on the utility of collecting and publishing these three components of Total Discoveries or whether it is more useful to report and publish these components under one data category such as ''County level Discoveries.'' EIA also requests comments on the burden of reporting these three components separately.
- Field Code Master List—EIA proposes to delete the EIA Field Code Master List that is currently used to report data at the field level. Changing the reporting on Form EIA–23L from Field to County level would eliminate the need to publish or maintain the EIA Field Code Master List.

All of the proposed changes that are described above are shaded the color yellow on the draft Form EIA–23L to illustrate and facilitate the review of the data elements that are affected by these proposed changes.

This information collection request contains:

(1) *OMB No.:* 1905–0057;

(2) *Information Collection Request Title:* Oil and Gas Reserves System.

(3) *Type of Request:* Revision of the currently approved Form EIA–23L; extension without changes of the currently approved Form EIA–64A; and continued suspension of collection of the currently approved Form EIA–23S (suspended).

(4) *Purpose:* In response to Public Law 95–91 Section 657, estimates of U.S. oil

and gas reserves are to be reported annually. Many U.S. government agencies have an interest in the definitions of proved oil and gas reserves and the quality, reliability, and usefulness of estimates of reserves. Among these are the U.S. Energy Information Administration (EIA), Department of Energy; Bureau of Ocean Energy Management (BOEM), Department of Interior; Internal Revenue Service (IRS), Department of the Treasury; and the Securities and Exchange Commission (SEC). Each of these organizations has specific purposes for collecting, using, or estimating proved reserves. EIA has a congressional mandate to provide accurate annual estimates of U.S. proved crude oil, natural gas, and natural gas liquids reserves, and EIA presents annual reserves data in EIA Web reports to meet this requirement. The BOEM maintains estimates of proved reserves to carry out their responsibilities in leasing, collecting royalty payments, and regulating the activities of oil and gas companies on Federal lands and water. Accurate reserve estimates are important, as the BOEM is second only to the IRS in generating Federal revenue. For the IRS, proved reserves and occasionally probable reserves are an essential component of calculating taxes for companies owning or producing oil and gas. The SEC requires publicly traded petroleum companies to annually file a reserves statement as part of their 10–K filing. The basic purpose of the 10–K filing is to provide public investors with a clear and reliable financial basis to assess the relative value, as a financial asset, of a company's reserves, especially in comparison to other similar oil and gas companies.

The Government also uses the resulting information to develop national and regional estimates of proved reserves of domestic crude oil, natural gas, and natural gas liquids to facilitate national energy policy decisions. These estimates are essential to the development, implementation, and evaluation of energy policy and legislation. Data are used directly in EIA Web reports concerning U.S. crude oil, natural gas, and natural gas liquids reserves, and are incorporated into a number of other Web reports and analyses.

EIA proposes to make the following changes to Form EIA–23L, *Annual Survey of Domestic Oil and Gas Reserves, Field Level Report:*

- Change the title of Form EIA–23L to *Annual Survey of Domestic Oil and Gas Reserves, County Level Report*;
- Change the title of Schedule A to Operated Proved Reserves, Production, and Related Data by County;
- Operators will be instructed to file their proved reserves by county rather than by field. Line Item 2.0 will be named ''County Data (operated basis);''
- Line Item 2.1.4 ''Field Code'', will be changed to ''County Name;''
- Line Item 2.1.5 ''MMS Code'' will be changed to ''Type Code;''
- Line Item 2.1.6. ''Field Name'' will be changed to ''Field, Play, or Prospect Name (Optional);''
- Line Items 2.1.9 ''water depth'' and 2.1.10 ''field discovery year'' will be replaced with 2.1.9 ''# of producing wells'', 2.1.10 ''# of wells added [in survey year];'' and
- Line Item 2.1.11, ''Prospect Name (optional) will be replaced with ''# of wells sold [in survey year].''

Comments and Feedback are requested on these proposed changes to Form EIA–23L.

Secondary reports that use the data include EIA's *Annual Energy Review, Annual Energy Outlook, Petroleum Supply Annual*, and *Natural Gas Annual*.

(5) *Annual Estimated Number of Respondents:*

Forms EIA–23L/23S/64A: 1,450.

(6) *Annual Estimated Number of Total Responses:*

Forms EIA–23L/23S/64A: 1,450.

(7) *Annual Estimated Number of Burden Hours:* 41,210.

Form EIA–23L *Annual Survey of Domestic Oil and Gas Reserves, County Level Report:*

38 hours (420 intermediate-size operators); 110 hours (160 large operators); 15 hours (270 small operators): 37,610 hours.

Form EIA–23S *Annual Survey of Domestic Oil and Gas Reserves, Summary Level Report:* 4 hours (small operators): 0 hours (Currently suspended).

Form EIA–64A *Annual Report of the Origin of Natural Gas Liquids Production:* 6 hours (600 natural gas plant operators): 3,600 hours.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:*

Forms EIA–23L/23S/64A: EIA estimates that there are no capital and start-up costs associated with this data collection. The information is maintained in the normal course of business. The cost of burden hours to the respondents is estimated to be $2,965,884 (41,210 burden hours times $71.97 per hour). Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, September 18, 2015.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2015–24422 Filed 9–24–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–101–000]

RC Cape May Holdings, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On September 21, 2015, the Commission issued an order in Docket No. EL15–101–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of RC Cape May Holdings, LLC's Reactive Power Schedule. *RC Cape May Holdings, LLC,* 152 FERC ¶ 61,224 (2015).

The refund effective date in Docket No. EL15–101–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: September 21, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24372 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–2582–000]

Carousel Wind Farm, 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 Carousel Wind Farm, 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 23, 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: September 3, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24378 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1744–039]

PacifiCorp; Notice of Scoping Meeting and Soliciting Scoping Comments for an Applicant Prepared Environmental Assessment Using the Alternative Licensing Process

a. *Type of Application:* Alternative Licensing Process.

b. *Project No.:* 1744–039.

c. *Applicant:* PacifiCorp.

d. *Name of Project:* Weber Hydroelectric Project.

e. *Location:* On the Weber River, in Weber, Davis, and Morgan Counties, Utah. The project occupies 11.4 acres of United States lands administered by the U.S. Forest Service.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Eve Davies, PacifiCorp, 1407 West North Temple, Ste. 110, Salt Lake City, UT 84116; (801) 220–2245; email: *eve.davies@pacificorp.com.*

h. *FERC Contact:* Claire McGrath at (202) 502–8290; or email at *claire.mcgrath@ferc.gov.*

j. *Deadline for filing scoping comments:* November 6, 2015.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–1744–039.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The existing project consists of: (1) The Weber diversion dam with an overall length of 114 feet and crest elevation of 4,798 feet mean sea level (ms)l, consisting of a 27-foot-high, 79-foot-long concrete section, two radial gates approximately 29 feet long, and a 35-foot-long intake structure on the Weber River; (2) a 3-foot by 18-foot non-operative fish passage structure that is used to pass minimum flows through a calibrated slide gate opening; 3) an impoundment with surface area of 8.4 acres at elevation 4,798 msl and total storage of approximately 42 acre-feet; (4) a 9,107-foot-long, 5-foot to 6.3-foot diameter steel penstock partially encased in concrete beginning at the intake and terminating at the powerhouse on the Weber River; (5) a powerhouse with one 3,850 kW generating unit operating under a head of 185 feet and producing a 30-year average annual energy output of 16,932 MWh; (6) a discharging pipe returning turbine flows into the Weber River at the powerhouse; and (7) a 77-foot-long, 46-kV transmission line which connects to the Weber substation. PacifiCorp proposes to build a new fish passage structure at the edge of the existing diversion dam in an area that currently has graded, unvegetated soil.

l. Scoping Process

PacifiCorp intends to utilize the Federal Energy Regulatory Commission's (Commission) alternative licensing process (ALP). Under the ALP, PacifiCorp will prepare an Applicant Prepared Environmental Assessment (APEA) and license application for the Weber Hydroelectric Project.

PacifiCorp expects to file with the Commission, the APEA and the license application for the Weber Hydroelectric Project by February 21, 2018. Although PacifCorp's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meetings identified below, and to solicit your scoping comments.

Scoping Meetings

PacifiCorp and the Commission staff will hold two scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the APEA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is

primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the environmental issues that should be analyzed in the APEA. The times and locations of these meetings are as follows:

Daytime Meeting

Tuesday, October 6, 2015, 1:00 p.m. (MDT), Ben Lomond Suites, 2510 Washington Blvd., Ogden, Utah 84401.

Evening Meeting

Tuesday, October 6, 2015, 7:00 p.m. (MDT), Ben Lomond Suites, 2510 Washington Blvd., Ogden, Utah 84401.

To help focus discussions, Scoping Document 1 was mailed in September 2015, outlining the subject areas to be addressed in the APEA to the parties on the mailing list. Copies of the SD1 also will be available at the scoping meetings. SD1 is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Based on all written comments received, a Scoping Document 2 (SD2) may be issued. SD2 will include a revised list of issues, based on the scoping sessions.

Environmental Site Review

PacifiCorp and the Commission staff will conduct a project Environmental Site Review beginning at 9:00 a.m. (MDT) on Wednesday, October 7, 2015. All interested individuals, organizations, and agencies are invited to attend; however, anyone planning to attend should notify Miriam Hugentobler at *miriam.hugentobler@gmail.com* by September 21, 2015. All participants should meet at the Weber Hydroelectric Project recreation site parking lot (see SD1 for directions). All participants are responsible for their own transportation to the site.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the APEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the APEA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the APEA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist PacifiCorp in defining and clarifying the issues to be addressed in the APEA.

Dated: September 3, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24381 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–2601–000]

Green Mountain Storage, 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 Green Mountain Storage, 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 23, 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: September 3, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24379 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

Panda Liberty LLC	EG15–92–000
Panda Patriot LLC	EG15–93–000
Panda Stonewall LLC	EG15–94–000

Blue Sky West, LLC	EG15–95–000
87RL 8me LLC	EG15–96–000
Route 66 Wind Power, LLC	EG15–97–000
North Star Solar, LLC	EG15–98–000
Indeck Corinth Limited Partnership	EG15–99–000
Greenleaf Energy Unit 1 LLC	EG15–100–000
Slate Creek Wind Project, LLC	EG15–101–000

Take notice that during the month of August 2015, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: September 3, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24377 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–98–000.

Applicants: Union Power Partners, L.P., Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Texas, Inc.

Description: Amendment to March 17, 2015 Joint Application for Section 203 Authorization of Union Power Partners, L.P., Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., and Entergy New Orleans, Inc.

Filed Date: 9/18/15.

Accession Number: 20150918–5251.

Comments Due: 5 p.m. ET 10/9/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3117–004; ER10–3115–003; ER13–445–006; ER14–2823–004; ER11–4060–006; ER11–4061–006; ER15–1170–002; ER15–1171–002; ER15–1172–002; ER15–1173–002.

Applicants: Lea Power Partners, LLC, Waterside Power, LLC, Badger Creek Limited, Double C Generation Limited Partnership, High Sierra Limited, Kern Front Limited, Bear Mountain Limited, Chalk Cliff Limited, Live Oak Limited, McKittrick Limited.

Description: Notice of Change in Status Lea Power Partners, LLC, *et al.*

Filed Date: 9/21/15.

Accession Number: 20150921–5050.

Comments Due: 5 p.m. ET 10/13/15.

Docket Numbers: ER11–3417–010; ER10–2895–014; ER14–1964–005; ER13–2143–007; ER10–3167–006; ER13–203–006; ER11–2292–014; ER11–3942–013; ER11–2293–014; ER10–2917–014; ER11–2294–013; ER12–2447–012; ER13–1613–007; ER10–2918–015; ER10–2920–014; ER11–3941–012; ER10–2921–014; ER10–2922–014; ER13–1346–006; ER10–2966–014; ER11–2383–009; ER10–3178–007.

Applicants: Alta Wind VIII, LLC, Bear Swamp Power Company LLC, BIF II Safe Harbor Holdings, LLC, Black Bear Development Holdings, LLC, Black Bear Hydro Partners, LLC, Black Bear SO, LLC, Brookfield Energy Marketing Inc., Brookfield Energy Marketing LP, Brookfield Energy Marketing US LLC, Brookfield Power Piney & Deep Creek LLC, Brookfield Renewable Energy Marketing US LLC, Brookfield Smoky Mountain Hydropower LLC, Brookfield White Pine Hydro LLC, Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Granite Reliable Power, LLC, Great Lakes Hydro America, LLC, Hawks Nest Hydro LLC, Mesa Wind Power Corporation, Rumford Falls Hydro LLC, Safe Harbor Water Power Corporation, Windstar Energy, LLC.

Description: Notice of Change in Status of the Brookfield Companies.

Filed Date: 9/18/15.

Accession Number: 20150918–5257.

Comments Due: 5 p.m. ET 10/9/15.

Docket Numbers: ER15–1406–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Report Filing: 2015–09–21_SA 2766 Refund Report of ATC-City of Elkhorn CFA to be effective N/A.

Filed Date: 9/21/15.

Accession Number: 20150921–5049.

Comments Due: 5 p.m. ET 10/13/15.

Docket Numbers: ER15–2541–000.

Applicants: Burgess Capital LLC.

Description: Amendment to August 27, 2015 Burgess Capital LLC tariff filing.

Filed Date: 9/17/15.

Accession Number: 20150917–5163.

Comments Due: 5 p.m. ET 10/8/15.

Docket Numbers: ER15–2650–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: Section 205(d) Rate Filing: Monthly Qualified Capacity Changes to be effective 10/13/2015.

Filed Date: 9/14/15.

Accession Number: 20150914–5169.

Comments Due: 5 p.m. ET 10/5/15.

Docket Numbers: ER15–2675–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: First Revised Construction Service Agreement No. 3477, Queue No. R11/Z2–109 to be effective 8/19/2015.

Filed Date: 9/18/15.

Accession Number: 20150918–5181.

Comments Due: 5 p.m. ET 10/9/15.

Docket Numbers: ER15–2676–000.

Applicants: Cedar Bluff Wind, LLC.

Description: Baseline eTariff Filing: Cedar Bluff Wind, LLC Application for MBR Authority to be effective 11/17/2015.

Filed Date: 9/18/15.

Accession Number: 20150918–5186.

Comments Due: 5 p.m. ET 10/9/15.

Docket Numbers: ER15–2677–000.

Applicants: Pacific Gas and Electric Company.

Description: Section 205(d) Rate Filing: Revisions to PWRPA's Customer Service Charge to be effective 9/21/2015.

Filed Date: 9/18/15.

Accession Number: 20150918–5208.

Comments Due: 5 p.m. ET 10/9/15.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES15–71–000.

Applicants: PPL Electric Utilities Corporation.

Description: Application under Section 204 of the Federal Power Act of PPL Electric Utilities Corporation.

Filed Date: 9/18/15.

Accession Number: 20150918–5245.

Comments Due: 5 p.m. ET 10/9/15.

Docket Numbers: ES15–72–000.

Applicants: Interstate Power and Light Company.

Description: Application under Section 204 of the Federal Power Act of Interstate Power and Light Company.

Filed Date: 9/18/15.

Accession Number: 20150918–5248.

Comments Due: 5 p.m. ET 10/9/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's

Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 21, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24370 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2203–000]

Alabama Power Company; Notice of Authorization for Continued Project Operation

On August 16, 2013, Alabama Power Company, licensee for the Holt Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Holt Hydroelectric Project is located on the Black Warrior River, in Tuscaloosa County, Alabama.

The license for Project No. 2203 was issued for a period ending August 31, 2015. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR.16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2203 is issued to the licensee for a period effective September 1, 2015 through August 31, 2016 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first.

If issuance of a new license (or other disposition) does not take place on or before August 31, 2016, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee, Alabama Power Company, is authorized to continue operation of the Holt Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: September 3, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24382 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI15–4–000]

Steve Patton; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI15–4–000.

c. *Date Filed:* May 11, 2015.

d. *Applicant:* Steve Patton.

e. *Name of Project:* Patton Colorado Hydropower Project.

f. *Location:* The proposed Patton Colorado Hydropower Project will be located on Columbine Creek (feeder to South Fork of Rio Grande) in the town of Southfork, Mineral County, Colorado.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C 817(b) (2012).

h. *Applicant Contact:* Steve Patton, 2418 Hawthorne, Amarillo, TX 79109; telephone: (806) 355–2418, fax: (806) 463–2418, email address: *itsme_ss@suddenlink.net.*

i. *FERC Contact:* Any questions on this notice should be addressed to Jennifer Polardino, (202) 502–6437, or email address: *Jennifer.Polardino@ferc.gov.*

j. Deadline for filing comments, protests, and motions to intervene is: 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The first page of any filing should include docket number DI15–04–000.

k. *Description of Project:* The proposed run-of-river Patton Colorado Hydropower Project would consist of: (1) Diverting water from Columbine Creek through either a 10-inch-diameter pipe or two 6-inch diameter pipes, by 220-foot-long, leading to a gravitation water vortex type generating unit; (2) a generating unit rated between 2 to 10 kilowatt (kW) with a rated head of 8 feet; and (3) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) would be located on a non-navigable stream over which Congress has Commerce Clause jurisdiction and would be constructed or enlarged after 1935.

l. *Locations of the Application:* This filing may be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may

also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 3, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24376 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

September 21, 2015.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–2678–000.

Applicants: NorthWestern Corporation.

Description: Initial rate filing: Rate Schedule FERC No. 38–SD—Agreements with Western Area Power Administration to be effective 9/22/2015.

Filed Date: 9/21/15.

Accession Number: 20150921–5097.

Comments Due: 5 p.m. ET 10/13/15.

Docket Numbers: ER15–2679–000.

Applicants: Latigo Wind Park, LLC.

Description: Baseline eTariff Filing: Latigo Wind Park, LLC MBR Tariff to be effective 11/15/2015.

Filed Date: 9/21/15.

Accession Number: 20150921–5133.

Comments Due: 5 p.m. ET 10/13/15.

Docket Numbers: ER15–2680–000.

Applicants: Sandstone Solar LLC.

Description: Baseline eTariff Filing: Sandstone Solar LLC MBR Tariff to be effective 11/1/2015.

Filed Date: 9/21/15.

Accession Number: 20150921–5161.

Comments Due: 5 p.m. ET 10/13/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 21, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24371 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD15–33–000]

City of Cheyenne, Wyoming; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On August 26, 2015, the City of Cheyenne, Wyoming, by and through its Board of Public Utilities, filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Sherard Hydroelectric Generation Facility would have an installed capacity of 950 kilowatts (kW), and would be located along an existing 48-inch-diameter raw water pipeline within the city's water treatment plant. The project would be located near the City of Cheyenne, Wyoming.

Applicant Contact: Tim Wilson, Director, 2416 Snyder Ave., Cheyenne, WY 82001, Phone No. (307) 637–6460.

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, email: *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A proposed two-level powerhouse approximately 36 feet by 36 feet adjacent to the existing water treatment plant building; (2) an approximately 800-foot-long, up to 48-inch-diameter penstock teeing off the existing 48-inch-diameter raw water pipeline; (3) one impulse turbine/generator unit with an installed capacity of 950 kilowatt (kW); (4) a short discharge returning water to the existing 48-inch-diameter raw water pipeline; and (5) appurtenant facilities.

The proposed project would have a total installed capacity of 950 kW.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA ..	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*i.e.,* CD15–33) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: September 3, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24375 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2001–2005 (2015).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5069–011]

Cascade Clean Energy, Inc.; Kingdom Energy Products; Notice of Transfer of Exemption

1. By letter filed August 19, 2015, Neva Van Hook, d/b/a Kingdom Energy Products (KEP) informed the Commission that the exemption from licensing for the Sygitowicz Creek Power Project, FERC No. 5069, originally issued July 14, 1982,[1] has been transferred to Kingdom Energy Products. The project is located on the Sygitowicz Creek, Whatcom County, Washington. The transfer of an exemption does not require Commission approval.

2. Kingdom Energy Products is now the exemptee of the Sygitowicz Creek Power Project, FERC No. 5069. All correspondence should be forwarded to: Mr. Alan Van Hook, Kingdom Energy Products, Box 557, Klawock, AK 99925.

Dated: September 3, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24383 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

[1] 20 FERC ¶ 62,051, Order Granting Exemption From Licensing of a Small Hydroelectric Project of 5 Megawatts or Less (1982).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications. Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file

associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP14–96–000	9–8–15	Nuclear Information and Resource Service.
Exempt:		
1. CP15–93–000	9–8–15	U.S. Representative Tim Murphy.
2. CP13–483–000, CP13–492–000	9–8–15	FERC Staff.[1]
3. CP09–6–001	9–11–15	FERC Staff.[2]
4. CP14–347–000	9–15–15	FERC Staff.[3]
5. P–2464–000, P–2484–000	9–16–15	FERC staff.[4]

[1] Notes from 9–2–15 telephone conference call with federal cooperating agencies regarding production of the final environmental impact statement.
[2] Summary of 9–2–15 telephone conference with Oregon LNG Representatives and DOT PHMSA Staff.
[3] Minutes from 9–3–15 meeting with National Marine Fisheries Service, US Army Corps of Engineers, Magnolia, and their respective contractors.
[4] eMails from 3–27–15 to 7–2–15 regarding the license application and environmental assessment for the Upper and Weed Dams.

Dated: September 21, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24374 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR15–38–000]

ETP Crude LLC; Notice of Petition for Declaratory Order

Take notice that on September 21, 2015, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2014), ETP Crude LLC filed a petition for a declaratory order seeking approval of the overall tariff and rate structure, proration procedure and the other matters set forth in Article III for a new crude oil pipeline that will have the capacity to accept approximately 120,000 barrels per day of crude oil from receipt points located in Reeves County, Texas and Lea County, New Mexico for transportation to delivery points in Loving County, Texas and Lea County, New Mexico, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on October 21, 2015.

Dated: September 21, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24373 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF14–22–000]

Tennessee Gas Pipeline Company, LLC; Notice of Public Scoping Meeting for the Northeast Energy Direct Project, and Extension of Scoping Comment Period

The staff of the Federal Energy Regulatory Commission (Commission) will hold an additional public scoping meeting for the Northeast Energy Direct

Pipeline Project (Project) proposed by Tennessee Gas Pipeline in the above-referenced docket. This meeting was referenced in the previous Notice issued on June 30, 2015. The scoping comment period has also been extended until October 16, 2015. In addition to sending written comments, the Commission invites you to attend the public scoping meeting its staff will conduct in the project area to receive verbal comments on the Project. Transcripts of the meetings will be available for review in eLibrary (*www.ferc.gov/docs-filing/elibrary.asp*) under Docket No. PF14–22–000. The meeting time and location are provided below.

Date and time	Location
September 29, 2015, 6:00 p.m.	Franklin Pierce University, Field House, University Drive, Rindge, New Hampshire 03461, 603–899–4000.

The Commission's staff will begin the sign-up of speakers one hour before the meeting begins. The scoping meeting will begin with a brief description of our environmental review process by Commission staff, after which speakers will be called. The meeting will end once all speakers have provided their comments or 11:00 p.m., whichever comes first. A time limit may be implemented (typically no less than 3 minutes) for each commenter, to ensure all those wishing to comment have the opportunity to do so. Speakers should structure their oral comments accordingly. Time limits will be strictly enforced to ensure that as many individuals as possible are given an opportunity to comment. It is important to note that written comments provided to staff, or otherwise filed with FERC, hold the same weight as oral comments.

Dated: September 3, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24384 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–2602–000]

Meyersdale Storage, 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 Meyersdale Storage, 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 23, 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: September 3, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–24380 Filed 9–24–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9023–1]

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 (EISs).

Filed 09/14/2015 Through 09/18/2015.

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. 20150265, Final, BR, CA, North Valley Regional Recycled Water Program, review period ends: 10/26/2015, Contact: Rain Emerson 559–487–5196.

EIS No. 20150266, Final, USFS, AZ, PROGRAMMATIC—Apache-Sitgreaves National Forests Land Management Plan, review period ends: 12/24/2015, Contact: Tom Greene 928–333–6268.

EIS No. 20150267, Final, USACE, WA, Skokomish River Ecosystem Restoration, review period ends: 10/26/2015, Contact: Nancy C. Gleason 206–764–6577.

EIS No. 20150268, Revised Final, USFS, ID, Clear Creek Integrated Restoration Project, review period ends: 10/26/2015, Contact: Lois Hill 208–935–4258.

EIS No. 20150269, Final, FHWA, NY, Cross Harbor Freight Program, review period ends: 10/26/2015, Contact: Peter Osborn 518–431–4127.

EIS No. 20150270, Final, FHWA, MN, US Highway 53 from Virginia to Eveleth Minnesota, Contact: Philip Forst 651–291–6110. Under MAP–21 Section 1319, FHWA has issued a single FEIS and ROD. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20150271, Final, USACE, CA, South San Francisco Bay Shoreline Phase I, review period ends: 10/26/2015, Contact: William DeJager 415–503–6866.

EIS No. 20150272, Draft, USFS, ID, Becker Integrated Resource Project, comment period ends: 11/09/2015, Contact: Michael Feiger 208–392–6681.

EIS No. 20150273, Draft, USACE, HI, Ala Wai Canal Project, comment period ends: 11/09/2015, Contact: Derek Chow 808–835–4026.

EIS No. 20150274, Final Supplement, USFS, OR, Motorized Vehicle Use on the Rogue River-Siskiyou National Forest Supplement, review period ends: 11/02/2015, Contact: David Krantz 541–618–2126.

Amended Notices

EIS No. 20150028, Final, USFS, ID, WITHDRAWN—Clear Creek Integrated Restoration Project, review period ends: 03/16/2015, Contact: Lois Hill 208–935–4258.

Revision to FR Notice Published 02/20/2015; Officially Withdrawn per request of the submitting agency.

EIS No. 20150200, Second Draft, USFWS, CA, South Bay Salt Pond Restoration Project, Phase 2, comment period ends: 10/30/2015, Contact: Anne Morkill 510–792–0222.

Revision to the FR Notice Published 07/24/2015; extending comment period from 9/22/2015 to 10/30/2015.

EIS No. 20150217, Draft, RUS, PR, Arecibo Waste-to-Energy and Resource Recovery Project, comment period ends: 11/12/2015, Contact: Lauren McGee Rayburn 202–695–2540.

Revision to FR Notice Published 08/14/2015; extending comment period from 09/28/2015 to 11/12/2015.

Dated: September 22, 2015.

Karin Leff,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2015–24455 Filed 9–24–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0879; FRL–9934–22]

Environmental Modeling Public Meeting; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An Environmental Modeling Public Meeting (EMPM) will be held on October 26, 2015. This Notice announces the location and time for the meeting and provides a tentative list of topics to be covered in the meeting. The EMPM provides a public forum for EPA and its stakeholders to discuss current issues related to modeling pesticide fate, transport, and exposure for pesticide risk assessments in a regulatory context.

DATES: The meeting will be held on October 26, 2015 from 9:00 a.m. to 4:00 p.m.

Requests to participate in the meeting must be received on or before October 15, 2015.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Office of Pesticide Programs (OPP), One Potomac Yard (South Building), First Floor Conference Center (S–1204/6), 2777 S. Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Meridith Fry or R. David Jones, Environmental Fate and Effects Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone numbers: 703–347–0128 and 703–305–6725; fax number: 703–347–8011; email address: *fry.meridith@epa.gov* and *jones.rdavid@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Agriculture, Forestry, Fishing and Hunting NAICS code 11
- Utilities NAICS code 22
- Professional, Scientific and Technical NAICS code 54

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–0879, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

On a biannual interval, an Environmental Modeling Public Meeting (EMPM) is held for presentation and discussion of current issues related to modeling pesticide fate, transport, and exposure for risk assessment in a regulatory context. Meeting dates and abstract requests are announced through the ''empmlist'' forum on the LYRIS list server at *https://lists.epa.gov/read/all_forums/.*

III. How can I request to participate in this meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2009–0879, must be received on or before October 15, 2015. Participants can also join the meeting by going to: *https://epa.connectsolutions.com/oct2015empm/* and enter as a Guest. Participants will then need to call in to the meeting by using the call in number 1–866–299–3188, followed by the conference code (703) 555–6627.

IV. Tentative Topics for the Meeting

- Spatial Aquatic Model
- Downstream chemical transport methods
- Estuarine scenarios for pesticide risk assessment
- PRZM–GW scenario development
- Spray drift assessment procedures and refinements
- Incorporation of filter strips in exposure assessments
- Down-the-drain model development
- Endangered species: Probabilistic modeling, population modeling, and refined aquatic exposure methods
- New Tools to estimate pesticide exposure and effects for listed aquatic and terrestrial species

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 18, 2015.

Donald J. Brady,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 2015–24550 Filed 9–24–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0579; FRL–9930–38]

Recommendations for Specifications, Environmental Performance Standards, and Ecolabels for Federal Procurement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document describes EPA's approach for providing recommendations to federal agencies on specifications, environmental performance standards, and ecolabels for purchasing environmentally preferable products and services. The federal government is one of the world's largest purchasers. This action will help federal agencies purchase environmentally preferable products and services in accordance with Executive Order 13693 and reduce public health and environmental impacts associated with the federal government's extensive supply chain.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Holly Elwood, Chemistry, Economics, and Sustainable Strategies Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, MC 7406M, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: 202–564–8854; email address: *elwood.holly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a federal purchaser or a vendor interested in selling to the federal government. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Food providers (NAICS code 722310), *e.g.*, Cafeteria Food Services Contractors, Food Concession Contractors, etc.
- Renovators (NAICS code 33333), *e.g.*, General Building Contractors/ Operative Builders, Renovation Firms, Individual Contractors, and Special Trade Contractors like Carpenters, Painters, Drywall Workers and Lathers, ''Home Improvement'' Contractors, etc.
- Commercial and Institutional Building Construction (NAICS code 236220), *e.g.*, Office Building Construction, Warehouse Construction, etc.
- Drywall and Insulation Contractors (NAICS code 238310), *e.g.*, Acoustical ceiling tile and panel installation, etc.
- Flooring Contractors (NAICS code 238330), *e.g.*, Carpet Installation, Resilient Floor Tile or Sheet Installation, etc.
- Janitorial Services (NAICS code 541620), *e.g.*, Office Cleaning Services, Rest Room Cleaning Services, Washroom Sanitation Services, etc.
- Electronic Computer Manufacturing (NAICS code 334111), *e.g.*, manufacturing machinery or equipment that incorporates electronic computers for operation or control purposes and embedded control applications, etc.
- Computer Systems Design Services (NAICS code 541512), *e.g.*, selling computer hardware or software products and systems from retail-like locations, and providing supporting services, such as customized assembly of personal computers, etc.
- Consumer Electronics Repair and Maintenance (NAICS code 811211), *e.g.*, Repairing computers and peripheral equipment, etc.
- Office Supplies and Stationary Stores (NAICS code 453210), *e.g.*, retailing stationery, school supplies, and office supplies via electronic shopping, mail-order, or direct sale, printing business forms, retailing new office furniture, etc.
- Packing and Crating (NAICS code 488991), *e.g.*, packing and preparing goods for shipping, etc.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–20[XX]–[insert Docket ID no.], is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www2.epa.gov/dockets*.

II. What is EPA's authority?

On March 19, 2015, the President issued Executive Order 13693, entitled ''Planning for Federal Sustainability in the Next Decade'' (80 FR 15871) (Ref. 1). Executive Order 13693 maintains federal leadership in sustainability and greenhouse gas emission reductions. Section 3(i) directs federal agencies to promote sustainable acquisition and procurement by ensuring that certain environmental performance and sustainability factors are included to the maximum extent practicable in the planning, award, and execution phases of agency acquisitions. Pursuant to Section 3(i)(iii)(A) of the Executive Order, one of the factors directs agencies to purchase environmentally preferable products or services that meet EPA recommendations for specifications, standards, and ecolabels for use in federal procurement. On June 10, 2015, the Office of Federal Sustainability in the White House Council on Environmental Quality (CEQ) issued Implementing Instructions for Executive Order 13693 (Ref. 2). The Implementing Instructions for Executive Order 13693 call on EPA, in consultation with the Office of Management and Budget (OMB) and CEQ, to provide guidance on recommendations for specifications, standards, and ecolabels for use in federal procurement within 90 days of the issuance of the Implementing Instructions.

In addition, the Pollution Prevention Act (PPA) (42 U.S.C.A. 13103(b)(11)) requires EPA to ''Identify opportunities to use federal procurement to encourage source reduction'' and section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272) requires federal agencies to ''use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities.''

III. What action is the Agency taking?

This document describes EPA's approach for providing recommendations to federal purchasers on specifications, environmental performance standards, and ecolabels for environmentally preferable products and services. The federal government is one of the world's largest purchasers. This action will help federal agencies purchase environmentally preferable products and services and reduce public health and environmental impacts

associated with the federal government's extensive supply chain.

Executive Order 13693 directs federal agencies to promote sustainable acquisition and procurement by ensuring that, to the maximum extent practicable, agencies purchase environmentally sustainable products and services by meeting statutory requirements that require a procurement preference for:

1. Recycled content products designated by the EPA;
2. Energy and water efficient products and services, such as ENERGY STAR® certified and Federal Energy Management Program (FEMP) designated products, identified by EPA and the Department of Energy (DOE); and
3. BioPreferred® and biobased products designated by the U.S. Department of Agriculture (USDA).

The Executive Order further instructs agencies to purchase sustainable products and services identified by EPA programs including:

1. Significant New Alternative Policy (SNAP) chemicals or other alternatives to ozone-depleting substances and high global warming potential hydrofluorocarbons, where feasible, as identified by SNAP;
2. WaterSense certified products and services (water efficient products);
3. Safer Choice certified products (chemically intensive products that contain safer ingredients); and
4. SmartWay Transport partners and SmartWay products (fuel efficient products and services).

Federal purchasers can also purchase environmentally preferable products or services that:

1. Meet or exceed specifications, standards, or labels recommended by EPA; or
2. Meet environmental performance criteria developed or adopted by voluntary consensus standards bodies consistent with the NTTAA section 12(d) and OMB Circular A–119.

In 2013, EPA sought comment on *Draft Guidelines for Environmental Performance Standards and Ecolabels for Voluntary Use in Federal Procurement* (Ref. 3).

On March 19, 2015, EPA announced the availability of revised Draft EPA Guidelines and the launch of a pilot to test the Draft EPA Guidelines in three building product categories: Furniture; flooring; and paints, coatings and paint removers (Ref. 4). It is expected that the pilot will inform refinements to the Draft EPA Guidelines, and help develop a process by which these Guidelines can be finalized and used to assess standards and ecolabels for use in federal procurement in a wide array of product and service categories.

The Implementing Instructions for the Executive Order direct EPA to prioritize application of the finalized Guidelines to product and service categories which ''represent the largest share of procurement spending across Agencies and potential environmental impact'' (Ref. 2, page 56).

Until the Draft EPA Guidelines are finalized and applied to key product and service categories, EPA is providing interim recommendations. Federal purchasers should utilize EPA's Interim Recommendations to select environmentally preferable products and services. EPA's Interim Recommendations are based on specifications, environmental performance standards, and ecolabels evaluated and currently utilized by federal agencies to assist in their procurement of environmentally preferable products and services. EPA will be initially using specifications, standards and labels information developed by other federal agencies to identify products that have verified sustainability attributes, are readily available in the market, and meet cost and performance needs. EPA's recommendations and further information about the evaluation processes used by these federal agencies will be available at *http://www.epa.gov/greenerproducts* and in the General Service Administration's Green Procurement Compilation at *https://sftool.gov/greenprocurement* (Ref. 5). EPA will review its recommendations periodically and update them after considering other federal agency assessments of standards and ecolabels when they become available. EPA's Interim Recommendations will also be updated to integrate any EPA recommendations developed following finalization and application of the Draft EPA Guidelines to specific product and service categories.

The Implementing Instructions state that ''where there is no specification, standard, or label recommended by EPA, an agency may elect to use other open and voluntary standards . . .'' to identify and procure environmentally preferable products and/or services, provided that they have conducted an assessment to ensure that the standard or ecolabel meets the requirements stipulated in the NTTAA, OMB Circular A–119 (Ref. 6), and Section II of the EPA Draft Guidelines or any subsequent revisions to those Guidelines (Ref. 2, page 56). The NTTAA requires that all agencies use standards developed by voluntary consensus standards bodies instead of government-unique standards unless inconsistent with applicable law or otherwise impractical. OMB Circular A–119 provides guidance on federal use of voluntary consensus standards and on conformity assessment. Because the NTTAA and OMB Circular A–119 do not address environmental performance, the Implementing Instructions point procurement officials to Section II of the EPA Draft Guidelines on Environmental Effectiveness and any subsequent revisions to those Guidelines (Ref. 2, pages 56–57). The Implementing Instructions direct agencies to consult with and share these assessments with EPA, and direct EPA to make these assessments available on its Web site.

Section 3(l)(i) of Executive Order 13693 includes requirements regarding procurement of environmentally sustainable electronic products. To meet the requirements of sections 3(i)(iii) and 3(l)(i) of the Executive Order, the Implementing Instructions state that agencies must acquire products that meet or exceed the specifications, standards, or labels recommended by EPA as posted on its Web site. As indicated in the Implementing Instructions, federal purchasers may continue to use the Electronic Product Environmental Assessment Tool (EPEAT)® product registry, or other methods to identify products that have been third-party verified as having met environmental performance criteria developed or adopted by voluntary consensus standards bodies consistent with section 12(d) of the NTTAA and OMB Circular A–119. However, the Implementing Instructions note that at this time CEQ is not aware of any product registries other than EPEAT for environmentally sustainable electronic products. It is possible that in the future other options may be developed that align with EPA Guidelines and support the electronic stewardship mandates of section 3(l) of Executive Order 13693. Any future tools will have to meet or exceed current levels of sustainable and environmental performance.

Once the *EPA Draft Guidelines for Environmental Performance Standards and Ecolabels for Voluntary Use in Federal Procurement* are finalized, EPA will apply the Guidelines to product and service categories which ''represent the largest share of procurement spending across agencies and potential environmental impact,'' per the Implementing Instructions. It is expected that electronics may be in the next group of additional product categories to which the Guidelines could be applied. When the Guidelines are applied to the electronics category, stakeholders will be asked to volunteer other specifications, standards and

ecolabels to be reviewed against the Guidelines. EPA will review additional specifications, standards and/or ecolabels to determine if they meet or exceed the current sustainability mandate for electronics and conform to the EPA Guidelines.

IV. References

The following is a listing of the documents that are referenced in this document. The docket includes these documents and other information considered by EPA, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. The President. Executive Order 13693 of March 19, 2015; Planning for Federal Sustainability in the Next Decade. **Federal Register** (80 FR 15869, March 25, 2015). Available at *http://www.gpo.gov/fdsys/pkg/FR-2015-03-25/pdf/2015-07016.pdf*.
2. The White House Council on Environmental Quality, Office of Federal Sustainability. Implementing Instructions for Executive Order 13693 Planning for Federal Sustainability in the Next Decade. June 10, 2015. Available at *https://www.whitehouse.gov/sites/default/files/docs/eo_13693_implementing_instructions_june_10_2015.pdf*.
3. EPA. Draft Guidelines for Environmental Performance Standards and Ecolabels for Voluntary Use in Federal Procurement; Notice of Availability and Request for Comments. **Federal Register** (78 FR 70938, November 27, 2013; FRL–9394–7). Available in EPA–HQ–OPPT–2013–0579 at *http://www.regulations.gov*.
4. EPA. Agency Information Collection Activities; Proposed Collection and Comment Request; Assessment of Environmental Performance Standards and Ecolabels for Federal Procurement; Notice. **Federal Register** (80 FR 14372, March 19, 2015; FRL–9923–58). Available at *http://www.gpo.gov/fdsys/pkg/FR-2015-03-19/pdf/2015-06275.pdf*.
5. General Services Administration (GSA) Federal Acquisition Service, Green Procurement Compilation (GPC). Available at *https://sftool.gov/greenprocurement*.
6. Office of Management and Budget (OMB). OMB Circular A–119 (Revised). Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities. February 10, 1998. Available at *https://www.whitehouse.gov/omb/circulars_a119/*.

Authority: 42 U.S.C.A. 13103(b)(11), 15 U.S.C. 272 note, and Executive Order 13693 of March 19, 2015.

Dated: September 17, 2015.

James J. Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2015–24456 Filed 9–24–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0010; FRL–9934–12]

Receipt of Test Data under the Toxic Substances Control Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing its receipt of test data submitted pursuant to an enforceable consent agreement (ECA)/Order issued by EPA under the Toxic Substances Control Act (TSCA). As required by TSCA, this document identifies each chemical substance and/or mixture for which test data have been received; the uses or intended uses of such chemical substance and/or mixture; and describes the nature of the test data received. Each chemical substance and/or mixture related to this announcement is identified in Unit I. under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kathy Calvo, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8089; email address: *calvo.kathy@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

I. Chemical Substances and/or Mixtures

Information about the following chemical substances and/or mixtures is provided in Unit IV.: *1,2-Ethylene Dichloride, (a/k/a Ethylene Dichloride)* (*CAS RN 107–06–2*).

II. Federal Register Publication Requirement

Section 4(d) of TSCA (15 U.S.C. 2603(d)) requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to ECAs/Orders promulgated under TSCA section 4 (15 U.S.C. 2603).

III. Docket Information

A docket, identified by the docket identification (ID) number EPA–HQ–OPPT–2003–0010, has been established for this **Federal Register** document that announces the receipt of data. Upon EPA's completion of its quality assurance review, the test data received will be added to the docket for the ECA/Order that required the test data. Use the docket ID number provided in Unit IV. to access the test data in the docket for the related ECA/Order.

The docket for this **Federal Register** document and the docket for each related ECA/Order is available electronically at *http://www.regulations.gov* or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

IV. Test Data Received

This unit contains the information required by TSCA section 4(d) for the test data received by EPA.

1,2-Ethylene Dichloride, (a/k/a Ethylene Dichloride) (*CAS RN 107–06–2*)

1. *Chemical Use(s):* Chemical intermediate principally in the production of vinyl chloride, but also vinylidene chloride, 1,1,1-trichloroethane, trichloroethylene, tetrachloroethylene, aziridines, and ethylene diamines. It is also used as a solvent.

2. *Applicable ECA/Order:* 1,2-Ethylene Dichloride (EDC).

3. *Test Data Received:* The following listing describes the nature of the test data received. The test data will be added to the docket for the applicable ECA/Order and can be found by referencing the docket ID number provided. EPA reviews of test data will be added to the same docket upon completion.

a. *Reproductive Toxicity (oral)/Neurotoxicity Study.* The docket ID number assigned to this data is EPA–HQ–OPPT–2003–0010.

b. *Physiologically-Based Pharmacokinetics (PBPK) Modeling of Reproductive Toxicity (oral)/Neurotoxicity Study.* The docket ID number assigned to this data is EPA–HQ–OPPT–2003–0010.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: September 18, 2015.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2015–24450 Filed 9–24–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0386; FRL–9933–68]

Pesticide Registration Review; Draft Human Health and Ecological Risk Assessments for Sulfonylureas and Certain Other Pesticides; Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of and opens a public comment period on EPA's draft human health and ecological risk assessments for the registration review of a group of pesticides known collectively as sulfonylureas (SUs) that are identified individually in this document in Table 1 of Unit III, as well as additional chemicals identified in Table 2 of Unit III. This notice also announces both the opening of the registration review docket and the availability of the registration review human health and ecological risk assessments for antimycin A and imazosulfuron. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration that is the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed a comprehensive preliminary human health and ecological risk assessment for the pesticide uses of the identified pesticides. After reviewing comments received during the public comment period, EPA may issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments and may request public input on risk mitigation before completing a proposed registration review decision for the identified pesticides. Through this program, EPA is ensuring that the registration of each pesticide is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before November 24, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0386, by one of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact:* The Chemical Review Manager listed in Table 1 and Table 2 of Unit III.

For general questions on the registration review program, contact: Richard Dumas, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8015; email address: *dumas.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager listed in Table 1 and Table 2 of Unit III.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is conducting the registration review of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. FIFRA section 3(g) provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

As directed by FIFRA section 3(g), EPA is reviewing the registrations for the pesticides listed in Tables 1 and 2 to ensure that each pesticide on the list

continues to satisfy the FIFRA standard for registration—that is, that these pesticides can still be used without unreasonable adverse effects on human health or the environment.

TABLE 1—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT—SULFONYLUREAS

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Bensulfuron-methyl 7216	EPA–HQ–OPP–2011–0663	Moana Appleyard, *appleyard.moana@epa.gov*, (703) 308–8175.
Chlorimuron-ethyl 7403	EPA–HQ–OPP–2010–0478	Wilhelmena Livingston, *livingston.wilhelmena@epa.gov*, (703) 308–8025.
Chlorsulfuron 0631	EPA–HQ–OPP–2012–0878	Miguel Zavala, *zavala.miguel@epa.gov*, (703) 347–0504.
Flazasulfuron 7271	EPA–HQ–OPP–2011–0994	Ricardo Jones, *jones.ricardo@epa.gov*, (703) 347–0493.
Foramsulfuron 7252	EPA–HQ–OPP–2012–0387	Jose Gayoso, *gayoso.jose@epa.gov*, (703) 347–8652.
Halosulfuron-methyl 7233	EPA–HQ–OPP–2011–0745	Brittany Pruitt, *pruitt.brittany@epa.gov*, (703) 347–0289.
Imazosulfuron 7285–1	EPA–HQ–OPP–2015–0625	Caitlin Newcamp, *newcamp.caitlin@epa.gov*, (703) 347–0325.
Iodosulfuron-methyl-sodium 7253	EPA–HQ–OPP–2012–0717	Katherine St. Clair, *stclair.katherine@epa.gov*, (703) 347–8778.
Mesosulfuron-methyl 7277	EPA–HQ–OPP–2012–0833	Jolene Trujillo, *trujillo.jolene@epa.gov*, (303) 312–6579.
Metsulfuron-methyl 7205	EPA–HQ–OPP–2011–0375	Katherine St. Clair, *stclair.katherine@epa.gov*, (703) 347–8778.
Nicosulfuron 7227	EPA–HQ–OPP–2012–0372	Miguel Zavala, *zavala.miguel@epa.gov*, (703) 347–0504.
Orthosulfamuron 7270	EPA–HQ–OPP–2011–0438	Khue Nguyen, *nguyen.khue@epa.gov*, (703) 347–0248.
Primisulfuron-methyl 7220	EPA–HQ–OPP–2011–0844	Christina Scheltema, *scheltema.christina@epa.gov*, (703) 308–2201.
Prosulfuron 7235	EPA–HQ–OPP–2011–1010	Wilhelmena Livingston, *livingston.wilhelmena@epa.gov*, (703) 308–8025.
Rimsulfuron 7218	EPA–HQ–OPP–2012–0178	Jose Gayoso, *gayoso.jose@epa.gov*, (703) 347–8652.
Sulfometuron-methyl 3136	EPA–HQ–OPP–2012–0433	Caitlin Newcamp, *newcamp.caitlin@epa.gov*, (703) 347–0325.
Sulfosulfuron 7247	EPA–HQ–OPP–2011–0434	Kelly Ballard, *ballard.kelly@epa.gov*, (703) 305–8126.
Thifensulfuron-methyl 7206	EPA–HQ–OPP–2011–0171	Brittany Pruitt, *pruitt.brittany@epa.gov*, (703) 347–0289.
Triasulfuron 7221	EPA–HQ–OPP–2012–0115	Margaret Hathaway, *hathaway.margaret@epa.gov*, (703) 305–5076.
Tribenuron-methyl 7217	EPA–HQ–OPP–2010–0626	Brittany Pruitt, *pruitt.brittany@epa.gov*, (703) 347–0289.
Trifloxysulfuron-Sodium 7208	EPA–HQ–OPP–2013–0409	Kelly Ballard, *ballard.kelly@epa.gov*, (703) 305–8126.
Triflusulfuron-methyl 7236	EPA–HQ–OPP–2012–0605	Matthew Manupella, *manupella.matthew@epa.gov*, (703) 347–0411.

A single, streamlined ecological risk assessment document covering the 22 sulfonylurea chemicals listed in Table 1, as well as 22 chemical-specific human health risk assessments separately addressing the same 22 active ingredients are being made available for public review and comment. The sulfonylureas (SUs) are an established and widely used class of agricultural pesticides in the United States. They are used to control broadleaf and grassy weeds and are registered for many agricultural and non-agricultural uses. The ecological risk assessment examines risks from the SUs simultaneously but not cumulatively. The streamlined assessment for SUs will focus on the risks to plants. This single document approach is intended to increase efficiency and consistency in assessing potential risks from this class of compounds. Separate human health risk assessment documents have been generated for each of the SUs because of differences in toxicity endpoints and points of departure.

TABLE 2—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT—ADDITIONAL CHEMICALS

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Antimycin A 4121	EPA–HQ–OPP–2015–0480	Christina Scheltema, *scheltema.christina@epa.gov*, (703) 308–2201.
Chlorpyrifos-methyl 8011	EPA–HQ–OPP–2010–0119	Joel Wolf, *wolf.joel@epa.gov*, (703) 347–0228.

TABLE 2—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT—ADDITIONAL CHEMICALS—Continued

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Dicrotophos Case 0145	EPA–HQ–OPP–2008–0440	Khue Nguyen, *nguyen.khue@epa.gov*, (703) 347–0248.
Dimethoate 0088	EPA–HQ–OPP–2009–0059	Kelly Ballard, *ballard.kelly@epa.gov*, (703) 305–8126.
Diquat Dibromide 0288	EPA–HQ–OPP–2009–0846	Bonnie Adler, *adler.bonnie@epa.gov*, (703) 308–8523.
Ethoprop 0106	EPA–HQ–OPP–2008–0560	Tracy Perry, *perry.tracy@epa.gov*, (703) 308–0128.
Fosamine ammonium 2355	EPA–HQ–OPP–2010–0215	James Parker, *parker.james@epa.gov*, (703) 306–0469.
Hexazinone 0266	EPA–HQ–OPP–2009–0755	Dana L. Friedman, *friedman.dana@epa.gov*, (703) 347–8827.
Methoxyfenozide 7431	EPA–HQ–OPP–2012–0663	Bonnie Adler, *adler.bonnie@epa.gov*, (703) 308–8523.
Profenofos 2540	EPA–HQ–OPP–2008–0345	Christina Scheltema, *scheltema.christina@epa.gov*, (703) 308–2201.
Tebufenozide 7416	EPA–HQ–OPP–2008–0824	Christina Scheltema, *scheltema.christina@epa.gov*, (703) 308–2201.
Terbufos 0109	EPA–HQ–OPP–2008–0119	Matthew Manupella, *manupella.matthew@epa.go*, (703) 347–0411.
Tribufos 2145	EPA–HQ–OPP–2008–0883	Marianne Mannix, *mannix.marianne@epa.gov*, (703) 347–0275.

Antimycin A. Draft Human Health and Ecological Risk Assessments, Preliminary Work Plan (EPA–HQ–OPP–2015–0480). Antimycin A (Fintrol®) is a restricted use pesticide registered for limited aquatic use by the U.S. National Park Service to control invasive species and restore native fish populations. EPA has completed combined scoping and preliminary human health and ecological risk assessments for Antimycin A. These assessments are limited to the current registered uses of Antimycin A in accordance with the Federal label and do not consider endangered species or endocrine effects.

Chlorpyrifos-methyl. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2010–0119). Chlorpyrifos-methyl is registered as an insecticide used to target and kill a variety of stored grain insects including beetles, weevils, moths, and grain borers. The registered uses of chlorpyrifos-methyl are limited to indoor applications made to the interior of empty grain storage bins or warehouses. EPA conducted a preliminary ecological risk assessment and effects determination and a human health risk assessment. An endangered species assessment was completed and a No Effect determination was made for all listed species, as well as a No Habitat Modification determination for all designated critical habitats for the currently registered uses of chlorpyrifos-methyl. Chlorpyrifos-methyl was not on either initial list of chemicals to be screened under the EDSP, and an endangered species assessment has not been conducted at this time.

Dicrotophos. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2008–0440). Dicrotophos is an organophosphate insecticide mainly used on cotton and ornamental trees. Dicrotophos is primarily used to target stinkbugs and tarnished plant bugs in cotton growing states. EPA published preliminary human health and ecological risk assessments in 2014 for public comment. EPA has revised its human health risk assessment by revising the Food Quality Protection Act (FQPA) safety factor and its dietary analysis. EPA has identified possible dietary risk for both adults and children, possible spray drift risks, and possible occupational handler risk from both aerial and ground application. EPA has revised its ecological risk assessment by providing additional characterization of potential ecological risk from typical application rates and average foliar residue (*i.e.*, Kenaga) values for mammalian and bird dietary exposure. EPA identified possible ecological risks for the following taxa: Aquatic invertebrates, mammals, birds, and terrestrial invertebrates. An endangered species assessment has not been completed for dicrotophos at this time. Dicrotophos was not on the first list of chemicals for endocrine disruption screening.

Dimethoate. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2009–0059). Dimethoate is a wide spectrum systemic organophosphate insecticide. It is registered for use on a wide variety of agricultural crops, tree crops, ornamentals, and non-cropland adjacent to agricultural fields. There are no residential uses. EPA conducted a comprehensive human health risk assessment and identified potential risks of concern for dietary and occupational exposures. EPA also conducted a screening level ecological risk assessment that addressed all registered use of dimethoate. Potential risks were identified for freshwater, estuarine/marine, and terrestrial invertebrates, birds, and mammals. An endangered species assessment has not been completed for dimethoate at this time. Dimethoate was evaluated for its potential to affect endocrine systems in mammals and wildlife and the results of the agency's review are found in the Weight of Evidence review in this registration review docket.

Diquat Dibromide. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2009–0846). Diquat dibromide is a non-selective contact algicide, defoliant, desiccant, and herbicide. As an herbicide/algicide it is registered for use to control weeds in non-crop (including residential) and aquatic areas. As a desiccant/defoliant, it is registered for use on seed crops and potatoes. The Agency issued a FWP for diquat dibromide in March 2011, and data were called in. The reviews of those data are incorporated into the draft risk assessments. The ecological risk assessment identifies risk of concern for both terrestrial and aquatic

organisms. The human health risk assessment identifies risks of concerns for residential and occupations handlers via inhalation, and dermal concerns for workers after application. Diquat dibromide was not on either initial list of chemicals to be screened under the Endocrine Disruptor Screening Program (EDSP), and an endangered species assessment has not been conducted at this time.

Ethoprop. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2008–0560). Ethoprop is an organophosphate, restricted use insecticide-nematicide registered for use on a variety of crops, including potatoes and sugarcane. The Agency has completed draft risk assessments for ethoprop, which identified both human health and ecological risks of concern. These assessments do not consider endangered species. Ethoprop was evaluated for its potential to affect endocrine systems in mammals and wildlife and the results of the agency's review are found in the Weight of Evidence review in this registration review docket.

Fosamine Ammonium. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2010–0215). Fosamine ammonium is an herbicide which is applied to prevent growth of undesirable seedlings and saplings of brush and vines. Fosamine ammonium is registered for use on non-agricultural rights-of way, industrial sites, fencerows, and pine plantations. It is used for general weed control in uncultivated nonagricultural areas (*e.g.*, airports, highway, railroad and utility rights-of-way, and sewage disposal areas), uncultivated agricultural areas (*e.g.*, non-crop producing farmyards, fuel storage areas, fencerows) and industrial sites (*e.g.*, lumberyards, pipeline and tank farms). The Agency has conducted a human health risk assessment for fosamine ammonium. The Agency has also conducted a quantitative ecological risk assessment, which includes a screening-level listed species assessment. Fosamine ammonium was not on either initial list of chemicals to be screened under the EDSP, and an endangered species assessment has not been conducted at this time.

Hexazinone. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2009–0755). Hexazinone is a broad spectrum herbicide registered for use on food and feed crops (including alfalfa, blueberry, pineapple, sugarcane), non-food crops (including Christmas tree plantations, industrial areas, recreational areas), drainage systems, and in forestry (including conifer release, reforestation, forest trees). EPA conducted a comprehensive human health risk assessment and did not identify any risks of concern for dietary or residential exposure. Most occupational risks identified may be addressed with additional levels of personal protective equipment, though some scenarios still pose concerns considering engineering controls. EPA also conducted a preliminary ecological risk assessment that identified potential risks, mainly to terrestrial and aquatic plants. Hexazinone was not on either initial list of chemicals to be screened under the EDSP, and an endangered species assessment has not been conducted at this time.

Methoxyfenozide. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2013–0606). Methoxyfenozide is a diacylhydrazine insecticide and insect growth regulator registered for use on a variety of agricultural and non-agricultural sites. The ecological assessment indicates that methoxyfenozide has the potential for direct acute and chronic effects on listed and non-listed freshwater and estuarine/marine invertebrates. The likelihood of direct adverse effects on birds, terrestrial-phase amphibians, reptiles, mammals, fish, aquatic-phase amphibians, and terrestrial and aquatic plants as a result of registered methoxyfenozide use is expected to be low. However, taxa that depend on aquatic invertebrate species may be indirectly affected. The endangered species protection bulletin for methoxyfenozide can be found by following the links at *http://www.epa.gov/oppfead1/endanger/bulletins.htm*). The human health risk assessment considered both current and pending proposed uses of methoxyfenozide, and the Agency concluded there were no risks of concern identified for any route or duration of exposure. Methoxyfenozide was not included in either the first or second list of chemicals to be screened for endocrine disruptor potential.

Profenofos. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2008–0345). Profenofos (Curacron®) is an organophosphate, restricted use insecticide registered for use on cotton. However, use has declined significantly since 2000, and EPA has not found any reports of use since 2011. The Agency has completed preliminary human health and ecological risk assessments for profenofos. Profenofos was not on either initial list of chemicals to be screened under the EDSP, and an endangered species assessment has not been conducted at this time.

Tebufenozide. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2008–0824). Tebufenozide (Confirm®) is an insect growth regulator registered for use on a variety of crops, mint, ornamentals, tree and nut fruit and in forestry. EPA has completed preliminary human health and ecological risk assessments for tebufenozide. Tebufenozide was not on either initial list of chemicals to be screened under the EDSP, and an endangered species assessment has not been conducted at this time.

Terbufos. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2008–0119). Terbufos is a systemic organophosphate insecticide-nematicide used to control a variety of pests on corn (field and sweet corn), grain sorghum, and sugar beets. EPA conducted a dietary and occupational human health risk assessment. The agency identified dietary and occupational risks. EPA also conducted a comprehensive ecological risk assessment and found risks to both aquatic and terrestrial animals. Endangered species, EDSP and pollinator assessments have not been completed for terbufos at this time.

Tribufos. Draft Human Health and Ecological Risk Assessments (EPA–HQ–OPP–2008–0883). Tribufos is an organophospate chemical used as a pre-harvest desiccant on cotton. The Environmental Protection Agency conducted comprehensive human health and ecological risk assessments, which identified human health and ecological risks. Tribufos was not on either initial list of chemicals to be screened under the EDSP, and an endangered species assessment has not been conducted at this time.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and ecological risk assessments for the pesticides identified in this document. Such comments and input could address, among other things, the Agency's risk assessment methodologies and assumptions, as applied to this draft risk assessment. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to the draft human health and ecological risk assessment. EPA will then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments. In the **Federal Register** notice announcing the availability of the revised risk assessment, if the revised risk assessment indicates risks of concern, the Agency may provide a comment

period for the public to submit suggestions for mitigating the risk identified in the revised risk assessment before developing a proposed registration review decision on the pesticides identified in this document.

1. *Other related information.* Additional information on the pesticides identified in this document is available on the Pesticide Registration Review Status Web page. Information on the Agency's registration review program and its implementing regulation is available at *http://www.epa.gov/oppsrrd1/registration_review.*

2. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 21, 2015.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2015–24452 Filed 9–24–15; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

AGENCY: Farm Credit System Insurance Corporation Board.

ACTION: Regular meeting notice.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATES: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 1, 2015, from 9:30 a.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are:

Closed Session

- Confidential Report on System Performance

Open Session

A. Approval of Minutes

- June 11, 2015

B. Business Reports

- FCSIC Quarterly Financial Report
- Report on Insured and Other Obligations
- Quarterly Report on Annual Performance Plan

C. New Business

- Annual Performance Plan FY 2016–2017
- Proposed 2017 and 2018 Budgets
- Insurance Fund Progress Review and Setting of Premium Range Guidance for 2016

Dated: September 22, 2015.

Dale L. Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2015–24476 Filed 9–24–15; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0718]

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 Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 24, 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: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0718.

Title: Part 101 Rule Sections Governing the Terrestrial Microwave Fixed Radio Service.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local, or tribal government.

Number of Respondents: 9,500 respondents; 27,342 responses.

Estimated Time per Response: .25–3 hours.

Frequency of Response: On occasion and every 10 year reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits or retain benefits. Voluntary in case of Rural Microwave Flexibility Policy. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 301, 303(f), 303(g), 303(r), 307, 308, 309, 310, and 316.

Total Annual Burden: 36,223 hours.

Total Annual Cost: $1,534,725.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget for a three-year extension of OMB Control Number 3060–0718. Part 101 rule sections require respondents to report or disclose information to the Commission or third parties, respectively, and to maintain records. These requirements are necessary for the Commission staff to carry out its duties to determine technical, legal and other qualifications of applicants to operate and remain licensed to operate a station(s) in the common carrier and/or private fixed microwave services. In addition, the information is used to determine whether the public interest, convenience, and necessity are being served as required by 47 U.S.C. 309 and to ensure that applicants and licenses comply with ownership and transfer restrictions imposed by 47 U.S.C. 310. Without this information, the Commission would not be able to carry out its statutory responsibilities.

In November 2012, FCC modified this collection to include the voluntary requirements of the *Rural Microwave Flexibility Policy* that were adopted by the FCC on August 3, 2012, the FCC adopted and released a *Backhaul Second Report and Order,* FCC 12–87, WT Docket No. 10–153. This Policy directs the Wireless Telecommunication Bureau to favorably consider waivers of the requirements for payload capacity of equipment. The voluntary requirements will continue with this PRA collection. There is no change in the third party disclosure requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015–24347 Filed 9–24–15; 8:45 am]

BILLING CODE 6712–01–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 October 23, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Albany Bancshares, Inc.*, Albany, Illinois; to acquire 100 percent of the voting shares of Port Byron State Bank, Port Byron, Illinois.

Board of Governors of the Federal Reserve System, September 22, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–24469 Filed 9–24–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 13, 2015.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *Garth Rex Greer,* London, Kentucky, a member of the Greer Family Control Group; to individually acquire voting shares of First National Financial Corporation, and thereby indirectly acquire voting shares of First National Bank, both in Manchester, Kentucky.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *William R. Docking, Arkansas City, Kansas; Thomas R. Docking and Brian T. Docking,* both of Wichita, Kansas; to retain voting shares of Docking Bancshares, Inc., and thereby indirectly retain voting shares of Union State Bank, Arkansas City, Kansas, and City Bank & Trust Company, Guymon, Oklahoma.

Board of Governors of the Federal Reserve System, September 22, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–24369 Filed 9–24–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements contained in the Children's Online Privacy Protection Act Rule (''COPPA Rule'' or ''Rule''), which will expire on February 29, 2016.

DATES: Comments must be filed by November 24, 2015.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''COPPA Rule: Paperwork Comment, FTC File No. P155408'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/coppapra*, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), 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 J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Miry Kim, Attorney, (202) 326–3622, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The COPPA Rule, 16 CFR part 312, requires commercial Web sites to provide notice and obtain parents' consent before collecting, using, and/or disclosing personal information from children under age 13, with limited exceptions. The COPPA Rule contains certain statutorily-required notice requirements that apply to operators of any Web site or online service directed to children, and operators of any Web site or online service with actual knowledge of collecting personal information from children. Covered operators must: provide online notice and direct notice to parents of how they collect, use, and disclose children's personal information; obtain the prior consent of the child's parent in order to engage in such collection, use, and disclosure, with limited exceptions; provide reasonable means for the parent to obtain access to the information and to direct its deletion; and, establish procedures that protect the confidentiality, security, and integrity of personal information collected from children.

Burden Statement

1. Estimated Annual Hours Burden: 17,500 Hours [1]

(a) New Entrant Web Operators' Disclosure Burden

Based on public comments on the Commission's 2013 final amendments to the COPPA Rule,[2] FTC staff estimates that the Rule affects approximately 280 new operators per year.[3] Staff maintains its longstanding estimate that new web operators will require, on average, approximately 60 hours crafting a privacy policy, designing mechanisms to provide the required online privacy notice and, where applicable, the direct notice to parents.[4] Applied to the estimated number of new operators per year, this yields a cumulative yearly total of 16,800 hours (280 new operators × 60 hours each).

(b) Safe Harbor Applicant Reporting Requirements

Operators can comply with the COPPA Rule by meeting the terms of industry self-regulatory guidelines that the Commission approves after notice and comment.[5] While the submission of industry self-regulatory guidelines to the agency is voluntary, the COPPA Rule sets out the criteria for approval of guidelines and the materials that must be submitted as part of a safe harbor application. Staff estimates that it would require, on average, 265 hours per new safe harbor program applicant to prepare and submit its safe harbor proposal in accordance with section 312.11(c) of the Rule. In the past, industry sources have confirmed that this estimate is reasonable and advised that all of this time would be attributable to the efforts of lawyers. Given that several safe harbor programs are already available to Web site operators, FTC staff believes that it is unlikely that more than one additional safe harbor applicant will submit a request within the next three years of PRA clearance sought. Thus, annualized burden attributable to this requirement would be approximately 88 hours per year (265 hours ÷3 years) or, roughly, 100 hours, for the estimated one additional safe harbor applicant.

Staff believes that most of the records submitted with a safe harbor request would be those that these entities have kept in the ordinary course of business, and that any incremental effort associated with maintaining the results of independent assessments or other records under section 312.11(d)(3) also would be in the normal course of business. Under 5 CFR 1320.3(b)(2), OMB excludes from the definition of PRA burden the time and financial resources needed to comply with agency-imposed recordkeeping, disclosure, or reporting requirements that customarily would be undertaken independently in the normal course of business.

(c) Annual Audit and Report for Safe Harbor Programs

The COPPA Rule requires safe harbor programs to audit their members at least annually and to submit annual reports to the Commission on the aggregate results of these member audits. The burden for conducting member audits and preparing these reports likely will vary for each safe harbor program depending on the number of members. Commission staff estimates that conducting audits and preparing reports will require approximately 100 hours per program per year. Aggregated for one new safe harbor (100 hours) and seven existing (700 hours) safe harbor programs, this amounts to an estimated cumulative reporting burden of 800 hours per year.

[1] This discussion and the associated burden estimates concern strictly recurring compliance obligations under the COPPA Rule. ''One-time'' adjustments associated with entities' initial steps to comply with the January 17, 2013 final amendments to the COPPA Rule, 78 FR 3972, already have been undertaken and accounted for in the FTC's previously published and cleared estimates associated with the final rulemaking.

[2] 78 FR at 4005.

[3] This consists of certain traditional Web site operators, mobile app developers, plug-in developers, and advertising networks.

[4] *See, e.g.,* 78 FR at 4006; 76 FR 31334 (May 31, 2011); 73 FR 35689 (June 24, 2008); 70 FR 21107 (April 22, 2005).

[5] See Section 312.11(c). Approved self-regulatory guidelines can be found on the FTC's Web site at *http://www.ftc.gov/privacy/privacyinitiatives/childrens_shp.html.*

(d) Safe Harbor Program Recordkeeping Requirements

FTC staff believes that most of the records listed in the COPPA Rule's safe harbor recordkeeping provisions consist of documentation that such parties have kept in the ordinary course of business irrespective of the COPPA Rule. As noted above, OMB excludes from the definition of PRA burden, among other things, recordkeeping requirements that customarily would be undertaken independently in the normal course of business. In staff's view, any incremental burden, such as that for maintaining the results of independent assessments under section 312.11(d), would be marginal.

2. Estimated Annual Labor Costs: $5,342,500

Based on its experience with previously approved safe harbor programs, FTC staff anticipates that in-house counsel (primarily senior) will perform the legal tasks associated with safe harbor applications. Conversely, based on the 2013 rulemaking record, staff assumes that outside counsel will perform legal services tied to Rule compliance by new entrant web operators.

For in-house legal costing, FTC staff applies to its analysis below an approximate mid-way between the mean hourly wage for lawyers ($64.17),[6] as appearing within the most recent annual compilation available online from the Bureau of Labor Statistics, and what Commission staff believes more generally reflects a rough approximation of hourly attorney costs ($300) associated with Commission information collection activities: $185, rounded upward.

Regarding outside counsel costs, the *National Law Journal* noted in connection with its *2014 Billing Survey* (''survey'') of law firms that the average rate for partner billing was ''about'' $500, and that the average associate billing rate was $306.[7] Commission staff believes it reasonable to assume that the workload among law firm partners and associates for COPPA compliance questions could be competently addressed and efficiently distributed among attorneys at varying levels of seniority, but would be weighted most heavily to more junior attorneys. Thus, assuming an apportionment of two-thirds of such work is done by associates, and one-third by partners, a weighted average tied to the average firm-wide associate and average firm-wide partner rates, respectively, in the National Law Journal 2014 survey would be about $370 per hour.

Labor costing for other assumed relevant categories (technical assistance, compliance officers) is detailed within the discussion below.

(a) New Entrant Web Operators' Disclosure Burden

Consistent with its past estimates, FTC staff assumes that the time spent on compliance for new operators and existing operators covered by the COPPA Rule would be apportioned five to one between legal (lawyers or similar professionals) and technical (*e.g.,* computer programmers, software developers, and information security analysts) personnel. Staff therefore estimates that lawyers or similar professionals who craft privacy policies will account for 14,000 of the estimated 16,800 hours required. Computer programmers responsible for posting privacy policies and implementing direct notices and parental consent mechanisms will account for the remaining 2,800 hours. FTC staff estimates an hourly wage of $42 for technical assistance, based on BLS data.[8] Accordingly, paired with the above-noted estimated rate for outside counsel assistance, associated labor costs would be $5,297,600 [(14,000 hours × $370/hour) + (2,800 hours × $42/hour)].

(b) Safe Harbor Applicant Reporting Requirements

Previously, industry sources have advised that all of the labor to comply with these requirements would be attributable to the efforts of lawyers. Accordingly, applying the estimated time stated above for these tasks (100 hours, annualized and rounded up) to the above-noted assumed hourly wage for in-house counsel ($185) yields $18,500 in labor cost per year.

(c) Annual Audit and Report for Safe Harbor Programs

Commission staff assumes that annual reports will be prepared by compliance officers, at a labor rate of $33.[9] Accordingly, applied to the above-stated estimates per year of 100 hours for a new safe harbor program and 700 hours, cumulatively, per year, for seven existing safe harbor programs, this amounts to $26,400 in aggregate yearly labor cost.

(d) Safe Harbor Program Recordkeeping Requirements

For the reasons stated in 1.(d) above, associated labor costs, for PRA purposes, would be nil or marginal.

3. Estimated Annual Non-Labor Costs: $0

Because Web sites will already be equipped with the computer equipment and software necessary to comply with the Rule's notice requirements, the predominant costs incurred by the Web sites are the aforementioned estimated labor costs. Similarly, industry members should already have in place the means to retain and store the records that must be kept under the Rule's safe harbor recordkeeping provisions, because they are likely to have been keeping these records independent of the Rule. Capital and start-up costs associated with the Rule are minimal.

Request for Comments

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the COPPA Rule. (OMB Control Number 3084–0117). Comments must be received on or before the deadline specified above in the **DATES** section in order to be considered by the Commission.

The FTC invites comments on: (1) Whether participation in the study is necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and

[6] *See Occupational Employment and Wages—May 2014,* Table 1 (National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2014), *available at http://www.bls.gov/news.release/ocwage.nr0.htm* (hereinafter, ''BLS Table 1'').

[7] *Cf.* Civil Division of the United States Attorney's Office for the District of Columbia, United States Attorney's Office, District of Columbia, Laffey Matrix B 2014–2015, available at *http://www.justice.gov/sites/default/files/usao-dc/legacy/2014/07/14/Laffey%20Matrix_2014-2015.pdf* (updated ''Laffey Matrix'' for calculating ''reasonable'' attorney fees in suits in which fee shifting as statutorily authorized can be evidence of prevailing market rates for litigation counsel in the Washington, DC area; rates in table range from $255 per hour for most junior associates to $520 per hour for most senior partners).

[8] The estimated mean hourly wages for technical labor support ($42) is based on an average of the salaries for computer programmers, software developers, information security analysts, and web developers as reported by the BLS. *See* BLS Table 1.

[9] *See* BLS Table 1 (compliance officers, $32.69).

(4) ways to minimize the burden of the collection of information.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 24, 2015. Write ''COPPA Rule: Paperwork Comment, FTC File No. 155408'' 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 doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information . . . which is privileged or confidential'' as provided in section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16CFR 4.10(a)(2). In particular, don't 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)).[10] 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/coppapra,* by following the instructions on the web-based form. When 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 ''COPPA Rule: Paperwork Comment, FTC File No. 155408'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), 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 J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

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 November 24, 2015. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *http://www.ftc.gov/ftc/privacy.htm.*

David C. Shonka

Principal Deputy General Counsel.

[FR Doc. 2015–24350 Filed 9–24–15; 8:45 am]

BILLING CODE 6750–01–P

[10] 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), CFR 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve as Members of the Community Preventive Services Task Force

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS) invites nominations of individuals qualified to serve as members of the Community Preventive Services Task Force (CPSTF).

DATES: Nomination packages must be received by November 9, 2015. Complete nomination packages must be submitted by the deadline in order to be considered.

ADDRESSES: Nomination packages should be submitted electronically to *cpstf@cdc.gov* or by U.S. mail to the address provided below in **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Donyelle Russ, Center for Surveillance, Epidemiology, and Laboratory Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS E–69, Atlanta, Georgia, 30329, Phone: (404) 498–3971; email: *cpstf@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Nomination Submissions

Nomination packages must be submitted electronically to the address above, and should include:

(1) The nominee's current curriculum vitae;

(2) A brief biographic sketch of the nominee;

(3) The nominee's contact information, including mailing address, email address, and telephone number; and

(4) A brief explanation of how the nominee meets the qualification requirements and how he/she would contribute to the CPSTF. The information provided should also attest to the nominee's willingness to serve as a member of the CPSTF.

HHS/CDC will later ask persons under serious consideration for CPSTF membership to provide detailed information that will permit evaluation of possible significant conflicts of interest.

To obtain diverse perspectives, HHS/CDC encourages nominations of women and members of minority populations. Interested individuals can self-nominate. Organizations and individuals may nominate one or more persons qualified for membership on the CPSTF. Federal employees are not eligible to be CPSTF members. Individuals nominated prior to this round, who continue to have interest in serving on the CPSTF, should be re-nominated.

Qualification Requirements

To qualify for the CPSTF and support its mission, a nominee must, at a minimum, demonstrate knowledge, experience, and national leadership in the following areas:

- The critical evaluation of research or policy, and/or in the methods of evidence review; and
- Research, evaluation, or implementation of community and/or

health system-based programs, policies, or services to improve population health.

Strongest consideration will be given to individuals with expertise and experience:

- That is applied, with practical applications for public health action;
- That addresses broad public health considerations, or is beyond one or two highly defined areas;
- In state and/or local health departments; and
- With policy.

In the current round of nominations, the strongest consideration will also be given to people with expertise and experience in systematic review methods, minority health, and aging. The CPSTF will also benefit from members with expertise and experience in the following areas: Youth populations; environmental health; injury (in particular substance abuse and violence prevention); media, communications, and marketing; public health nursing; and economic analysis.

Candidates with experience and skills in any of these areas should highlight them in their nomination materials.

All nominated individuals will be considered for CPSTF membership.

Applicants must have no substantial conflicts of interest, whether financial, professional, or intellectual, that would impair the scientific integrity of the work of the CPSTF and must be willing to complete regular conflict of interest disclosures.

Applicants must have the ability to work collaboratively with a team of diverse professionals who support the mission of the CPSTF. Applicants must have adequate time to contribute substantively to the work products of the CPSTF.

Nominee Selection

Appointments to the CPSTF will be made on the basis of qualifications as outlined above (see Qualification Requirements) and the current expertise needs of the CPSTF.

Background

The CPSTF was established in 1996 by the Department of Health and Human Services (HHS) to identify population health interventions that are scientifically proven to save lives, increase lifespans, and improve quality of life. The CPSTF produces recommendations (and identifies evidence gaps) to help inform the decision making of federal, state, and local health departments, other government agencies, communities, healthcare providers and organizations, employers, schools and research organizations.

The CPSTF, is an independent, nonpartisan, nonfederal, unpaid panel of public health and prevention experts that is statutorily mandated to provide evidence-based findings and recommendations about community preventive services, programs, and policies to improve health (Public Health Service Act § 399U(a)). Its members represent a broad range of research, practice, and policy expertise in community preventive services, public health, health promotion, and disease prevention. The CPSTF members are appointed by the CDC Director and serve five year terms, with extensions possible in order to maintain a full scope of expertise, complete specific work, and ensure consistency of CPSTF methods and recommendations. HHS/CDC provides ''ongoing administrative, research, and technical support for the operations of the Task Force'' as directed by the Public Health Service Act § 399U(c).

The CPSTF bases its recommendations on rigorous, replicable systematic reviews of the scientific literature, which do all of the following:

- Evaluate the strength and limitations of published scientific studies about community-based health promotion and disease prevention programs, services, and policies;
- Assess whether the programs, services, and policies are effective in promoting health and preventing disease, injury, and disability;
- Examine the applicability of these programs, services, and policies to varied populations and settings; and
- Conduct economic analyses of recommended interventions.

These systematic reviews are conducted, with CPSTF oversight, by scientists and subject matter experts from HHS/CDC in collaboration with a wide range of government, academic, policy, and practice-based partners. CPSTF findings and recommendations, and the systematic reviews on which they are based are available at *www.thecommunityguide.org.*

Time Commitment

The CPSTF conducts three, two-day meetings each year that are open to the public. In addition, a significant portion of the CPSTF's work occurs between meetings during conference calls and via email discussions. Member duties include overseeing the process of prioritizing Task Force work, participating in the development and refinement of systematic review methods, serving as members of individual review teams, and issuing recommendations and findings to help inform the decision making process about policy, practice, research, and research funding in a wide range of U.S. settings. The estimated workload for CPSTF members is approximately 168 hours a year in addition to the three in-person meetings. The members are all volunteers and do not receive any compensation beyond support for travel to in-person meetings.

Dated: September 22, 2015.

Veronica Kennedy,

Acting Director, Division of the Executive Secretariat, Office of the Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2015–24470 Filed 9–24–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10393]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

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 October 26, 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:* Extension of a previously approved collection; *Title of Information Collection:* Medicare Beneficiary and Family-Centered Satisfaction Survey; *Use:* The data collection methodology used to determine Beneficiary Satisfaction flows from the proposed sampling approach. Based on recent literature on survey methodology and response rates by mode, we recommend using a data collection that is done primarily by mail. A mail-based methodology will achieve the goals of being efficient, effective, and minimally burdensome for beneficiary respondents. We anticipate that a mail-based methodology could yield a response rate of approximately 60 percent. In order to achieve this response rate, we would recommend a 3 staged approach to data collection:

(1) Mailout of a covering letter, the paper survey questionnaire, and a postage-paid return envelope.

(2) Mailout of a post card that thanks respondents and reminds the non-respondents to please return their survey.

(3) Mailout of a follow-up covering letter, the paper survey questionnaire, and a postage-paid return envelope.

Through the pilot test, we will determine the response rate that can be achieved using this approach. If it is deemed necessary, a prenotification letter, additional mailout reminders and a telephone non-response step can be added to the protocol to achieve desired response rate.

Form Number: CMS–10393 (OMB Control number: 0938–1177); *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 16,010; *Number of Responses:* 16,010; *Total Annual Hours:* 4,002. (For policy questions regarding this collection, contact Nekeshia McInnis at 410–786–4486.)

Dated: September 22, 2015.

William N. Parham,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–24471 Filed 9–24–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3322–PN]

Medicare and Medicaid Programs: Application From the American Association for Accreditation of Ambulatory Surgery Facilities for Continued Approval of Its Rural Health Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice acknowledges the receipt of an application from the American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF) for continued recognition as a national accrediting organization for Rural Health Clinics (RHCs). The statute requires that within 60 days of receipt of an organization's complete application, the Centers for Medicare & Medicaid Services (CMS) publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 26, 2015.

ADDRESSES: In commenting, please refer to file code CMS–3322–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways:

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.regulations.gov.* Follow the ''submit a comment'' instructions.
2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3322–PN, P.O. Box 8016, Baltimore, MD 21244–8010.

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 following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3322–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.
4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments to the following addresses:

a. *For delivery in Washington, DC:* Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

b. *For delivery in Baltimore, MD:* Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786–0310; Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this proposed notice to assist us in fully considering issues and developing policies. Referencing the file code CMS–3322–PN and the specific ''issue identifier'' that precedes the section on which you choose to comment will assist us in fully considering issues and developing policies.

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. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a Rural Health Clinic (RHC), provided certain requirements are met. Section 1861(aa) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as an RHC. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 491, subpart A, specify the minimum conditions that an RHC must meet to participate in the Medicare program.

Generally, to enter into an agreement, an RHC must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 491, subpart A of our Medicare regulations. Thereafter, the RHC is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by a Centers for Medicare & Medicaid Services (CMS) approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we may deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary of the Department of Health and Human Services (the Secretary) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. A national accrediting organization applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval and re-approval of accrediting organizations are set forth at § 488.5. The regulations at § 488.5(i) require accrediting organizations to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF's) current term of approval for their RHC accreditation program expires March 23, 2016.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of AAAASF's request for continued approval of its RHC accreditation program. This notice also solicits public comment on whether AAAASF's requirements meet or exceed the Medicare conditions for certification for RHCs.

III. Evaluation of Deeming Authority Request

AAAASF submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its RHC accreditation program. This application was determined to be complete on July 31, 2015. Under section 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national accrediting organizations), our review and evaluation of AAAASF will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of AAAASF's standards for RHCs as compared with Medicare's RHC conditions for certification.
- AAAASF's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of AAAASF's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ AAAASF's processes and procedures for monitoring a RHC found out of compliance with AAAASF's program requirements. These monitoring procedures are used only when AAAASF identifies noncompliance. If noncompliance is

identified through validation reviews or complaint surveys, the State survey agency monitors corrections as specified at § 488.9(c).

++ AAAASF's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ AAAASF's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of AAAASF's staff and other resources, and its financial viability.

++ AAAASF's capacity to adequately fund required surveys.

++ AAAASF's policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ AAAASF's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as CMS may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

Dated: September 16, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–24356 Filed 9–24–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3315–FN]

Medicare and Medicaid Programs; Continued Approval of the American Association of Diabetes Educators as an Accrediting Organization for Diabetes Self-Management Training Programs

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the American Association of Diabetes Educators (AADE) for continued recognition as a national accreditation program for accrediting entities that wish to furnish outpatient diabetes self-management training (DSMT) to Medicare beneficiaries.

DATES: This final notice is effective September 25, 2015 through September 27, 2021.

FOR FURTHER INFORMATION CONTACT: Kristin Shifflett, (410) 786–4133; Jacqueline Leach, (410) 786–4282.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive outpatient diabetes self-management training (DSMT) when ordered by the physician (or qualified non-physician practitioner) treating the beneficiary's diabetes, provided certain requirements are met by the provider. Pursuant to our regulations at 42 CFR 410.141 (e)(3), we use national accrediting organizations (NAOs) to assess whether provider entities meet Medicare requirements when providing DSMT services for which Medicare payment is made. If a provider entity is accredited by an approved accrediting organization, it is ''deemed'' to meet applicable Medicare requirements.

A NAO must meet the standards and requirements specified by the Secretary of the Department of Health and Human Services in our regulations under part 410, subpart H, to qualify for deeming authority. The regulations pertaining to application procedures for NAOs for DSMT are specified at § 410.142 (CMS process for approving national accreditation organizations).

A NAO applying for deeming authority must provide us with reasonable assurance that the accrediting organization requires accredited entities to meet requirements that are at least as stringent as our requirements.

We may approve and recognize a nonprofit organization with demonstrated experience in representing the interests of individuals with diabetes to accredit entities to furnish DSMT. The accreditation organization, after being approved and recognized by CMS, may accredit an entity to meet one of the sets of quality standards in § 410.144 (Quality standards for deemed entities).

Section 1865(a)(2) of the Social Security Act (the Act) requires that we review the applying accreditation organization's requirements for accreditation, as follows:

- Survey procedures.
- Ability to provide adequate resources for conducting required surveys.
- Ability to supply information for use in enforcement activities.
- Monitoring procedures for providers found out of compliance with the conditions or requirements.
- Ability to provide CMS with necessary data for validation.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS-approval of an accreditation program is conducted in a timely manner. The Act provides us 210 days after the date of receipt of a complete application, with any documentation necessary to make the determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice

On April 24, 2015, we published a proposed notice in the **Federal Register** (80 FR 23009) entitled ''Application by the American Association of Diabetes Educators for Continued Deeming Authority for Diabetes Self-Management Training,'' announcing the receipt of an application from AADE for continued recognition as a national accreditation program for accrediting entities that wish to furnish outpatient diabetes self-management training to Medicare beneficiaries.

In that notice, we detailed our evaluation criteria. Under section

1865(a)(2) of the Act and our regulations at § 410.142 and § 410.143, we conducted a review of AADE's national accreditation organization based on the criteria set forth in § 410.142(b), which include, but are not limited to the following: (1) A review of the national accreditation organization's operations and office to verify information in the organization's application and assess the organization's compliance with its own policies and procedures; (2) evaluating accreditation results or the accreditation status decision making process; and (3) interviewing the organization's staff.

The April 24, 2015 proposed notice also solicited public comments on the ability of AADE to continue to develop standards that meet or exceed the Medicare conditions for coverage and apply them to entities furnishing outpatient services. We received no public comments in response to our proposed notice.

IV. Provisions of the Final Notice

AADE's application to continue as an accredited NAO to deem entities for the purposes of DSMT is approved for a period of 6 years. The accreditation is effective on September 25, 2015. This approval is subject to renewal subsequent to the receipt of an application from the AADE and subject to review, evaluation, and approval of its program.

Based on our review and observations described in section II of this final notice, we approve AADE as a national accreditation organization for entities furnishing DSMT that request participation in the Medicare program, effective September 25, 2015 through September 27, 2021.

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: September 16, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–24357 Filed 9–24–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3316–FN]

Medicare and Medicaid Programs; Continued Approval of the American Diabetes Association as an Accrediting Organization for Diabetes Self-Management Training Programs

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the American Diabetes Association (ADA) for continued recognition as a national accreditation program for accrediting entities that wish to furnish outpatient diabetes self-management training (DSMT) to Medicare beneficiaries.

DATES: This final notice is effective September 25, 2015 through September 27, 2021.

FOR FURTHER INFORMATION CONTACT: Kristin Shifflett, (410) 786–4133; Jacqueline Leach, (410) 786–4282.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive outpatient diabetes self-management training (DSMT) when ordered by the physician (or qualified non-physician practitioner) treating the beneficiary's diabetes, provided certain requirements are met by the provider. Pursuant to our regulations at 42 CFR 410.141(e)(3), we use national accrediting organizations (NAOs) to assess whether provider entities meet Medicare requirements when providing DSMT services for which Medicare payment is made. If a provider entity is accredited by an approved accrediting organization, it is ''deemed'' to meet applicable Medicare requirements.

A NAO must meet the standards and requirements specified by the Secretary of the Department of Health and Human Services in our regulations under part 410, subpart H, to qualify for deeming authority. The regulations pertaining to application procedures for NAOs for DSMT are specified at § 410.142 (CMS process for approving NAOs).

A NAO applying for deeming authority must provide us with reasonable assurance that the accrediting organization requires accredited entities to meet requirements that are at least as stringent as our requirements.

We may approve and recognize a nonprofit organization with demonstrated experience in representing the interests of individuals with diabetes to accredit entities to furnish DSMT. The accreditation organization, after being approved and recognized by CMS, may accredit an entity to meet one of the sets of quality standards in § 410.144 (Quality standards for deemed entities).

Section 1865(a)(2) of the Social Security Act (the Act) requires that we review the applying accreditation organization's requirements for accreditation, as follows:

- Survey procedures.
- Ability to provide adequate resources for conducting required surveys.
- Ability to supply information for use in enforcement activities.
- Monitoring procedures for providers found out of compliance with the conditions or requirements.
- Ability to provide CMS with necessary data for validation.

We then examine the NAO's accreditation requirements to determine if they meet or exceed the Medicare conditions as we would have applied them.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS-approval of an accreditation program is conducted in a timely manner. The Act provides us 210 days after the date of receipt of a complete application, with any documentation necessary to make the determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice

On April 30, 2015, we published a proposed notice in the **Federal Register** (80 FR 24253) entitled ''Application by the American Diabetes Association for Continued Deeming Authority for Diabetes Self-Management Training,'' announcing the receipt of an application from the ADA for continued recognition as a national accreditation program for accrediting entities that wish to furnish outpatient DSMT to Medicare beneficiaries.

In that notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and our regulations at § 410.142 and § 410.143, we conducted a review of ADA's NAO based on the criteria set forth in § 410.142(b), which include, but are not limited to the following: (1) A review of the NAO's operations and office to verify information in the organization's application and assess the organization's compliance with its own policies and procedures; (2) evaluating accreditation results or the accreditation status decision making process; and (3) interviewing the organization's staff.

The April 30, 2015 proposed notice also solicited public comments on the ability of ADA to continue to develop standards that meet or exceed the Medicare conditions for coverage and apply them to accredit entities to furnish training. We received no public comments in response to our proposed notice.

IV. Provisions of the Final Notice

ADA's application to continue as an accredited NAO to deem entities for the purposes of DSMT is approved for a period of 6 years. The accreditation is effective on September 25, 2015. This approval is subject to renewal subsequent to the receipt of an application from the ADA and subject to review, evaluation, and approval of its program.

Based on our review and observations described in section III of this final notice, we approve ADA as a NAO for entities furnishing DSMT that request participation in the Medicare program, effective September 25, 2015 through effective September 27, 2021.

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: September 17, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–24358 Filed 9–24–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10519 and CMS–10583]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (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 must be received by November 24, 2015.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10519 Physician Quality Reporting System (PQRS) and the Electronic Prescribing Incentive (eRx) Program Data Assessment, Accuracy and Improper Payments Identification Support

CMS–10583 Data Collection for Medicare Beneficiaries Receiving Beta Amyloid Positron Emission Tomography (PET) for Dementia and Neurodegenerative Disease

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Physician

Quality Reporting System (PQRS) and the Electronic Prescribing Incentive (eRx) Program Data Assessment, Accuracy and Improper Payments Identification Support; *Use:* The incentive and reporting programs have data integrity issues, such as rejected and improper payments. This four year project will evaluate incentive payment information for accuracy and identify improper payments, with the goal of recovering these payments. Additionally, based on the project's results, recommendations will be made so that we can avoid future data integrity issues.

Data submission, processing, and reporting will be analyzed for potential errors, inconsistencies, and gaps that are related to data handling, program requirements, and clinical quality measure specifications of PQRS and eRx program. Surveys of Group Practices, Registries, and Data Submission Vendors (DSVs) will be conducted in order to evaluate the PQRS and eRx Incentive Program. Follow-up interviews will occur with a small number of respondents. *Form Number:* CMS–10519 (OMB control number: 0938–1255); *Frequency:* Annually; *Affected Public:* Business or other for-profits; *Number of Respondents:* 115; *Total Annual Responses:* 115; *Total Annual Hours:* 201. (For policy questions regarding this collection contact Timothy Jackson at 410–786–4006.)

2. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Data Collection for Medicare Beneficiaries Receiving Beta Amyloid Positron Emission Tomography (PET) for Dementia and Neurodegenerative Disease *Use:* In the Decision Memorandum #CAG–00431N issued on September 27, 2013, CMS determined there is sufficient evidence that the use of beta amyloid PET is promising in 2 scenarios: (1) to exclude Alzheimer's Disease (AD) in narrowly defined and clinically difficult differential diagnoses; and (2) to enrich clinical trials seeking better treatments or prevention strategies for AD. CMS will cover one beta amyloid PET scan per patient through Coverage with Evidence Development under section 1862(a)(1)(E) of the Social Security Act, in clinical studies that meet specific criteria established by CMS. Clinical studies must be approved by CMS, involve subjects from appropriate populations, and be comparative and longitudinal. Radiopharmaceuticals used in the scan must be FDA approved. Approved studies must address defined research questions established by CMS. Clinical studies in this National Coverage Determination (NCD) must adhere to the designated timeframe and meet standards establish by CMS in the NCD. Consistent with section 1142 of the Social Security Act, the Agency for Healthcare and Quality (AHRQ) supports clinical research studies that CMS determines meet specifically identified requirements and research questions.

To qualify for payment, providers must prescribe beta amyloid PET for beneficiaries with a set of clinical criteria specific to each cancer. Data elements will be transmitted to CMS for evaluation of the short and long-term benefits of beta amyloid PET to beneficiaries and for use in future clinical decision making. *Form Number:* CMS–10583 (OMB control number: 0938–NEW); *Frequency:* Annually; *Affected Public:* Private sector (Business or other for-profit); *Number of Respondents:* 300; *Total Annual Responses:* 3,700; *Total Annual Hours:* 6,475. (For policy questions regarding this collection contact Stuart Caplan at 410–786–8564).

Dated: September 22, 2015.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–24474 Filed 9–24–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4178–N]

Medicare Program; Medicare Appeals; Adjustment to the Amount in Controversy Threshold Amounts for Calendar Year 2016

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustment in the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearings and judicial review under the Medicare appeals process. The adjustment to the AIC threshold amounts will be effective for requests for ALJ hearings and judicial review filed on or after January 1, 2016. The calendar year 2016 AIC threshold amounts are $150 for ALJ hearings and $1,500 for judicial review.

DATES: *Effective Date:* This notice is effective on January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Liz Hosna (*Katherine.Hosna@cms.hhs.gov*), (410) 786–4993.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1869(b)(1)(E) of the Social Security Act (the Act), as amended by section 521 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), established the amount in controversy (AIC) threshold amounts for Administrative Law Judge (ALJ) hearing requests and judicial review at $100 and $1,000, respectively, for Medicare Part A and Part B appeals. Section 940 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), amended section 1869(b)(1)(E) of the Act to require the AIC threshold amounts for ALJ hearings and judicial review to be adjusted annually. The AIC threshold amounts are to be adjusted, as of January 2005, by the percentage increase in the medical care component of the consumer price index (CPI) for all urban consumers (U.S. city average) for July 2003 to July of the year preceding the year involved and rounded to the nearest multiple of $10. Section 940(b)(2) of the MMA provided conforming amendments to apply the AIC adjustment requirement to Medicare Part C/Medicare Advantage (MA) appeals and certain health maintenance organization and competitive health plan appeals. Health care prepayment plans are also subject to MA appeals rules, including the AIC adjustment requirement. Section 101 of the MMA provides for the application of the AIC adjustment requirement to Medicare Part D appeals.

A. Medicare Part A and Part B Appeals

The statutory formula for the annual adjustment to the AIC threshold amounts for ALJ hearings and judicial review of Medicare Part A and Part B appeals, set forth at section 1869(b)(1)(E) of the Act, is included in the applicable implementing regulations, 42 CFR 405.1006(b) and (c). The regulations require the Secretary of the Department of Health and Human Services (the Secretary) to publish changes to the AIC threshold amounts in the **Federal Register** (§ 405.1006(b)(2)). In order to be entitled to a hearing before an ALJ, a party to a proceeding must meet the AIC requirements at § 405.1006(b). Similarly, a party must meet the AIC requirements at § 405.1006(c) at the time judicial review is requested for the court to have jurisdiction over the appeal (§ 405.1136(a)).

B. Medicare Part C/MA Appeals

Section 940(b)(2) of the MMA applies the AIC adjustment requirement to Medicare Part C appeals by amending section 1852(g)(5) of the Act. The implementing regulations for Medicare Part C appeals are found at 42 CFR 422, subpart M. Specifically, §§ 422.600 and 422.612 discuss the AIC threshold amounts for ALJ hearings and judicial review. Section 422.600 grants any party to the reconsideration, except the MA organization, who is dissatisfied with the reconsideration determination, a right to an ALJ hearing as long as the amount remaining in controversy after reconsideration meets the threshold requirement established annually by the Secretary. Section 422.612 states, in part, that any party, including the MA organization, may request judicial review if the AIC meets the threshold requirement established annually by the Secretary.

C. Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans

Section 1876(c)(5)(B) of the Act states that the annual adjustment to the AIC dollar amounts set forth in section 1869(b)(1)(E)(iii) of the Act applies to certain beneficiary appeals within the context of health maintenance organizations and competitive medical plans. The applicable implementing regulations for Medicare Part C appeals are set forth in 42 CFR 422, subpart M and apply to these appeals. The Medicare Part C appeals rules also apply to health care prepayment plan appeals.

D. Medicare Part D (Prescription Drug Plan) Appeals

The annually adjusted AIC threshold amounts for ALJ hearings and judicial review that apply to Medicare Parts A, B, and C appeals also apply to Medicare Part D appeals. Section 101 of the MMA added section 1860D–4(h)(1) of the Act regarding Part D appeals. This statutory provision requires a prescription drug plan sponsor to meet the requirements set forth in sections 1852(g)(4) and (g)(5) of the Act, in a similar manner as MA organizations. As noted previously, the annually adjusted AIC threshold requirement was added to section 1852(g)(5) of the Act by section 940(b)(2)(A) of the MMA. The implementing regulations for Medicare Part D appeals can be found at 42 CFR 423, subparts M and U. The regulations at § 423.562(c) prescribe that, unless the Part D appeals rules provide otherwise, the Part C appeals rules (including the annually adjusted AIC threshold amount) apply to Part D appeals to the extent they are appropriate. More specifically, §§ 423.1970 and 423.1976 of the Part D appeals rules discuss the AIC threshold amounts for ALJ hearings and judicial review. Section 423.1970(a) grants a Part D enrollee, who is dissatisfied with the independent review entity (IRE) reconsideration determination, a right to an ALJ hearing if the amount remaining in controversy after the IRE reconsideration meets the threshold amount established annually by the Secretary. Sections 423.1976(a) and (b) allow a Part D enrollee to request judicial review of an ALJ or Medicare Appeals Council (MAC) decision if, in part, the AIC meets the threshold amount established annually by the Secretary.

II. Provisions of the Notice—Annual AIC Adjustments

A. AIC Adjustment Formula and AIC Adjustments

As previously noted, section 940 of the MMA requires that the AIC threshold amounts be adjusted annually, beginning in January 2005, by the percentage increase in the medical care component of the CPI for all urban consumers (U.S. city average) for July 2003 to July of the year preceding the year involved and rounded to the nearest multiple of $10.

B. Calendar Year 2016

The AIC threshold amount for ALJ hearing requests will remain at $150 and the AIC threshold amount for judicial review will rise to $1,500 for CY 2016. These amounts are based on the 50.125 percent increase in the medical care component of the CPI, which was at 297.600 in July 2003 and rose to 446.773 in July 2015. The AIC threshold amount for ALJ hearing requests changes to $150.125 based on the 50.125 percent increase over the initial threshold amount of $100 established in 2003. In accordance with section 1869(b)(1)(E)(iii) of the Act, the adjusted threshold amounts are rounded to the nearest multiple of $10. Therefore, the CY 2016 AIC threshold amount for ALJ hearings is $150.00. The AIC threshold amount for judicial review changes to $1,501.25 based on the 50.125 percent increase over the initial threshold amount of $1,000. This amount was rounded to the nearest multiple of $10, resulting in the CY 2016 AIC threshold amount of $1,500.00 for judicial review.

C. Summary Table of Adjustments in the AIC Threshold Amounts

In the following table we list the CYs 2012 through 2016 threshold amounts.

	CY 2012 $	CY 2013 $	CY 2014 $	CY 2015 $	CY 2016 $
ALJ Hearing	130	140	140	150	150
Judicial Review	1,350	1,400	1,430	1,460	1,500

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: September 10, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–24359 Filed 9–24–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Head Start Eligibility Verification.

OMB No.: 0970–0374.

Description: The Office of Head Start (OHS) within the Administration for

Children and Families, United States Department of Health and Human Services, proposes to renew, with changes, its authority for record keeping requirements associated with Head Start eligibility verification. OHS revised the Head Start Eligibility Verification form to reflect changes in the eligibility final rule published on February 10, 2015 (80 FR 7368). OHS initially developed the form to help programs determine eligibility. However, Head Start programs are not required to use this specific form. Programs may either adopt the form or design a new form to meet the eligibility requirements.

The Office of Head Start published a final rule on eligibility under the authority granted to the Secretary of Health and Human Services under the Head Start Act (Act) at sections 644(c), 645(a)(1)(A), and 645A(c). The final rule clarifies Head Start's eligibility procedures and enrollment requirements, and reinforces Head Start's overall mission to support low-income families and early learning. A program must maintain records as specified in sections 1305.4(d)(2), 1305.4(l), and 1305.4(h) through (j) of the final rule.

Respondents: Head Start and Early Head Start program grant recipients.

ANNUAL BURDEN ESTIMATES

Instruments	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
§ 1305.4(l) Eligibility determination records *(sample form)*	1,600	478	.10	76,480
§ 1305.4(d)(2)	20	1	2	40
§ 1305.4(h),(i), and (j)	1,600	1	15	24,000
§ 1305.4(l) Other Record Keeping	1,600	1	15	24,000

Estimated Total Annual Burden Hours: 124,520

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–24293 Filed 9–24–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities: Submission for OMB Review; Comment Request; OAA Title III–E Evaluation

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (formerly the Administration on Aging (AoA)) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by October 26, 2015.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.6974 to the OMB Desk Officer for ACL, Office of Information and Regulatory Affairs, OMB.

FOR FURTHER INFORMATION CONTACT: Alice-Lynn Ryssman, 202.357.3491

SUPPLEMENTARY INFORMATION: In compliance with PRA (44 U.S.C. 3501–3520), the Administration for Community Living (ACL, formerly the Administration for Aging) has submitted the following proposed collection of information to the Office of Management and Budget (OMB) for review and clearance. The outcome evaluation data collection associated with the Title III–E National Family Caregiver Support Program (NFCSP) is necessary to meet three broad objectives of ACL: (1) To provide information to support program planning, including an analysis of program processes, (2) to develop information about program efficiency and costs, and (3) gauge program effectiveness in assessing community and client needs, targeting and prioritizing, and providing services to family caregivers. The outcome evaluation will examine to what extent do the needs, services, and outcomes of NFCSP caregivers differ from non-NFCSP caregivers over a twelve-month period. As well, where feasible, the individuals supported by these two groups of caregivers will be asked seven short questions about their situation initially and at the end of twelve months, to take into account the care recipients' perceptions of their quality of life and the support for their caregivers.

In response to the 60-day **Federal Register** Notice related to this proposed data collection and published on November 20, 2013, comments from six individuals and/or organizations were received. Many of the suggestions commented on the length of the survey and eliminating duplicative or cumbersome open-ended questions, efforts have been made to make the questions clearer, reduce the number of open-ended questions, and shorten the estimated time needed for the survey by about 10 percent. In addition, in response to concerns about the views of those receiving care from these caregivers, a very short seven-question survey has been added to ask the caregivers' care recipients about their perceived quality of life and the support needed by their caregivers.

The outcome study will conduct telephone interviews with a randomly

sampled group of 1,250 NFCSP caregivers at three points in time (baseline, six months later, and twelve months later), as well as to a comparison group of 1,250 caregivers not receiving NFCSP services at the same three points in time (baseline, six months later, and twelve months later), who will be identified through their care recipients who are receiving other OAA services. Additionally, the care recipients of each group of caregivers will be contacted, as feasible, and asked seven short questions at two points in time (baseline and twelve months later). ACL estimates the burden of this collection of information as follows: 2,513 hours for caregivers receiving NFCSP services, 2,186 hours for caregivers who are not receiving NFCSP services, 400 hours for the NFCSP caregivers' care recipients, and 400 hours for the non-NFCSP caregivers' care recipients, in addition to approximately 63 hours for the local Area Agencies on Aging (AAAs) to help with the respondent selection process, for a Total Burden for Study of 5,562 hours.

The proposed data collection tools may be found on the ACL Web site at *http://www.aoa.gov/Program_Results/Outcome_Evaluation_Survey.aspx.*

Dated: September 21, 2015.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2015–24444 Filed 9–24–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Resources and Services Administration

Bright Futures Pediatric Implementation Cooperative Agreement

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of Single-Case Deviation from Competition Requirement for Program Expansion for the Bright Futures Pediatric Implementation Cooperative Agreement at the American Academy of Pediatrics, Grant Number U04MC07853.

SUMMARY: HRSA announces the award of a program expansion supplement in the amount of $210,000 for the Bright Futures Pediatric Implementation (BFPI) cooperative agreement. The proposed program expansion supplement would provide funds to the American Academy of Pediatrics (AAP) to support the integration of genetics and genomic medicine into pediatric primary care by testing genomic resources and tools to ensure relevance to clinical practice and the practicality of implementing them in clinical practice and the eventual addition to the Bright Futures Tool and Resources Kit.

The BFPI is authorized by the Social Security Act, Title V, Sections 501(a)(2) (42 U.S.C. 701(a)(2)), as amended. The BFPI is a national resource to promote integration of the ''Bright Futures Guidelines for Health Supervision of Infants, Children and Adolescents, Third Edition'' and subsequent editions, through strengthening, aligning, and fostering partnerships among families, health professionals, public health, and the broader community to promote children's health.

SUPPLEMENTARY INFORMATION: Intended Recipient of the Award: The American Academy of Pediatrics

Amount of the Non-Competitive Award: $210,000.

CFDA Number: 93.110.

Current Project Period: 02/01/2007—01/31/2017.

Period of Supplemental Funding: 2/1/2015—1/31/2016.

Authority: Social Security Act, Title V, Sections 501(a)(2) (42 U.S.C. 701(a)(2)), as amended.

Justification: Genetic information may be used to diagnose disease, predict risk of future disease, inform decision-making, and manage patient care. Although the number of evidence-based genomic applications relevant to pediatric practice is growing, lack of awareness and genetics-related skills among providers often results in significant lag time between the generation of evidenced-based findings and their integration into pediatric practice.

From June 1, 2011, to January 30, 2014, HRSA's Maternal and Child Health Bureau (MCHB) funded AAP to develop and implement the Genetics in Primary Care Institute (GPCI) program that provided models, best practices, and dissemination strategies for ensuring optimal integration of genetic medicine content and concepts into primary care practice.

Bright Futures Guidelines for Health Supervision of Infants, Children and Adolescents, Third Edition (hereafter referred to as *Bright Futures*), is a set of principles, strategies and tools that are theory-based, evidence-driven, and systems-oriented, that can be used to improve the health and well-being of all children. *Bright Futures* has become the primary source of clinical guidelines and recommendations to improve health promotion and preventive practices for infants, children, and adolescents, including those with special healthcare needs, among pediatric health care providers. *Bright Futures* is an ideal platform for the GPCI tools to integrate the genetic guidelines into clinical practice and the addition of genomic tools and resources will strengthen and enhance the work of *Bright Futures.*

The purpose of the BFPI cooperative agreement, as stated in the funding opportunity announcement, is to improve the quality of health promotion and preventive services for all infants, children, adolescents, and their families, including children with special health care needs, through the effective national implementation of *Bright Futures.* To address the need for the integration of genetics and genomic medicine into pediatric primary care, AAP, working with MCHB, would support the development of the Think Genetics! Initiative using the GPCI tool, ''Think Genetics! Daily Use in Pediatric Primary Care: A Case Series for the Continuity Clinic.'' This tool focuses on a wide range of clinical topics that are encountered in pediatric primary care and that require the primary care provider to ''think genetically'' in order to think more broadly about genetics/genomics when seeing patients in the clinic. The supplemental funds would allow MCHB to build on AAP's GPCI outputs, strong relationship with the pediatric primary care providers, and *Bright Futures* platform to help MCHB facilitate the integration of genetic guidelines into clinical practice.

As part of the current award, BFPI would recommend updates to *Bright Futures* based upon information from the GPCI to promote the importance of collecting a multigenerational family health history, as well as the collection of targeted, just-in-time family history information. As part of this project, AAP would engage five clinics in testing and revise several modules from the genetics case series to better understand what supports clinic directors, attending physicians, and residents need to implement the provision of genetics and genomic medicine in patient visits. In addition, AAP would compare the case series content with *Bright Futures* to determine content alignment as well as gaps.

AAP would partner with residency training programs, the Bright Futures Steering Committee, the Association of Pediatric Program Directors, and others, respectively, to ensure the development of a sound project implementation methodology consistent with the overall aims. Resources and tools would be

developed and/or refined based on results. Further, AAP would plan for the resulting tools and resources to be integrated into the Bright Futures Tool and Resource Kit (Bright Futures toolkit) or other anticipatory guidance resource materials (*e.g.,* tip sheets, communication tools, and parent education materials). The information obtained from these activities will inform MCHB's understanding of additional strategies needed to implement genomics into clinical practice.

FOR FURTHER INFORMATION CONTACT: Lynn Van Pelt, DMD, Division of Child, Adolescent, and Family Health, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 18W13B, Rockville, Maryland 20857; *lvanpelt@hrsa.gov*.

Grantee/organization name	Grant number	State	Fiscal year 2015 authorized funding level	Fiscal year 2015 estimated supplemental funding
The American Academy of Pediatrics	U04MC07853	IL	$1,176,800	$210,000

Dated: September 21, 2015.

James Macrae,

Acting Administrator.

[FR Doc. 2015–24393 Filed 9–24–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Resources and Services Administration

Bright Futures Pediatric Implementation Cooperative Agreement

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of Single-Case Deviation from Competition Requirement for Program Expansion for the Bright Futures Pediatric Implementation Cooperative Agreement at the American Academy of Pediatrics, Grant Number U04MC07853.

SUMMARY: HRSA announces its intent to award a program expansion supplement in the amount of $75,000 for the Bright Futures Pediatric Implementation (BFPI) cooperative agreement. The purpose of the BFPI cooperative agreement, as stated in the funding opportunity announcement, is to improve the quality of health promotion and preventive services for all infants, children, adolescents, and their families, including children with special health care needs, through the effective national implementation of *Bright Futures Guidelines for Health Supervision of Infants, Children and Adolescents, Third Edition* (*Bright Futures*). The purpose of this notice is to award supplemental funds to collect baseline information to measure the improvement of coordination activities between home visiting and primary care providers by the American Academy of Pediatrics, the cooperative agreement awardee who serves as the BFPI, during the budget period of February 1, 2015, to January 31, 2016. The BFPI is authorized by the Social Security Act, Title V, Sections 501(a)(2) (42 U.S.C. 701(a)(2)), as amended.

The BFPI is a national resource to promote integration of the *Bright Futures* through strengthening, aligning, and fostering partnerships among families, health professionals, public health, and the broader community to promote children's health.

SUPPLEMENTARY INFORMATION: Intended Recipient of the Award: The American Academy of Pediatrics.

Amount of the Non-Competitive Award: $75,000.

CFDA Number: 93.110.

Current Project Period: 02/01/2007–01/31/2017.

Period of Supplemental Funding: 2/1/2015–1/31/2016.

Authority: Social Security Act, Title V, Sections 501(a)(2) (42 U.S.C. 701(a)(2)), as amended.

Justification: The HHS Strategic Plan for fiscal years (FYS) 2014 to 2018 includes the goal of strengthening health care by emphasizing primary and preventive care, linked with community prevention services. Such integration between primary health care services and public health efforts can promote efficiency, positively affect individual well-being, and improve population health. In alignment with this HHS goal, a goal of the BFPI cooperative agreement is to foster partnerships between families, health professionals, public health and the broader community to promote children's health through the effective national implementation of *Bright Futures.*

Home visiting within a strong early childhood system is a *Bright Futures*-recommended public health effort that could benefit from improved coordination with primary health care services. Studies have shown that improving coordination between primary health care services and home visitors could yield improved adherence to preventative health services for at risk families, improved compliance and fidelity to evidence-based home visiting models, and stronger family engagement in community support services. For BFPI to improve integration between home visiting and primary care providers, it must first understand the current state of these partnerships.

The AAP collects data from pediatricians, the primary care medical providers most likely to encounter families with young children. AAP's Periodic Survey of Fellows is an established mechanism for surveying practice delivery among AAP's more than 60,000 pediatrician members, with response rates ranging from 50 to 55 percent, higher than many other national surveys of physicians. AAP conducts the survey every 2 years. The proposed program expansion supplement would fund AAP to collect additional complementary data from pediatricians and provide such data to MCHB.

The supplemental funds for survey questions would build on AAP's survey infrastructure to help MCHB understand the system, organization, and individual-level determinants and challenges that influence coordination between home visitors and pediatricians. AAP would add questions focusing on coordination between home visitors and pediatricians to the Fall 2015 Periodic Survey of Fellows that would be sent to a national random sample of approximately 1,600 non-retired United States members of the AAP. The survey would include specific questions about pediatricians' use of, and communication with, home visitors and perception of the role of the home visitor and the pediatrician in addressing several preventive care topics as part of routine well-child care and home visits. These topics include injury prevention, infant feeding practices, early reading/literacy development, developmental screening,

immunization information, smoking cessation, oral health, as well as parental depression, domestic violence and substance use counseling. Pediatricians would be asked about the frequency with which they inquire about, use formal screening instruments, treat/manage, and refer patients for various problems/conditions. These various problems/conditions may include maternal depression, parental alcohol/drug use, divorce, illiteracy, domestic violence exposure, physical or sexual abuse, neglectful parenting, and food and housing insecurity. Findings from the AAP national survey of pediatricians, in conjunction with findings from other data sources and ongoing surveys of home visitors, would inform MCHB's understanding of what is needed to best strengthen the home visitors' and pediatricians' collaborations for at-risk families to support healthy development and to address the toxic stress and social determinants that drive health and developmental disparities for young children.

FOR FURTHER INFORMATION CONTACT: Lynn Van Pelt, DMD, Division of Child, Adolescent, and Family Health, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 18W13B, Rockville, Maryland 20857; *lvanpelt@hrsa.gov.*

Grantee/organization name	Grant number	State	FY 2015 authorized funding level	FY 2015 estimated supplemental funding
The American Academy of Pediatrics	U04MC07853	IL	$1,176,800	$75,000

Dated: September 21, 2015.

James Macrae,

Acting Administrator.

[FR Doc. 2015–24395 Filed 9–24–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; The Aging and Memory Project.

Date: October 26, 2015.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 21, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–24322 Filed 9–24–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Start-Up Exclusive Evaluation Option License Agreement: Development of Diagnostic Tests and Kits for Detection of Pathological Angiogenesis in Cancer

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a Start-Up Exclusive Evaluation Option License Agreement to Angio360 Diagnostics, LLC, a company having a place of business in Wauwatosa, Wisconsin, to practice the inventions embodied in U.S. Provisional Patent Application No. 60/858,068, entitled ''Differential Gene Expression in Physiological and Pathological Angiogenesis,'' filed November 9, 2006 (HHS Ref. No.: E–285–2006/0–US–01); US Provisional Patent Application No. 60/879,457, entitled ''Organ And Tumor Associated Endothelial Markers,'' filed January 8, 2007 (HHS Ref. No. E–285–2006/1–US–01); PCT Application No. PCT/US2007/072395, entitled ''Differential Gene Expression in Physiological and Pathological Angiogenesis,'' filed June 8, 2007 (HHS Ref. No. E–285–2006/2–PCT–01); U.S. Patent Application No. 12/514,297, entitled ''Differential Gene Expression in Physiological and Pathological Angiogenesis,'' filed May 8, 2009 (HHS Ref No. E–285–2006/2–US–02); Australian Patent No. 2007–317753, entitled ''Differential Gene Expression in Physiological and Pathological Angiogenesis,'' filed June 28, 2007 (HHS Ref No. E–285–2006/2–AU–03); Canadian Patent Application No. 2,669,260, entitled ''Differential Gene Expression in Physiological and Pathological Angiogenesis,'' filed June 28, 2007 (HHS Ref. No. E–285–2006/2–CA–04); U.S. Patent No.: 8,440,411, entitled ''Differential Gene Expression in Physiological and Pathological Angiogenesis,'' filed March 21, 2011 (HHS Ref. No. E–285–2006/2–US–05); U.S. Patent Application No. 13/052,878, entitled ''Differential Gene Expression in Physiological and Pathological Angiogenesis,'' filed April 16, 2013 (HHS Ref. No.: E–285–2006/2–US–06); and Australian Application Patent No.: 2014–200453, entitled ''Differential Gene Expression in Physiological and Pathological Angiogenesis,'' filed January 28, 2014 (HHS Ref No. E–285–2006/2–AU–07). The patent rights in these inventions have been assigned to the Government of the United States of America. The territory of the prospective Start-Up Exclusive Evaluation Option License Agreement may be worldwide, and the field of use may be limited to ''Development of diagnostic tests and kits to determine or monitor pathological angiogenesis related to cancer in animals or humans.''

Upon the expiration or termination of the Start-up Exclusive Evaluation Option License Agreement, Angio360 Diagnostics, LLC will have the exclusive right to execute a Start-Up Exclusive Patent License Agreement which will supersede and replace the Start-up Exclusive Evaluation Option License Agreement, with no greater field of use and territory than granted in the Start-up Exclusive Evaluation Option License Agreement.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before October 13, 2015 will be considered.

ADDRESSES: Requests for copies of the patent application(s), inquiries, comments, and other materials relating to the contemplated Start-Up Exclusive Evaluation Option License Agreement should be directed to: Rose M. Freel, Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 402–9521; Facsimile: (301) 402–0220; Email: *rose.freel@nih.gov.* A signed confidentiality nondisclosure agreement will be required to receive copies of any patent applications that have not been published or issued by the United States Patent and Trademark Office or the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: This technology describes a method of detecting pathological angiogenesis (formation of new blood vessels) using the expression levels of certain proteins for the diagnosis of cancer or monitoring response to cancer treatment.

The prospective Start-Up Exclusive Evaluation Option License Agreement is being considered under the small business initiative launched on October 1, 2011 and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective Start-Up Exclusive Evaluation Option License Agreement and a subsequent Start-Up Exclusive Patent License Agreement may be granted unless the NIH receives written evidence and argument, within fifteen (15) days from the date of this published notice, that establishes that the grant of the contemplated Start-Up Exclusive Evaluation Option License Agreement would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are filed in response to this notice will be treated as objections to the grant of the contemplated Start-Up Exclusive Evaluation Option License Agreement. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 21, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015–24331 Filed 9–24–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology.

Date: October 14, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Clinical Oncology Study Section.

Date: October 19, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, VA 20191.

Contact Person: Malaya Chatterjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–806–2515, *chatterm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer, Cardiovascular and Sleep Epidemiology Panel B Study Section.

Date: October 19–20, 2015.

Time: 8:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3144, MSC 7770, Bethesda, MD 20892, 301–828–6146, *schwarel@mail.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—A Study Section.

Date: October 26–27, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Kenneth M. Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Innate Immunity and Inflammation Study Section.

Date: October 29–30, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria-Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Tina McIntyre, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topic: Development Functions and Immune Mediated Diseases.

Date: October 30, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Contact Person: Deborah Hodge, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4207 MSC 7812, Bethesda, MD 20892, (301) 435–1238, *hodged@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PARs: Developing and Testing Interventions for Health-Enhancing Physical Activity.

Date: October 30, 2015.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, (301) 594–3292, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Infection, Complement Activation and Inflammatory Immune Tolerance.

Date: October 30, 2015.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Bahiru Gametchu, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1225, *gametchb@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 21, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–24320 Filed 9–24–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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: National Cancer Institute Special Emphasis Panel; Processes in Cancer Control.

Date: October 14, 2015.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 2E904, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W266, Bethesda, MD 20892, 240–276–6385, *lovingeg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Cancer Institute Special Emphasis Panel; Omnibus R03 & R21/SEP–5.

Date: November 19–20, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Salon G, Gaithersburg, MD 20878.

Contact Person: Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W412, Bethesda, MD 20892–9750, 240–276–6386, *twinters@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 21, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–24321 Filed 9–24–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2015–0751]

Cook Inlet Regional Citizen's Advisory Council (CIRCAC) Charter Renewal

AGENCY: Coast Guard, DHS.

ACTION: Notice of recertification.

SUMMARY: The purpose of this notice is to inform the public that the Coast Guard has recertified the Cook Inlet Regional Citizen's Advisory Council (CIRCAC) as an alternative voluntary advisory group for Cook Inlet, Alaska. This certification allows the CIRCAC to monitor the activities of terminal facilities and crude oil tankers under the Cook Inlet Program established by statute.

DATES: This recertification is effective for the period from September 1, 2015 through August 31, 2016.

FOR FURTHER INFORMATION CONTACT: LTJG Katharine Martorelli, Seventeenth Coast Guard District (dpi), by phone at (907) 463–2809, email *Katharine.E.Martorelli@uscg.mil* or by mail at P.O. Box 25517, Juneau, Alaska 99802.

SUPPLEMENTARY INFORMATION:

Background and Purpose

As part of the Oil Pollution Act of 1990, Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), 33 U.S.C. 2732, to foster a long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

On October 18, 1991, the President delegated his authority under 33 U.S.C 2732 (o) to the Secretary of Transportation in Executive Order 12777, section 8(g) (see 56 FR 54757; October 22, 1991) for purposes of certifying advisory councils, or groups, subject to the Act. On March 3, 1992, the Secretary re-delegated that authority to the Commandant of the USCG (see 57 FR 8582; March 11, 1992). The Commandant re-delegated that authority to the Chief, Office of Marine Safety, Security and Environmental Protection (G–M) on March 19, 1992 (letter #5402).

On July 7, 1993, the USCG published a policy statement, 58 FR 36504, to clarify the factors that shall be considered in making the determination as to whether advisory councils, or groups, should be certified in accordance with the Act.

The Assistant Commandant for Marine Safety and Environmental Protection (G–M), re-delegated recertification authority for advisory councils, or groups, to the Commander, Seventeenth Coast Guard District on February 26, 1999 (letter #16450).

On September 16, 2002, the USCG published a policy statement, 67 FR 58440, that changed the recertification procedures such that applicants are required to provide the USCG with comprehensive information every three years (triennially). For each of the two years between the triennial application procedures, applicants submit a letter requesting recertification that includes a description of any substantive changes to the information provided at the previous triennial recertification. Further, public comment is not solicited prior to recertification during

streamlined years, only during the triennial comprehensive review.

On September 1, 2014, the Coast Guard recertified the Cook Inlet Regional Citizen's Advisory Council through August 31, 2015. Under the Oil Terminal and Oil Tanker Environmental Oversight Act of 1990 (33 U.S.C. 2732), the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group for Cook Inlet, Alaska. This advisory group monitors the activities of terminal facilities and crude oil tankers under the Cook Inlet Program established by Congress, 33 U.S.C. 2732 (b).

Recertification

By letter dated August 20, 2015, the Commander, Seventeenth Coast Guard certified that the CIRCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification terminates on August 31, 2016.

Dated: August 20, 2015.

D. B. Abel,

Rear Admiral, U.S. Coast Guard Commander, Seventeenth Coast Guard District.

[FR Doc. 2015–24335 Filed 9–24–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2014–0935]

Letter of Recommendation for Washington State Ferries Liquefied Natural Gas Conversion; Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice and response to comments

SUMMARY: On June 27, 2014, Coast Guard Sector Puget Sound received a Letter of Intent (LOI) and Waterway Suitability Assessment (WSA) from Washington State Ferries (WSF) for a proposal to modify existing Washington State Ferry marine terminal operations to include the handling of Liquefied Natural Gas (LNG). The LNG would be transferred to and used as a marine fuel by six Issaquah Class Ferries converted to use LNG propulsion systems. In accordance with regulation and policy guidance, the Captain of the Port (COTP), Coast Guard Sector Puget Sound, in cooperation with key port stakeholders, will review and validate the information in the WSA. The COTP will then issue a Letter of Recommendation (LOR) to the State of Washington Department of Transportation that conveys the Coast Guard's recommendation on the suitability of the following waterways for LNG marine traffic as it relates to safety and security: Guemes Channel, Rosario Strait, Thatcher Pass, Harney Channel, Upright Channel, Wasp Channel, San Juan Channel, Spieden Channel, Haro Strait, Sidney Channel, Possession Sound, Admiralty Inlet, Puget Sound, Sinclair Inlet, Rich Passage, Elliot Bay, Admiralty Passage, North East Passage, and Colvos Passage.

As part of this validation process, the Coast Guard, on November 12, 2014, published a ''Notice and Request for Comments'' in the **Federal Register** which solicited public comments to inform the COTP's recommendation. A number of comments were received, including two outside the comment period. This document summarizes those comments, explains whether or not they are appropriate for consideration under regulation, and provides additional information to help inform the public about the various issues raised in them.

FOR FURTHER INFORMATION CONTACT: For further information about this document call or email LT Sarah Rodiño, Coast Guard Sector Puget Sound; telephone 206–217–6623, email *sarah.e.rodino@uscg.mil.*

Background

In accordance with 33 CFR 127.007, the COTP, Coast Guard Sector Puget Sound, received an LOI and WSA from WSF on June 27, 2014 regarding WSF's proposal to modify existing Washington State Ferry marine terminal operations and add the handling of LNG. The LNG would be transferred to and used as a marine fuel by six Issaquah Class Ferries converted to use LNG propulsion systems. The LOI notes that if the conversion is completed, each vessel would require fueling by truck once every 7 to 10 days.

Pursuant to 33 CFR 127.009, and using the guidance set forth in reference to the Coast Guard's Navigation and Vessel Inspection Circular (NVIC) 01–2011, ''Guidance Related to Waterfront Liquefied Natural Gas (LNG) Facilities,'' the COTP is reviewing and validating WSF's WSA in cooperation with key port stakeholders. To assist the COTP, the Coast Guard on November 12, 2014 published a ''Notice and Request for Comments'' in the **Federal Register** (79 FR 67179) seeking public comments on WSF's proposal. Once the COTP finishes the review and validation of WSF's WSA, he will develop the LOR with accompanying analysis and provide it to the State of Washington Department of Transportation as the agency with jurisdiction over WSF's proposed activity.

Thirteen comments were received, including two outside the comment period. This document summarizes those comments, explains whether or not they are appropriate for consideration under 33 CFR 127.009, and provides additional information to help inform the public about the various issues raised in them. Comments that fell outside the scope of the WSA but are relevant to the vessel design modifications will be forwarded on to the Coast Guard Marine Safety Center (MSC) to be considered during the design review and approval process in accordance with 46 CFR 71.65–10.

WSF's LOI, WSA, and other supporting documentation can be viewed at: *http://www.wsdot.wa.gov/Ferries/Environment/LNG.htm.* The public comments received by the Coast Guard can be viewed at: *http://www.regulations.gov/#!docketBrowser;rpp=100;so=DESC;sb=docId;po=0;dct=PS;D=USCG–2014–0935.* A copy of NVIC 01–2011 is available for viewing on the Coast Guard's Web site at *http://www.uscg.mil/hq/cg5/nvic/2010s.asp.*

The Coast Guard sincerely appreciates the comments received.

Summary and Discussion of Comments Received

Cost and Funding of Conversion

Multiple comments expressed concern that the proposed conversion is too expensive and that the funding that would pay for the conversion should be spent in a different manner. The COTP's role with regard to WSF's proposal is limited to issuing an LOR to the Washington State Department of Transportation regarding the suitability of the waterway for LNG marine traffic based on the criteria listed in 33 CFR 127.009. Cost of vessel conversion issues fall outside the scope of the LOR. As such, these comments will not be considered by the COTP in issuing the LOR.

Pollution

Two comments expressed concern that LNG poses a pollution threat to the environment. As an issue relevant under 33 CFR 127.009, the COTP will consider those comments in issuing the LOR. For the public's awareness, the Coast Guard will examine WSF's Emergency and Operations Manuals as required by 33 CFR 127.019 covering the transfer system and transfer procedures. These manuals include but are not limited to LNG release response procedures, local response organizations contact

procedures, and emergency shutdown procedures.

Security

Several comments expressed concern that exposed LNG tanks on the proposed converted ferries pose a security risk. As an issue relevant under 33 CFR 127.009, the COTP will consider those comments in issuing the LOR. For the public's awareness on this topic, the Coast Guard oversees a multilayered security framework under 33 CFR parts 101–105 to enhance maritime security throughout the Puget Sound region. If the WSF proposal is approved by the Washington State Department of Transportation, the marine terminal would be required to submit a facility security plan in accordance with 33 CFR part 105. Washington State Ferries is currently required to comply with 33 CFR part 104 which requires in-depth security assessments and Coast Guard-approved vessel security plans. WSF currently has Coast Guard-approved vessel security plans covering each of its vessels. These security plans would be reviewed and amended as necessary to reflect the conversion to LNG fuel.

Design of Converted Ferries

Multiple comments expressed concern about the design of the proposed converted ferries and that the use of LNG poses an unnecessary risk to passengers. The COTP's role with regards to the subject proposal is limited to issuing an LOR to the Washington State Department of Transportation regarding the suitability of the waterway for LNG marine traffic based on the items listed in 33 CFR 127.009. This comment fell outside the scope of the Waterways Suitability Assessment but is relevant to the vessel design modification and will be forwarded on to the Coast Guard MSC to be considered during the design approval process in accordance with 46 CFR 71.65–10. At this time, final plans have not been submitted by WSF to MSC.

One comment stated that WSF should be required to update its Emergency Manual and include it as part of the docket. This comment fell outside the scope of the WSA but for the public's awareness, Operations and Emergency Manuals are required under 33 CFR 127.019. As such, the Coast Guard will examine Emergency and Operation Manuals for compliance with 33 CFR 127.305 and 33 CFR 127.307. WSF will be required to submit copies of these manuals to the COTP 30 days prior to transferring LNG. The COTP may also require WSF to update other required safety plans as necessary.

Two comments expressed concern that a seaplane or other aircraft could collide with an LNG tank onboard a converted ferry. As an issue relevant under 33 CFR 127.009, the COTP will consider those comments in issuing the LOR. For the public's awareness on this topic, historical data shows that instances of unintentional aircraft collisions with ferries are extremely low. Malicious or intentional collisions will be considered in the security threat mitigation strategies explained previously.

Two comments expressed concern that a large commercial vessel could collide with a converted ferry carrying LNG causing a tank rupture and explosion. As an issue relevant under 33 CFR 127.009, the COTP will consider those comments in issuing the LOR. For the public's awareness on this topic, the risk of collision between large commercial vessels is mitigated significantly through a number of systems, processes, and requirements already in place today including the Coast Guard's Vessel Traffic Service (VTS), Automated Identification System (AIS), and Automatic Radar Plotting Aids (ARPA) as well as established traffic separation schemes and the International Regulations for Preventing Collisions at Sea (COLREGS) Navigation Rules governing vessel navigation. In addition, Federal and state laws require large vessels transiting within Puget Sound, including WSF ferries, to be under the direction and control of a federally licensed pilot. A federally licensed pilot is an experienced navigator with expertise specific to Puget Sound who provides significant risk mitigation in regards to collisions. Of note, VTS Puget Sound closely monitors and, as necessary, directs all large commercial vessel traffic throughout the Puget Sound including the routes transited by the Issaquah class ferries. The Issaquah class ferry routes have remained unchanged for at least 55 years and there are no proposed changes to the routes.

One comment expressed the opinion that the Coast Guard should define strict criteria for conducting risk analysis and research. The Coast Guard in our role as stewards of safety and security in the maritime arena regularly integrate risk management into every aspect of our maritime governance and operations. 33 CFR part 127 and NVIC 01–2011 contain tailored requirements and guidance based on risk. In addition, the Coast Guard has commissioned studies from Sandia National Laboratories to examine the risks associated with potential LNG spills. These reports are titled ''Guidance on Risk Analysis and Safety Implication of a Large Liquefied Natural Gas (LNG) Over Water'' (2004) and ''Breach and Safety Analysis of Spills over Water from Large Liquefied Natural Gas Carriers'' (2008). These studies are available online at: *http://www.energy.ca.gov/lng/documents/2004-12_SANDIA-DOE_RISK_ANALYSIS.PDF* and *http://www.lngfacts.org/resources/SANDIA_2008_Report_-_Large_LNG_Vessel_Sa.pdf.*

Further, NVIC 01–11 was written based on Risk Based Decision Making, COMDTINST M16010.3, which can be found at: *http://www.uscg.mil/hq/cg5/cg5211/risk.asp.*

One comment expressed concern about WSF's plan to fuel the converted ferries by parking a tank truck on the terminal transfer span, placing the vehicle on an inclined plane. As an issue relevant under 33 CFR 127.009, the COTP will consider this comment in issuing the LOR. For the public's awareness, the Coast Guard will examine WSF's Operations Manual as required by 33 CFR 127.019 covering the transfer system and transfer procedures.

Regulatory Guidance

One comment expressed concern that currently there are no Federal regulations regarding LNG fueled passenger vessels. The commenter is correct that there are currently no Federal regulations in place that specifically govern the installation and use of LNG as a marine fuel. This concept is new in the United States, although it is more commonly used internationally. The Coast Guard has issued vessel design and LNG bunkering policy documents that provide guidelines for facility and vessel owner operators to use in consideration of facility operations and vessel design. Those documents can be found at: *http://www.uscg.mil/hq/cg5/lgcncoe/docs/Bunking%20Policy%20LTR.pdf* and *http://www.uscg.mil/hq/cg5/lgcncoe/docs/LNGF%20Policy%20LTR.pdf.*

One comment expressed concern that there is not explicit guidance regarding the criteria for developing or evaluating a WSA. The requirements and guidance are located in 33 CFR 127.007 and NVIC 01–11.

Problems With the WSA

One comment expressed concern that the WSA referenced unverified probability calculations for tank collisions from SOLAS Chapter II–1. As an issue relevant under 33 CFR 127.009, the COTP will consider those comments in issuing the LOR. For the public's awareness on this topic, there is a lack

of historical information regarding tank collision probabilities, due to a lack of previous occurrences. However, it should be noted that the current resources available for mitigating vessel collisions (previously described above) considerably reduce the probability of vessel collisions.

One comment stated that the SOLAS model used for collision damage in the WSA is meant to be used on vessels designed for an ocean route and the WSF ferries were constructed for lakes, bays and sounds route. As an issue relevant under 33 CFR 127.009, the COTP will consider those comments in issuing the LOR. For the public's awareness on this topic, DNV–GL determined that the use of this model was the best approach available because a probability model does not exist for a vessel of similar structure as the WSF ferries.

One commenter stated that DNV did not utilize the correct tank volume of fuel in the risk assessment models. The correct tank volume was incorporated in Revision 03 of the WSA.

One comment stated that DNV–GL used inappropriate ignition probability models when utilizing the International Association of Oil and Gas Producers (OGP) Scenario 24 Floating Production, Storage, and Offloading (FPSO) Vessels Gas model. As an issue relevant under 33 CFR 127.009, the COTP will consider those comments in issuing the LOR. For the public's awareness on this topic, no statistically significant data exists for ignition probability models for LNG as fuel onboard passenger ferries. The model used by DNV–GL is meant to model ignition probability onboard larger scale offshore vessels and was chosen because it represents a more conservative and representative model for application to the WSF vessel design.

One comment expressed concern that the societal risks identified in the WSA required that risks falling in the range between ''broadly acceptable'' and ''maximum tolerable'' be mitigated so that they are As Low As Reasonably Possible (ALARP) and that the WSA did not address mitigating factors to reach the ALARP mitigation. As an issue relevant under 33 CFR 127.009, the COTP will consider those comments in issuing the LOR. During the validation process, the COTP will determine if appropriate risk management strategies have been identified.

One comment expressed concern that the WSA was not completed objectively and appears to be incomplete. As an issue relevant under 33 CFR 127.009, the COTP will consider those comments in issuing the LOR. As part of the LOR process and in accordance with NVIC 01–2011, the COTP has been and will continue to review and validate the WSA in cooperation with key port stakeholders. This validation will determine if the WSA presents a realistic and credible analysis of the public safety and security implications of introducing LNG marine traffic into the port and waterway.

This response to comments is issued under authority of 33 CFR 127.009.

Dated: August 20, 2015.

M. W. Raymond,

Captain, U.S. Coast Guard, Captain of the Port, Sector Puget Sound.

[FR Doc. 2015–24337 Filed 9–24–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1530]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before December 24, 2015.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1530, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the

flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: September 9, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Sussex County, Delaware, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project:15–03–1590S Preliminary Date: May 18, 2015	
Town of South Bethany	Town Hall, Office of the Code Constable, 402 Evergreen Road, South Bethany, DE 19930.
Northumberland County, Pennsylvania (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project:14–03–2032S Preliminary Date: May 29, 2015	
City of Sunbury	City Hall, 225 Market Street, Sunbury, PA 17801.
Township of Upper Augusta	Upper Augusta Township Municipal Building, 2087 Snydertown Road, Sunbury, PA 17801.

[FR Doc. 2015–24407 Filed 9–24–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3372–EM; Docket ID FEMA–2015–0002]

Washington; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Washington (FEMA–3372–EM), dated August 21, 2015, and related determinations.

DATES: *Effective Date:* September 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: Notice is hereby given that the incident period for this emergency is closed effective September 10, 2015.

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. 2015–24410 Filed 9–24–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4228–DR; Docket ID FEMA–2015–0002]

Louisiana; Amendment No. 2 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 Louisiana (FEMA–4228–DR), dated July 13, 2015, and related determinations.

DATES: *Effective Date:* September 4, 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 Louisiana 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 13, 2015.

West Feliciana Parish 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. 2015–24428 Filed 9–24–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1536]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before December 24, 2015.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1536, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: September 9, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
McKean County, Pennsylvania (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 07–03–0298S Preliminary Date: March 31, 2010, and May 22, 2015	
Borough of Eldred	Borough Building, 3 Bennett Street, Eldred, PA 16731.
Borough of Lewis Run	Borough Office, 60 Main Street, Lewis Run, PA 16738.
Borough of Port Allegany	Borough Hall, 45 West Maple Street, Port Allegany, PA 16743.
Borough of Smethport	Borough Hall, 201 West Main Street, Smethport, PA 16749.
City of Bradford	City Hall, 24 Kennedy Street, Bradford, PA 16701.
Township of Annin	Annin Township Building, 67 Railroad Avenue, Turtlepoint, PA 16750.
Township of Bradford	Municipal Building, 136 Hemlock Street, Bradford, PA 16701.
Township of Ceres	Ceres Township Building, 12 Barbertown Road, Eldred, PA 16731.
Township of Corydon	Corydon Township Municipal Building, 2474 West Washington Street, Bradford, PA 16701.
Township of Eldred	Township Supervisors' Building, 1834 West Eldred Road, Eldred, PA 16731.
Township of Foster	Foster Township Municipal Building, 1185 East Main Street, Bradford, PA 16701.
Township of Hamilton	Hamilton Township Municipal Building, 2 Curtis Road, Ludlow, PA 16333.
Township of Hamlin	Hamlin Township Municipal Building, 22 Park Road, Hazel Hurst, PA 16733.
Township of Keating	Keating Township Building, 7160 Route 46, Smethport, PA 16749.
Township of Lafayette	Lafayette Township Hall, 7534 Route 59, Lewis Run, PA 16738.
Township of Liberty	Liberty Township Building, 4859 Route 155, Port Allegany, PA 16743.
Township of Norwich	Norwich Township Garage, 3853 West Valley Road, Smethport, PA 16749.
Township of Otto	Otto Township Office, 695 Main Street, Duke Center, PA 16729.
Township of Sergeant	Sergeant Township Office, 14200 Wilcox Road, Mount Jewett, PA 16740.
Township of Wetmore	Wetmore Township Hall, 318 Spring Street, Kane, PA 16735.

[FR Doc. 2015–24402 Filed 9–24–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1452]

Proposed Flood Hazard Determinations for Polk County, Minnesota and Incorporated Areas

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed notice; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed notice concerning proposed flood hazard determinations, which may include the addition or modification of any Base Flood Elevation, base flood depth, Special Flood Hazard Area boundary or zone designation, or regulatory floodway (herein after referred to as proposed flood hazard determinations) on the Flood Insurance Rate Maps and, where applicable, in the supporting Flood Insurance Study reports for Polk County, Minnesota and Incorporated Areas.

DATES: This withdrawal is effective September 25, 2015.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1452, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: On December 16, 2014, FEMA published a proposed notice at 79 FR 74758, proposing flood hazard determinations for Polk County, Minnesota and Incorporated Areas. FEMA is withdrawing the proposed notice.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: September 9, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2015–24426 Filed 9–24–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4239–DR; Docket ID FEMA–2015–0002]

Kentucky; Amendment No. 2 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 Commonwealth of Kentucky (FEMA–4239–DR), dated August 12, 2105, and related determinations.

DATES: *Effective Date:* September 16, 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 Commonwealth of Kentucky 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 August 12, 2015.

Leslie County for Individual Assistance (already designated 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. 2015–24430 Filed 9–24–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2015–0001]

Final Flood Hazard Determinations; Correction

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Final notice; correction.

SUMMARY: On August 19, 2015, FEMA published in the **Federal Register** a final flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 80 FR 50316. The table provided here represents the final flood hazard determinations and communities affected for Norman County, Minnesota, and Incorporated Areas.

Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of September 30, 2015 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the table below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.* The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

Correction

In the final flood hazard determination notice published at 80 FR 50316 in the August 19, 2015, issue of the **Federal Register**, FEMA published a table titled ''Norman County, Minnesota, and Incorporated Areas''. This table contained inaccurate information as to the communities affected by the final flood hazard determinations for Norman County, Minnesota, and Incorporated Areas. In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: September 9, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Norman County, Minnesota, and Incorporated Areas Docket No.: FEMA–B–1311	
City of Ada	15 East 4th Street, Ada, MN 56510.
City of Borup	203 Main Avenue, Borup, MN 56519.
City of Halstad	404 5th Avenue East, Halstad, MN 56548.
City of Hendrum	308 Main Street East, Hendrum, MN 56550.
City of Perley	205 Main Street, Perley, MN 56574.
City of Shelly	101 West McKinley Avenue, Shelly, MN 56581.
City of Twin Valley	107 2nd Street SW, Twin Valley, MN 56584.
Unincorporated Areas of Norman County	16 3rd Avenue East, Ada, MN 56510.

[FR Doc. 2015–24411 Filed 9–24–15; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1541]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before December 24, 2015.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1541, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: September 9, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Brunswick County, North Carolina, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project:11–04–8240S Preliminary Date: August 29, 2014	
Village of Bald Head Island	Village Hall, 106 Lighthouse Wynd, Bald Head Island, NC 28461.

[FR Doc. 2015–24409 Filed 9–24–15; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5828–N–39]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AGRICULTURE: Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; AIR FORCE: Mr. Robert E. Moriarty, P.E., AFCEC/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland TX 78236–9853; COE: Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5542; ENERGY: Mr. David Steinau, Department of Energy, Office of Property Management, OECM MA–50, 4B122, 1000 Independence Ave. SW., Washington, DC 20585 (202) 287–1503; GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; INTERIOR: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 3960 N. 56th Ave. #104, Hollywood, FL. 33021; (443) 223–4639 NASA: Mr. Frank T. Bellinger, Facilities Engineering Division, National Aeronautics & Space Administration, Code JX, Washington, DC 20546, (202) 358–1124; NAVY: Mr. Steve Matteo, Department of the Navy, Asset Management; Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426 (These are not toll-free numbers).

Dated: September 17, 2015.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM Federal Register REPORT FOR 09/25/2015

Suitable/Available Properties

Building

Arkansas

Dierks Lake Project Office
246 Jefferson Ridge Road
Sevier County AR
Landholding Agency: COE
Property Number: 31201530003
Status: Unutilized
Comments: 30+ yrs. old; 600 sq. ft.; restroom; contact COE for more information.

DeQueen Project Office—Oak G
706 DeQueen Lake Road
Sevier County AR
Landholding Agency: COE
Property Number: 31201530004
Status: Unutilized
Comments: 30+ yrs. old; 600 sq. ft.; restroom; contact COE for more information.

District of Columbia

Flammable Liquid Storage Bldg.
3501 New York Avenue
Washington DC 20002
Landholding Agency: Agriculture
Property Number: 15201530023

Status: Excess
Directions: #NA25 (1230B00025)? RPUID: 03.51655
Comments: 44+ yrs. old; 220 sq. ft.; 18+ mos. vacant; floors need replaced; hazardous material (herbicides, insecticide & fungicide) storage; remediation needed; contact Agriculture for more information.

Florida

2 Buildings
Fairway Drive
Niceville FL 32578
Landholding Agency: Air Force
Property Number: 18201530024
Status: Unutilized
Directions: 1542 (206 SQ. FT.; restroom/storage); 1543 (170 SQ. FT.; restroom)
Comments: 50+ yrs.-old; deteriorated; repairs needed; contact Air Force for more information on a specific property.

Yellow Water
Normandy Blvd.
NAS Jacksonville FL
Landholding Agency: Navy
Property Number: 77201530026
Status: Unutilized
Comments: 102 acres; recreational; contact Navy for more information.

Michigan

Reinhold
Red Water Dr.
Luzerne MI 48636
Landholding Agency: Agriculture
Property Number: 15201530011
Status: Unutilized
Comments: off-site removal only; no future agency need; 1,560 sq. ft.; seasonal residence; removal diff. due to type/size; significant renvo. needed; contact Agriculture for more information.

South Carolina

Witherbee Dwelling D (604)
2367 Witherbee Road
Cordesville SC 29434
Landholding Agency: Agriculture
Property Number: 15201530015
Status: Excess
Directions: RPUID: #2120.006791
Comments: off-site removal only; 1,400 sq. ft.; 84+ months vacant; residential; significant renvo. needed; asbestos/mold; a waiting funding for remediation; contact Agriculture for more information.

Witherbee Dwelling E (605)
2355 Witherbee Road
Cordesville SC 29434
Landholding Agency: Agriculture
Property Number: 15201530016
Status: Excess
Directions: RPUID: #2121.006791
Comments: off-site removal only; 1,400 sq. ft.; 84+ months vacant; residential; significant renvo. needed; asbestos/mold; waiting funding for remediation; contact Agriculture for more information.

Witherbee Dwelling B (602)
2397 Witherbee Road
Cordesville SC 29434
Landholding Agency: Agriculture
Property Number: 15201530017
Status: Excess
Directions: RPUID: #2222.006791
Comments: off-site removal only; 1,400 sq. ft.; 84+ months vacant; residential; significant renov. needed; asbestos/mold; waiting funding for remediation contact Agriculture for more information.

Witherbee Dwelling C (603)
2381 Witherbee Road
Cordesville SC 29434
Landholding Agency: Agriculture
Property Number: 15201530018
Status: Excess
Directions: RPUID: #2119.006791
Comments: off-site removal only; 1,455 sq. ft.; 84+ months vacant; residential; significant renov. needed; asbestos/mold; waiting funding for remediation; contact Agriculture for more information.

Texas

3 Buildings
Naval Air Station Corpus Christi
Corpus Christi TX 78419
Landholding Agency: Navy
Property Number: 77201530024
Status: Excess
Directions: Bldg. H56B (900 sq.ft.); Bldg. H–111 (255 sq. ft.); Bldg. H–101 (1,260 sq.ft.)
Comments: 27–62 yrs. old; bathhouse, generator bldg., CPO club; poor conditions; obtain visitor's pass for entry; contact Navy for more information.

Facility H56
Naval Air Station Corpus Christi
Corpus Christi TX 78419
Landholding Agency: Navy
Property Number: 77201530025
Status: Excess
Comments: 76+ yrs. old; swimming pool; poor condition; must obtain visitor's pass; contact Navy for more information.

Virginia

Tract 01–114 Metal Storage She
621 Bowman's Mill Road
Middletown VA 22645
Landholding Agency: Interior
Property Number: 61201530022
Status: Excess
Comments: off-site removal; 30–40 yrs. old; 600 sq. ft.; temp. storage; 144 mos. vacant; fair condition; prior approval needed to gain access; contact DOI for more information.

Unsuitable Properties

Building

California

2 Buildings
North Flightline Road; Edwards AFB
Edwards AFB CA 93524
Landholding Agency: Air Force
Property Number: 18201530028
Status: Unutilized
Directions: 1910; 1863
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Colorado

Q–0489–N ESD
Seasonal Residence 00000489
1057 CR 84 West
Allenspark CO 80510
Landholding Agency: Interior
Property Number: 61201530023
Status: Excess
Comments: documented deficiencies: no foundation to support bldg.; rodent infestation (high potential for Hanta virus); clear threat to physical safety
Reasons: Extensive deterioration

B–0060–N–ESD
Ranger Office- Long Peak Campground
1057 CR 84 West
Allenspark CO 80510
Landholding Agency: Interior
Property Number: 61201530024
Status: Excess
Comments: documented deficiencies: no foundation to support bldg.; rodent infestation (high potential for Hanta virus); clear threat to physical safety.
Reasons: Extensive deterioration

Florida

Camp Ocala Dormitory, #702
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530028
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material; Extensive deterioration

Camp Ocala Dormitory #701
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530029
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #703
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530030
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #704
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530031
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located

2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #705
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530032
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #706
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530047
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #707
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530033
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #708
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530034
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #709
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530036
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #710
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530037
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #711
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530038
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #712
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530039
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #713
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530040
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #714
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530041
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #715
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530042
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #716
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530043
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #717
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530044
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Dormitory, #718
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530045
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located 2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Camp Ocala Nature Center, #719
18533 NFS 535
Altoona FL 32702
Landholding Agency: Agriculture
Property Number: 15201530046
Status: Excess
Comments: foundation is not structurally sound due to stair step cracking. Flammable/Explosive materials located on adjacent property, Ocala Fire Control Center.
Reasons: Extensive deterioration; Within airport runway clear zone; Other—Located

2,000 ft. of helicopter pad; Within 2000 ft. of flammable or explosive material

Building 1539
Eglin AFB
Eglin AFB FL 32578
Landholding Agency: Air Force
Property Number: 18201530025
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

9 Buildings
Kennedy Space Center
Kennedy Space Center FL 32899
Landholding Agency: NASA
Property Number: 71201530003
Status: Unutilized
Directions: 865-Toxic Hazards Lab; 623–Generator Operations Shop; 1055-Locomotive Office Bldg.; 45-Hazardous Stg.; 1056–Locomotive Stg.; 763–C Band Radar 19.17 Bldg.; 127-Reclorination Bldg.; 655–Roads & Grounds Maint.; 625–Base Electric Shop
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

3 Buildings
Kennedy Space Center
Kennedy Space Center FL 32899
Landholding Agency: NASA
Property Number: 71201530004
Status: Unutilized
Directions: 77–LH2 Engineering Office Bldg., 904–Operations Support Bldg. A–2; 822–Slidewire Termination Facility
Comments: flammable/explosive mats. are located on? adjacent industrial, commercial, or Federal facility; public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

329 Temporary Building
TRI–0477 4th Street SE
Kennedy Space Center FL 32899
Landholding Agency: NASA
Property Number: 71201530005
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Georgia

2 Buildings
Robins Air Force Base, Georgia
Robins AFB GA 31098
Landholding Agency: Air Force
Property Number: 18201530029
Status: Unutilized
Directions: Facility 16 & 24
Comments: property located within floodway which has not been correct or contained; public access denied and no alternative method to gain access without compromising national security.
Reasons: Floodway; Secured Area

Facility 14
125 Beale Drive
Robins AFB GA 31098
Landholding Agency: Air Force
Property Number: 18201530030
Status: Underutilized
Comments: property located within floodway which has not been correct or contained; public access denied and no alternative method to gain access without compromising national security.
Reasons: Floodway; Secured Area

Facility 181
580 First Street
Robins AFB GA 31098
Landholding Agency: Air Force
Property Number: 18201530031
Status: Underutilized
Comments: flammable/explosive mat.; property located within floodway which has not been correct or contained; Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material; Floodway

Facility 20
135 Beale Drive
Robins AFB GA 31098
Landholding Agency: Air Force
Property Number: 18201530032
Status: Unutilized
Comments: property located within floodway which has not been correct or contained; public access denied and no alternative method to gain access without compromising national security.
Reasons: Floodway; Secured Area

Facility 20
135 Beale Drive
Robins AFB GA 31098
Landholding Agency: Air Force
Property Number: 18201530033
Status: Unutilized
Comments: property located within floodway which has not been correct or contained; public access denied and no alternative method to gain access without compromising national security.
Reasons: Floodway; Secured Area

Facility 14
125 Beale Drive
Robins AFB GA 31098
Landholding Agency: Air Force
Property Number: 18201530034
Status: Underutilized
Comments: property located within floodway which has not been correct or contained; public access denied and no alternative method to gain access without compromising national security.
Reasons: Floodway; Secured Area

Idaho

Benton Bunkhouse
4907 East River
Priest River ID 83856
Landholding Agency: Agriculture
Property Number: 15201530008
Status: Excess
Comments: documented deficiencies: roof is severely dilapidated; severe rodent infestation; clear threat to physical safety.
Reasons: Extensive deterioration

Illinois

2 Buildings
Fermi National Accelerator Laboratory
Batavia IL 60510
Landholding Agency: Energy
Property Number: 41201530005
Status: Excess
Directions: 248–E2 Service Building; 249–E3 Service Building
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Iowa

FAA Outer Marker (PPY)
Omaha, NE RWY 17
152nd Street
Crescent IA 51526
Landholding Agency: GSA
Property Number: 54201530004
Status: Surplus
GSA Number: 7–U–IA–0516
Directions: east of 152nd St. in rural Crescent, IA.; landholding Agency: FAA—Disposal Agency: GSA
Comments: property located within floodway which has not been corrected or contained.
Reasons: Floodway

Michigan

Kincaid
Knott Road
Luzerne MI 48636
Landholding Agency: Agriculture
Property Number: 15201530009
Status: Unutilized
Comments: documented deficiencies: structurally unsound; clear threat to physical safety.
Reasons: Extensive deterioration

Burdis Cabin 2
Haskell Drive
Lewiston MI 49756
Landholding Agency: Agriculture
Property Number: 15201530010
Status: Unutilized
Comments: documented deficiencies: Severe structural deterioration; structural walls are rotten; clear threat physical safety.
Reasons: Extensive deterioration

Ladd
West Ausable River Dr.
Luzerne MI 48636
Landholding Agency: Agriculture
Property Number: 15201530012
Status: Unutilized
Comments: documented deficiencies: Significant rotting; structurally unsound; clear threat to physical safety.
Reasons: Extensive deterioration

Burdis Cabin 1
Haskell Dr.
Lewiston MI 49756
Landholding Agency: Agriculture
Property Number: 15201530013
Status: Unutilized
Comments: documented deficiencies: Foundation collapsing; clear threat to physical safety.
Reasons: Extensive deterioration

Nevada

Holbrook Warehouse
0.5 Miles N of Holbrook JCT To
Gardnerville NV 89410
Landholding Agency: Agriculture
Property Number: 15201530014
Status: Unutilized
Directions: Btw. addresses 1380
Comments: inaccessible because it is landlocked and can only be reached by

crossing private property and there is no established right of means of entry.
Reasons: Not accessible by road

New Jersey

Building 1909
JBMDL
JBMDL NJ 08641
Landholding Agency: Air Force
Property Number: 18201530023
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

New York

3 Buildings
Liberty Island
New York NY 10004
Landholding Agency: Interior
Property Number: 61201530020
Status: Excess
Directions: Quarters #42, 43, 44
Comments: located on off-shore Liberty Island; located in floodway which has not been corrected or contained; suffered extensive damage due to Sandy; shell of house remains; threat to physical safety.
Reasons: Floodway; Isolated area; Extensive deterioration

Ohio

Restroom Bldg. MOSQ–12628
2961 Warren-Meadville Road
Cortland OH 44410
Landholding Agency: COE
Property Number: 31201530002
Status: Underutilized
Comments: structurally unsound; vegetation growing on & within property.
Reasons: Extensive deterioration

Green Lab Research Facility,
Bldg. #336
21000 Brookpark Road
Brook Park OH 44135
Landholding Agency: NASA
Property Number: 71201530006
Status: Unutilized
Comments: materials are located on adjacent property, GRC Lewis Field and GRC haz. waste fac. (bldg. 215)Public access denied and no alternative method to gain access without compromising national security.
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Oregon

W4007 Applegate Lookout Guard
Freemont-Winema Nat'l Forest
Chiloquin OR 97624
Landholding Agency: Agriculture
Property Number: 15201530024
Status: Excess
Directions: (1334.005651) 13971 00
Comments: documented deficiencies: Structure collapsing; unsafe; clear threat to physical safety.
Reasons: Extensive deterioration

South Carolina

Storage Bldg. #655 for Dwelling 605
2355 Witherbee Road
Cordesville SC 29434
Landholding Agency: Agriculture
Property Number: 15201530019
Status: Excess
Directions: RPUID: #4392.006791
Comments: structure only; completely gutted; surrounded by vegetation; vegetation growing on & within property.
Reasons: Extensive deterioration

Storage Bldg. #654 for Dwelling 604
2367 Witherbee Road
Cordesville SC 29434
Landholding Agency: Agriculture
Property Number: 15201530020
Status: Excess
Directions: RPUID: #4390.006791
Comments: structure only; completely gutted; surrounded by vegetation; vegetation growing on & within property.
Reasons: Extensive deterioration

Storage Bldg. 653 for Dwelling 603
2381 Witherbee Road
Cordesville SC 29434
Landholding Agency: Agriculture
Property Number: 15201530021
Status: Excess
Directions: RPUID: #4388.006791
Comments: structure only; completely gutted; surrounded by vegetation; vegetation growing on & within property.
Reasons: Extensive deterioration

Storage Bldg. #652 for Dwelling 602
2397 Witherbee Road
Cordesville SC 29434
Landholding Agency: Agriculture
Property Number: 15201530022
Status: Excess
Directions: RPUID: #4386.00691
Comments: structure only; completely gutted; surrounded by vegetation.
Reasons: Extensive deterioration

Texas

FNWZ8004
726 Third Street
Dyess AFB TX 79607
Landholding Agency: Air Force
Property Number: 18201530026
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Utah

Building 1475; Munitions Storage
7750 Madrona Ln., Hill AFB
Ogden UT 54056
Landholding Agency: Air Force
Property Number: 18201530027
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Virginia

12 Buildings
JBLE-Langley
JBLE-Langley VA 23665
Landholding Agency: Air Force
Property Number: 18201530035
Status: Underutilized
Directions: 141 (467777); 142 (467778); 143 (467779); 147 (467783); 148 (467784); 162 (467788); 355 (466533); 720 (666652); 1329 (467481); 1330 (467482); 1331 (467483); 1332 (467984)
Comments: properties located w/in floodway which has not been corrected or contained; public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area; Floodway

Tract 01–114 Livestock Shed
621 Bowman's Mill Road
Middletown VA 22645
Landholding Agency: Interior
Property Number: 61201530021
Status: Excess
Comments: structurally unstable; moving will result in collapsing; clear threat to physical safety.
Reasons: Extensive deterioration

2 Buildings
17320 Dahlgren Rd.
Dahlgren VA
Landholding Agency: Navy
Property Number: 77201530022
Status: Excess
Directions: Bldg. 290TNK & 291TKN, PW Elevated Storage Tanks
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

2 Buildings
Gilbert Street—Naval Station Norfolk
Norfolk VA 23511
Landholding Agency: Navy
Property Number: 77201530023
Status: Excess
Directions: Buildings CEP–41 & CEP–44
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Wyoming

2340
7800 Central Ave F.E.
Warren AFB WY 82005
Landholding Agency: Air Force
Property Number: 18201530036
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

2 Buildings
Warren AFB
Warren AFB WY 82005
Landholding Agency: Air Force
Property Number: 18201530038
Status: Unutilized
Directions: Property 155 & 4330
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Extensive deterioration

Land

Arizona

Treaccre Surplus Land 3.82 Acre
Frank Lloyd Wright Blvd. & Pima S. Frontage R
Scottsdale AZ
Landholding Agency: GSA
Property Number: 54201530005
Status: Surplus
GSA Number: 9–I–AZ–1712AA
Directions: Disposal Agency: GSA? Land Holding Agency: Interior
Comments: property is inaccessible because it is landlocked and can only be reached by crossing private property and there is no established right or means of entry.

Reasons: Not accessible by road

California

Naval Weapons Station Seal Bea
Bolsa Chica Road & Edinger Ave.
Seal Beach CA
Landholding Agency: Navy
Property Number: 77201530021
Status: Unutilized
Comments: land surrounding site is encumbered by explosive/flammable materials.
Reasons: Within airport runway clear zone

[FR Doc. 2015–24200 Filed 9–24–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5835–N–15]

60-Day Notice of Proposed Information Collection: Mark-to-Market Program: Requirements for Community-Based Non-Profit Organizations and Public Agencies

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: November 24, 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: Claude Dickson, Acting Senior Advisor, Office of Recapitalization, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email: *Claude.C.Dickson@hud.gov* or telephone number: (202) 402–8372. 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. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A.

A. Overview of Information Collection

Title of Information Collection: Mark-to-Market Program: Requirements for Community-Based Non-Profit Organizations and Public Agencies.

OMB Approval Number: 2502–0563.

Type of Request: Extension of currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: Provides proof of tenant endorsement of entity proposing to purchase restructured property and obtain modification, assignment, or forgiveness of second mortgage and/or third mortgage debt.

Respondents: Non-profits/public agencies and tenants/heads of households.

Estimated Number of Respondents: 371.

Estimated Number of Responses: 371.

Frequency of Response: 1.

Average Hours per Response: 10 (non-profits/public agencies); 1 (tenants/heads of households).

Total Estimated Burdens: 398.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Dated: September 18, 2015.

Janet M. Golrick,

Acting Associate General Deputy Assistant, Secretary for Housing—Associate Deputy Federal Housing Commissioner.

[FR Doc. 2015–24429 Filed 9–24–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD/AAKC001030/A0A501010.999900 253G]

Land Acquisitions; Mashpee Wampanoag Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination.

SUMMARY: The Assistant Secretary—Indian Affairs made a final determination to acquire approximately 321.35 acres of land, more or less, in Barnstable and Bristol Counties, Massachusetts, in trust for gaming and other purposes for the Mashpee Wampanoag Tribe on September 18, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

On September 18, 2015, the Assistant Secretary—Indian Affairs issued a decision to accept 321.35 acres, more or less, of land in trust for the Mashpee Wampanoag Tribe in the Town of Mashpee, Massachusetts (170 acres, more or less), and the City of Taunton, Massachusetts (151 acres, more or less), under the authority of Section 5 of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The Assistant Secretary—Indian Affairs also determined that these lands meet the requirements of the Indian Gaming Regulatory Act's ''initial reservation'' exception, 25 U.S.C. 2719(b)(1)(B)(ii), to the general prohibition contained in 25 U.S.C.

2719(a), on gaming on lands acquired in trust after October 17, 1988.

Legal Description

The Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title in the name of the United States of America in trust for Mashpee Wampanoag Tribe. The 321.35 acres are located in Barnstable and Bristol Counties, Massachusetts, and are more particularly described as follows:

Town of Mashpee, Barnstable County, State of Massachusetts

Parcel 1—213 Sampsons Mill Road (Assessor's Parcel 63–10–0–R)

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee on the east side of Quippish Road, and the south side of Sampsons Mill Road more particularly shown as Lot 6 on a plan entitled ''Plan of Land in Mashpee, Mass. Jill Slaymaker in Mashpee, Ma. Scale 1″ =100′, Date March 22, 1985'' prepared by Edward E. Kelley Reg. Land Surveyor and recorded in Barnstable County Registry of Deeds, Plan Book 401 Page 97. Bounded and described as follows:

Beginning at a concrete bound at the intersection of Quippish Road and Linwood Street and the southwesterly corner of the parcel herein described;

Thence N 01° – 28′ – 19″ W along the easterly sideline of Quippish Road a distance of 258.98 feet to a concrete bound;

Thence N 14° – 02′ – 10″ W along the easterly sideline of Quippish Road on a distance of 209.57 feet to a concrete bound;

Thence N 20° – 57′ – 57″ W along the easterly sideline of Quippish Road a distance of 266.53 feet to a point near a concrete bound disturbed at the land now or formerly of Willowbend Community Trust;

Thence N 68° – 19′49″ E along land now or formerly of Willowbend Community Trust a distance of 335.86 feet to a concrete bound;

Thence N 18° – 23′ – 09″ W along land now or formerly of Willowbend Community Trust a distance of 391.81 feet to a concrete bound at the easterly sideline of Quippish Road;

Thence N 18° – 23′ – 09″ W along the easterly sideline of Quippish Road a distance of 355.84 feet to a mag nail set at the southerly sideline of Sampsons Mill Road;

Thence S 70° – 51′ – 50″ E along the southerly sideline of Sampsons Mill Road a distance of 528.32 feet to a concrete bound at the point of curvature;

Thence easterly along the southerly sideline of Sampsons Mill Road a curve to the left having a radius of 191.36 feet, an arc distance of 132.25 feet, a chord bearing N 89° – 20′ – 15″ E and a chord length of 129.63 feet to point of tangency;

Thence N 69° – 32′ – 13″ E along the southerly sideline of Sampsons Mill Road a distance of 195.68 feet to a point of curvature;

Thence easterly along the southerly sideline of Sampsons Mill Road a curve to the right having a radius of 171.59 feet, an arc distance of 120.46 feet, a chord bearing N 89° – 38′ – 54″ E and a chord length of 118.00 feet to point of tangency;

Thence S 70° – 14′ – 27″ E along the southerly sideline of Sampsons Mill Road a distance of 114.00 feet to the medial line of the Santuit River;

Thence numerous courses along the medial line of Santuit River;

Thence S 26° – 12′ – 29″ W along the medial line of the Santuit River a distance of 21.27 feet to a point;

Thence S 06° – 37′ – 27″ E along the medial line of the Santuit River a distance of 98.31 feet to a point;

Thence S 49° – 39′ – 30″ W along the medial line of the Santuit River a distance of 40.85 feet to a point;

Thence S 38° – 48′ – 36″ W along the medial line of the Santuit River a distance of 43.45 feet to point;

Thence S 30° – 48′ – 45″ E along the medial line of the Santuit River a distance of 27.64 feet to a point;

Thence S 53° – 29′ – 40″ E along the medial line of the Santuit River a distance of 31.73 feet to a point;

Thence S 29° – 39′ – 25″ E along the medial line of the Santuit River a distance of 73.97 feet to a point;

Thence S 05° – 07′ – 08″ W along the medial line of the Santuit River a distance of 81.61 feet to a point;

Thence S 19° – 19′ – 45″ W along the medial line of the Santuit River a distance of 55.78 feet to a point;

Thence S 14° – 31′ – 54″ E along the medial line of the Santuit River a distance of 146.35 feet to a point;

Thence S 27° – 27′ – 03″ E along the medial line of the Santuit River a distance of 94.14 feet to a point;

Thence S 51° – 23′ – 03″ E along the medial line of the Santuit River a distance of 56.47 feet to a point;

Thence S 08° – 58′ – 54″ E along the medial line of the Santuit River a distance of 48.95 feet to a point;

Thence S 01° – 59′ – 19″ E along the medial line of the Santuit River a distance of 49.82 feet to a point;

Thence S 20° – 26′ – 08″ E along the medial line of the Santuit River a distance of 34.79 feet to a point;

Thence S 07° – 02′ – 20″ E along the medial line of the Santuit River a distance of 34.79 feet to a point;

Thence S 11° – 59′ – 37″ W along the medial line of the Santuit River a distance of 65.43 feet to a point;

Thence S 56° – 08′ – 09″ W along the medial line of the Santuit River a distance of 88.60 feet to a point;

Thence S 13° – 17′ – 42″ W along the medial line of the Santuit River a distance of 102.68 feet to a point;

Thence S 49° – 39′ – 30″ W along the medial line of the Santuit River a distance of 18.15 feet to a point;

Thence S 02° – 26′ – 46″ E along the medial line of the Santuit River a distance of 51.81 feet to a point;

Thence S 30° – 57′ – 53″ E along the medial line of the Santuit River a distance of 33.53 feet to a point at the land now or formerly of the Town of Mashpee Conservation Commission;

Thence S 75° – 43′ – 36″ W along land now or formerly of the Town of Mashpee Conservation Commission a distance of 314.40 feet to a concrete bound;

Thence S 75° – 43′ – 36″ W along land now or formerly of the Town of Mashpee Conservation Commission and along an undeveloped way know as Linwood Street, all being land of the Town of Mashpee Conservation Commission, a distance of 300.03 feet to a concrete bound at the sideline of Linwood Street;

Thence S 75° – 43′ – 36″ W along the northerly sideline of Linwood Street a distance of 417.21 feet to a concrete bound at the easterly sideline of Quippish Road, being the Point of Beginning.

The above parcel contains 29.92 acres, more or less.

For Grantor's title see deed dated February 7, 2013 from Maushop L.L.C. and recorded in the Barnstable Registry of Deeds in Book 27116, Page 35.

Parcel 2—17 Mizzenmast (Assessor's Parcel 125–238–0–E)

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee, on the east side of Mizzenmast more particularly shown as shown as Lot 80 Land Court Plan 35464–b (Sheet 7) filed in Land Registration Office, Barnstable County Registry of Deeds with a Certificate of Title Number 165381 bounded and described as follows:

Beginning at a concrete bound at the southwesterly corner of the parcel herein described and the land now or formerly of new Seabury Properties, LLC;

Thence N 09°08′29″ E along land now or formerly of new Seabury

Properties, LLC a distance of 57.00 feet to a bound at the land now or formerly of Paul;

Thence N 59°24′39″ E along land now or formerly of Paul a distance of 188.63 feet to a concrete bound at the easterly sideline of Mizzenmast;

Thence southerly along the easterly sideline of Mizzenmast a curve to the right, having a radius of 547.59 feet, an arc distance of 118.00 feet, with a chord bearing S 8°45′36″ E and a chord length of 117.77 feet to a concrete bound at the land now or formerly of Garber;

Thence S 79°16′28″ W along land now or formerly of Garber a distance of 192.74 feet to the Point of Beginning.

The above described parcel contains 15,727± s.f. or 0.3610 acres, more or less.

Parcel 3—56 Uncle Percy's Road (Assessor's Parcel 117–173–0–R)

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee, on the south side of Uncle Percy's Road more particularly shown as shown as Lot 15 (Block 10) Land Court Plan 11408–I filed in Land Registration Office, Barnstable County Registry of Deeds with a Certificate of Title Number 157612. Bounded and described as follows:

Beginning at a concrete bound along the southerly sideline of Uncle Percy's Road at the westerly corner of the parcel herein described and at the land now or formerly of Tucchio;

Thence N 45°15′00″ E along the southerly sideline of Uncle Percy's Road a distance 65.00 feet to a concrete bound at the land now or formerly of Mainberger, Trustee;

Thence S 44°45′00″ E along land now or formerly of Mainberger, Trustee a distance of 100.00 feet to a concrete bound at the land now or formerly of Romanski;

Thence S 45°15′00″ W along land now or formerly of Romanski and Brossi a distance of 65.00 feet to a point at the land now or formerly of Tucchio;

Thence N 44°45′00″ W along land now or formerly of Tucchio a distance of 100.00 feet to the southerly sideline of Uncle Percy's Road and the Point of Beginning.

The above described parcel contains 6,500 s.f. or 0.1492 acres, more or less.

Parcel 4—Great Neck Road South (Assessor's Parcel 99–38–0–R)

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee on the west side of Great Neck Road South more particularly shown on a plan entitled ''Plan of Land in Mashpee, Mass. Prepared for Duck Pond Limited Partnership. Scale 1″=50′, dated February 13, 2007″ prepared by Holmes and McGrath, Inc. and recorded in Barnstable County Registry of Deeds, Plan Book 618 Page 13. Bounded and described as follows:

Beginning at a concrete bound at the northeasterly corner of the parcel herein described and at the land now or formerly of the Mashpee Wampanoag Tribal Council, Inc.;

Thence S 70° – 00′ – 00″ E along the land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. A distance of 180.00 feet to a point;

Thence S 24° – 54′ – 00″ E along the land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. A distance of 93.07 feet to a point;

Thence S 01° – 00′ – 00″ W along the land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. A distance of 75.00 feet to a concrete bound;

Thence S 13° – 55′ – 00″ W along the land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. A distance of 190.01 feet to a point at the land now or formerly of Mashpee Commons L P;

Thence N 84° – 57′ – 25″ W along the land now or formerly of Mashpee Commons L P a distance of 282.36 feet to a concrete bound;

Thence N 84° – 57′ – 25″ W along the land now or formerly of Mashpee Commons L P a distance of 500.11 feet to a concrete bound;

Thence N 84° – 57′ – 25″ W along the land now or formerly of Mashpee Commons L P a distance of 244.03 feet to a point near a concrete bound at land now or formerly of the Mashpee Wampanoag Tribal Council, Inc.;

Thence N 14° – 32′ – 19″ E along the land now or formerly of the Mashpee Wampanoag Tribal Council, Inc.; a distance of 395.00 feet to a concrete bound;

Thence S 84° – 57′ – 43″ E along the land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. a distance of 765.00 feet to a concrete bound being the Point of Beginning.

The above parcel contains 8.88 acres, more or less.

For Grantor's title see deed dated June 12, 2007 from Duck Pond Limited Partnership and recorded in the Barnstable Registry of Deeds in Book 22104, Page 110.

Parcel 5—483 Great Neck Road South (Assessor's Parcel 95–7–0–R)

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee on the west side of Great Neck Road South more particularly shown on a plan entitled ''Plan of Land in Mashpee, Mass. Prepared for the Mashpee Wampanoag Indian Tribal Council, Inc. Scale 1″=100′, dated June 6/3/15″ prepared by Cape & Islands Engineering, Inc. To be recorded in Barnstable County Registry of Deeds; bounded and described as follows:

Beginning at a Mashpee road bound along the westerly sideline of Great Neck Road South;

Thence S 19° – 26′ – 15″ W along the westerly sideline of Great Neck Road South a distance of 220.76 feet to a point of curvature near a disturbed concrete bound;

Thence southerly along the westerly sideline of Great Neck Road South a curve to the left having a radius of 4055.79 feet, an arc distance of 249.01 feet, a chord bearing S 17° – 40′ – 43″ W and a chord length of 248.97 feet to a point at the land now or formerly of Mashpee Commons L P;

Thence N 84° – 57′ – 25″ W along land now or formerly Mashpee Commons L P a distance of 265.00 feet to a point at land now or formerly of the Mashpee Wampanoag Tribal Council;

Thence N 13° – 55′ – 00″ E along land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. a distance of 190.01 feet to a concrete bound;

Thence N 01° – 00′ – 00″ E along land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. a distance of 75.00 feet to a point;

Thence N 24° – 54′ – 00″ W along land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. a distance of 93.07 feet to a point;

Thence N 70° – 00′ – 00″ W along land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. a distance of 180.00 feet to a concrete bound;

Thence N 84° – 57′ – 43″ W along land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. a distance of 765.00 feet to a concrete bound;

Thence S 14° – 32′ – 19″ W along land now or formerly of the Mashpee Wampanoag Tribal Council, Inc. a distance of 395.00 feet to a point near a concrete bound at the land now or formerly of Mashpee Commons L P;

Thence N 84° – 57′ – 25″ W along land now or formerly of the Mashpee Commons L P. a distance of 256.07 feet to a broken concrete bound;

Thence N 84° – 57′ – 25″ W along land now or formerly of the Mashpee Commons L P. a distance of 499.97 feet to a concrete bound;
Thence N 84° – 57′ – 25″ W along land now or formerly of the Mashpee Commons L P. a distance of 500.00 feet to a concrete bound at the northerly sideline of Holland Mill Road;
Thence N 6° – 32′ – 16″ E along Holland Mill Road so called a distance of 8.04 feet to a point;
Thence N 58° – 32′ – 13″ W along the northerly sideline of Holland Mill Road a distance of 342.16 feet to a concrete bound;
Thence N 75° – 30′ – 32″ W along the northerly sideline of Holland Mill Road a distance of 95.19 feet to a concrete bound;
Thence N 83° – 41′ – 49″ W along the northerly sideline of Holland Mill Road a distance of 90.76 feet to a concrete bound online and thence continuing 12.90 feet to a point at the easterly sideline of Great Hay Road;
Thence N 10° – 25′ – 26″ E along the easterly sideline of Great Hay Road a distance of 96.00 feet to a point;
Thence N 12° – 38′ – 07″ E along the easterly sideline of Great Hay Road a distance of 149.30 feet to a point;
Thence N 10° – 23′ – 37″ E along the easterly sideline of Great Hay Road a distance of 98.12 feet to a point of curvature;
Thence northerly along the easterly sideline of Great Hay Road a curve to the left having a radius of 412.75 feet, an arc distance of 98.07 feet, a chord bearing N 3° – 53′ – 22″ E and a chord length of 97.84 feet to a point of tangency;
Thence N 2° – 55′ – 03″ W along the easterly sideline of Great Hay Road a distance of 125.15 feet to a point;
Thence N 0° – 35′ – 42″ E along the easterly sideline of Great Hay Road a distance of 49.42 feet to a point of curvature;
Thence northerly along the easterly sideline of Great Hay Road a curve to the left having a radius of 404.20 feet, an arc distance of 208.01 feet, a chord bearing N 14° – 08′ – 53″ W and a chord length of 205.72 feet to a point of tangency;
Thence N 28° – 53′ – 28″ W along the easterly sideline of Great Hay Road a distance of 49.10 feet to a point at the land now or formerly (n/f) of the Town of Mashpee Conservation Commission;
Thence S 82° – 18′ – 33″ E along land n/f of the Town of Mashpee Conservation Commission a distance of 10.11 feet to a broken concrete bound;
Thence S 82° – 18′ – 33″ E along land n/f of the Town of Mashpee Conservation Commission a distance of 1216.01 feet to a broken concrete bound;
Thence S 82° – 18′ – 33″ E along land n/f of the Town of Mashpee Conservation Commission a distance of 352.06 feet to a concrete bound;
Thence S 82° – 18′ – 33″ E along land n/f of the Town of Mashpee Conservation Commission a distance of 125.83 feet to a concrete bound;
Thence S 82° – 18′ – 33″ E along land n/f of the Town of Mashpee Conservation Commission a distance of 484.05 feet to a concrete bound;
Thence S 82° – 18′ – 33″ E along land n/f of the Town of Mashpee Conservation Commission a distance of 405.76 feet to a concrete bound;
Thence S 82° – 18′ – 33″ E along land n/f of the Town of Mashpee Conservation Commission a distance of 500.19 feet to a concrete bound;
Thence S 82° – 18′ – 33″ E along land now or formerly of the Town of Mashpee Conservation Commission a distance of 159.99 feet to a point near a concrete bound at the westerly sideline of Great Neck Road South;
Thence S 04° – 15′ – 00″ E along the westerly sideline of Great Neck Road South a distance of 43.97 feet to a point of curvature;
Thence southerly along the westerly sideline of Great Neck Road South a curve to the right having a radius of 914.51 feet, an arc distance of 378.08 feet, a chord bearing S 7° – 35′ – 38″ W and a chord length of 375.39 feet to a Mashpee Road bound being the Point of Beginning.

The above parcel contains 57.94 acres, more or less.

Parcel 6—414 Main Street (Assessor's Parcel 35–30–0–R)

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee on the south side of Main Street more particularly shown as shown as parcel 35 30 0 on the Town of Mashpee Assessors Maps, and is shown as parcel labeled Town of Mashpee on a plan entitled ''Plan of Land in Mashpee, Mass. As surveyed for Bonnie MacCarthy, Scale 1 in. = 40 ft., May 11, 1973, Nickerson & Berger, Inc. Engineers,'' recorded with the Barnstable County Registry of Deeds at Plan Book 273, Page 2. Bounded and described as follows:

Beginning on the southerly sideline of Main Street at a concrete bound at the northwesterly corner of the parcel herein described and at the land now or formerly of the Commonwealth of Massachusetts;
Thence S 74°26′15″ E by said Main Street a distance of 230.95 feet to a point on the westerly bank of the Mashpee River;
Thence S 11°57′41″ W along the westerly bank of the Mashpee River a distance of 20.35 feet to a point;
Thence S 11°35′07″ W along the westerly bank of the Mashpee River a distance of 18.16 feet to a point;
Thence N 79°14′07″ W along the westerly bank of the Mashpee River a distance of 3.28 feet to a point;
Thence S 06°00′37″ W along the westerly bank of the Mashpee River a distance of 34.71 feet to a point;
Thence S 04°19′12″ W along the westerly bank of the Mashpee River a distance of 39.78 feet to a point;
Thence S 56°36′27″ W along the westerly bank of the Mashpee River a distance of 3.97 feet to a point;
Thence S 16°22′26″ E along the westerly bank of the Mashpee River a distance of 19.51 feet to a point;
Thence S 01°45′28″ E along the westerly bank of the Mashpee River a distance of 10.40 feet to a point at the land now or formerly of the Commonwealth of Massachusetts;
Thence N 65°57′45″ W along land now or formerly of the Commonwealth of Massachusetts a distance of 40.08 feet to a concrete bound;
Thence N 65°57′45″ W along land now or formerly of the Commonwealth of Massachusetts a distance of 234.92 feet to a concrete bound;
Thence N 25° – 22′ – 55″ E along land now or formerly of the Commonwealth of Massachusetts a distance of 102.38 feet to the southerly sideline of Main Street and the Point of Beginning.

The above described parcel contains 29,708 ± s.f. or 0.6820 acres, more or less.

Parcel 7—41 Hollow Road (Assessor's Parcel 45–73–A–R)

That certain parcel of land together with the buildings thereon located on the southerly side of Hollow Road in Mashpee, Barnstable County, Massachusetts, now known and numbered as 41 Hollow Road, described as follows:

Beginning at a Point (P.O.B. ''A'') at the southerly side of Hollow Road and the easterly side of Goodspeed's Meeting House Road. Said Point (P.O.B. ''A'') lies N 54–53–10 E a distance of 39.89 feet from a concrete bound with a drill hole found, thence:
By the southerly line of Hollow Road S 54–11–06 E a distance of 160.52 feet to a point, thence;

By the southerly line of Hollow Road S 58–08–17 E a distance of 267.94 feet to a concrete bound with a drill hole set at land of Mashpee Water District, thence;

By land of Mashpee Water District along a non-tangent curve to the left, having a radius of 400.00 feet, an arc length of 1758.49 feet, and whose long chord bears S 78–30–33 E a distance of 647.68 feet to a concrete bound with a drill hole set in the southerly line of hollow Road, thence;

By the southerly line of Hollow Road along a curve to the right, having a radius of 230.06 feet, an arc length of 207.20 feet, and whose long chord bears S 67–36–33 E a distance of 200.27 feet to a point, thence;

By the southerly line of Hollow Road S 41–48–27 E a distance of 14.34 feet to a concrete bound with a drill hole set at land of Town of Mashpee Conservation Commission, thence;

By land of Town of Mashpee Conservation Commission S 18–18–01 W a distance of 665.60 feet to a concrete bound with a drill hole set at land of Mashpee Old Indian Meeting House Authority, Inc., thence;

By land of Mashpee Old Indian Meeting House Authority, Inc. S 72–07–25 W a distance of 411.20 feet to a point, thence;

By land of Mashpee Old Indian Meeting House Authority, Inc. N 73–07–23 W a distance of 301.99 feet to a point, thence;

By land of Mashpee Old Indian Meeting House Authority, Inc. N 18–56–33 W a distance of 614.52 feet to a point, thence;

By land of Mashpee Old Indian Meeting House Authority, Inc. N 68–19–57 W a distance of 287.36 feet to a point in the easterly line of Goodspeed's Meetinghouse Road, thence;

By the easterly line of Goodspeed's Meetinghouse Road N 17–54–20 E a distance of 217.36 feet to a point, thence;

By the easterly line of Goodspeed's Meetinghouse Road N 24–06–17 E a distance of 249.44 feet to the Point of Beginning.

Parcel 73A contains 10.81 acres, more or less.

Parcel 8—410 Meetinghouse Road (Assessor's Parcel 61–58a-0–R)

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee on the east side of Meetinghouse Road more particularly shown as Parcel 58A on a plan entitled ''Plan of Land Prepared for Old Indian Meeting House Authority, Inc. Scale 1″=10′, date March 29, 2007'' prepared by Holmes and McGrath Inc. and recorded in Barnstable County Registry of Deeds, Plan Book 625 page 8. Bounded and described as follows:

Beginning at a concrete bound with nail located along the easterly sideline of Meetinghouse Road at the northeasterly corner of the parcel herein described and at the land now or formerly of the Mashpee Wampanoag Tribal Council Inc.;

Thence S 5° – 22′ – 15″ W along the easterly sideline of Meetinghouse Road a distance of 10.17 feet to a concrete bound with disk located on the easterly sideline of Meeting House Road;

Thence easterly along the sideline of Meetinghouse Road on a curve to the left having a radius of 996.84 feet, an arc distance of 59.85 feet, a chord bearing S 3° – 39′ – 02″ W and a chord length of 59.84 feet to a point located at the southwest corner of the parcel herein described;

Thence S 73° – 12′ – 45″ E along land now or formerly of Mashpee Wampanoag Tribal Council Inc. A distance of 86.92 feet to a point;

Thence N 13° – 42′ – 06″ E along land now or formerly of Mashpee Wampanoag Tribal Council Inc. A distance of 70.00 feet to a point marked by a concrete bound with a nail;

Thence N 74° – 10′ – 05″ W along land now or formerly of Mashpee Wampanoag Tribal Council Inc. A distance of 98.78 feet to a point marked by a concrete bound with a nail at the easterly sideline of Meetinghouse Road, being the Point of Beginning;

The above parcel contains 6,447± s.f. or 0.1480 acres, more or less.

For grantor's title see deed dated April 28, 2008 from the Town of Mashpee, acting by and through its Board of Selectmen, and recorded in the Barnstable Registry of Deeds in Book 22867, Page 31.

Parcel 9—414 Meetinghouse Road (Assessor's Parcel 68–13a-0–E)

Description of land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee on the west side of Falmouth Road, and the east side of Meetinghouse Road more particularly shown as Parcel 13B on a plan entitled ''Plan of Land Prepared For Mashpee Wampanoag Tribe in Mashpee, MA. Scale 1″=80′, date May 16, 2008'' prepared by Holmes and McGrath Inc. and recorded in Barnstable County Registry of Deeds, Plan Book 626 Page 4. Bounded and described as follows:

Beginning near a concrete bound along the westerly sideline of Falmouth Road at the southeasterly corner of the parcel herein described and at the land now or formerly of the Town of Mashpee;

Thence N 64° – 23′ – 33″ W along land now or formerly of the Town of Mashpee a distance of 375.00 feet to a concrete bound on the easterly sideline of Meeting House Road;

Thence easterly along the sideline of Meetinghouse Road on a curve to the right having a radius of 996.84 feet, an arc distance of 158.50 feet, a chord bearing N 2° – 37′ – 29″ W and a chord length of 158.33 feet to a point;

Thence S 73° – 12′ – 45″ E along land now or formerly of Mashpee Wampanoag Tribal Council Inc. A distance of 86.92 feet to a point;

Thence N 13° – 42′ – 06″ E along land now or formerly of Mashpee Wampanoag Tribal Council Inc. A distance of 70.00 feet to a point marked by a concrete bound with a nail;

Thence N 74° – 10′ – 05″ W along land now or formerly of Mashpee Wampanoag Tribal Council Inc. a distance of 98.78 feet to a point marked by a concrete bound with a nail at the easterly sideline of Meetinghouse Road,

Thence N 05° – 22′ – 15″ E along the easterly sideline of Meetinghouse Road a distance of 186.63 feet to the a point of curvature;

Thence along the easterly sideline of Meetinghouse Road a curve to the left having a radius of 1050.00 feet, an arc distance of 233.86 feet, a chord bearing N 1° – 00′ – 35″ W and a chord length of 233.38 feet to a concrete bound at the land now or formerly of the Town of Mashpee;

Thence N 73° – 02′ – 52″ E along land of now or formerly Town of Mashpee a distance of 720.70 feet to a point marked by a concrete bound at the land now or formerly of Nancy D. Ellison and at the land of now or formerly of Scott Greenwood;

Thence S 11° – 40′ – 13″ E along lands of now or formerly of Greenwood, of Ainsworth and of Draggoo a distance of 381.13 feet to a rod with cap at the centerline of the way and at the land now or formerly Michael G. Miller;

Thence S 60° – 17′ – 07″ W along land now or formerly of Miller a distance 44.94 feet to a rod with cap;

Thence S 50° – 37′ – 58″ W along land now or formerly of Miller a distance of 44.45 feet to a rod with cap;

Thence S 43° – 49′ – 11″ W along land now or formerly of Miller a distance of 56.00 feet to a rod with cap;

Thence S 41° – 13′ – 45″ W along land now or formerly of Miller a distance of 44.85 feet to a rod with cap;
Thence S 38° – 24′ – 16″ W along land now or formerly of Miller a distance of 56.58 feet to a rod with cap;
Thence S 23° – 27′ – 46″ W along land now or formerly of Miller a distance of 113.79 feet to a rod with cap at the westerly sideline of Falmouth Road;
Thence westerly along the sideline of Falmouth Road a curve to the left, radius of 2030.00 feet, an arc distance of 329.65 feet, a chord bearing S 31° – 18′ – 19″ W and a chord length of 329.29 feet to a concrete bound at a point of tangency;
Thence S 26° – 39′ – 12″ W along the westerly sideline of Falmouth Road a distance of 102.33 feet to the Point of Beginning.

The above parcel contains 501,486± s.f. or 11.5125 acres, more or less.

For Grantor's title see deed dated May 19, 2008 from the Town of Mashpee, acting by and through its Board of Selectmen, and recorded in the Barnstable Registry of Deeds in Book 23010, Page 37.

Parcel 10—431 Main Street (Assessor's Parcel 27–42–0–R)

Description of the land in the Commonwealth of Massachusetts, County of Barnstable, Town of Mashpee, on the northerly side of Main Street more particularly shown as parcel 27 42 0 on the Town of Mashpee Assessors Maps, bounded and described as follows:
Beginning at a broken concrete bound on the northerly sideline of Main Street at the southwesterly corner of the parcel herein described and at the land now or formerly of Mauro;
Thence N 20° – 15′ – 55″ E along land now or formerly of Mauro & Aselbekian a distance of 150.00 feet to a rod with a cap at the land now or formerly of Mashpee Shores Realty Trust;
Thence N 20° – 15′ – 55″ E along land now or formerly of Mashpee Shores Realty Trust a distance of 207.89 feet to a point at the land now or formerly of Wolf;
Thence N 20° – 15′ – 55″ E along land now or formerly of Wolf a distance of 70.00 feet to a concrete bound at the land now or formerly of Bortolotti;
Thence S 76° – 03′ – 10″ E along land now or formerly of Bortolotti a distance of 264.65 feet to a concrete bound at the land now or formerly of Peters;
Thence S 29° – 16′ – 14″ W along land of now or formerly of Peters a distance of 477.51 feet to a concrete bound at the northerly sideline of Main Street;
Thence westerly along the northerly sideline of Main Street, on a curve to the right having a radius of 594.62 feet, an arc distance of 189.67 feet with a chord bearing N 65° – 17′ – 58″ W and a chord length of 188.87 feet, to a broken concrete bound being the Point of Beginning.

Above described parcel contains 102,177 s.f. or 2.3456 acres, more or less.

For Grantor's title see deed dated April 28, 2008 from the Town of Mashpee, acting by and through its Board of Selectmen, and recorded in the Barnstable Registry of Deeds in Book 22867, Page 26.

Parcel 11—184 Meetinghouse Road (Assessor's Parcel 45–75–0–R)

That certain parcel of land together with the buildings thereon located on the easterly side of Meetinghouse Road in Mashpee, Barnstable County, Massachusetts, now known and numbered as #184 Meetinghouse Road, described as follows:
Beginning at a point (P.O.B. ''B'') at the easterly side of Goodspeed's Meetinghouse Road and the easterly side of Meetinghouse Road. Said point (P.O.B. ''B'') lies S 06–34–23 E a distance of 64.36 feet from a concrete bound with a drill hole found, thence:
by the easterly line of Goodspeed's Meetinghouse Road N 7–50–42 E a distance of 157.70 feet to a point, thence;
by the easterly line of Goodspeed's Meetinghouse Road N 22–53–12 E a distance of 196.84 feet to a point, thence;
by the easterly line of Goodspeed's Meetinghouse Road N 29–49–31 E a distance of 257.97 feet to a point, thence;
by the easterly line of Goodspeed's Meetinghouse Road N 17–54–20 E a distance of 11.49 feet to a point at land of Mashpee Wampanoag Indian Tribal Council, Inc., thence;
by land of Mashpee Wampanoag Indian Tribal Council, Inc. S 68–19–57 E a distance of 287.36 feet to a point, thence;
by land of Mashpee Wampanoag Indian Tribal Council, Inc. S 18–56–33 E a distance of 614.52 feet to a point, thence;
by land of Mashpee Wampanoag Indian Tribal Council, Inc. S 73–07–23 E a distance of 301.99 feet to a point, thence;
by land of Mashpee Wampanoag Indian Tribal Council, Inc. N 72–07–25 E a distance of 411.20 feet to a concrete bound with a drill hole set at land of Town of Mashpee Conservation Commission, thence;
by land of Town of Mashpee Conservation Commission N 53–00–36 E a distance of 567.12 feet to a concrete bound with a drill hole set in the westerly line of Noisy Hole Road, thence;
by westerly line of Noisy Hole Road along a non-tangent curve to the RIGHT, having a radius of 1095.10 feet, an arc length of 145.55 feet, and whose long chord bears S 30–06–07 E a distance of 145.44 feet to a point, thence;
by westerly line of Noisy Hole Road along a curve to the LEFT, having a radius of 2636.04 feet, an arc length of 435.63 feet, and whose long chord bears S 31–01–44 E a distance of 435.13 feet to a point, thence;
by westerly line of Noisy Hole Road along a curve to the RIGHT, having a radius of 2823.63 feet, an arc length of 197.19 feet, and whose long chord bears S 33–45–45 E a distance of 197.15 feet to a point, thence;
by westerly line of Noisy Hole Road S 31–45–43 E a distance of 145.38 feet to a concrete bound with a drill hole set at land of Town of Mashpee Conservation Commission, thence;
by land of Town of Mashpee Conservation Commission S 69–37–19 W a distance of 2045.48 feet to a concrete bound with a drill hole set, thence;
by land of Town of Mashpee Conservation Commission N 55–19–03 W a distance of 34.35 feet to a concrete bound with a drill hole set in the easterly line of Meetinghouse Road, thence;
by the easterly line of Meetinghouse Road along a non-tangent curve to the LEFT, having a radius of 1075.46 feet, an arc length of 342.37 feet, and whose long chord bears N 10–09–22 W a distance of 340.93 feet to a concrete bound with a drill hole found, thence;
by the easterly line of Meetinghouse Road N 19–16–34 W a distance of 930.78 feet to the Point of Beginning.

Parcel 75 contains 46.83 acres, more or less.

City of Taunton, Bristol County, State of Massachusetts

Tract 1—TDC—Lot 9

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton, on the west side of O'Connell Way off of Stevens Street owned by the Taunton Development Corporation and shown as Assessor's Parcel 49 on Assessor's Map 118 and as Lot 9 on a plan by Field

Engineering Co., Inc. entitled ''Definitive Subdivision Plan of Land, Liberty and Union Industrial Park—Phase II'' and revised dated 3/08/2006, recorded in Plan Book 446, Pages 34–36, bounded and described as follows:

Beginning on the westerly sideline of O'Connell Way, at the most southeasterly corner of the lot to be described; said point being N 13°10′38″ W and 321.23 feet from a point of tangency in the westerly side line of O'Connell Way;

THENCE S 76°49′22″ W along land now or formerly of Two Stevens LLC a distance of 225.11 feet to a point;

THENCE N 20°56′02″ W along land now or formerly of Two Stevens LLC a distance of 547.76 feet to a point at Lot 14 and land now or formerly of Taunton Development Corporation (TDC);

THENCE N 87°34′23″ E along land now or formerly of TDC a distance of 186.89 feet to a point on a curve on the westerly side line of O'Connell Way;

THENCE southerly along the westerly sideline of O'Connell Way on a curve to the left having a radius of 230.00 feet, an arc distance of 92.90 feet, a chord bearing S 30°45′02″ E and a chord length of 92.27 feet to a point of tangency;

THENCE S 42°19′18″ E along the westerly sideline of O'Connell Way a distance of 135.62 feet to a point of curvature;

THENCE southerly along the westerly sideline of O'Connell Way on a curve to the right having a radius of 170.00 feet, an arc distance of 86.47 feet, a chord bearing S 27°44′58″ E and a chord length of 85.54 feet to a point of tangency;

THENCE S 13°10′38″ E along the westerly side line of O'Connell Way a distance of 218.68 feet to the Point of Beginning.

The above described lot contains 2.726 acres, more or less.

Tract 1—TDC—Lot 13

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton, on the west side of O'Connell Way off of Stevens Street owned by the Taunton Development Corporation and shown as Assessor's Parcel 27 on Assessor's Map 108 and as Lot 13 on a plan by Field Engineering Co., Inc. entitled ''Definitive Subdivision Plan of Land, Liberty and Union Industrial Park—Phase II'' and revised dated 3/08/2006, recorded in Plan Book 458, Page 21, bounded and described as follows: (For the purposes of these drawings, the portion of the property boundary defined by the centerline of the Cotley River has been approximated by line segments with bearings and distances).

Beginning on the westerly sideline of O'Connell Way, at the southerly corner of the lot to be described and point being the easterly corner of Lot 14 owned by Taunton Development Corporation (TDC);

THENCE N 69°59′17″ W along land now or formerly of TDC (Lot 14) a distance of 749.99 feet to a point;

THENCE S 19°57′56″ W along land now or formerly of TDC (Lot 14) a distance of 301.44 feet to a point and at land now or formerly of Two Stevens LLC;

THENCE N 69°49′06″ W along land now or formerly of Two Stevens LLC a distance of 200.62 feet to a point also being the end point of a tie line;

THENCE continuing in the same N 69°49′06″ W direction along land now or formerly of Two Stevens LLC a distance of 30.00 feet to the approximate centerline of the Cotley River;

THENCE S 10°39′46″ W along the approximate centerline of Cotley River a distance of 110.86 feet;

THENCE S 05°31′51″ E along the approximate centerline of Cotley River a distance of 43.77 feet;

THENCE S 54°00′16″ E along the approximate centerline of Cotley River a distance of 31.07 feet;

THENCE S 58°48′35″ E along the approximate centerline of Cotley River a distance of 35.99 feet;

THENCE S 22°35′20″ E along the approximate centerline of Cotley River a distance of 27.33 feet;

THENCE S 15°02′05″ E along the approximate centerline of Cotley River a distance of 115.27 feet;

THENCE S 07°35′17″ W along the approximate centerline of Cotley River a distance of 30.90 feet;

THENCE S 36°31′36″ W along the approximate centerline of Cotley River a distance of 36.78 feet;

THENCE S 22°05′23″ W along the approximate centerline of Cotley River a distance of 37.53 feet;

THENCE S 00°51′38″ E along the approximate centerline of Cotley River a distance of 102.63 feet;

THENCE S 10°19′41″ E along the approximate centerline of Cotley River a distance of 132.84 feet to a point at land now or formerly of Douglas Porter Trustee;

THENCE S 79°40′32″ W along land now or formerly of Douglas Porter Trustee a distance of 21.00 feet to a point also being the end point of a tie line;

THENCE continuing in the same S 79°40′32″ W direction along land now or formerly of Douglas Porter Trustee a distance of 190.04 feet to a point on the easterly sideline of Massachusetts State Highway Route 24, Layout #3719;

THENCE N 01°00′57″ E along said easterly sideline of Route 24 a distance of 438.59 feet to a Massachusetts Highway bound;

THENCE N 45°35′25″ W along said easterly sideline of Route 24 a distance of 463.25 feet to a Massachusetts Highway bound;

THENCE N 11°44′56″ E along said easterly sideline of Route 24 a distance of 862.24 feet to the southerly sideline of a railroad right of way owned now or formerly by the Commonwealth of Massachusetts;

THENCE N 59°53′38″ E along the southerly sideline of the railroad right of way a distance of 239.15 feet to a point;

THENCE S 68°51′04″ E along land now or formerly of James L. Read, Trustee a distance of 235.00 feet to a point at the land now or formerly of PR-Crossroads Commerce Center LLC;

THENCE S 24°15′25″ E along land now or formerly of PR-Crossroads Commerce Center LLC a distance of 500.20 feet to a point;

THENCE S 62°44′24″ E along land now or formerly of PR-Crossroads Commerce Center LLC a distance of 203.55 feet to a point;

THENCE N 78°08′37″ E along land now or formerly of PR-Crossroads Commerce Center LLC a distance of 227.00 feet to a point;

THENCE S 14°16′09″ E along land now or formerly of PR-Crossroads Commerce Center LLC a distance of 77.84 feet to a point on the cul-de-sac sideline of O'Connell Way;

THENCE westerly and southerly along the sideline of O'Connell Way on a curve to the left having a radius 75.00 feet, an arc distance of 190.17 feet, a chord bearing S 21°30′01″ E and a chord length of 143.17 feet to a point of reverse curvature;

THENCE easterly and southerly along the sideline of O'Connell Way on a curve to the right having a radius of 40.00 feet, an arc distance of 49.33 feet, a chord bearing S 58°48′43″ E and a chord length of 46.26 feet to a point of reverse curvature;

THENCE southerly along the westerly sideline of O'Connell Way on a curve to the left having a radius of 330.00 feet, an arc distance of 93.55 feet, a chord bearing S 31°36′18″ E and a chord length of 93.23 feet to a point of tangency;

THENCE S 39°43′33″ E along the westerly sideline of O'Connell Way a distance of 100.06 feet to a point of curvature;

THENCE southerly along the westerly sideline of O'Connell Way on a curve to the right having a radius of 270.00 feet, an arc distance of 125.40 feet, a chord bearing S 26°25′15″ E and a chord length of 124.27 feet to the Point of Beginning.

The above described lot contains 22.238 acres, more or less.

Tract 1—TDC—Lot 14

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton, on the west side of O'Connell Way off of Stevens Street owned by the Taunton Development Corporation and shown as Assessor's Parcel 26 on Assessor's Map 108 and as Lot 14 on a plan by Field Engineering Co., Inc. entitled ''Definitive Subdivision Plan of Land, Liberty and Union Industrial Park—Phase II'' and revised dated 3/08/2006, recorded in Plan Book 446, Pages 34–36, bounded and described as follows:

Beginning on the westerly sideline of O'Connell Way, at the most southeasterly corner of the lot to be described and point being the northeasterly corner of Lot 9 owned by Taunton Development Corporation (TDC);

THENCE S 87°34′23″ W along land now or formerly of TDC (Lot 9), a distance of 186.89 feet to a point at land now or formerly of Two Stevens LLC;

THENCE N 70°07′42″ W along land now or formerly of Two Stevens LLC a distance of 636.23 feet to a point;

THENCE N 69°49′06″ W along land now or formerly of Two Stevens LLC a distance of 46.27 feet to a point at land now or formerly of TDC (Lot 13);

THENCE N 19°57′56″ E along land now or formerly of TDC (Lot 13) a distance of 301.44 feet to a point;

THENCE S 69°59′17″ E along land now or formerly of TDC (Lot 13) a distance of 749.99 feet to a point on the westerly sideline of O'Connell Way;

THENCE southerly along the westerly sideline of O'Connell Way on a curve to the right having a radius of 270.00 feet, an arc distance of 59.38 feet, a chord bearing S 06°48′53″ E and a chord length of 59.27 feet to a point of tangency;

THENCE S 00°30′50″ E along the westerly sideline of O'Connell Way a distance of 118.63 feet to a point of curvature;

THENCE southerly along the westerly sideline of O'Connell Way on a curve to the left having a radius of 230.00 feet, an arc distance of 74.93 feet, a chord bearing S 09°50′48″ E and a chord length of 74.60 feet to the Point of Beginning.

The above described lot contains 5.473 acres, more or less.

Tract 1—TDC—North side Railroad 45 acres

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton, on the south side of Middleboro Avenue and west side of Stevens Street owned by the Taunton Development Corporation and shown as Assessor's Parcel 156 on Assessor's Map 94 and as shown on a plan by Tibbetts Engineering Corp. entitled ''Plan of Land'', Prepared for Taunton Development Corporation (TDC) dated 4/25/2002, recorded in Plan Book 406, Pages 66–68, bounded and described as follows: (For the purposes of these drawings, the portion of the property boundary defined by the centerline of the Cotley River or the westerly edge of Barstow's Pond has been approximated by line segments with bearings and distances).

Beginning on the southerly sideline of Middleboro Avenue at the northwesterly corner of land now or formerly of Tracey and Troy Hixon;

THENCE S 01°02′56″ W along land now or formerly of Hixon a distance of 166.30 feet to an angle point;

THENCE S 04°39′04″ E along land now or formerly of Hixon a distance of 98.65 feet to a point;

THENCE S 76°07′35″ E along land now or formerly of Hixon a distance of 106.06 feet to a point;

THENCE S 73°49′19″ E along land now or formerly of Ray A. Nacaula and Donnelly a distance of 241.70 feet to a point at land now or formerly of Waterman;

THENCE S 18°49′20″ W along land now or formerly of Waterman a distance of 151.72 feet to an iron pipe;

THENCE N 85°34′00″ E along land now or formerly of Waterman a distance of 74.85 feet to an iron pipe at land now or formerly of Mora and Bell;

THENCE S 09°35′20″ E along land now or formerly of Mora and Bell and land formerly of Oldfield but now of TDC a distance of 279.18 feet to a stone bound;

THENCE N 85°33′36″ E along land formerly of Oldfield but now of TDC a distance of 304.45 feet to a point on the westerly sideline of Stevens Street;

THENCE S 09°01′27″ E along the westerly sideline of Stevens Street a distance of 35.74 feet to a Massachusetts Highway bound;

THENCE S 59°54′40″ W along the land now or formerly of the Commonwealth of Massachusetts a distance of 16.08 feet to a Massachusetts Highway bound;

THENCE S 04°25′09″ E along the land now or formerly of the Commonwealth of Massachusetts a distance of 11.29 feet to a point along the northerly sideline of railroad right of way;

THENCE S 59°53′38″ W along the northerly sideline of the railroad right of way a distance of 884.09 feet to an angle point;

THENCE S 54°50′33″ W along the northerly sideline of the railroad right of way a distance of 187.40 feet to an angle point;

THENCE S 59°53′38″ W along the northerly sideline of the railroad right of way a distance of 1299.46 feet to a point also being the end point of a tie line;

THENCE continuing in the same direction S 59°53′38″ W along the northerly sideline of the railroad right of way a distance of 30.01 feet to the approximate centerline of the Cotley River channel;

THENCE N 03°10′26″ E along the approximate centerline of the Cotley River channel a distance of 47.17 feet;

THENCE N 33°36′32″ E along the approximate centerline of the Cotley River channel a distance of 113.25 feet;

THENCE N 52°39′30″ E along the approximate centerline of the Cotley River channel a distance of 66.39 feet;

THENCE N 09°47′41″ E along the approximate centerline of the Cotley River channel a distance of 173.55 feet;

THENCE N 18°32′41″ W along the approximate centerline of the Cotley River channel a distance of 70.11 feet;

THENCE N 25°28′18″ W along the approximate centerline of the Cotley River channel a distance of 105.43 feet;

THENCE N 07°01′49″ W along the approximate centerline of the Cotley River channel a distance of 127.91 feet;

THENCE N 33°55′21″ E along the approximate centerline of the Cotley River channel a distance of 103.89 feet;

THENCE N 07°23′01″ W along the approximate centerline of the Cotley River channel a distance of 199.55 feet;

THENCE N 13°51′57″ E along the approximate centerline of the Cotley River channel a distance of 64.35 feet;

THENCE N 31°51′07″ E along the approximate centerline of the Cotley River channel a distance of 175.31 feet;

THENCE N 21°19′23″ E along the approximate centerline of the Cotley

River channel a distance of 142.74 feet;
THENCE N 38°11′09″ E along the approximate centerline of the Cotley River channel a distance of 173.51 feet;
THENCE N 63°56′17″ W a distance of 96.16 feet to the approximate westerly edge of Barstow's Pond;
THENCE N 51°45′07″ E by the approximate westerly edge of Barstow's Pond a distance of 156.13 feet;
THENCE N 65°12′52″ E by the approximate westerly edge of Barstow's Pond a distance of 162.77 feet;
THENCE N 82°19′48″ E by the approximate westerly edge of Barstow's Pond a distance of 106.19 feet;
THENCE N 35°36′23″ E by the approximate westerly edge of Barstow's Pond a distance of 22.65 feet;
THENCE N 08°39′34″ W by the approximate westerly edge of Barstow's Pond a distance of 44.34 feet;
THENCE N 17°22′26″ E by the approximate westerly edge of Barstow's Pond a distance of 48.53 feet;
THENCE N 17°23′37″ W by the approximate westerly edge of Barstow's Pond a distance of 75.14 feet;
THENCE N 03°05′14″ E by the approximate westerly edge of Barstow's Pond a distance of 41.87 feet;
THENCE N 76°36′55″ E by the approximate westerly edge of Barstow's Pond a distance of 45.99 feet;
THENCE S 37°12′19″ E by the approximate westerly edge of Barstow's Pond a distance of 46.41 feet;
THENCE S 10°11′37″ E by the approximate westerly edge of Barstow's Pond a distance of 55.96 feet;
THENCE S 15°09′39″ E by the approximate westerly edge of Barstow's Pond a distance of 35.95 feet;
THENCE S 05°46′00″ E by the approximate westerly edge of Barstow's Pond a distance of 44.65 feet;
THENCE S 81°38′17″ E by the approximate westerly edge of Barstow's Pond a distance of 27.39 feet;
THENCE N 54°43′56″ E by the approximate westerly edge of Barstow's Pond a distance of 128.51 feet;
THENCE N 01°46′23″ W by the approximate westerly edge of Barstow's Pond a distance of 113.99 feet;
THENCE N 25°38′16″ E by the approximate westerly edge of Barstow's Pond a distance of 151.73 feet;
THENCE N 74°41′23″ E by the approximate westerly edge of Barstow's Pond a distance of 106.65 feet;
THENCE N 27°43′59″ E by the approximate westerly edge of Barstow's Pond a distance of 20.70 feet to a point near the dam;
THENCE N 32°19′00″ E a distance of 110.00 feet to an iron pipe being the end point of a tie line and also being a point on a curve on the southerly sideline of Middleboro Avenue;
THENCE easterly along the southerly sideline of Middleboro Avenue on a curve to the right having a radius of 1975.00 feet, an arc distance of 131.00 feet, a chord bearing S 68°43′59″ E and a chord length of 130.98 feet to a Massachusetts Highway bound;
THENCE S 43°35′26″ E along the southerly sideline of Middleboro Avenue a distance of 17.94 feet to a Massachusetts Highway bound;
THENCE S 55°00′28″ E along the southerly sideline of Middleboro Avenue a distance of 93.78 feet to at Massachusetts Highway bound;
THENCE S 64°48′14″ E along the southerly sideline of Middleboro Avenue a distance of 35.92 feet to the Point of Beginning.

The above described lot contains 45.222 acres, more or less.

Tract 1—TDC—Stevens Street Single Lot, Oldfield

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton, on the west side of Stevens Street owned by Taunton Development Corporation and shown as Assessor's Parcel 36 on Assessor's Map 95, bounded and described as follows:
Beginning at a stake on the westerly side of Stevens Street at the most north easterly corner of the lot to be described; and point being the south easterly corner of land now or formerly of Mora and Bell;
THENCE S 07°47′36″ E along the westerly sideline of Stevens Street a distance of 183.57 feet to a corner of land now or formerly of Taunton Development Corporation (TDC);
THENCE S 85°33′36″ W along land now or formerly of TDC (Assessor Map 94 Lot 156) a distance of 304.45 feet to a stone bound;
THENCE N 09°35′20″ W along land now or formerly of TDC (Assessor Map 94 Lot 156) a distance of 184.00 feet to a point at land now or formerly of Mora and Bell;
THENCE N 85°33′36″ E along land now or formerly of Mora and Bell a distance of 310.25 feet to the Point of Beginning.

The above described lot contains 1.293 acres, more or less.

The above described parcel has taken into consideration the roadway taking by the Commonwealth of Massachusetts, Department of Highways, for the relocation of Stevens Street, by taking dated September 8, 1993, recorded with Bristol County North District Registry of Deeds in Deed Book 5683, Page 12.

Tract 2—61R Stevens Street and O'Connell Way, Taunton, MA

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton, on the west side of Stevens Street and the east side of O'Connell Way and more particularly shown as Lot 3A on a plan by Cullinan Engineering Co. Inc., entitled ''Plan of Land Stevens Street, East Taunton, Massachusetts'', revised dated May 31, 2005 recorded in Plan Book 437, Page 30. Also a portion of said property is shown on a plan by Field Engineering Co. Inc., entitled ''Definitive Subdivision Plan of Land, Liberty and Union Industrial Park—Phase II, Taunton Development Corporation'', revised dated March 8, 2006, recorded in Plan Book 446, Page 35 bounded and described as follows:
Also see Tract 10 (Gap Parcel)
Beginning on the westerly sideline of Stevens Street at the most easterly corner of lot to be described; and point being the northeast corner of property now or formerly of Allen;
THENCE N 68°39′51″ W along land now or formerly of Allen and land now or formerly of 71 Stevens Street, LLC a distance of 313.86 feet to a point;
THENCE N 69°12′22″ W continuing along land now or formerly of 71 Stevens Street, LLC a distance of 225.17 feet to a point;
THENCE S 47°56′00″ W along land now or formerly of 71 Stevens Street, LLC a distance of 87.00 feet to a point;
THENCE S 44°58′21″ W continuing along land now or formerly of 71 Stevens Street, LLC a distance of 155.46 feet to a point;
THENCE N 13°10′38″ W a distance of 349.05 feet along land now or formerly of Taunton Development Corp. (Gap Parcel, see Tract 10) to a point;

THENCE N 42°19′18″ W a distance of 215.61 feet along land now or formerly of Taunton Development Corp. (Gap Parcel, see Tract 10) to a point at land now or formerly of Bellas, Trustee;
THENCE S 72°20′47″ E a distance of 491.45 feet along land now or formerly of Bellas, Trustee and land now or formerly of DeBrum to a point;
THENCE continuing S 72°20′47″ E along land now or formerly of DeBrum a distance of 20.32 feet to a point;
THENCE S 70°48′53″ E a distance of 141.08 feet along land now or formerly of DeBrum to an iron pipe;
THENCE S 63°11′08″ E along land now or formerly of DeBrum a distance of 211.40 feet to a point at the land now or formerly of Haskins;
THENCE S 26°48′58″ W along land now or formerly of Haskins a distance of 134.62 feet to a point;
THENCE S 69°41′20″ E along land now or formerly of Haskins a distance of 167.82 feet to a point at the westerly sideline of Stevens Street;
THENCE S 04°48′11″ W along the westerly sideline of Stevens Street a distance of 50.00 feet to the Point of Beginning.

The above described parcel contains 3.895 acres, more or less.

Tract 3—71 Stevens Street, Taunton, MA

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton on the west side of Stevens Street more particularly shown as Lot 2 on a plan by Cullinan Engineering Co. Inc., entitled ''Plan of Land Stevens Street, County Street and Rte. 24 East Taunton, Massachusetts Prepared for Robert DiCroce'', dated March 23, 2005, recorded in Plan Book 436, Page 22, bounded and described as follows:
Beginning on the westerly sideline of Stevens Street at the southeast corner of property now or formerly of Williams;
THENCE S 19°18′52″ W along the westerly sideline of Stevens Street a distance of 186.64 feet to a point of curvature at the beginning of the road layout for O'Connell Way;
THENCE southwesterly along the northerly sideline of O'Connell Way on a curve to the right having a radius of 75.00 feet, an arc distance of 130.78, feet a chord bearing S 69°16′13″ W and a chord length of 114.83 feet to a point of tangency;
THENCE N 60°46′27″ W along the northerly sideline of O'Connell Way a distance of 325.24 feet to a point of curvature;
THENCE northwesterly along the easterly sideline of O'Connell Way on a curve to the right having a radius of 250.00 feet, an arc distance of 207.68 feet, a chord bearing N 36°58′32″ W and a chord length of 201.76 feet to a point of tangency;
THENCE N 13°10′38″ W along the easterly sideline of O'Connell Way a distance of 283.78 feet to a point at land now or formerly Taunton Development Corporation (TDC) (Gap Parcel, Tract 10);
THENCE S 41°25′18″ E along land now or formerly of TDC (Gap Parcel, Tract 10) a distance of 28.35 feet to a point at land now or formerly DaRosa;
THENCE N 44°58′21″ E along land now or formerly of DaRosa a distance of 155.46 feet to a point;
THENCE N 47°56′00″ E along land now or formerly of DaRosa a distance of 87.00 feet to a point;
THENCE S 69°12′22″ E along land now or formerly of DaRosa a distance of 225.17 feet to a point;
THENCE S 68°39′51″ E along land now or formerly of DaRosa a distance of 192.94 feet to a point at land now or formerly of Allen;
THENCE S 14°26′52″ W along land now or formerly of Allen and land now or formerly of Williams a distance of 324.60 feet to a point;
THENCE S 65°33′57″ E along land now or formerly of Williams a distance of 150.00 feet to the Point of Beginning.

The above described parcel contains 6.875 acres, more or less.

Tract 4—73 Stevens Street, Taunton, MA

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton on the west side of Stevens Street more particularly shown as Lot 2 on a plan by Cullinan Engineering Co. Inc., entitled ''Plan of Land Stevens Street and O'Connell Way East Taunton, Massachusetts, prepared for One Stevens, LLC'', dated August 13, 2007, recorded in Plan Book 459, Page 72, bounded and described as follows:
Beginning at the intersection of the westerly sideline of Stevens Street and the southerly sideline of O'Connell Way and being the most northeasterly corner of the property herein described;
THENCE S 19°26′59″ W along the westerly sideline of Stevens Street a distance of 66.65 feet to a point;
THENCE S 29°25′10″ W along the westerly sideline of Stevens Street a distance of 134.03 feet to a point;
THENCE S 77°25′54″ W along Parcel E as shown on the above referenced plan a distance of 40.36 feet to a point;
THENCE S 46°27′27″ W along Parcel B–R as shown on the above referenced plan a distance of 53.00 feet to a point at the land now or formerly of One Stevens LLC;
THENCE N 73°40′17″ W along land now or formerly of One Stevens LLC a distance of 73.36 feet to a point;
THENCE N 04°17′52″ W along land now or formerly of One Stevens LLC a distance of 281.12 feet to a point of curvature;
THENCE northwesterly along a curve to the left having a radius of 110.00 feet, an arc distance of 108.43 feet, a chord bearing N 32°32′10″ W and a chord length of 104.09 feet to a point of tangency;
THENCE N 60°46′27″ W along land now or formerly of One Stevens LLC a distance of 50.91 feet to a point;
THENCE S 85°42′06″ W along land now or formerly of One Stevens LLC a distance of 60.47 feet to a point of curvature;
THENCE northerly along a curve to the right having a radius of 51.00 feet, an arc distance of 110.83 feet, a chord bearing N 32°02′26″ W and a chord length of 90.28 feet to a point of non-tangency;
THENCE S 60°46′27″ E along land now or formerly of One Stevens LLC a distance of 112.61 feet to a point on the southerly sideline of O'Connell Way;
THENCE S 60°46′27″ E along the southerly sideline of O'Connell Way a distance of 421.27 feet to the Point of Beginning.

The above described parcel contains 1.502 acres, more or less.

Tract 5—Lot 11 O'Connell Way Taunton, MA

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton on the east side of O'Connell Way off Stevens Street, more particularly shown as Lot 11 on a plan by Cullinan Engineering Co. Inc., entitled ''Definitive Subdivision Modification Plan of Land Liberty and Union Industrial Park—Phase II Taunton Development Corporation'', dated March 23, 2007, recorded in Plan Book 458, Page 21, bounded and described as follows:
Beginning at a point along a curve on the easterly sideline of O'Connell Way and said point being the northwesterly corner of land now or formerly of Taunton Development Corporation (Gap Parcel, Tract 10);
THENCE northwesterly along the easterly sideline of O'Connell Way on

a curve to the right having a radius of 170.00 feet, an arc distance of 94.29 feet, a chord bearing N 16°24′14″ W and a chord length of 93.09 feet to a point of tangency;

THENCE N 00°30′50″ W along the easterly sideline of O'Connell Way a distance of 118.63 feet to a point of curvature;

THENCE northwesterly along the easterly sideline of O'Connell Way on a curve to the left having a radius of 330.00 feet, an arc distance of 225.84 feet, a chord bearing N 20°07′12″ W and a chord length of 221.46 feet to a point of tangency;

THENCE N 39°43′33″ W along the easterly sideline of O'Connell Way a distance of 100.06 feet to a point of curvature;

THENCE northwesterly along the easterly sideline of O'Connell Way on a curve to the right having a radius of 270.00 feet, an arc distance of 119.96 feet, a chord bearing N 26°59′51″ W and a chord length of 118.98 feet to a point of tangency;

THENCE N 14°16′09″ W along the easterly sideline of O'Connell Way and land now or formerly PR-Crossroads Commerce Center LLC a distance of 153.52 feet to a point;

THENCE N 28°14′17″ E along land now or formerly PR-Crossroads Commerce Center LLC a distance of 220.00 feet to a point;

THENCE N 68°59′27″ E along land now or formerly PR-Crossroads Commerce Center LLC a distance of 100.00 feet to a point;

THENCE N 89°40′32″ E along land now or formerly PR-Crossroads Commerce Center LLC a distance of 602.55 feet to a point at the land now or formerly of Christ Community Church, Inc.;

THENCE S 13°44′43″ E along land now or formerly of Christ Community Church, Inc. a distance of 223.37 feet to a point;

THENCE S 08°06′20″ W along land now or formerly of Christ Community Church, Inc. a distance of 70.79 feet to a point;

THENCE S 01°38′59″ E along land now or formerly of Christ Community Church, Inc. and land now or formerly of Bellas, Trustee a distance of 214.50 feet to a point;

THENCE S 23°51′01″ W along land now or formerly of Bellas, Trustee a distance of 311.52 feet to a point;

THENCE S 67°36′01″ W along land now or formerly of Bellas, Trustee a distance of 486.60 feet to a point at land now or formerly of DaRosa and land now or formerly of Taunton Development Corporation (Gap Parcel, Tract 10);

THENCE S 57°42′31″ W along land now or formerly of Taunton Development Corporation (Gap Parcel, Tract 10) a distance of 16.65 feet to the Point of Beginning.

The above described parcel contains 14.021 acres, more or less.

Tract 6—50 O'Connell Way

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton on the west side of Stevens Street and the west side on O'Connell Way more particularly shown as Lot 1A–R on a plan by Cullinan Engineering Co. Inc., entitled ''Plan of Land Stevens Street and O'Connell Way East Taunton, Massachusetts prepared for One Stevens LLC'', dated August 13, 2007, recorded in Plan Book 459, Page 72, bounded and described as follows:

Beginning on the southerly sideline of O'Connell Way at the land now or formerly of Jamins LLC;

THENCE N 60°46′27″ W along land now or formerly of Jamins LLC a distance of 112.61 feet to a point at the beginning of a non-tangent curve;

THENCE southeasterly along land now or formerly Jamins LLC on a curve to the left having a radius of 51.00 feet, an arc distance of 110.83 feet, a chord bearing S 32°02′26″ E and a chord length of 90.28 feet to a point of tangency;

THENCE N 85°42′06″ E along land now or formerly of Jamins LLC a distance of 60.47 feet to a point;

THENCE S 60°46′27″ E along land now or formerly of Jamins LLC a distance of 50.91 feet to a point of curvature;

THENCE southerly along land now or formerly of Jamins LLC on a curve to the right having a radius of 110.00 feet, an arc distance of 108.43 feet, a chord bearing S 32°32′10″ E and a chord length of 104.09 feet to a point of tangency;

THENCE S 04°17′52″ E along land now or formerly of Jamins LLC a distance of 281.12 feet to a point;

THENCE S 73°40′17″ E along land now or formerly of Jamins LLC a distance of 73.36 feet to a point at the land now or formerly of Porter, Trustee;

THENCE S 46°27′27″ W along land now or formerly of Porter, Trustee a distance of 235.54 feet to a point;

THENCE N 88°13′45″ W along land now or formerly of Porter, Trustee a distance of 139.98 feet to a point;

THENCE N 70°55′10″ W along land now or formerly of Porter, Trustee a distance of 530.08 feet to a point;

THENCE N 30°37′46″ W along land now or formerly of Porter, Trustee a distance of 236.68 feet to a point at the land now or formerly of Two Stevens, LLC;

THENCE N 15°19′02″ E along land now or formerly of Two Stevens, LLC a distance of 146.85 feet to a point;

THENCE N 85°42′06″ E along land now or formerly of Two Stevens, LLC a distance of 414.39 feet to a point of curvature;

THENCE northeasterly along land now or formerly of Two Stevens, LLC on a curve to the left having a radius of 100.00 feet, an arc distance of 94.52 feet, a chord bearing N 58°37′25″ E and a chord length of 91.04 feet to a point of tangency;

THENCE N 31°32′45″ E along land now or formerly of Two Stevens, LLC a distance of 59.36 feet to a point;

THENCE N 03°58′05″ W along land now or formerly of Two Stevens, LLC a distance of 73.82 feet to a point;

THENCE N 54°21′17″ E along land now or formerly of Two Stevens, LLC a distance of 45.25 feet to a point on the curve of the westerly sideline of O'Connell Way;

THENCE southeasterly along the westerly sideline of O'Connell Way on a curve to the left having a radius of 310.00 feet, an arc distance of 214.85 feet, a chord bearing S 40°55′09″ E and a chord length of 210.58 feet to a point of tangency and at the Point of Beginning.

The above described parcel contains 9.146 acres, more or less.

Tract 7—60 O'Connell Way, Taunton, MA

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton on the west side of O'Connell Way off Stevens Street, more particularly shown as Lot 1B on plan by Cullinan Engineering Co. Inc., entitled ''Plan of Land Stevens Street, County Street and Route 24 East Taunton, Massachusetts Prepared for the Maggiore Companies'', dated May 29, 2007, rev. June 13, 2007, recorded in Plan Book 458, Page 22, bounded and described as follows: (For the purposes of these drawings, the portion of the property boundary defined by the centerline of the Cotley River has been approximated by line segments with defined bearings and distances).

Beginning on the westerly sideline of O'Connell Way at the most easterly corner of land now or formerly of Taunton Development Corporation (TDC) (Lot 9);

THENCE S 13°10′38″ E along the westerly sideline of O'Connell Way a distance of 321.23 feet to a point of curvature;

THENCE southeasterly along the westerly sideline of O'Connell Way on a curve to the left having a radius of 310.00 feet, an arc distance of 42.67 feet, a chord bearing S 17°07′14″ E and a chord length of 42.64 feet to a point at the land now or formerly of One Stevens LLC;
THENCE S 54°21′17″ W along land now or formerly of One Stevens LLC a distance of 45.25 feet to a point;
THENCE S 03°58′05″ E along land now or formerly of One Stevens LLC a distance of 73.82 feet to a point;
THENCE S 31°32′45″ W along land now or formerly of One Stevens LLC a distance of 59.36 feet to a point of curvature;
THENCE southwesterly along land now or formerly of One Stevens LLC on a curve to the right having a radius of 100.00 feet, an arc distance of 94.52 feet, a chord bearing S 58°37′25″ W and a chord length of 91.04 feet to a point of tangency;
THENCE S 85°42′06″ W along land now or formerly of One Stevens LLC a distance of 414.39 feet to a point;
THENCE S 15°19′02″ W along land now or formerly of One Stevens LLC a distance of 146.85 feet to a point at the land now or formerly of Porter, Trustee;
THENCE N 30°37′46″ W along land now or formerly of Porter, Trustee a distance of 72.02 feet to a point;
THENCE N 60°57′07″ W along land now or formerly of Porter, Trustee a distance of 554.83 feet to a point;
THENCE N 05°23′38″ W along land now or formerly of Porter, Trustee a distance of 141.69 feet to a point;
THENCE N 75°19′32″ W along land now or formerly of Porter, Trustee a distance of 66.89 feet to a point;
THENCE N 10°07′19″ W along land now or formerly of Porter, Trustee a distance of 365.13 feet to a point;
THENCE S 79°40′32″ W along land now or formerly of Porter, Trustee a distance of 37.82 feet to the approximate centerline of the Cotley River and at land now or formerly of TDC (Lot 13);
THENCE N 10°19′41″ W along the approximate centerline of Cotley River a distance of 132.84 feet;
THENCE N 00°51′38″ W along the approximate centerline of Cotley River a distance of 102.63 feet;
THENCE N 22°05′23″ E along the approximate centerline of Cotley River a distance of 37.53 feet;
THENCE N 36°31′36″ E along the approximate centerline of Cotley River a distance of 36.78 feet;
THENCE N 07°35′17″ E along the approximate centerline of Cotley River a distance of 30.90 feet;
THENCE N 15°02′05″ W along the approximate centerline of Cotley River a distance of 115.27 feet;
THENCE N 22°35′20″ W along the approximate centerline of Cotley River a distance of 27.33 feet;
THENCE N 58°48′35″ W along the approximate centerline of Cotley River a distance of 35.99 feet;
THENCE N 54°00′16″ W along the approximate centerline of Cotley River a distance of 31.07 feet;
THENCE N 05°31′51″ W along the approximate centerline of Cotley River a distance of 43.77 feet;
THENCE N 10°39′46″ E along the approximate centerline of Cotley River a distance of 110.86 feet to a point;
THENCE S 69°49′06″ E along land now or formerly of TDC (Lot 13) a distance of 30.00 feet to a point also being the end point of a tie line;
THENCE continuing S 69°49′06″ E along land now or formerly of TDC (Lot 13 & Lot 14) a distance of 246.89 feet to a point;
THENCE S 70°07′42″ E along land now or formerly of TDC (Lot 14) a distance of 636.23 feet to a point at the land of TDC (Lot 9);
THENCE S 20°56′02″ E along land now or formerly of TDC (Lot 9) a distance of 547.76 feet to a point;
THENCE N 76°49′22″ E along land now or formerly of TDC (Lot 9) a distance of 225.11 feet to the Point of Beginning.

The above described parcel contains 26.249 acres, more or less.

Tract 8—Stevens Street and O'Connell Way

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton on Stevens Street and Route 140, more particularly shown as Parcels A and B on a plan by Cullinan Engineering Co. Inc., entitled ''Plan of Land Stevens Street, County Street and Rte. 24 East Taunton, Massachusetts, prepared for the Maggiore Companies'', dated May 29, 2007, recorded in Plan Book 458, Page 22 and as Parcel E on a plan by Cullinan Engineering Co. Inc., entitled ''Plan of Land Stevens Street and O'Connell Way East Taunton, Massachusetts, Prepared for One Stevens LLC'', dated August 13, 2007, recorded in Plan Book 459, Page 72, bounded and described as follows:
Beginning at a point on the westerly sideline of Stevens Street at the land now or formerly of 73 Stevens Street Jamins LLC;
THENCE S 29°25′10″ W along the westerly sideline of Stevens Street a distance of 67.00 feet to a point.
THENCE N 56°43′22″ W along the sideline of Stevens Street a distance of 8.25 feet to a Massachusetts Highway bound;
THENCE continuing S 36°03′59″ W along the westerly sideline of Stevens Street a distance of 45.36 feet to a concrete bound;
THENCE S 36°03′59″ W along the westerly sideline of Stevens Street a distance of 69.00 feet to a point;
THENCE S 51°31′40″ W along the westerly sideline of Stevens Street a distance of 178.97 feet to a point at land now or formerly of Silver City Galleria LLC;
THENCE N 88°13′45″ W along land now or formerly of Silver City Galleria LLC a distance of 142.82 feet to a point;
THENCE N 72°05′20″ W along land now or formerly of Silver City Galleria LLC a distance of 331.46 feet to a point;
THENCE N 70°46′43″ W along land now or formerly of Silver City Galleria LLC a distance of 246.11 feet to a Massachusetts Highway bound;
THENCE S 41°20′14″ W along land now or formerly of Silver City Galleria LLC a distance of 70.00 feet to a Massachusetts Highway bound and at the northerly sideline of County Street, State Highway Route 140, Layout #4865;
THENCE N 52°11′42″ W along the northerly sideline of County Street, State Highway Route 140, Layout #4865 a distance of 200.37 feet to a Massachusetts Highway bound;
THENCE N 48°39′46″ W along the northerly sideline of County Street, State Highway Route 140, Layout #4865 a distance of 1040.93 feet to a Massachusetts Highway bound and at the easterly sideline of State Highway Route 24, Layout #3719;
THENCE N 01°00′57″ E along the easterly sideline of State Highway Route 24, Layout #3719 a distance of 290.43 feet to a point and at land now or formerly of the Taunton Development Corporation;
THENCE N 79°40′32″ E along land now or formerly of Taunton Development Corporation a distance of 190.04 feet to a point also being the end point of a tie line;
THENCE continuing N 79°40′32″ E along land now or formerly of Taunton Development Corporation a distance of 21.00 feet to the approximate centerline of the Cotley River and at land now or formerly of Two Stevens LLC;
THENCE N 79°40′32″ E along land now or formerly of Two Stevens LLC a distance of 37.82 feet to a point;
THENCE S 10°07′19″ E along land now or formerly of Two Stevens LLC a distance of 365.13 feet to a point;

THENCE S 75°19′32″ E along land now or formerly of Two Stevens LLC a distance of 66.89 feet to a point;
THENCE S 05°23′38″ E along land now or formerly of Two Stevens LLC a distance of 141.69 feet to a point;
THENCE S 60°57′07″ E along land now or formerly of Two Stevens LLC a distance of 554.83 feet to a point;
THENCE S 30°37′46″ E along land now or formerly of Two Stevens LLC a distance of 72.02 feet to a point and at land now or formerly of One Stevens LLC;
THENCE S 30°37′46″ E along land now or formerly of One Stevens LLC a distance of 236.68 feet to a point;
THENCE S 70°55′10″ E along land now or formerly of One Stevens LLC a distance of 530.08 feet to a point;
THENCE S 88°13′45″ E along land now or formerly of One Stevens LLC a distance of 139.98 feet to a point;
THENCE N 46°27′27″ E along land now or formerly of One Stevens LLC a distance of 235.54 feet to a point and at land now or formerly of Jamins LLC;
THENCE continuing N 46°27′27″ E along land now or formerly of Jamins LLC a distance of 53.00 feet to a point;
THENCE N 77°25′54″ E along land now or formerly of Jamins LLC a distance of 40.36 feet to a point on the westerly sideline of Stevens Street and the Point of Beginning; The above described parcel contains 7.966 acres, more or less.

Tract 9—O'Connell Way Layout

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton on the west side of Stevens Street owned by the Taunton Development Corporation and shown as a proposed roadway layout on a plan by Field Engineering Co., Inc., entitled ''Definitive Subdivision Plan of Land, Liberty and Union Industrial Park—Phase II'' and revised dated 3/08/2006, recorded in Plan Book 446, Page 35, and a plan entitled, ''Definitive Subdivision Modification Plan of Land, Liberty and Union Industrial Park—Phase II'' and dated 3/23/2007, recorded in Plan Book 458, Page 21, bounded and described as follows:

Beginning on the westerly sideline of Stevens Street at the southeasterly corner of the parcel to be described;
THENCE S 19°18′52″ W along the westerly sideline of Stevens Street a distance of 155.23 feet to a point at land now or formerly Jamins LLC;
THENCE N 60°46′27″ W along the westerly sideline of O'Connell Way a distance of 421.27 feet to a point of curvature;
THENCE northwesterly along the westerly sideline of O'Connell Way on a curve to the right having a radius of 310.00 feet, an arc distance of 257.52 feet, a chord bearing N 36°58′32″ W and a chord length of 250.18 feet to a point of tangency;
THENCE N 13°10′38″ W along the westerly sideline of O'Connell Way a distance of 539.91 feet to a point of curvature;
THENCE northwesterly along the westerly sideline of O'Connell Way on a curve to the left having a radius of 170.00 feet, an arc distance of 86.47 feet, a chord bearing N 27°44′58″ W and a chord length of 85.54 feet to a point of tangency;
THENCE N 42°19′18″ W along the westerly sideline of O'Connell Way a distance of 135.62 feet to a point of curvature;
THENCE northwesterly along the westerly sideline of O'Connell Way on a curve to the right having a radius of 230.00 feet, an arc distance of 167.83 feet, a chord bearing N 21°25′04″ W and a chord length of 164.13 feet to a point of tangency;
THENCE N 00°30′50″ W along the westerly sideline of O'Connell Way a distance of 118.63 feet to a point of curvature;
THENCE northerly along the westerly sideline of O'Connell Way on a curve to the left having a radius of 270.00 feet, an arc distance of 184.78 feet, a chord bearing N 20°07′11″ W and a chord length of 181.20 feet to a point of tangency;
THENCE N 39°43′33″ W along the westerly sideline of O'Connell Way a distance of 100.06 feet to a point of curvature;
THENCE northwesterly along the westerly sideline of O'Connell Way on a curve to the right having a radius of 330.00 feet, an arc distance of 93.55 feet, a chord bearing N 31°36′18″ W and a chord length of 93.23 feet to a point of reverse curvature;
THENCE northwesterly along the westerly sideline of O'Connell Way on a curve to the left having a radius of 40.00 feet, an arc distance of 49.33 feet, a chord bearing N 58°48′43″ W and a chord length of 46.26 feet to a point of reverse curvature;
THENCE northerly along the sideline of O'Connell Way on a curve to the right having a radius of 75.00 feet, an arc distance of 340.17 feet, a chord bearing N 35°47′44″ E and a chord length of 115.02 feet to a point of tangency;
THENCE S 14°16′09″ E along the easterly sideline of O'Connell Way a distance of 53.96 feet to a point of curvature;
THENCE southerly along the easterly sideline of O'Connell Way on a curve to the left having a radius of 270.00 feet, an arc distance of 119.96 feet, a chord bearing S 26°59′51″ E and a chord length of 118.98 feet to a point of tangency;
THENCE S 39°43′33″ E along the easterly sideline of O'Connell Way a distance of 100.06 feet to a point of curvature;
THENCE southeastly along the easterly sideline of O'Connell Way on a curve to the right having a radius of 330.00 feet, an arc distance of 225.84 feet, a chord bearing S 20°07′12″ E and a chord length of 221.46 feet to a point of tangency;
THENCE S 00°30′50″ E along the easterly sideline of O'Connell Way a distance of 118.63 feet to a point of curvature;
THENCE southeasterly along the easterly sideline of O'Connell Way on a curve to the left having a radius of 170.00 feet, an arc distance of 124.05 feet, a chord bearing S 21°25′04″ E and a chord length of 121.31 feet to a point of tangency;
THENCE S 42°19′18″ E along the easterly sideline of O'Connell Way a distance of 135.62 feet to a point of curvature;
THENCE southeasterly along the easterly sideline of O'Connell Way on a curve to the right having a radius of 230.00 feet, an arc distance of 116.99 feet, a chord bearing S 27°44′58″ E and a chord length of 115.74 feet to a point of tangency;
THENCE S 13°10′38″ E along the easterly sideline of O'Connell Way a distance of 533.14 feet to a point of curvature;
THENCE southeasterly along the easterly sideline of O'Connell Way on a curve to the left having a radius of 250.00 feet, an arc distance of 207.68 feet, a chord bearing S 36°58′32″ E and a chord length of 201.76 feet to a point of tangency;
THENCE S 60°46′27″ E along the easterly sideline of O'Connell Way a distance of 325.24 feet to a point of curvature;
THENCE northeasterly along the easterly sideline of O'Connell Way on a curve to the left having a radius of 75.00 feet, an arc distance of 130.78 feet, a chord bearing N 69°16′13″ E and a chord length of 114.83 feet to the Point of Beginning.

The above described roadway parcel contains 3.442 +/− acres which, together with a 512 square foot easement on land now or formerly of Jamins LLC, constitute the O'Connell Way layout.

The 512 square foot easement description begins at a point on the northerly sideline of Stevens Street being S 19°18′52″ W and 155.23 feet distant from the beginning point of O'Connell Way described above;
THENCE N 60°46′27″ W along the westerly sideline of O'Connell Way a distance of 50.55 feet to a point of curvature;
THENCE southerly on a curve to the right having a radius of 60.00 feet, an arc distance of 84.01 feet, a chord bearing S 20°39′44″ E and a chord length of 77.31 feet to a point on the northerly sideline of Stevens Street;
THENCE N 19°26′59″ E along the northerly sideline of Stevens Street a distance of 50.55 feet to the Point of Beginning.

Said 512 square foot easement is on land now or formerly of Jamins LLC and is intended to be included with and for the use of O'Connell Way.

Tract 10—Gap of Land between land of DaRosa and O'Connell Way

Description of land in the Commonwealth of Massachusetts, County of Bristol, City of Taunton, on the east side of O'Connell Way off Stevens Street being a land gap between the layout of O'Connell Way and Lot 10 in Plan Book 446, Page 35 and Parcel 2 described in a the deed from Taunton Development Corporation to Daniel G. DaRosa and Laurie B. DaRosa, dated July 18, 2005, recorded in Deed Book 15013, Page 42, bounded and described as follows:
Beginning on the easterly sideline of O'Connell Way at the most southwesterly corner of the parcel to be described;
THENCE N 13°10′38″ W along the easterly sideline of O'Connell Way a distance of 249.36 feet to a point of curvature;
THENCE northwesterly along the easterly sideline of O'Connell Way on a curve to the left having a radius of 230.00 feet, an arc distance of 116.99 feet, a chord bearing N 27°44' 58″ W and a chord length of 115.74 feet to a point of tangency;
THENCE N 42°19′18″ W along the easterly sideline of O'Connell Way a distance of 135.62 feet to a point of curvature;
THENCE northwesterly along the easterly sideline of O'Connell Way on a curve to the right having a radius of 170.00 feet an arc distance of 29.76 feet, a chord bearing N 37°18′28″ W and a chord length of 29.72 feet to a point at land now or formerly L & U LLC;
THENCE N 57°42′31″ E along land now or formerly L & U LLC distance of 16.65 feet to a point at land now or formerly of Darosa (Tract 2);
THENCE S 42°19′18″ E along land now or formerly of DaRosa (Tract 2) a distance of 215.61 feet to a point;
THENCE S 13°10′38″ E along land now or formerly of DaRosa (Tract 2) a distance of 349.05 feet to a point at land now or formerly of 71 Stevens Street LLC;
THENCE N 41°25′18″ W along land now or formerly of 71 Stevens Street LLC a distance of 28.35 feet to the Point of Beginning.

The above described parcel contains 0.203 acres, more or less.

Tract 11—67 Stevens Street

Description of parcel of land in Taunton, Massachusetts shown as Tax Parcel 119–2–0 on the City of Taunton Assessor's plans, bounded and described as follows:
Beginning on the westerly sideline of Stevens Street, at the most northeasterly corner of the lot to be herein described and at the southeasterly corner of land now or formerly John & Betty Jean Allen;
THENCE S 07°26′15″ W along the westerly sideline of Stevens Street, a distance of 50.49 feet to an angle point in the westerly sideline of Stevens Street;
THENCE S 13°24′15″ W along the westerly sideline of Stevens Street, a distance of 46.49 feet to an angle point in the westerly sideline of Stevens Street;
THENCE S 18°41′39″ W along the westerly sideline of Stevens Street, a distance of 103.43 feet to land now or formerly of 71 Stevens Street LLC;
THENCE N 65°33′57″ W along land now or formerly of 71 Stevens Street LLC, a distance of 150.00 feet to corner of land now or formerly of 71 Stevens Street LLC;
THENCE N 14°26′52″ E along land now or formerly of 71 Stevens Street LLC, a distance of 200.00 feet to a concrete bound at the land of John & Betty Jean Allen;
THENCE S 65°30′42″ E along land now or formerly of John & Betty Jean Allen, a distance of 150.68 feet to the Point of Beginning.

The above described lot contains 0.699 acres, more or less.

Being the same premises conveyed to Kathleen Williams and Kenneth Williams by deed of Ernestina R. Torres and Nelson Henriquez, dated July 28, 2005 and recorded in Deed Book 15029, Page 189.

Tract 12—65 Stevens Street

Description of parcel of land in Taunton, Massachusetts shown as tax parcel 119–3–0 on the City of Taunton Assessor's plans, bounded and described as follows:

The land in Taunton, on the northwesterly side of Stevens Street, being shown as Lot #9A on a plan entitled ''Property of Richard C. Tilton et ux Taunton, Mass. Scale 1″ = 20′ July 8, 1964 John P. Gonzals, Surveyor'', which plan is recorded with Bristol County Northern District Registry of Deeds, Plan Book 94, Page 9 and being more particularly described as follows:
Beginning on the westerly sideline of Stevens Street, at the most northeasterly corner of the lot to be herein described and at the southeasterly corner of land now or formerly Daniel & Laurie DaRosa;
THENCE S 02°11′22″ W along the westerly sideline of Stevens Street, a distance of 116.64 feet to an angle point in the westerly sideline of Stevens Street;
THENCE S 05°24′21″ W along the westerly sideline of Stevens Street, a distance of 22.67 feet to a point at the land now or formerly of Kathleen & Kenneth Williams;
THENCE N 65°30′42″ W along land now or formerly of Kathleen & Kenneth Williams, a distance of 150.68 feet to a concrete bound at the land now or formerly of 71 Stevens Street LLC;
THENCE N 14°26′52″ E along land now or formerly of 71 Stevens Street LLC, a distance of 124.60 feet to a concrete bound at the land of Daniel & Laurie DaRosa;
THENCE S 68°39′51″ E along stonewall remains and land now or formerly of Daniel & Laurie DaRosa, a distance of 120.92 feet to the Point of Beginning.

The above described lot contains 0.396 acres, more or less.

Being the same premises conveyed to John M. Allen by deed of John M. Allen and Betty Jean Allen dated June 4, 2011 and recorded in Deed Book 20376, page 275.

Tract 13—61F Stevens Street

Description of parcel of land in Taunton, Massachusetts shown as Tax Parcel 109–17–0 on the City of Taunton Assessors' Plans and being more particularly described as follows:

The land located on the westerly side of Stevens Street, East Taunton, Bristol County, Massachusetts shown as Lot 3B on a plan entitled, ''Plan of Land Stevens Street, East Taunton, Massachusetts, prepared for Taunton Development Corporation'', prepared by Cullinan Engineering, Scale 1″ = 30′ revised dated May 31, 2005 which plan is recorded with the Bristol County Northern District Registry of Deeds in Plan Book 437, Page 30, containing

approximately 0.42 acres and known as and numbered 61F Stevens Street, bounded and described as follows:

Beginning on the westerly sideline of Stevens Street, at the most northeasterly corner of the lot to be herein described and at the southeasterly corner of land now or formerly Edwin DeBrum;

THENCE S 04°48′11″ W along the westerly sideline of Stevens Street, a distance of 124.70 feet to a point at the land now or formerly of Daniel & Laurie DaRosa;

THENCE N 69°41′20″ W along land now or formerly of Daniel & Laurie DaRosa, a distance of 167.82 feet to a point at the corner of land now or formerly of Daniel & Laurie DaRosa;

THENCE N 26°48′58″ E along land now or formerly of Daniel & Laurie DaRosa, a distance of 134.62 feet to a point at the land of Edwin DeBrum;

THENCE S 63°11′08″ E along land now or formerly of Edwin DeBrum, a distance of 120.00 feet to the Point of Beginning.

The above described lot contains 0.416 acres more or less.

Being the same premises conveyed to Edward A. Haskins, Jr. and Sheri L. Haskins by deed of Jeffrey D. Smith dated December 30, 2005, recorded in Deed Book 15519, page 221.

Dated: September 18, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2015–24360 Filed 9–24–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD08000.L12100000.MD0000. 15XL1109AF WBS: LXSSB0010000]

Reopening of the Public Comment Period and Two Additional Public Meetings for the Draft Supplemental Environmental Impact Statement and Draft Plan Amendment, California Desert Conservation Area Plan, West Mojave Planning Area, Inyo, Kern, Los Angeles and San Bernardino Counties

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On March 6, 2015, the Department of Interior, Bureau of Land Management (BLM), published in the **Federal Register** a notice of availability for comment on a Draft Land Use Plan Amendment (LUPA) and Draft Supplemental Environmental Impact Statement (EIS) for the West Mojave Route Network Project (WMRNP) for the West Mojave (WEMO) Planning Area of the California Desert Conservation Area (CDCA), to amend the Motor Vehicle, Recreation, and Grazing Elements of the CDCA Plan and to designate a transportation network within the planning area. Comments were requested by June 4, 2015. The BLM is reopening the public comment period for the draft LUPA and draft supplemental EIS for an additional 120 days.

DATES: Written comments must be received on or before January 25, 2016. Two public meetings will be scheduled. Notice of the meetings will be provided on the BLM Web site (see **ADDRESSES**) and in local papers at least 15 days prior to the date of the meetings.

ADDRESSES: Submit your comments, identified by WMRNP in the subject line, by one of the following methods:

- Email: *cawemopa@blm.gov.*
- Web site: *http://www.blm.gov/ca/st/en/fo/cdd/west_mojave_wemo.*
- Fax: 951–697–5299.
- Mail: BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, ATTN: West Mojave Route Network Project, Moreno Valley, CA 92553–9046.

FOR FURTHER INFORMATION CONTACT: Edythe Seehafer, telephone 760–252–6021; address: Bureau of Land Management, Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311; email *cawemopa@blm.gov.* Documents relevant to this notice may be examined at the California Desert District Office and associated Field Offices in Barstow, Ridgecrest, Needles, Palm Springs, and El Centro, at the Web site (see **ADDRESSES**), or the BLM's California State Office, 2800 Cottage Way, Sacramento, CA 95825.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800)877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: On March 6, 2015, the BLM published in the **Federal Register** a notice of availability for comment of a draft LUPA and draft supplemental EIS for the WMRNP (80 FR 12194). In the original notice, the BLM requested comments by June 4, 2015. The BLM is reopening the public comment period in response to requests by the public and to allow for public consideration of new information on reasonably foreseeable actions as identified in the Desert Renewable Energy Conservation Plan (DRECP) as it relates to the WMRNP.

Concurrent with the WMRNP planning effort, the BLM is proposing CDCA LUPA alternatives in the DRECP that include, among other proposals, special area designations and associated management parameters, and which comprise new information that may be considered in the identification of alternatives and the analysis of impacts in the WMRNP. The BLM is considering whether to adjust or add additional alternatives to the WMRNP in response to the proposals in the DRECP. All previously submitted comments will be considered; comments submitted during the initial WMRNP comment period need not be resubmitted.

Information and environmental documents on the DRECP are available for review at *http://www.blm.gov/ca/st/en/prog/energy/DRECP.html.*

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.

Authority: 40 CFR 1501.7, 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2

Thomas Pogacnik,

Deputy State Director.

[FR Doc. 2015–24437 Filed 9–24–15; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2015–0080; MMAA104000]

Atlantic Wind Lease Sale 5 (ATLW5) for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore New Jersey—Final Sale Notice

AGENCY: Bureau of Ocean Energy Management (BOEM or ''the Bureau''), Interior.

ACTION: Final Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore New Jersey.

SUMMARY: This document is the Final Sale Notice (FSN) for the sale of two commercial wind energy leases on the Outer Continental Shelf (OCS) offshore

New Jersey, pursuant to BOEM's regulations at 30 CFR 585.216. BOEM is offering two leases for sale using a multiple-factor auction format: Lease OCS–A 0498 and Lease OCS–A 0499. The two lease areas (LAs) are identical to those announced in the Proposed Sale Notice (PSN) for Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore New Jersey that was published in the **Federal Register** on July 21, 2014, with a 60-day public comment period (79 FR 42361). This FSN contains information pertaining to the areas available for leasing, proposed lease provisions and conditions, auction details, lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. The issuance of the proposed leases resulting from this sale would not constitute an approval of project-specific plans to develop offshore wind energy. Such plans, expected to be submitted by auction winners, will be subject to subsequent environmental and technical reviews prior to a decision to proceed with development.

DATES: BOEM will hold a mock auction for the qualified bidders on November 4, 2015. The monetary auction will be held online and will begin at 9:00 a.m. Eastern Time (ET) on November 9, 2015. Additional details are provided in the section entitled ''Deadlines and Milestones for Bidders.''

FOR FURTHER INFORMATION CONTACT: Will Waskes, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia, 20166, (703) 787–1320 or *Will.Waskes@boem.gov.*

SUPPLEMENTARY INFORMATION:

Authority

This FSN is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)) (OCSLA), as amended by section 388 of the Energy Policy Act of 2005 (EPAct), and the implementing regulations at 30 CFR part 585, including 30 CFR 585.211 and 585.216.

Background

The two LAs offered in this FSN are the same areas BOEM announced in the PSN on July 21, 2014 (79 FR 42361). BOEM received 24 comment submissions in response to the PSN, which are available in the **Federal Register** docket (Docket ID: BOEM–2014–0029) through BOEM's Web site at: *http://www.boem.gov/New-Jersey/*. BOEM also has posted a document containing responses to comments submitted during the PSN comment period and a list of other changes that BOEM has implemented for this lease sale since publication of the PSN. This document, entitled *Response to Comments and Explanation of Changes*, can be found at the following URL: *http://www.boem.gov/New-Jersey/.*

On February 3, 2012, BOEM published the Notice of Availability (NOA) (77 FR 5560) for the final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for commercial wind lease issuance and site assessment activities on the Atlantic OCS offshore New Jersey, Delaware, Maryland, and Virginia, pursuant to the National Environmental Policy Act. Consultations ran concurrently with the preparation of the EA and included consultation under the Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), section 106 of the National Historic Preservation Act (NHPA), and the Coastal Zone Management Act (CZMA). The proposed lease areas identified in this FSN have been reduced from the areas described in the Call and the New Jersey Wind Energy Area (WEA) described in the EA, but are the same as the areas described in the PSN (79 FR 42361). An explanation regarding the reduction in the area is provided in the section entitled ''Area Offered for Leasing'' of the New Jersey PSN published on July 21, 2014 (79 FR 42361). The *Commercial Wind Lease Issuance and Site Characterization Activities on the Atlantic Outer Continental Shelf Offshore New Jersey, Delaware, Maryland, and Virginia Final Environmental Assessment* can be found at: *http://www.boem.gov/uploadedFiles/BOEM/Renewable_Energy_Program/Smart_from_the_Start/Mid-Atlantic_Final_EA_012012.pdf.*

On October 19, 2012, BOEM initiated consultation with the National Marine Fisheries Service (NMFS) under the ESA for geological and geophysical (G&G) activities in support of renewable energy development offshore New Jersey, New York, Massachusetts, and Rhode Island. Formal consultation concluded on April 10, 2013, with receipt of a Biological Opinion that, along with the previous informal consultation, informed the development of the New Jersey commercial wind lease package. Additional environmental reviews will be prepared upon receipt of the lessees' proposed project plans, such as a Site Assessment Plan (SAP) or Construction and Operations Plan (COP).

Other Activities Under BOEM's Jurisdiction

Potential bidders should be aware of the following unsolicited request for a right-of-way (ROW) grant, and two limited leases issued by BOEM within the New Jersey WEA.

Atlantic Grid Holdings LLC (AGH) Right-of-Way Grant Request: On March 31, 2011, Atlantic Grid Holdings LLC submitted an unsolicited application for a ROW grant. Following publication of a notice to determine competitive interest in the grant area and a 60-day public comment period, BOEM published a determination of no competitive interest on May 15, 2012 (77 FR 28620). The application and associated notices can be found at: *http://www.boem.gov/Regional-Proposals/.* On May 1, 2013, Atlantic Grid Holdings LLC submitted a supplement to their application which can found at the web address above. On December 13, 2013, at the request of AGH, BOEM granted a departure under BOEM's regulations at 30 CFR 585.103(a) extending the filing date for the General Activities Plan (GAP) until December 31, 2014. On June 2, 2014, AGH informed BOEM of a new phased development schedule. Phase 1 would consist of the installation of a point-to-point transmission system that would not support the production, transmission, or transportation of energy from sources other than oil and gas. On December 22, 2014, BOEM suspended the current application process and informed AGH that Phase 1 no longer falls under BOEM's jurisdiction and does not require an OCS lease, easement or ROW grant pursuant to subsection 8(p) of the OCS Lands Act prior to AGH moving forward with Phase I. Should AGH proceed with future phases that support the production, transmission, or transportation of energy from sources other than oil and gas, AGH will need to reinitiate the renewable energy regulatory process pursuant to 30 CFR part 585.

Interim Policy Leases: On November 1, 2009, BOEM issued two Interim Policy leases within the New Jersey WEA authorizing the construction, installation, and operation of meteorological towers or buoys for a term of five years. The location of each lease, the name of each lease holder, and each lease number are listed below.

Lease No.	Lessee	Protraction No.	Block No.	Sub-block
OCS–A 0472	Deepwater Wind LLC	Wilmington NJ18–02	7033	All.
OCS–A 0473	Fishermen's Energy LLC	Wilmington NJ18–02	6931	H,K,L,N,O,P.

These leases did not confer a right to develop a commercial offshore wind project. Rather, the leases granted the exclusive right to conduct the activities described in each lease, which were limited to installing and operating facilities to characterize wind and environmental resources. These leases expired on November 1, 2014; BOEM requires all facilities to be removed by November 1, 2015. Electronic copies of the executed leases can be found at: *http://www.boem.gov/Renewable-Energy-Interim-Policy/.* BOEM anticipates that both lease areas will be cleared prior to the New Jersey lease sale.

List of Qualified Bidders: BOEM has determined that the following companies are legally, technically, and financially qualified to hold a commercial wind lease offshore New Jersey pursuant to 30 CFR 585.106 and 107, and therefore may participate in this lease sale as bidders, subject to meeting the bid deposit requirements and other requirements described in this notice.

Company name	Company No.
Convalt Energy LLC	15051
GSOE I, LLC	15009
EDF Renewable Development, Inc	15027
Energy Management, Inc.	15015
Fishermen's Energy, LLC	15005
Green Sail Energy LLC	15045
IBERDROLA RENEWABLES, Inc	15019
New Jersey Offshore Wind, LLC	15030
Offshore MW LLC	15010
RES America Developments Inc	15021
Sea Breeze Energy LLC	15044
US Mainstream Renewable Power (Offshore) Inc	15029
US Wind Inc	15023

Deadlines and Milestones for Bidders: This section describes the major deadlines and milestones in the auction process from publication of this FSN to execution of leases pursuant to this sale. These are organized into three stages: (1) The FSN waiting period; (2) conducting the Auction; and (3) from the Auction to Lease execution.

1. *FSN Waiting Period.* During this period, qualified bidders must take several steps before participating in the Auction.

• *Bidder's Financial Form (BFF):* BOEM must receive each qualified bidder's BFF by October 6, 2015. BOEM will consider extensions to this deadline only if BOEM determines that the failure to timely submit the BFF was caused by events beyond the bidder's control. The BFF is available at: *http://www.boem.gov/New-Jersey/.* Once the BFF has been processed, bidders may log into *pay.gov* and submit bid deposits. BOEM will only accept an originally executed paper copy of the BFF, and will not consider any BFFs submitted by qualified bidders for previous lease sales for the purposes of this auction. The BFF must be executed by an authorized representative as shown on the bidder's legal qualifications. Each bidder is required to sign the self-certification in the BFF, in accordance with 18 U.S.C. 1001 (Fraud and False Statements).

• *Bid Deposits:* Each bidder must submit a bid deposit of $450,000 by October 20, 2015. BOEM will consider extensions to this deadline only if BOEM determines that the failure to timely submit the bid deposit was caused by events beyond the bidder's control.

• *Non-Monetary Package:* For bidders applying for a credit as described in the ''Auction Procedures: Credit Factors'' section of this notice, BOEM must receive those bidders' non-monetary packages' by October 20, 2015. Non-monetary packages must be submitted in both paper and electronic formats. BOEM considers an Adobe Portable Document Format (pdf) file stored on electronic media (*e.g.,* flash drive) to be an acceptable format.

Further information on non-monetary packages can be found in the section of this notice entitled ''Credit Factor Definitions.'' If BOEM does not receive a bidder's non-monetary package by October 20, 2015, BOEM will assume that the bidder is not seeking a non-monetary auction credit and the BOEM panel responsible for determining bidder eligibility for the credit will not consider that bidder for a non-monetary auction credit.

• *Mock Auction:* BOEM will hold a Mock Auction on November 4, 2015. The Mock Auction will be held online. Only qualified bidders who have met the requirements and deadlines for auction participation, including submission of bid deposits, will be permitted to participate in the Mock Auction. BOEM will contact each qualified bidder and provide instructions for participation.

2. *Conduct the Auction:* BOEM, through its contractor, will hold an auction as described in this notice.

• *Panel Convenes to Evaluate Non-Monetary Packages:* On November 5, 2015, the panel described in the ''Auction Procedures'' section will convene to consider non-monetary packages. The panel will send determinations of eligibility to BOEM, which will inform each bidder by email whether it qualifies for a non-monetary credit.

• *Monetary Auction:* On November 9, 2015, BOEM, through its contractor, will hold the monetary stage of the auction. The auction will start at 9:00 a.m. ET. The auction will proceed electronically according to a schedule to be distributed by the BOEM Auction Manager at the time of the auction. If the auction does not conclude by the end of the day on November 9, BOEM will continue the auction on a schedule that will be communicated during the auction through the auction messaging and scheduling functions of the auction

platform. BOEM anticipates that this means continuing the auction on consecutive business days, as necessary, until the auction ends according to the procedures described in the ''Auction Procedures'' section of this notice.

• *Announce Provisional Winner:* BOEM will announce the provisional winners of the lease sale after the auction ends.

• *Reconvene the Panel:* The panel will reconvene to verify auction results.

3. *From Auction to Lease Execution.* There are several steps between the conclusion of the auction and execution of leases.

• *Bid Deposit Refund:* Once provisional winners have been announced and the panel has verified the auction results, BOEM will return bid deposits to non-winning bidders and provide a written explanation of why non-winning bidders did not win. BOEM will also return to winners the excess of any bid deposits over the cash portion of their wining bids.

• *Department of Justice (DOJ) Review:* BOEM will allow the Department of Justice (DOJ) 30 days in which to conduct an antitrust review of the auction in consultation with the Federal Trade Commission, pursuant to 43 U.S.C. 1337(c).

• *Delivery of Leases:* BOEM will send three lease copies to each winner, with instructions on how to execute the leases. The first year's rent is due 45 days after the winner receives the lease copies for execution.

• *Return the Leases:* Within 10 business days of receiving the lease copies, the auction winners must post financial assurance, pay any outstanding balance of their bonus bids (*i.e.,* winning monetary bids minus applicable non-monetary credits and bid deposits), and sign and return the three executed lease copies.

• *Execution of Leases:* Once BOEM has received the lease copies and verified that all required materials have been received, BOEM will execute the leases if appropriate.

Areas Offered For Leasing: The area available for sale will be auctioned as two leases, Lease OCS–A 0498 [South Lease Area (South LA)] and Lease OCS–A 0499 [North Lease Area (North LA)]. The South LA consists of 160,480 acres and the North LA consists of 183,353 acres. The total area is approximately 343,833 acres. If there are adequate bids, two leases will be issued pursuant to this lease sale. A description of the lease areas can be found in Addendum ''A'' of the proposed leases, which BOEM has made available with this notice on its Web site at: *http://www.boem.gov/New-Jersey/.*

Map of the Areas Offered for Leasing

A map of the North and South LAs, GIS spatial files, and a table of the boundary coordinates in X, Y (eastings, northings) UTM Zone 18, NAD83 Datum, and geographic X, Y (longitude, latitude), NAD83 Datum can be found on BOEM's Web site at: *http://www.boem.gov/New-Jersey/.*

A large scale map of these areas, showing boundaries of the area with numbered blocks, is available from BOEM upon request at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia, 20166, Phone: (703) 787–1300, Fax: (703) 787–1708.

Potential Future Restrictions To Minimize Conflicts With Vessel Traffic

Prospective bidders should note that certain sub-blocks (or portions thereof) in the North and South LAs may not be available for future development (*i.e.,* installation of wind facilities) because of navigational safety concerns. Reductions or limitations to development in the North or South LAs, if any, will be determined at the COP stage, once BOEM and USCG have reviewed the Lessee's site-specific navigational risk assessment.

First, at the New Jersey Intergovernmental Task Force meeting on December 18, 2012, the United States Coast Guard (USCG) presented an analysis of tug, towing and barge traffic that currently transits through the New Jersey WEA. USCG's presentation discussed potential safety implications and possible changes in traffic patterns to the extent that vessels reroute around the New Jersey WEA once development occurs. USCG identified the OCS Blocks listed in Table 1 as blocks of highest concern. These blocks represent 6.8% of the South LA.

TABLE 1—SOUTH LEASING AREA: BLOCKS OF PRIMARY CONCERN TO USCG

Protraction name	Protraction No.	Block No.	Sub-block
Wilmington	NJ18–02	7080	All Sub-Blocks.
Wilmington	NJ18–02	7030	B,C,D,E,F,G,H,I,J,K,L,M,N,O,P.

Additionally, during the New Jersey PSN comment period, BOEM received comments from the American Waterways Operators (AWO) expressing concern that the western boundary of the New Jersey WEA does not allow for a sufficiently wide two-way near-shore corridor for tug and barge vessels to navigate safely. AWO has argued that tug and barge vessels would have a sufficiently wide near-shore corridor along the New Jersey coast if the OCS Blocks listed in Tables 2 and 3 were not developed. These blocks represent 6.6% of the North LA and 15.7% of the South LA, and there is some overlap with the OCS Blocks identified in Table 1 above.

TABLE 2—NORTH LEASING AREA: BLOCKS OF CONCERN TO AWO

Protraction name	Protraction No.	Block No.	Sub-block	Leasing area
Wilmington	NJ18–02	6389	C,D,G,H,K,L,O,P	North.
Wilmington	NJ18–02	6438	D,G,H,K,L,O	North.
Wilmington	NJ18–02	6439	A,B,E,I	North.
Wilmington	NJ18–02	6488	A,B,E,I,M	North.
Wilmington	NJ18–02	6636	C,D,G,H	North.
Wilmington	NJ18–02	6735	C,D,G,H,K	North.
Wilmington	NJ18–02	6784	K,L,O	North.

TABLE 3—SOUTH LEASING AREA: BLOCKS OF CONCERN TO AWO

Protraction name	Protraction No.	Block No.	Sub-block	Leasing area
Wilmington	NJ18–02	6833	C,D,F,G,H,I,J,K,L,M,N,O,P	South.
Wilmington	NJ18–02	6834	I	South.
Wilmington	NJ18–02	6883	A,B,E,F,I,J	South.
Wilmington	NJ18–02	6932	A,B,C,D,E,F,G,H	South.
Wilmington	NJ18–02	6931	H,K,L,N,O,P	South.
Wilmington	NJ18–02	6982	I,J,M	South.
Wilmington	NJ18–02	7030	B,C,D,E,F,G,H,I,J,K,L,M,N,O,P	South.
Wilmington	NJ18–02	7031	I,J,M,N	South.
Wilmington	NJ18–02	7080	A,B,C,D,E,F,G,H,I,J,K,M,N	South.
Wilmington	NJ18–02	7081	A,B,E	South.

Maps identifying these blocks and sub-blocks are available on BOEM's Web site at: *http://www.boem.gov/New-Jersey/.*

Potential Future Restrictions To Minimize Conflicts With Active Undersea Cables

Potential bidders should note that certain sub-blocks (or portions thereof) in the North LA may not be available for future development (*i.e.,* installation of wind facilities) because of the presence of active subsea cables.

The U.S. Department of State has identified four active subsea cables that are present in the North LA. BOEM has not determined the degree to which subsea cables will interfere with offshore wind facility operations or the associated infrastructure, but believes it is prudent to make potential lessees aware of potential conflicts and provide them with guidance on how such conflicts can be addressed. To this end, BOEM is presently revising its COP guidelines to include recommendations for engaging and coordinating with owners and operators of existing telecommunications cables. BOEM will determine at the COP stage if any site-specific mitigation is needed for the New Jersey LAs, once it has more detailed information.

Table 4 lists the sub-blocks where the active cables are present. These sub-blocks represent 6.41% of the North LA. Maps identifying these whole blocks and sub-blocks are available on BOEM's Web site at: *http://www.boem.gov/New-Jersey/.*

TABLE 4—NORTH LEASING AREA: BLOCKS TRAVERSED BY ACTIVE SUBSEA CABLES

Protraction name	Protraction No.	Block No.	Sub-block
Wilmington	NJ18–02	6438	O.
Wilmington	NJ18–02	6488	C,D.
Wilmington	NJ18–02	6489	A,B,C,D.
Wilmington	NJ18–02	6588	A,B,C,D,F,G,H.
Wilmington	NJ18–02	6539	I,J,K,M,N,O,P.
Wilmington	NJ18–02	6589	A,B,C,D,E,F,G,H,I,J,K,L.

Potential Future Restrictions To Minimize Conflicts With Commercial Fishing Grounds

BOEM received comments in response to the PSN regarding potential conflicts with commercial fishing grounds in the proposed leasing areas. Although BOEM is retaining these fishing areas in the LAs, potential bidders should be aware that BOEM will be gathering additional data and may develop mitigation measures to minimize impacts. BOEM has completed preliminary work with NMFS Northeast Fisheries Science Center to characterize fishing activity in BOEM's wind energy areas. Results for the New Jersey LAs indicate the potential for economic impacts, particularly to those vessels conducting dredge activities for surf clams and ocean quahog. BOEM will encourage the sale winners to participate in discussions that the Bureau will hold with NMFS, the Mid-Atlantic Fisheries Management Council, the Mid-Atlantic Regional Council on the Ocean, and other interested stakeholders to further characterize fishing activity offshore New Jersey and develop site-specific best management practices as lease activities progress. These discussions may result in mitigation measures in key fishing grounds to offset impacts to fishermen using the area.

BOEM also received comments from the fishing industry in response to the PSN recommending that its New Jersey leases stipulate that lessees must hire a fisheries liaison to reduce potential multiple use conflicts. BOEM's 2007 Record of Decision (ROD) for the OCS Alternative Energy and Alternate Use Program adopted a series of best management practices (BMPs), one of which states that ''lessees and grantees shall work cooperatively with commercial/recreational fishing entities and interests to ensure that the construction and operation of a project will minimize potential conflicts with commercial and recreational fishing interests.'' The ROD also states that BOEM may choose to incorporate one or more of its identified BMPs into its leases as required stipulations.

Between 2012 and 2014, BOEM collaborated with numerous stakeholders in the fishing and offshore wind industries to develop additional BMPs in furtherance of its goal of eliminating/minimizing potential multiple use conflicts between offshore renewable energy developers and the fishing industry. As a result of this effort, BOEM concluded that it would be beneficial for a lessee to utilize both a fisheries liaison and fisheries representative during the lessee's plan development process. Therefore, BOEM recommends that lessees utilize a fisheries liaison and fisheries representative during the development of their plans to facilitate cooperation with the fishing industry. However, given the benefits of preserving lessee flexibility and the lack of project-specific information available at this juncture, BOEM is not including stipulations requiring the use of a

fisheries liaison in the leases to be offered in its New Jersey lease sale.

Withdrawal of Blocks: BOEM reserves the right to withdraw portions of the LAs prior to its execution of a lease based upon relevant information provided to the Bureau.

Lease Terms and Conditions: BOEM has included specific terms, conditions, and stipulations for the OCS commercial wind leases to be offered through this sale. BOEM will require compliance with additional terms and conditions associated with approval of a SAP or COP as necessary. Each lease is available on BOEM's Web site at: *http://www.boem.gov/New-Jersey/.* Each lease includes the following seven attachments:

- Addendum ''A'' (Description of Leased Area and Lease Activities);
- Addendum ''B'' (Lease Term and Financial Schedule);
- Addendum ''C'' (Lease Specific Terms, Conditions, and Stipulations);
- Addendum ''D'' (Project Easement);
- Addendum ''E'' (Rent Schedule);
- Appendix A to Addendum C: (Incident Report: Protected Species Injury or Mortality); and
- Appendix B to Addendum C: (Required Data Elements for Protected Species Observer Reports).

Addenda ''A'', ''B'', and ''C'' provide detailed descriptions of lease terms and conditions. Addenda ''D'' and ''E'' will be completed at the time of COP approval or approval with modifications.

The most recent version of BOEM's renewable energy commercial lease form (BOEM–0008) is available on BOEM's Web site at: *http://www.boem.gov/BOEM-OCS-Operation-Forms/.*

Plans: Pursuant to 30 CFR 585.601, the leaseholder must submit a SAP within 12 months of lease issuance. If the leaseholder intends to continue its commercial lease with an operations term, the leaseholder must submit a COP at least 6 months before the end of the site assessment term.

BOEM is aware that long-term electrical offtake mechanisms (*e.g.,* power purchase agreements (PPAs), offshore renewable energy certificates (ORECs)) are a critical component to providing revenue certainty and attracting financing for commercial offshore wind projects. BOEM may consider a lessee's progress in obtaining such mechanisms when evaluating requests for additional time to extend the preliminary or site assessment term of their commercial lease pursuant to 30 CFR 585.235(b).

Lease Renewals: Pursuant to 30 CFR 585.425, a lessee may obtain a renewal of the operations term of its lease before the lease terminates. BOEM is aware that lessees may wish to build out their LA in phases due to their size, and that lessees may propose to construct and operate one or more phases after significant portions of the operations terms have lapsed. BOEM will consider a lessee's proposed plans and progress in completing secondary phases when reviewing a lessee's renewal request.

Financial Terms and Conditions: This section provides an overview of the annual payments and financial assurance that each lessee must provide.

Rent: The first year's rent payment of $3 per acre is due within 45 days of the date the lessee receives the lease for execution. Thereafter, annual rent payments are due on the anniversary of the Effective Date of the lease (the ''Lease Anniversary''). Once the first commercial operations under the lease begin, BOEM will charge rent only for the portions of the lease not authorized for commercial operations, *i.e.,* not generating electricity. However, instead of geographically dividing the LA into acreage that is ''generating'' and acreage that is ''non-generating,'' the fraction of the lease accruing rent will be based on the fraction of the total nameplate capacity of the project that is not yet in operation. This fraction is calculated by dividing the nameplate capacity not yet authorized for commercial operations at the time payment is due by the anticipated nameplate capacity after full installation of the project (as described in the COP). The annual rent due for a given year is then derived by multiplying this fraction by the amount of rent that would have been due for the lessee's entire LA at the rental rate of $3 per acre.

For example, for an 183,353 acre lease (the size of the entire North LA), the rent payment will be $550,059 per year if no portion of the leased area is authorized for commercial operations. If 300 megawatts (MW) of a project's nameplate capacity is operating (or authorized for operation), and its most recent approved COP specifies a maximum project size of 500 MW, the rent payment will be $220,024. This payment is based on the 200 MW of nameplate capacity BOEM has not yet authorized for commercial operations. For the above example, this would be calculated as follows: 200MW/500MW × ($3/acre × 183,353 acres) = $220,024.

If the lessee submits an application for relinquishment of a portion of its lease area within the first 45 calendar days following the date that the lease is received by the lessee for execution, and BOEM approves that application, no rent payment will be due on that relinquished portion of the LA. Later relinquishments of any LA will reduce the lessee's rent payments starting in the year following BOEM's approval of the relinquishment.

The lessee also must pay rent for any project easement associated with the lease, commencing on the date that BOEM approves the COP (or modification thereof) that describes the project easement. Annual rent for a project easement that is 200 feet wide and centered on the transmission cable is $70 per statute mile. For any additional acreage required, the lessee must also pay the greater of $5 per acre per year or $450 per year.

Operating Fee

For purposes of calculating the initial annual operating fee payment and pursuant to 30 CFR 585.506, an operating fee rate is applied to a proxy for the wholesale market value of the electricity expected to be generated from the project during its first twelve months of operations. This initial payment will be prorated to reflect the period between the commencement of commercial operations and the Lease Anniversary. The initial annual operating fee payment is due within 45 days of the commencement of commercial operations. Thereafter, subsequent annual operating fee payments are due on or before each Lease Anniversary.

The subsequent annual operating fee payments are calculated by multiplying the operating fee rate by the imputed wholesale market value of the projected annual electric power production. For the purposes of this calculation, the imputed market value is the product of the project's annual nameplate capacity, the total number of hours in the year (8,760), the capacity factor, and the annual average price of electricity derived from a historical regional wholesale power price index. For example, the annual operating fee for a 100 MW wind facility operating at a 40% capacity (*i.e.,* capacity factor of 0.4) with a regional wholesale power price of $40/MWh and an operating fee rate of 0.02 would be calculated as follows:

$$\text{Annual Operating Fee} = 100\text{MW} \times 8{,}760\,\frac{\text{hrs}}{\text{year}} \times 0.4 \times \frac{\$40}{\text{MWh}}\,\text{Power Price} \times 0.02 = \$280{,}320$$

Operating Fee Rate: The operating fee rate is the share of imputed wholesale market value of the projected annual electric power production due to BOEM as an annual operating fee. For the LAs in this sale, this fee is set at 0.02 (*i.e.,* 2%) during the entire life of commercial operations.

Nameplate Capacity: Nameplate capacity is the maximum rated electric output, expressed in MW, that the turbines of the wind facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer. The lessee will specify in its COP the nameplate capacity applicable at the start of each year of commercial operations on the lease. For example, if the lessee has 20 turbines in commercial operation, and each is rated by the design manufacturer at 5 MW, the nameplate capacity of the wind facility would be 100 MW.

Capacity Factor: The capacity factor compares the amount of energy delivered to the grid during a period of time to the amount of energy the wind facility would have produced at full capacity. The amount of power delivered will always be less than the theoretical 100% capacity, largely because of the variability of wind speeds, transmission line loss, and down time for maintenance or other purposes.

The capacity factor is expressed as a decimal between zero and one, and represents the share of anticipated generation of the wind facility that is delivered to the interconnection grid (*i.e.,* where the lessee's facility interconnects with the electric grid) relative to the wind facility's generation at continuous full power operation at nameplate capacity. BOEM has set the capacity factor for the year in which commercial operations commence and the six full years thereafter at 0.4 (*i.e.,* 40%). At the end of the sixth year, BOEM may adjust the capacity factor to reflect the performance over the previous five years based upon the actual metered electricity generation at the delivery point to the electrical grid. BOEM may make similar adjustments to the capacity factor once every five years thereafter. The maximum change in the capacity factor from one period to the next will be limited to plus or minus 10 percent of the previous period's value.

Wholesale Power Price Index: Pursuant to 30 CFR 585.506(c)(2)(i), the wholesale power price, expressed in dollars per MW-hour, is determined at the time each annual operating fee payment is due, based on the weighted average of the inflation-adjusted peak and off-peak spot price indices for the PJM West power market for the most recent year of spot price data available. The wholesale power price is adjusted for inflation from the year associated with the published spot price indices to the year in which the operating fee is to be due, based on the Lease Anniversary and using annual implicit price deflators as reported by the U.S. Department of Commerce Bureau of Economic Analysis.

Financial Assurance

Within 10 business days after receiving the lease copies and pursuant to 30 CFR 585.515–.516, the provisional winner must provide an initial lease-specific bond, or other approved means of meeting the lessor's initial financial assurance requirements. A provisional winning bidder may meet financial assurance requirements by posting a surety bond or by setting up an escrow account with a trust agreement giving BOEM the right to withdraw the money held in the account on demand. BOEM encourages provisionally winning bidders to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

BOEM will base the amount of all SAP, COP, and decommissioning financial assurance requirements on cost estimates for meeting all accrued lease obligations at the respective stages of development. The required amount of supplemental and decommissioning financial assurance will be determined on a case-by-case basis.

The financial terms can be found in Addendum ''B'' of the proposed leases, which BOEM has made available with this notice on its Web site at: *http://www.boem.gov/New-Jersey/.*

Bid Deposit: A bid deposit is an advance cash deposit submitted to BOEM in order to participate in the auction. No later than October 20, 2015, each qualified bidder must have submitted a bid deposit of $450,000. Any qualified bidder who fails to submit the bid deposit by this deadline may be disqualified from participating in the auction. Bid deposits will be accepted online via *pay.gov.*

Each bidder must fill out the Bidder's Financial Form referenced in this FSN. BOEM has also made a copy of the form available with this notice on its Web site at: *http://www.boem.gov/New-Jersey/.* BOEM recommends that each bidder designate an email address in its BFF that the bidder will then use to create an account in *pay.gov* (if it has not already done so). Bidders may then use the Bid Deposit Form on the *pay.gov* Web site to leave a deposit.

BOEM will not consider BFFs submitted by qualified bidders for previous lease sales to satisfy the requirements of this auction. BOEM will also only consider BFFs submitted after the deadline if BOEM determines that the failure to timely submit the BFF was caused by events beyond the bidder's control. BOEM will only accept an original, executed paper copy of the BFF. The BFF must be executed by an authorized representative who has been identified in the qualifications package on file with BOEM as authorized to bind the company.

Following the auction, bid deposits will be applied against bonus bids or other obligations owed to BOEM. If the bid deposit exceeds a bidder's total financial obligation, the balance of the bid deposit will be refunded to the bidder. BOEM will refund bid deposits to non-winners.

Minimum Bid: The minimum bid is the lowest price that BOEM will accept as a winning bid for a LA. BOEM has established a minimum bid per acre of $2.00 for this lease sale. Accordingly, the minimum bids will be $320,960 for Lease OCS–A 0498 and $366,706 for Lease OCS–A 0499.

Auction Procedures

Summary of Auction Format

As authorized under 30 CFR 585.220(a)(4) and 585.221(a)(6), BOEM will conduct this lease sale under a multiple-factor auction format, with a multiple-factor bidding system. Under this system, BOEM may consider a combination of monetary and non-monetary factors, or ''variables,'' in determining the outcome of the auction. BOEM will appoint a panel of three BOEM employees to review the non-monetary packages and verify the results of the lease sale. BOEM reserves the right to change the composition of this panel prior to the date of the lease sale. The panel plans to meet to consider non-monetary packages on November 5, 2015. At this meeting, the panel will determine whether any bidder has earned a non-monetary credit (such as by submitting legal documentation that it holds a valid PPA or OREC) to be used during the auction and, if so, the value of that credit. The panel also will help determine the

winning bids for each LA in accordance with the procedures described in this FSN.

As described below, BOEM has updated the auction details previously described in the PSN (79 FR 42361): A bidder can now bid on and win only one of the two LAs. This change was made following receipt and assessment of comments made on the PSN, as described in BOEM's *Response to Comments and Explanation of Changes* document, which can be found at the following URL: *http://www.boem.gov/New-Jersey/*.

Only qualified bidders who submit the required bid deposit are authorized to bid in the sale. BOEM's asking prices in the opening round will be the minimum bids for each LA.

The auction will balance consideration of two variables: (1) A cash bid, and (2) a non-monetary credit. These two variables comprise the multi-factor bid (or ''as-bid'' auction price), as reflected either in a bidder submitting a ''live'' bid (*i.e.,* one that meets BOEM's asking price) or offering its own ''intra-round'' bid subject to certain conditions (described more fully below).

Bidding continues in successive rounds as long as at least one LA had two or more live bids in the previous round. The bidding ends at the round in which both LAs have one or zero live bids. This triggers the two-stage award part of the auction, as discussed below.

All of the live bids submitted in any round of the auction will be preserved and considered binding until determination of the winning bids is made. Therefore, the bidders are responsible for payment of each of the bids they submit.

Overview of the Multiple-Factor Bidding Format Proposed for This Sale

BOEM has chosen to adopt a multi-round, multiple-factor auction format, pursuant to 30 CFR 585.220(a)(4). Under this format, BOEM may consider a combination of factors as part of each bid. The multiple-factor format provides BOEM flexibility in administering the auction. The regulations leave to BOEM the determination as to how to administer the multiple-factor auction format in order to ''ensure a fair return to the United States'' under OCSLA, 43 U.S.C 1337(p)(2)(A).

Under the format for this sale, a bidder may submit a bid proposal, *i.e.,* a multiple-factor bid, on only one LA per round. The multiple-factor bid made by a particular bidder in each round represents the sum of a non-monetary credit and a monetary (cash) amount. The non-monetary portion of each bid consists of a credit of up to 25% of BOEM's last asking price met by the bidder for a given LA. This credit will be recalculated and applied throughout the auction in each round as a form of imputed payment against the LA's asking price in a bidder's multiple-factor bid. More details on the non-monetary factors are found in the ''Credit Factors'' section below.

The auction continues for both LAs as long as there are two or more competing live bids for either or both LAs. At the end of each round, BOEM will share with the bidders the number of live bids associated with each LA and the asking prices in the next round.

This auction format enables both consideration of more than one bidding factor and enhanced competition among bidders for lease areas. The auction format also allows bidders to adjust their bidding strategies and bidding targets in real time as the auction proceeds through successive rounds of bidding. Accordingly, BOEM has concluded that this auction format will enhance competition and reduce bidder uncertainty more effectively than other available auction formats.

Credit Factors

Prior to the auction, BOEM will convene a panel pursuant to 30 CFR 585.222(d) to evaluate bidders' non-monetary packages to determine whether and to what extent each bidder is eligible for a non-monetary credit. To qualify for the credit, bidders must submit non-monetary packages that meet the criteria outlined in the ''Credit Factor Definitions'' section below. The only non-monetary credits that BOEM will consider in this auction are a New Jersey OREC award and a PPA. In order to receive one of these credits, a bidder must be legally, technically, and financially qualified to acquire a commercial OCS wind lease, and must not be affiliated with another bidding entity seeking credit for the same PPA or qualified application for a New Jersey OREC. Any single PPA or OREC cannot be used by more than one bidder in the auction. The panel will review all non-monetary packages submitted and will determine whether bidders have established that they are qualified to receive a credit—and the percentage at which that credit will apply. The auction will proceed whether or not any bidders have qualified for a non-monetary factor.

A bidder will earn the full 25% credit if the BOEM panel determines the bidder has either a New Jersey OREC Order or a PPA totaling 250 MW or more. Smaller credit percentages may be earned for holding a valid PPA totaling less than 250 MW. BOEM will inform bidders by email before the monetary stage of the auction regarding the percentage credit that will be applied to their bid.

The bid credit will be bundled into each bid. In each round, the auction system will show each bidder how their as-bid auction price is affected by the credit imputed to its bid. For an intra-round bid (as defined below), the credit will be based on the previous round's asking price, not on the additional amount above the previous round's asking price that may be offered in an intra-round bid.

Bid Deposit

To be eligible to offer a bid on a LA at the start of the auction, BOEM must receive a bidder's bid deposit of $450,000 by October 20, 2015. A bidder's bid deposit will be used by BOEM as a down payment on the winning bid submitted by the bidder, should it be awarded a lease.

Details of the Auction Process

The auction will be conducted in a series of rounds. At the start of each round BOEM will state an asking price for the North LA and an asking price for the South LA. If a bidder is willing to meet the asking price for one of the LAs, it will indicate its intent by submitting a bid equal to the asking price. Any bid equal to the asking price is considered a ''live bid.'' If the bidder has earned a credit, it will meet the asking price by submitting a multiple-factor bid—that is, a live bid that consists of a monetary element and a non-monetary element, the sum of which equals the asking price.

To participate in the next round of the auction, a bidder must submit a live bid for one of the LAs in each previous round.

As long as there are two or more live bids for at least one LA, the auction moves to the next round. BOEM will raise the asking price for such LA by an increment determined by BOEM. Asking price increments will be determined based on a number of factors, including (but not necessarily limited to) the expected time needed to conduct the auction and the number of rounds that have already occurred. BOEM reserves the right to increase or decrease bidding increments if it determines that different increments of asking prices are warranted.

A bidder may switch its live bid from one LA to the other in the current round only if its bid from the previous round was contested—*i.e.,* a bidder cannot switch from LA–1 to LA–2 unless there was at least one other bid for LA–1 in the last round. If the bid was not

contested in the previous round, the bidder cannot switch LAs, and its previous round bid will be carried forward to the next round. If another bidder places a live bid on LA–1 later in the auction, BOEM will stop automatically carrying forward the previously uncontested bid on that LA. The bidder that placed the previously carried forward bid is then free to bid on either lease area in the next round at the new asking prices.

A bidder remains eligible to participate in the auction if it has submitted a live bid in the prior round, or has its uncontested bid carried forward by BOEM to the current round.

Between rounds, BOEM will disclose to all bidders eligible to bid in the next round: (1) The number of live bids for each LA in the previous round of the auction (*i.e.,* the level of demand); and (2) the asking price for each LA in the upcoming round of the auction. As discussed below, if a bidder decides to stop bidding further when its bid is contested, there are still circumstances where the bidder could still win (*e.g.,* if the winning bid is disqualified at the award stage of the auction). If this happens, the bidder may be bound by its bid (and potentially obligated to pay up to the full amount) until the auction results are finalized.

Intra-Round Bidding

A bidder may submit an intra-round bid that is higher than the previous round's asking price and less than the current round's asking price. An intra-round bid must consist of a single offer price for the same LA from the bidder's live bid in the previous round. An intra-round bid in this sale is equivalent to an exit bid, since it reduces the bidder's eligibility by one LA, and the bidder only has an eligibility of one LA at the start of the auction. During the auction, the intra-round bid will be seen only by BOEM and not by other bidders.

BOEM will not consider intra-round bids the same way as it does live bids for the purpose of determining whether to increase the asking price for a particular LA or to end the auction. A LA with only intra-round bids in a given round will not have its asking price raised in the next round. As long as both LAs have one or zero live bids, the auction is over, regardless of the number of intra-round bids on each area. For example, if each LA has one live bid and multiple intra-round bids, the auction will end. All intra-round bids submitted during the auction will be preserved, and the highest intra-round bid for a LA in this sale may be determined to be the provisionally winning bid for that LA under certain circumstances.

Determining Provisional Winners

After the bidding ends, BOEM will determine the provisionally winning bids through a two-stage award process. During this process, BOEM and its panel will assess the two components of the multiple-factor bids, determine the provisional winners for each LA and identify the applicable bid prices to be paid by the winners for the LA they won. The panel will also validate the results of the auction in a timely manner. Provisional winners may be disqualified if they are subsequently found to have violated auction rules or otherwise engaged in conduct detrimental to the integrity of the competitive auction.

In Stage 1, BOEM will determine if either or both LAs have one live bid. BOEM will designate the provisional winner of a LA to be that bidder who offers the only live bid for that LA in the final round of the auction. As a result, this bidder is provisionally assured of winning the LA included in its final round bid, regardless of any other prior-to-final round live bids or intra-round bids in any round. If both LAs are awarded to bidders in Stage 1, BOEM need not proceed to Stage 2.

In Stage 2, BOEM will determine if the LA(s) not awarded in Stage 1 can be awarded based on intra-round bids and prior round live bids. In making this determination, BOEM will award leases to the bid(s) that maximize(s) the total as-bid prices, subject to the condition that a bidder can win at most one LA. If there is a provisional winning bidder for a LA in Stage 1, all bids by that bidder on the other LA will be excluded from consideration in selecting the provisional winning bidder in Stage 2.

The award procedures in Stage 2 could result in a tie if, for example, two bidders submit identical intra-round bids or prior round live bids for the same LA. In such cases, BOEM will resolve the tie by randomized means.

If a bidder submits a bid that BOEM and its panel determine to be a provisionally winning bid, the bidder will be expected to sign the applicable lease documents and submit the full cash payment due within 10 days pursuant to 30 CFR 585.224. BOEM reserves the right to not issue the lease to the provisionally winning bidder if that bidder fails to timely sign and pay for the lease or otherwise fails to comply with applicable regulations or terms of this FSN. In that case, that bidder will forfeit its bid deposit. BOEM may consider failure of a bidder to timely pay the full amount due an indication that the bidder is no longer financially qualified to participate in other lease sales under BOEM's regulations at 30 CFR 585.106 and 585.107.

Additional Information Regarding the Auction Format

Credit Factor Definitions

The definitions below will apply to the factors for which bidders may earn a credit.

A *Power Purchase Agreement (PPA)* is any legally enforceable long-term contract negotiated between an electricity generator (Generator) and a power purchaser (Buyer) that identifies, defines, and stipulates the rights and obligations of one party to produce, and the other party to purchase, energy from an offshore wind project to be located in the lease sale area. Except where approval of the PPA would not otherwise be required by the New Jersey Board of Public Utilities, such approval must be obtained before a PPA will be eligible for credit in a non-monetary package in BOEM's lease sale. The PPA must state that the Generator will sell to the Buyer and the Buyer will buy from the Generator capacity and/or energy from the project, as defined in the terms and conditions set forth in the PPA. To qualify, a PPA must contain the following terms or supporting documentation:

(i) A complete description of the proposed project;

(ii) Specification of the energy products to be supplied by the Generator;

(iii) Identification of both the electricity Generator and Buyer that will enter into a long term contract;

(iv) A timeline for permitting, licensing, and construction;

(v) Pricing projected under the long term contract being sought, including prices for all market products that would be sold under the proposed long term contract;

(vi) A schedule of quantities of each product to be delivered and projected electrical energy production profiles;

(vii) The term for the long term contract;

(viii) Details of the firm cost recovery mechanism approved by the State's public utility commission or other applicable authority used to recover expenditures incurred as a result of the PPA;

(ix) Citations to all filings related to the PPA that have been made with state and Federal agencies, and identification of all such filings that are necessary to be made; and

(x) Copies of or citations to interconnection filings related to the PPA.

If the panel determines a bidder has executed a PPA for at least 250 MW, it will be eligible for the entire 25% credit. If the panel determines a bidder has executed a PPA for an amount less than 250 MW, the bidder may still be eligible for a non-monetary credit proportional to the PPA's fraction of 250 MW. The smaller percentage for a partial credit will be calculated according to the following formula:

$$\text{Partial Credit} = \frac{(\text{Full Credit} * \text{Partial PPA})}{\text{Full PPA}}$$

Where:

- Partial Credit = Percent credit for which a smaller PPA is eligible.
- Full PPA = 250 MW
- Full Credit = 25%
- Partial PPA = amount (less than 250 MW) of power under contract

A *New Jersey OREC Order* is a qualified application for an Offshore Renewable Energy Certificate (OREC) representing the environmental attributes of one megawatt hour of electric generation from a qualified offshore wind project that has been approved or conditionally approved by the New Jersey Board of Public Utilities (NJ BPU).

The NJ BPU defines a qualified offshore wind project as a wind turbine electric generation facility in the Atlantic Ocean and connected to the electrical transmission systems in New Jersey, including the associated transmission-related interconnection facilities and equipment.

If the panel determines a bidder has secured a New Jersey OREC order satisfying the criteria outlined in the New Jersey Offshore Wind Economic Development Act (*2010*), the bidder will be eligible for the entire 25% credit.

Bidder Authentication

Prior to the auction, the Auction Manager will send several bidder authentication packages to the bidders shortly after BOEM has processed the BFFs. One package will contain digital authentication tokens for each authorized individual allowing access to the auction Web site. The tokens will be mailed to the Primary Point of Contact indicated on the BFF. This individual is responsible for distributing the tokens to the individuals authorized to bid for that company. Bidders are to ensure that each token is returned within three business days following the auction. An addressed, stamped envelope will be provided to facilitate this process. In the event that a bidder fails to submit a bid deposit or does not participate in the auction, BOEM will de-activate that bidder's token and login information, and the bidder will be asked to return its tokens.

The second package contains login credentials for authorized bidders. The login credentials will be mailed to the address provided in the BFF for each authorized individual. Bidders can confirm these addresses by calling 703–787–1320. This package will contain user login information and instructions for accessing the Auction System Technical Supplement and Alternative Bidding Form. The login information, along with the tokens, will be tested during the Mock Auction.

Timing of Auction

The auction will begin at 9:00 a.m. ET November 9, 2015. Bidders may log in as early as 8:00 a.m. on that day. We recommend that bidders log in no later than 8:30 a.m. to ensure that any login issues are resolved prior to the start of the auction. Once bidders have logged in, they should review the auction schedule, which lists the start times, end times, and recess times of each round in the auction. Each round is structured as follows:

- Round bidding begins;
- Bidders enter their bids;
- Round bidding ends and the recess begins;
- During the recess, previous round results and the next round's asking prices are posted;
- Bidders review the previous Round results and prepare their next Round bids;
- Next Round bidding begins.

The first round will last about 30 minutes, and subsequent rounds may be shorter. Recesses are anticipated to last approximately 10 minutes. The descriptions of the auction schedule and asking price increments included with this FSN are tentative. Bidders should consult the auction schedule on the bidding Web site just before and during the auction for updated times. Bidding may continue until about 6:00 p.m. for each day of the auction. BOEM anticipates the auction will last one or two business days, but bidders are advised to prepare to continue bidding for additional business days as necessary to resolve the auction.

BOEM and the auction contractors will use the auction platform messaging service to keep bidders informed on issues of interest during the auction. BOEM will use the messaging system for auction schedule changes and other updates during the auction.

Bidders may place bids at any time during the round. At the top of the bidding page, a countdown clock will show how much time remains in the round. Bidders have until the scheduled ending time to place bids. Bidders should bid according to the procedures described in both this notice and the Auction System Technical Supplement. No information about bidding during the round is available until the round has closed and results have been posted, so there is no tactical advantage to placing bids early or late in the round.

The timing of the auction will be elaborated on and clarified in the Auction System Technical Supplement available on BOEM's Web site at: *http://www.boem.gov/New-Jersey/*. The Auction System Technical Supplement describes auction procedures that are incorporated by reference in this notice, except where the procedures described in the Auction System Technical Supplement directly contradict this notice.

Alternate Bidding Procedures

Alternate Bidding Procedures enable a bidder who is having difficulties accessing the Internet to submit its bid via fax using an Alternate Bidding Form available on BOEM's Web site at: *http://www.boem.gov/New-Jersey/*.

In order to be authorized to use an Alternative Bidding Form, a bidder must call the help desk number listed in the Auction Manual *before* the end of the round. BOEM will authenticate the caller to ensure he/she is authorized to bid on behalf of the company. The bidder must explain the reasons for which he/she is forced to place a bid using the Alternate Bidding Procedures. BOEM may, in its sole discretion, permit or refuse to accept a request for the placement of a bid using the Alternate Bidding Procedures. *If bidders need to submit an Alternate Bidding Form, they are strongly encouraged to do so before the round ends.*

Rejection or Non-Acceptance of Bids: BOEM reserves the right and authority to reject or not accept any and all bids that do not satisfy the requirements and rules of the auction, this FSN, and all applicable regulations and statutes.

Anti-Competitive Behavior Review

Bidding behavior in this sale is subject to Federal antitrust laws. Accordingly, following the auction, but before the acceptance of bids and the issuance of leases, BOEM will ''allow the Attorney General, in consultation with the Federal Trade Commission, 30 days to review the results of the lease sale.'' 43 U.S.C. 1337(c). If a bidder is found to have engaged in anti-competitive behavior in connection with its participation in the competitive bidding process, BOEM may reject the provisionally winning bid. Compliance with BOEM's auction procedures and regulations is not an absolute defense to violations of antitrust laws.

Anti-competitive behavior determinations are fact specific. However, such behavior may manifest itself in several different ways, including, but not limited to:

- An express or tacit agreement among bidders to not bid in an auction, or to bid a particular price;
- An agreement among bidders not to bid for a particular LA;
- An agreement among bidders not to bid against each other; and
- Other agreements among bidders that have the potential to affect the final auction price.

BOEM will decline to award a lease if the Attorney General, in consultation with the Federal Trade Commission, determines that doing so would be inconsistent with the antitrust laws. *See* 43 U.S.C. 1337(c).

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see: *http://www.justice.gov/atr/public/business-resources.html,* or consult legal counsel.

Process for Issuing the Leases: Once all post auction reviews have been completed to BOEM's satisfaction, BOEM will issue three unsigned copies of the lease to each provisionally winning bidder. Within 10 business days after receiving the lease copies, each provisionally winning bidder must:

1. Execute the lease on the bidder's behalf;
2. File financial assurance, as required under 30 CFR 585.515–537; and
3. Pay by electronic funds transfer (EFT) the balance (if any) of the bonus bid (winning bid less the bid deposit). BOEM requires bidders to use EFT procedures (not *pay.gov,* the Web site bidders used to submit bid deposits) for payment of the balance of the bonus bid, following the detailed instructions contained in the ''Instructions for Making Electronic Payments'' available on BOEM's Web site at: *http://www.boem.gov/New-Jersey/.*

BOEM will not execute a lease until the three requirements above have been satisfied, BOEM has accepted the provisionally winning bidder's financial assurance pursuant to 30 CFR 585.515, and BOEM has processed the provisional winning bidder's payment.

BOEM may extend the ten business day deadline for executing the lease on the bidder's behalf, filing the required financial assurance, and/or paying the balance of the bonus bid if it determines the delay was caused by events beyond the provisional winning bidder's control.

If the provisionally winning bidder does not meet these requirements or otherwise fails to comply with applicable regulations or the terms of the FSN, BOEM reserves the right to not issue the lease to that bidder. In such a case the winning bidder will forfeit its bid deposit.

In the event that a provisional winner does not execute and return its lease according to the instructions in this notice, BOEM reserves the right to reconvene the panel to determine whether it is possible and desirable to identify a new provisionally winning bidder.

Within 45 days of the date that the provisionally winning bidder receives copies of the lease, it must pay the first year's rent using the *pay.gov* Renewable Energy Initial Rental Payment form available at: *https://pay.gov/paygov/forms/formInstance.html?agencyFormId=27797604.* Subsequent annual rent payments must be made following the detailed instructions contained in the ''Instructions for Making Electronic Payments,'' available on BOEM's Web site at: *http://www.boem.gov/New-Jersey/.*

Non-Procurement Debarment and Suspension Regulations: Pursuant to regulations at 43 CFR part 42, subpart C, an OCS renewable energy lessee must comply with the Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR parts 180 and 1400. The lessee must also communicate this requirement to persons with whom the lessee does business relating to this lease, by including this term as a condition in their contracts and other transactions.

Force Majeure: The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any auction details specified in the FSN, including the date and time, in case of a *force majeure* event that the Program Manager deems may interfere with a fair and proper lease sale process. Such events may include, but are not limited to: Natural disasters (*e.g.,* earthquakes, hurricanes, floods, blizzards), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, BOEM will notify all qualified bidders via email, phone, or through the BOEM Web site at: *http://www.boem.gov/Renewable-Energy-Program/index.aspx.* Bidders should call 703–787–1320 if they have concerns.

Appeals: The appeals procedures are provided in BOEM's regulations at 30 CFR 585.225 and 585.118(c). Pursuant to 30 CFR 585.225:

(a) If BOEM rejects your bid, BOEM will provide a written statement of the reasons and refund any money deposited with your bid, without interest.

(b) You will then be able to ask the BOEM Director for reconsideration, in writing, within 15 business days of bid rejection, under 30 CFR 585.118(c)(1). We will send you a written response either affirming or reversing the rejection.

The procedures for appealing final decisions with respect to lease sales are described in 30 CFR 585.118(c).

Protection of Privileged or Confidential Information

BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to ''trade secrets and commercial or financial information that you submit that is privileged or confidential.'' 5 U.S.C. 552(b)(4). If you wish to protect the confidentiality of such information, clearly mark it ''Contains Privileged or Confidential Information'' and consider submitting such information as a separate attachment. BOEM will not disclose such information, except as required by FOIA. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

BOEM will not treat as confidential aggregate summaries of otherwise confidential information or comments not containing such information. Additionally, BOEM will not treat as confidential the legal title of the commenting entity (*e.g.,* the name of your company).

Dated: September 1, 2015.

Abagail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2015–24392 Filed 9–24–15; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2015–0068]

Outer Continental Shelf, Alaska Region, Beaufort Sea Planning Area, Liberty Development and Production Plan, MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: BOEM is announcing its intent to prepare an EIS for the Liberty Development and Production Plan (DPP) in the Beaufort Sea Planning Area. The DPP proposes several steps. A man-made gravel production island, known as the Liberty Drilling and Production Island (LDPI), would be established in Foggy Island Bay. Gravel for construction would come from a new mine west of the Kadleroshilik River. A pipeline would link the LDPI to the Badami Sales Oil Pipeline (Badami pipeline). The pipe-in-pipe pipeline would be buried along a route going south from the LPDI to the shoreline west of the Kadleroshilik River, transition to an above-ground pipeline, and continue south to tie into the existing Badami pipeline. Oil produced from the LDPI would be transported through the Badami pipeline to the existing common carrier pipeline system to the Trans-Alaska Pipeline System.

This NOI also serves to announce the beginning of the scoping process. The scope of an EIS refers to the range of issues, alternatives, and mitigation measures to be considered. Public scoping assists the agency in focusing on significant issues and alternatives and eliminating from detailed consideration those issues that are insignificant, irrelevant or have been fully and adequately considered in prior analyses. No alternatives, other than the no-action alternative, have yet been identified.

Through this notice, BOEM also invites public input regarding the identification of historic properties and potential effects from the proposed action to historic properties as defined by the National Historic Preservation Act (NHPA) (54 U.S.C. 306108), as provided for in 36 CFR 800.2(d)(3). Additional information related to the Liberty DPP, including the proposed plan itself, may be found at *http://www.boem.gov/Liberty.*

DATES: Comments should be submitted no later than November 24, 2015.

FOR FURTHER INFORMATION CONTACT: For information on the Liberty DPP EIS, the submission of comments, or BOEM's policies associated with this notice, please contact Lauren Boldrick, Project Manager, BOEM, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, AK 99503, telephone (907) 334–5227.

SUPPLEMENTARY INFORMATION: BOEM invites qualified entities, such as other Federal agencies, state, tribal, and local governments, to consider becoming cooperating agencies for the preparation of this EIS. Following the guidelines at 40 CFR 1501.6 and 1508.5 from the Council on Environmental Quality (CEQ), qualified agencies and governments are those with "'jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decisionmaking authority of any other agency involved in the National Environmental Policy Act (NEPA) process. Upon request, BOEM will provide potential cooperating agencies with a written summary of guidelines for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and availability of pre-decisional information. BOEM anticipates this summary will form the basis for a Memorandum of Understanding between BOEM and any cooperating agency consistent with 43 CFR 46.226(d). BOEM, as the lead agency, will not provide financial assistance to cooperating agencies. In addition to becoming a cooperating agency, other opportunities will exist to provide information and comments to BOEM during the public comment period for the EIS.

Federal, state, tribal, and local governments and/or agencies and other interested parties may submit written comments on the scope of this EIS through the Federal eRulemaking Portal: *http://www.regulations.gov.* In the field entitled ''Enter Keyword or ID,'' enter [Docket No. BOEM–2015–0068], and then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this notice.

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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Pursuant to the regulations implementing the procedural provisions of NEPA, BOEM will hold public scoping meetings. The purpose of these meetings is to solicit comments on the scope of the Liberty Development and Production Plan EIS. These meetings are scheduled as follows:

- November 2, 2015, Westmark Conference Center, Fairbanks, Alaska;
- November 3, 2015, Kaktovik Community Center, Kaktovik, Alaska;
- November 4, 2015, Kisik Community Center, Nuiqsut, Alaska;
- November 5, 2015, Inupiat Heritage Center, Barrow, Alaska; and
- November 9, 2015, Embassy Suites (Benson Boulevard), Anchorage, Alaska.

Authority: This NOI to prepare an EIS is in compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4231 *et seq.*), and is published pursuant to implementing regulations at 40 CFR 1501.7 and 43 CFR 46.415.

Dated: September 15, 2015.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2015–24391 Filed 9–24–15; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On September 21, 2015, the Department of Justice lodged a proposed consent decree with the United States District Court for the Southern District of West Virginia in the lawsuit entitled *United States* v. *Bayer CropScience LP,* Civil Action No. 2:15–cv–13331.

The United States filed this lawsuit under the Clean Air Act. The United States' complaint alleges that Bayer CropScience violated section 112(r) of the Clean Air Act, 42 U.S.C. 7412(r), which addresses the prevention of accidental releases. The claims arise out of a 2008 explosion at the Methomyl production unit at Bayer CropScience's plant in Institute, West Virginia. The consent decree requires the defendant, Bayer CropScience LP, to pay a civil penalty of $975,000, to perform injunctive relief to reduce the likelihood of future accidents at the Institute Plant and several other chemical processing

plants, and to perform supplemental environmental projects valued collectively at $4.23 million.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Bayer CropScience LP,* D.J. Ref. No. 90–5–2–1–10802. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, D.C. 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $43.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $10.00.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–24401 Filed 9–24–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1697]

Webinar Meeting of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, DOJ.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has scheduled a meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ).

Dates and Location: The meeting will take place on Monday, October 19, 2015 from 9:30 a.m.–5:30 p.m. and Tuesday, October 20, 2015 from 9:30 a.m.–3:00 p.m. The meeting is scheduled at the Office of Justice Programs at 810 7th St. NW., in the Main 3rd floor Conference Room in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Scott Pestridge, Acting Designated Federal Official, OJJDP, *Scott.Pestridge@ojp.usdoj.gov* or (202) 514–5655. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee on Juvenile Justice (FACJJ), established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The FACJJ is composed of representatives from the states and territories. FACJJ member duties include: Reviewing Federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and advising the President and Congress with regard to state perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information on the FACJJ may be found at *www.facjj.org.*

Meeting Agenda: The proposed agenda will include: (1) Introductions/Welcome of New Members; (2) Remarks from and FACJJ discussion with Robert Listenbee, OJJDP Administrator; (3) FACJJ Subcommittee Meetings (Legislation; Expungement/Sealing of Juvenile Court Records; Research/Publications) with Reports to Full Committee; (4) FACJJ Administrative Business; (5) Next Steps; and Meeting Adjournment. Note: Subcommittee working meetings, anticipated to take place on Monday, October 19th in the afternoon, will not be open to the public.

Registration: To attend as an observer, members of the public must pre-register online. Interested persons must link to the web registration through *www.facjj.org* no later than Wednesday, October 14, 2015. Should problems arise with web registration, please contact Scott Peton, Senior Meeting Planner at (240) 432–3014. Please include name, title, organization or other affiliation, full address and phone, fax, and email information and send to his attention either by fax to 866–854–6619 or by email *speton@aeioonline.com.* Note that these are not toll-free telephone numbers. Also, photo identification will be required for admission to the meeting. Additional identification documents may be required. Meeting space is limited.

Written Comments: Interested parties may submit written comments by email message in advance of the meeting to Scott Pestridge, Acting Designated Federal Official, at *Scott.Pestridge@ojp.usdoj.gov* no later than Wednesday, October 14, 2015. In the alternative, interested parties may fax comments to (202) 353–9093 and contact Marshall D. Edwards at (202) 514–0929 to ensure that they are received. [These are not toll-free numbers.]

Robert L. Listenbee,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2015–24427 Filed 9–24–15; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Establishing a Minimum Wage for Contractors, Notice of Rate Change in Effect as of January 1, 2016; Correction

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice; correction.

SUMMARY: On September 16, 2015, the Department of Labor (the Department) published a notice to announce the applicable minimum wage rate to be paid to workers performing work on or in connection with Federal contracts covered by Executive Order 13658 (the Executive Order), beginning January 1, 2016. *See* 80 FR 55646. The published notice omitted Appendix A and Appendix B. Accordingly, this notice corrects the September 16, 2015 notice by publishing Appendix A and Appendix B. Both documents, along with the original notice, are also available on the Wage and Hour Division (WHD) Web site at: *http://www.dol.gov/whd/flsa/eo13658/.*

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Acting Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023

(not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION: On September 16, 2015, the Department published a notice to announce the applicable minimum wage rate to be paid to workers performing work on or in connection with Federal contracts covered by Executive Order 13658, beginning January 1, 2016. *See* 80 FR 55646. This Notice of Correction publishes appendices omitted in the prior publication. As indicated in the notice published September 16, 2015, Appendix A to the notice provides a comprehensive chart of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) (United States city average, all items, not seasonally adjusted) data published by the Bureau of Labor Statistics (BLS) that the Department utilized to calculate the new Executive Order minimum wage rate based on the methodology explained therein. Appendix B to the notice sets forth an updated version of the Executive Order 13658 poster that the Department published with its Final Rule implementing the Executive Order, reflecting the updated wage rates that will be in effect beginning January 1, 2016. *See* 79 FR 60732–33. Pursuant to 29 CFR 10.29, contractors are required to notify all workers performing on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. Contractors with employees covered by the Fair Labor Standards Act who are performing on or in connection with a covered contract may satisfy the notice requirement by displaying the poster set forth in Appendix B in a prominent or accessible place at the worksite.

Dated: September 21, 2015.

David Weil,

Wage and Hour Administrator.

Appendix A to Notice: Establishing a Minimum Wage for Contractors, Notice of Rate Change in Effect as of January 1, 2016

DATA USED TO DETERMINE EXECUTIVE ORDER 13658 MINIMUM WAGE RATE EFFECTIVE JANUARY 1, 2016
DATA SOURCE: CONSUMER PRICE INDEX FOR URBAN WAGE EARNERS AND CLERICAL WORKERS (CPI–W)
[United States city average, all items, not seasonally adjusted.]

	Q3			Q4			Q1			Q2			Annual average
2013Q3 to 2014Q2	230.084	230.359	230.537	229.735	229.133	229.174	230.040	230.871	232.560	233.443	234.216	234.702	231.238
2014Q3 to 2015Q2	234.525	234.030	234.170	233.229	231.551	229.909	228.294	229.421	231.055	231.520	232.908	233.804	232.035
Annual Percentage Increase	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.345%

BILLING CODE 4410–18–P

Appendix B to Notice

WORKER RIGHTS
UNDER EXECUTIVE ORDER 13658

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

FEDERAL MINIMUM WAGE FOR CONTRACTORS

$10.15 PER HOUR

EFFECTIVE JANUARY 1, 2016 – DECEMBER 31, 2016

MINIMUM WAGE

On February 12, 2014, the President signed Executive Order 13658, Establishing a Minimum Wage for Contractors. The Executive Order requires that parties who contract with the Federal Government pay workers performing work on or in connection with covered Federal contracts at least: (1) $10.10 per hour beginning January 1, 2015; and (2) beginning January 1, 2016, and annually thereafter, an inflation adjusted amount determined by the Secretary of Labor in accordance with the Executive Order and appropriate regulations. The Executive Order hourly minimum wage in effect from January 1, 2016 through December 31, 2016 is $10.15.

TIPS

Covered tipped employees must be paid a cash wage of at least $5.85 per hour effective January 1, 2016 – December 31, 2016. If a worker's tips combined with the required cash wage of at least $5.85 per hour paid by the contractor do not equal the hourly minimum wage for contractors (noted above), the contractor must increase the cash wage paid to make up the difference. Certain other conditions must also be met.

ENFORCEMENT

The Wage and Hour Division (WHD) has offices across the country to help. WHD can answer questions, in person or by telephone, about your workplace rights and protections. We can investigate employers and recover wages to which workers may be entitled. All services are free and confidential. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the Executive Order. If you are unable to file a complaint in English, WHD will accept the complaint in any language.

ADDITIONAL INFORMATION

- Executive Order 13658 establishes that the Order applies only to new Federal construction and service contracts, as defined by the Secretary in the regulations.
- Workers with disabilities whose wages are governed by special certificates issued under section 14(c) of the Fair Labor Standards Act must receive no less than the full minimum wage rate as established by the Executive Order.
- Some workers are excluded. For example, some workers who provide support "in connection with" covered contracts for less than 20 percent of their hours worked in a week may not be entitled to the Executive Order minimum wage. Certain full-time students, learners, and apprentices who are employed under subminimum wage certificates are not entitled to the Executive Order minimum wage. Certain occupations are also exempt from the Executive Order minimum wage.
- Some state or local laws may provide greater worker protections. Employers need to comply with both.

For additional information:

1-866-487-9243

WHD U.S. Wage and Hour Division

www.dol.gov/whd/govcontracts

U.S. Department of Labor | Wage and Hour Division

WH1088 0915

[FR Doc. 2015–24412 Filed 9–24–15; 8:45 am]

BILLING CODE 4510–27–C

DEPARTMENT OF LABOR

Office of the Secretary

United States-Peru Trade Promotion Agreement; Notice of Determination Regarding Review of Submission #2015–01

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: Notice.

SUMMARY: The Office of Trade and Labor Affairs (OTLA) gives notice that on September 21, 2015, Submission #2015–01 regarding Peru was accepted for review pursuant to Article 17.5.5 of the United States-Peru Trade Promotion Agreement (PTPA).

On July 23, 2015, the International Labor Rights Forum, *Perú Equidad,* and seven Peruvian workers' organizations provided a formal submission to OTLA alleging violations of Chapter 17 (the Labor Chapter) of the PTPA by the Government of Peru (GOP). The submission alleges that the GOP has failed to adopt and maintain in its statutes and regulations, and practices thereunder, the right of freedom of association and the effective recognition of the right to collective bargaining, and that it has also failed to effectively enforce its labor laws with respect to freedom of association, collective bargaining, and acceptable conditions of work.

OTLA's decision to accept the submission for review is not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submission. The objective of the review will be to gather information so that OTLA can better understand the allegations contained in the submission and publicly report on the issues raised therein in light of the GOP's obligations under the Labor Chapter of the PTPA. As set out in the Procedural Guidelines (published as 71 FR 76691, December 21, 2006), OTLA will complete the review and issue a public report to the Secretary of Labor within 180 days of this acceptance, unless circumstances, as determined by OTLA, require an extension of time.

DATES: *Effective Date:* September 21, 2015.

FOR FURTHER INFORMATION CONTACT: Matthew Levin, Director, OTLA, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–5303, Washington, DC 20210. Telephone: (202) 693–4900. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Article 17.5 of the Labor Chapter of the PTPA establishes that each Party's contact point shall provide for the submission, receipt, and consideration of communications (''submissions'') on matters related to the Labor Chapter and each Party shall review those submissions in accordance with domestic procedures. A **Federal Register** notice issued on December 21, 2006, informed the public that the OTLA had been designated as the office to serve as the contact point for implementing the labor provisions of United States free trade agreements. The same **Federal Register** notice informed the public of the Procedural Guidelines that OTLA would follow for the receipt and review of public submissions (71 FR 76691, December 21, 2006). These Procedural Guidelines are available at *http://www.dol.gov/ilab/media/pdf/2006021837.pdf.* According to the definitions contained in the Procedural Guidelines (Section B) a ''submission'' is ''a communication from the public containing specific allegations, accompanied by relevant supporting information, that another Party has failed to meet its commitments or obligations arising under a labor chapter'' of a U.S. free trade agreement.

The Procedural Guidelines specify that OTLA shall consider six factors, to the extent that they are relevant, in determining whether to accept a submission for review:

1. Whether the submission raises issues relevant to any matter arising under a labor chapter;
2. Whether a review would further the objectives of a labor chapter;
3. Whether the submission clearly identifies the person filing the submission, is signed and dated, and is sufficiently specific to determine the nature of the request and permit an appropriate review;
4. Whether the statements contained in the submission, if substantiated, would constitute a failure of the other Party to comply with its obligations or commitments under a labor chapter;
5. Whether the statements contained in the submission or available information demonstrate that appropriate relief has been sought under the domestic laws of the other Party, or that the matter or a related matter is pending before an international body; and
6. Whether the submission is substantially similar to a recent submission and significant, new information has been furnished that would substantially differentiate the submission from the one previously filed.

U.S. Submission # 2015–01 alleges that, by permitting the unlimited consecutive renewal of short-term contracts under the Law Promoting Non-Traditional Exports (Law No. 22342) and Article 80 of the Law of Productivity and Labor Competitiveness (Law No. 728, Supreme Decree No. 003–97–TR), the GOP has failed to adopt and maintain, in its statutes and regulations, and practices thereunder, the right of freedom of association and the effective recognition of the right to collective bargaining. The submission also cites specific instances to support its allegation that the GOP, through its action or inaction, has failed to effectively enforce its labor laws in the non-traditional export and agricultural sectors with respect to freedom of association, the effective recognition of the right to collective bargaining, and acceptable conditions of work.

In determining whether to accept the submission, OTLA considered the statements in the submission in light of the relevant factors identified in the Procedural Guidelines. The submission raises issues relevant to the Labor Chapter of the PTPA because it cites alleged GOP failures to adopt and maintain in its statutes and regulations, and practices thereunder, freedom of association and the effective recognition of the right to collective bargaining, and alleged GOP failures to effectively enforce its labor laws with respect to freedom of association, collective bargaining, and acceptable conditions of work. It also clearly identifies the submitter and is sufficiently specific to determine the nature of the request and permit an appropriate review. The submission raises pertinent issues that could further the objectives of the Labor Chapter and that could, if substantiated, constitute a failure of the GOP to comply with its obligations under the Labor Chapter. The submitters provided information on specific cases of alleged labor violations and included citations to both Peruvian law and International Labor Organization (ILO) Conventions ratified by Peru that they believe were violated by the allegations in the submission. The submitters provided information on efforts to seek appropriate relief for these alleged violations under domestic laws and to raise the issues with GOP officials and with the ILO. The submission also notes that the issues raised in the submission have not been remedied to date. OTLA has not received similar submissions related to the PTPA obligations of the GOP. Accordingly, OTLA has accepted the submission for review.

OTLA's decision to accept the submission for review is not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submission. The

objective of the review will be to gather information so that OTLA can better understand the allegations contained in the submission and to publicly report on the issues raised therein. As set out in the Procedural Guidelines, OTLA will complete the review and issue a public report to the Secretary of Labor within 180 days, unless circumstances, as determined by OTLA, require an extension of time. The public report will include a summary of the review process, as well as any findings and recommendations.

Signed at Washington, DC, on September 21, 2015.

Carol Pier,

Deputy Undersecretary for International Affairs.

[FR Doc. 2015–24414 Filed 9–24–15; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0013]

The Lead in General Industry Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Lead in General Industry Standard (29 CFR 1910.1025).

DATES: Comments must be submitted (postmarked, sent, or received) by November 24, 2015.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0013, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2012–0013) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing collection of information requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The purpose of the Lead in General Industry Standard and its collection of information requirements is to reduce occupational lead exposure in general industry. Lead exposure can result in both acute and chronic effects and can be fatal in severe cases of lead toxicity. The standard contains the following collection of information requirements: Conducting worker exposure monitoring; notifying workers of their lead exposure levels; establishing, implementing and reviewing a written compliance program annually; labeling containers of contaminated protective clothing and equipment; providing medical surveillance to workers; providing examining physicians with specific information; notifying workers of their medical surveillance results (including medical examinations and biological monitoring) and of the option for multiple physician review; posting warning signs; establishing and maintaining exposure monitoring, medical surveillance, and medical removal records; and providing workers with access to these records. The records are used by employees, physicians, employers and OSHA to determine the effectiveness of the employer's compliance efforts.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed collection of information requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the collection of information requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency is requesting an adjustment decrease of 75,092 burden hours (from 1,105,397 to 1,030,305 burden hours). The decrease in burden hours is due to an estimated overall decrease in the number of covered establishments, based on updated data and estimates. There is also an estimated decrease in operation and maintenance costs of $50,556,032, from $143,192,845 to $92,636,813. The decrease in operation and maintenance costs is due to an estimated decrease in the cost of biological medical surveillance, due to the Agency's identification of a new data source which indicates a lower cost for biological monitoring tests than previously assumed.

Type of Review: Extension of a currently approved collection.

Title: Lead in General Industry Standard (29 CFR 1910.1025).

OMB Control Number: 1218–0092.

Affected Public: Businesses or other for-profits.

Number of Respondents: 53,935.

Frequency of Response: On occasion; Quarterly; Bi-monthly; Semi-annually; Annually.

Total Responses: 3,616,044.

Average Time per Response: Varies from 1 minute (.02 hour) for a clerical employee to notify employees of their right to seek a second medical opinion to 8 hours to develop a compliance plan.

Estimated Total Burden Hours: 1,030,305.

Estimated Cost (Operation and Maintenance): $92,636,813.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (Docket No. OSHA–2012–0013). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627). Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as their social security number and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on September 21, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–24345 Filed 9–24–15; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Board of Directors and its six committees will meet October 4–6, 2015. On Sunday, October 4, the first meeting will commence at 1:00 p.m., Pacific Standard Time (PST), with the meeting thereafter commencing promptly upon adjournment of the immediately preceding meeting. On Monday, October 5, the first meeting will commence at 3:00 p.m., PST, with the next meeting commencing at 4:15 p.m., PST. On Tuesday, October 6, the first meeting will commence at 9:00 a.m., PST, it will be followed by the closed session meeting of the Board of Directors which will commence promptly upon adjournment of the prior meeting.

LOCATION: Hyatt Regency San Francisco, 5 Embarcadero Center, San Francisco, California 94111.

PUBLIC OBSERVATION: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

Meeting Schedule

	Time *
Sunday, October 4, 2015:	
1. Operations and Regulations Committee.	1:00 p.m.
2. Audit Committee.	
3. Finance Committee.	
4. Institutional Advancement Committee.	
5. Institutional Advancement Committee Communication Subcommittee.	
Monday, October 5, 2015:	
1. Delivery of Legal Services Committee.	3:00 p.m.
2. Governance & Performance Review Committee.	
Tuesday, October 6, 2015:	
1. Board of Directors	9:00 a.m.

STATUS OF MEETING: Open, except as noted below.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to hear briefings by management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential

* Please note that all times in this notice are in *Pacific Standard Time.*

and pending litigation involving LSC, and on a list of prospective funders.**

Institutional Advancement Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to consider and act on recommendation of new prospective donors and to receive a briefing on the development report.**

Audit Committee—Open, except that the meeting may be closed to the public to hear a briefing on the Office of Compliance and Enforcement's active enforcement matters.**

A verbatim written transcript will be made of the closed session of the Board, Institutional Advancement Committee, and Audit Committee meetings. The transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) and (10), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

October 4, 2015

Operations & Regulations Committee

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of July 16, 2015
3. Update on Further Notice of Proposed Rulemaking for Transfers of LSC Funds and Subgrants and Membership Fees or Dues
   - Ron Flagg, General Counsel
   - Stefanie Davis, Assistant General Counsel
   - Mark Freedman, Senior Associate General Counsel
4. Consider and act on Advanced Notice of Rulemaking for Cost Standards and the Property Acquisition and Management Manual
   - Ron Flagg, General Counsel
   - Stefanie Davis, Assistant General Counsel
5. Report on LSC Rulemaking Timeline
   - Ron Flagg, General Counsel
   - Stefanie Davis, Assistant General Counsel
   - Mark Freedman, Senior Associate General Counsel
6. Report on Records Management Policy
   - Ron Flagg, General Counsel
7. Other public comment
8. Consider and act on other business
9. Consider and act on adjournment of meeting

October 4, 2015

Audit Committee

1. Approval of agenda
2. Approval of minutes of the Committee's meeting on July 16, 2015
3. Review of the Audit Committee Charter responsibilities and development of work plan
4. Briefing by Office of Inspector General
   - Jeffrey Schanz, Inspector General
5. Management update regarding risk management
   - Ron Flagg, Vice President of Legal Affairs
6. Briefing about follow-up by Office of Compliance and Enforcement on referrals by the Office of Inspector General regarding audit reports and annual Independent Public audits of grantees
   - Lora Rath, Director of Compliance and Enforcement
   - John Seeba, Assistant Inspector General for Audits
7. Public comment
8. Consider and act on other business

Closed Session

9. Approval of minutes of the Committee's meeting on July 16, 2015
10. Briefing by Office of Compliance and Enforcement on active enforcement matter(s) and follow-up on open investigation referrals from the Office of Inspector General
    - Lora Rath, Director of Compliance and Enforcement
11. Consider and act on adjournment of meeting

October 4, 2015

Finance Committee

1. Approval of agenda
2. Approval of minutes of the Committee's telephonic meeting on July 9, 2015
3. Approval of the minutes of the meeting of July 16, 2015
4. Approval of the minutes of the Committee's telephonic meeting on August 13, 2015
5. Presentation of the LSC's Financial Report for the ten-month period ending July 31, 2015
   - David Richardson, Treasurer/Comptroller
6. Report on status of FY 2016 appropriations process
   - Carol Bergman, Director of Government Relations & Public Affairs
7. Report on status of FY 2017 appropriations process
   - Carol Bergman, Director of Government Relations & Public Affairs
8. Consider and act on *Resolution 2015–XXX,* Temporary Operating Authority for FY 2016
   - David Richardson, Treasurer/Comptroller
9. Public comment
10. Consider and act on other business
11. Consider and act on adjournment of meeting

October 4, 2015

Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of July 17, 2015
3. Update on development activities
4. Leaders Council update
5. Public comment
6. Consider and act on other business
7. Adjourn open session

Closed Session

1. Approval of minutes of the Committee's Closed Session meeting of July 17, 2015
2. Development report
3. Consider and act on prospective donors
4. Consider and act on adjournment of meeting

October 4, 2015

Communications Subcommittee of the Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Subcommittee's meeting of July 18, 2015
3. Discussion of communication efforts
4. Public comment
5. Consider and act on other business

October 5, 2015

Delivery of Legal Services Committee

1. Approval of agenda
2. Approval of minutes of the Committee's meeting on July 17, 2015
3. Review of LSC management proposal to include client-eligible representatives on Office of Program Performance oversight visits
4. Panel presentation and Committee discussion on fiscal oversight and internal controls
   - Gregory Knoll, Executive Director, Legal Aid Society of San Diego Inc.
   - John Seeba, Assistant Inspector

** Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2. & 1622.3.

General for Audit, Office of Inspector General, Legal Services Corporation
- Mohammed Sheikh, Director of Finance, Bay Area Legal Aid
- Lora Rath, Director, Office of Compliance and Enforcement, Legal Services Corporation (Moderator)

5. Public comment
6. Consider and act on other business
7. Consider and act on motion to adjourn the meeting

October 5, 2015

Governance and Performance Review Committee

1. Approval of agenda
2. Approval of minutes of the Committee's meeting on July 16, 2015
3. Review Committee Charter
   - Carol Bergman, Director of Government Relations & Public Affairs
   - Ron Flagg, General Counsel
4. Resources for Board Succession Plan
   - Carol Bergman, Director of Government Relations & Public Affairs
   - Ron Flagg, General Counsel
5. GAO Report on Federal Low-Income Programs
   - Carol Bergman, Director of Government Relations & Public Affairs
6. Report on Board and Committee 2015 evaluations
   - Carol Bergman, Director of Government Relations & Public Affairs
7. Report on foundation grants and LSC's research agenda
   - Jim Sandman, President
8. Consider and act on other business
9. Public comment
10. Consider and act on adjournment of meeting

October 6, 2015

Board of Directors

Open Session

1. Pledge of Allegiance
2. Approval of agenda
3. Approval of minutes of the Board's Open Session meeting of July 18, 2015
4. Approval of minutes of the Board's Open Session telephonic meeting of August 13, 2015
5. Chairman's Report
6. Members' Report
7. President's Report
8. Inspector General's Report
9. Consider and act on the report of the Finance Committee
10. Consider and act on the report of the Audit Committee
11. Consider and act on the report of the Operations and Regulations Committee
12. Consider and act on the report of the Governance and Performance Review Committee
13. Consider and act on the report of the Institutional Advancement Committee
14. Consider and act on the report of the Delivery of Legal Services Committee
15. Consider and act on process for updating the 2012–2016 LSC Strategic Plan
16. Report on implementation of the Pro Bono Task Force Report and the Pro Bono Innovation Fund
17. Public comment
18. Consider and act on other business
19. Consider and act on whether to authorize an executive session of the Board to address items listed below, under Closed Session

Closed Session

20. Approval of minutes of the Board's Closed Session of July 18, 2015
21. Approval of minutes of the Governance & Performance Review Committee's Closed Session Meeting of July 16, 2015
22. Briefing by Management
23. Briefing by Inspector General
24. Consider and act on General Counsel's report on potential and pending litigation Involving LSC
25. Consider and act on list of prospective funders
26. Consider and act on motion to adjourn meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

NON-CONFIDENTIAL MEETING MATERIALS: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC Web site, at *http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session.*

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: September 23, 2015.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 2015–24563 Filed 9–23–15; 4:30 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (15–081)]

NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Thursday, October 22, 2015, 9:00 a.m.–5:00 p.m., and Friday, October 23, 2015, 11:00 a.m.–5:00 p.m., Local Time.

ADDRESSES: NASA Goddard Space Flight Center, Building 34, Room W305, 8800 Greenbelt Road, Greenbelt, MD 20771.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting will also be available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 1–877–917–4912, or the toll number 1–312–470–0131 to participate in this meeting by telephone, passcode APSOctober. The telephone numbers and passcode will be used both days. The WebEx link is *https://nasa.webex.com/;* the meeting number on October 22 is 991 931 304,

password October22!. The meeting number on October 23 is 997 714 683, password October23!.

The agenda for the meeting includes the following topics:

—Astrophysics Division Update

—Updates on Specific Astrophysics Missions

—Reports from the Program Analysis Groups

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to the Goddard Space Flight Center. Due to the Real ID Act, Public Law 109–13, any attendees with driver's licenses issued from non-compliant states/territories must present a second form of identification: [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the ''List of the Acceptable Documents'' on Form I–9]. Non-compliant states/territories are: American Samoa, Arizona, Idaho, Louisiana, Maine, Minnesota, New Hampshire, and New York. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Ms. Briana E. Horton, via email at *briana.e.horton@nasa.gov* or by fax at (301) 286–1714. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Ms. Briana E. Horton, as noted above. It is imperative that the meeting be held on these dates to the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2015–24297 Filed 9–24–15; 08:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 6:00 p.m., Thursday, September 24, 2015.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

Pursuant to the provisions of the ''Government in Sunshine Act,'' notice is hereby given that the NCUA Board unanimously determined that agency business required holding a closed meeting with less than seven days' notice to the public, and that no earlier notice of the meeting was possible.

MATTERS TO BE CONSIDERED:

1. Consideration of Supervisory Action. Closed pursuant to Exemptions (8), (9) and (9)(ii).

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2015–24600 Filed 9–23–15; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Request Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45, part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 26, 2015. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Li Ling Hamady, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (ACA 2015–001) to Dr. Robert Pitman on November 7, 2014. The issued permit allows the applicant to take and import tissue samples from various marine mammal species; tag them with satellite or suction cup tags; take photographs; and salvage dead birds or mammals for research purposes.

Now the applicant proposes a modification to the permit to extend the permit's duration, which had expired on June 30, 2015, and to include the use of Unmanned Aerial Systems (UASs) for photography, in order to make it consistent with and correspond to their Marine Mammal Protection Act permit (14097–06), which was recently extended and updated to include the aforementioned activity. The applicant would use utilize a remotely operated UAS (Unmanned Aerial System) equipped with a small high resolution camera to fly and take pictures at altitudes of 90–180 ft above the following species: killer whales (≤600 individuals), humpback whales (≤100 individuals), and Antarctic minke whales (≤100 individuals). The applicant wants to collect morphological data on the 4 types of killer whales to assist with taxonomic studies; identify prey species for small type B killer whales; and assess fitness in minke and humpback whales to provide baseline data for assessing the impact of krill fisheries on whale stocks in the Antarctic Peninsula area. The applicant has successfully deployed the equipment array over 200 times in various environments without wildlife disturbance.

Location: Southern Ross Sea, Antarctic Peninsula, and various other location around the continent as opportunities become available via private tour operator.

Dates: November 30, 2015–June 30, 2016.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2015–24308 Filed 9–24–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0184]

Chilled Water System

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-final section; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to Section 9.2.7, ''Chilled Water System,'' of NUREG–0800, ''Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.''

DATES: The effective date of this Standard Review Plan update is October 26, 2015.

ADDRESSES: Please refer to Docket ID NRC–2014–0184 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–2014–0184. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced. The final revision for the SRP, Section 9.2.7, ''Chilled Water System,'' is available in ADAMS under Accession No. ML15103A559. A redline strikeout comparing the proposed and final revision of the document can be found in ADAMS under Accession No. ML14328A622.
- 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.
- The NRC posts its issued staff guidance on the NRC's external Web page (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/*).

FOR FURTHER INFORMATION CONTACT: Mark Notich, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6256, email: *Mark.Notich@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 5, 2014 (79 FR 45498), the NRC published for public comment the proposed SRP Section 9.2.7, ''Chilled Water,'' in Chapter 9, ''Auxiliary Systems,'' of NUREG–0800. The NRC staff received comments on the draft section. After consideration of comments received on the proposed revision, the NRC staff reformatted guidance for the review of nonsafety-related structures, systems, and components (SSCs) into a tabular format, and separated it from the core review guidance used for review of safety-related SSCs. A summary of comments received and the staff's disposition of the comments are available in a separate document, ''*Response to Public Comments on Draft Standard Review Plan,* Section 9.2.7, ''Chilled Water System,'' (ADAMS Accession No. ML14328A663).

II. Backfitting and Issue Finality

The SRP Section 9.2.7, provides guidance to the staff for reviewing applications for a construction permit and an operating license under part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), with respect to systems associated with chilled water. The SRP Section 9.2.7 also provides guidance for reviewing an application for a standard design approval, a standard design certification, a combined license, and a manufacturing license under 10 CFR part 52 with respect to the same subject matters.

Issuance of this SRP section revision does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) nor is it inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations:

1. *The SRP positions would not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides internal guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *The NRC staff has no intention to impose the SRP positions on existing licensees either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the SRP to existing licenses and regulatory approvals. Hence, the issuance of this SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR part 52—does not need to be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (*e.g.,* an early site permit) or NRC regulatory approval (*e.g.,* a design certification rule) with specified issue finality provisions. The NRC staff does not, at this time, intend to impose the positions represented in the SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the SRP section in a manner that does not provide issue finality as described in the applicable issue finality

provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

III. Congressional Review Act

This action is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 10th day of September, 2015.

For the Nuclear Regulatory Commission.

Kimyata Morgan Butler,

Acting Chief, New Reactor Rulemaking and Guidance Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2015–24306 Filed 9–24–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0226]

Review and Submission of Updates to the Final Safety Analysis Reports, Emergency Preparedness Documents, and Fire Protection Documents

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory issue summary; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking public comment on a draft regulatory issue summary (RIS), RIS 2015–XX, ''Review and Submission of Updates to the Final Safety Analysis Reports, Emergency Preparedness Documents, and Fire Protection Documents.'' This RIS reminds addressees of the review and submission requirements regarding information to be withheld from public disclosure, and recommends a format for submission of updates to the Final Safety Analysis Reports (FSARs).

DATES: Submit comments by October 26, 2015. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0226. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: O–12H8, 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: Matthew Humberstone, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1464; email: *Matthew.Humberstone@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0226 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–2015–0226.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft RIS, ''Review and Submission of Updates to the Final Safety Analysis Reports, Emergency Preparedness Documents, and Fire Protection Documents'' is available in ADAMS under Accession No. ML15177A074.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0226 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 submisssions 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 submissions into ADAMS.

II. Background

The NRC issues RISs to communicate with stakeholders on a broad range of regulatory matters. This may include communicating and restating staff technical positions on regulatory matters. The NRC staff has developed draft RIS 2015–XX to remind licensees of the review and submission requirements of section 2.390 of Title 10 of the *Code of Federal Regulations* (CFR), ''Public Inspections, Exemptions, Requests for Withholding,'' regarding information to be withheld from public disclosure, as well as to recommend that the updates to the FSARs required by paragraph (e) of 10 CFR 50.71, ''Maintenance of records, making of reports,'' be made electronically on a total FSAR replacement basis, as described in paragraph (b)(6) of 10 CFR 50.4, ''Written communications.''

Specifically, the NRC is issuing this RIS for the following purposes:

- To remind licensees of the potential for physical protection information, which the NRC is required to protect in the same manner as commercial or financial information for the purposes of withholding from public disclosure pursuant to 10 CFR 2.390(d)(1), to be contained in documents that will be proactively released to the public in accordance with the Commission direction in Staff Requirements Memorandum (SRM)–SECY–15–0032 (ADAMS Accession No. ML15167A090). Specifically, the NRC reminds licensees of the potential for physical protection information to be contained in Preliminary Safety Analysis Reports,

FSARs, FSAR updates, and in emergency preparedness and fire protection documents, which had previously been presumptively withheld by the NRC.

• To recommend a format for submission of FSAR updates for nuclear power reactors. Research and test reactors and other non-power production and utilization facilities are not required to update their facility FSARs, unless applying for renewal of the facility license. Licensees have two submission format options regarding FSAR updates: (1) Electronically on a total FSAR replacement basis, as described in 10 CFR 50.4(b)(6), or (2) on a paper replacement page basis, as described in 10 CFR 50.71(e). Electronic submission of updates on a total FSAR replacement basis would save billable staff hours since time would not be taken to manually reconstruct sections of the FSAR for various staff reviews. Therefore, the NRC recommends that licensees voluntarily submit updates electronically (via CD or Electronic Information Exchange) on a total FSAR replacement basis. Submission of FSAR updates in this manner will also assist the NRC in its emergency response function by ensuring that recently-updated, total FSARs are available to NRC emergency response teams.

Proposed Action

The NRC is requesting public comments on draft RIS 2015–XX. The NRC staff will make a final determination regarding issuance of the RIS after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 18th day of September 2015.

For the Nuclear Regulatory Commission.

Sheldon Stuchell,

Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–24301 Filed 9–24–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306; NRC–2014–0028]

Northern States Power Company—Minnesota; Prairie Island Nuclear Generating Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Northern States Power Company—Minnesota, doing business as Xcel Energy, to withdraw its application dated December 20, 2013, as supplemented by letters dated October 15, 2014, and May 28, 2015, for a proposed amendment to Renewed Facility Operating Licenses DPR–42 and DPR–60. The proposed amendment would have revised the Prairie Island Nuclear Generating Plant, Units 1 and 2, Emergency Plan to increase staff augmentation times for certain emergency response organization positions.

ADDRESSES: Please refer to Docket ID NRC–2014–0028 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–2014–0028. 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: Terry A. Beltz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–3049, email: *Terry.Beltz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The NRC has granted the request of Northern States Power Company—Minnesota (the licensee) to withdraw its application dated December 20, 2013 (ADAMS Accession No. ML13358A405), as supplemented by two letters dated October 15, 2014, and May 28, 2015 (ADAMS Accession Nos. ML14288A543 and ML15148A775, respectively) for a proposed amendment to Renewed Facility Operating Licenses DPR–42 and DPR–60 for the Prairie Island Nuclear Generating Plant, Units 1 and 2, located in Goodhue County, Minnesota.

The proposed amendment sought to revise the Emergency Plan for the Prairie Island Nuclear Generating Plant, Units 1 and 2, to increase the staff augmentation times for certain emergency response organization positions.

The NRC published a Biweekly Notice in the **Federal Register** on February 19, 2014 (79 FR 9497), that gave notice that this proposed amendment was under consideration by the NRC. The licensee submitted its request to withdraw the proposed amendment on August 28, 2015 (ADAMS Accession No. ML15240A089).

Dated at Rockville, Maryland, this 17th day of September, 2015.

For the Nuclear Regulatory Commission.

Terry A. Beltz,

Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–24311 Filed 9–24–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0173]

Integrated Safety Analysis Standards for Acute Uranium Exposure of Workers

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Interim Staff Guidance (ISG), FCSE ISG–14, ''Acute Uranium Standards for Workers,'' dated June 15, 2015. The ISG provides guidance to the NRC staff when reviewing licensee-proposed standards in the Integrated Safety Analysis Summary for determining worker uranium exposures that would result in high or intermediate consequences consistent with the general definition of these events in NRC regulations.

DATES: The ISG is available September 25, 2015.

ADDRESSES: Please refer to Docket ID NRC–2014–0173 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–2014–0173. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (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: James Hammelman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7526; email: *James.Hammelman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The purpose of this ISG (ADAMS Accession No. ML15147A682) is to identify acute uranium intake values that will be acceptable to the staff for classifying acute worker exposure events as high or intermediate consequence events consistent with the general definition of the terms presented in § 70.61 of Title 10 of the *Code of Federal Regulations* (10 CFR). This guidance has been approved by the Division of Fuel Cycle Safety, Safeguards, and Environmental Review management (ADAMS Accession No. ML15147A680) and is available on the NRC's Web site as well as in ADAMS.

In a **Federal Register** notice published on September 17, 2014 (79 FR 55834), the NRC requested public comments on the draft ISG. In response, Janet R. Schlueter on behalf of the Nuclear Energy Institute (NEI) provided comments by letter dated November 12, 2014 (ADAMS Accession No. ML14322A698). The NRC also received an anonymous comment (ADAMS Accession No. ML14345A747). The final ISG includes clarifications in response to these comments. The specific changes made in the final ISG were described in a letter to the Division of Fuel Cycle Safety, Safeguards, and Environmental Review management (ADAMS Accession No. ML15147A683)

II. Backfitting

The NRC is issuing interim guidance for the NRC staff regarding acute uranium intake values for classifying acute worker exposure events. Issuance of the ISG does not constitute backfitting as defined in 10 CFR 70.76 (the Backfit Rule). The NRC's position is based upon the following considerations.

1. *The ISG positions do not constitute backfitting, inasmuch as the ISG is internal guidance to NRC staff.*

The ISG provides interim guidance to the staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which applicants or licensees are protected under 10 CFR 70.76.

2. *The Backfit Rule does not protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by the Backfit Rule. This is because the Backfit Rule was not intended to apply to every NRC action that substantially changes the expectations of current and future applicants.

III. Congressional Review Act

This action is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 17th day of September, 2015.

For the Nuclear Regulatory Commission.

Robert Johnson,

Branch Chief, Fuel Manufacturing Branch Division of Fuel Cycle Safety, Safeguards, and Environmental Review Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2015–24315 Filed 9–24–15; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review; Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, RI 30–9, 3206–0138

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension without change of a currently approved information collection (ICR) 3206–0138, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity. As required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until November 24, 2015. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Retirement Services, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Alberta Butler, Room 2349, or sent via electronic mail to *Alberta.Butler@opm.gov*.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 3316–AC, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION:

The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. 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;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. 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.

RI 30–9, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity informs disability annuitants of their right to request restoration under title 5, U.S.C. Sections 8337 and 8455. It also specifies the conditions to be met and the documentation required for a person to request reinstatement.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management

Title: Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity

OMB: 3206–0138

Frequency: On occasion

Affected Public: Individuals or Households

Number of Respondents: 200

Estimated Time Per Respondent: 60 minutes

Total Burden Hours: 200

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2015–24420 Filed 9–24–15; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting Notice

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Federal Salary Council will meet on Friday, November 6, 2015, at the time and location shown below. The Council is an advisory body composed of representatives of Federal employee organizations and experts in the fields of labor relations and pay policy. The Council makes recommendations to the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) about the locality pay program for General Schedule employees under section 5304 of title 5, United States Code. The Council's recommendations cover the establishment or modification of locality pay areas, the coverage of salary surveys, the process of comparing Federal and non-Federal rates of pay, and the level of comparability payments that should be paid.

The Council will hear public testimony about the locality pay program, review the results of pay comparisons, and formulate its recommendations to the President's Pay Agent on pay comparison methods, locality pay rates, and locality pay areas and boundaries for 2017. The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to submit testimony or present material to the Council at the meeting.

DATES: Friday, November 6, 2015, at 10:00 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., Pendleton Room 5th Floor, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Brenda L. Roberts, Deputy Associate Director, Pay and Leave, Office of Personnel Management, 1900 E Street NW., Room 7H31, Washington, DC 20415–8200. Phone (202) 606–2838; FAX (202) 606–0824; or email at *pay-leave-policy@opm.gov.*

For the President's Pay Agent.

Beth F. Cobert,

Acting Director.

[FR Doc. 2015–24416 Filed 9–24–15; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Certification of Qualifying District of Columbia Service Under Section 1905 of Public Law 111–84, RI 20–126, 3206–XXXX

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a new information collection request (ICR) 3206–XXXX, Certification of Qualifying District of Columbia Service Under Section 1905 of Public Law (Pub. L.) 111–84. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on May 4, 2015 at Volume 80 FR 25338 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until October 26, 2015. This process is conducted in accordance with 5 CFR 1320.1.

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, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. 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.

RI 20–126 is used to certify that an employee performed certain service with the District of Columbia (DC) that qualifies under section 1905 of Pub. L. 111–84 for determining retirement eligibility. However, this service cannot

be used in the computation of a retirement benefit.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Certification of Qualifying District of Columbia Service Under Section 1905 of Pub. L. 111–84.

OMB Number: 3206–XXXX.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 1000.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 500.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2015–24425 Filed 9–24–15; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Rollover Election (RI 38–117), Rollover Information (RI 38–118) and Special Tax Notice Regarding Rollovers (RI 37–22), 3206–0212

AGENCY: Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0212, Rollover Election (RI 38–117), Rollover Information (RI 38–118), and Special Tax Notice Regarding Rollovers (RI 37–22). As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. This information collection was previously published in the **Federal Register** on February 2, 2015 at volume 80 FR 5587 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until October 26, 2015. This process is conducted in accordance with 5 CFR 1320.1.

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, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. 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;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. 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.

RI 38–117, Rollover Election, is used to collect information from each payee affected by a change in the tax code so that OPM can make payment in accordance with the wishes of the payee. RI 38–118, Rollover Information, explains the election. RI 37–22, Special Tax Notice Regarding Rollovers, provides more detailed information.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Rollover Election, Rollover Information, and Special Tax Notice Regarding Rollover.

OMB Number: 3206–0212.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 1,500.

Estimated Time per Respondent: 40 minutes.

Total Burden Hours: 1,000.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2015–24419 Filed 9–24–15; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–84 and CP2015–140; Order No. 2721]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 144 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 28, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 144 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a

[1] Request of the United States Postal Service to Add Priority Mail Contract 144 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 18, 2015 (Request).

copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–84 and CP2015–140 to consider the Request pertaining to the proposed Priority Mail Contract 144 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than September 28, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–84 and CP2015–140 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).
3. Comments are due no later than September 28, 2015.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–24295 Filed 9–24–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–85 and CP2015–141; Order No. 2722]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Parcel Select Contract 10 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 28, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Parcel Select Contract 10 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–85 and CP2015–141 to consider the Request pertaining to the proposed Parcel Select Contract 10 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than September 28, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–85 and CP2015–141 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).
3. Comments are due no later than September 28, 2015.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–24299 Filed 9–24–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–83 and CP2015–139; Order No. 2720]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 143 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 28, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

[1] Request of the United States Postal Service to Add Parcel Select Contract 10 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 18, 2015 (Request).

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 143 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–83 and CP2015–139 to consider the Request pertaining to the proposed Priority Mail Contract 143 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than September 28, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–83 and CP2015–139 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than September 28, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–24294 Filed 9–24–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 143 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 18, 2015 (Request).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–82 and CP2015–138; Order No. 2723]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 142 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 28, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 142 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

[1] Request of the United States Postal Service to Add Priority Mail Contract 142 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 18, 2015 (Request).

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–82 and CP2015–138 to consider the Request pertaining to the proposed Priority Mail Contract 142 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than September 28, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints JP Klingenberg to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–82 and CP2015–138 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, JP Klingenberg is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than September 28, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–24303 Filed 9–24–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* September 25, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 18, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 144 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–84, CP2015–140.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–24353 Filed 9–24–15; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* September 25, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 18, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 143 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–83, CP2015–139.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–24354 Filed 9–24–15; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* September 25, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 18, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Parcel Select Contract 10 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–85, CP2015–141.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2015–24351 Filed 9–24–15; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* September 25, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 18, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 142 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–82, CP2015–138.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–24352 Filed 9–24–15; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31833; 812–14550]

General Electric Company and GE Capital International Funding Company; Notice of Application

September 21, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit GE Capital International Funding Company (''FinCo'') to issue and sell commercial paper, preferred stock and other debt securities to finance the operations of subsidiaries of General Electric Company (''GE''). Applicants state that FinCo would qualify for the exemption provided by rule 3a–5 under the Act but for the fact that FinCo may finance GE subsidiaries that are not ''companies controlled by'' GE within the meaning of rule 3a-5 due to their reliance on sections 3(c)(5) or 3(c)(6) of the Act (collectively, the ''Controlled Companies'').

APPLICANTS: GE and FinCo.

FILING DATE: The application was filed on September 21, 2015.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 16, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 299 Park Avenue, New York, NY 10171.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, at (202) 551–6826, or Mary Kay Frech,

Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. GE, a New York corporation, is one of the largest and most diversified infrastructure and financial services corporations in the world. Its products and services range from aircraft engines, power generation, oil and gas production equipment and household appliances to medical imaging, business and consumer financing and industrial products. Applicants state that GE is not an investment company as defined in section 3(a) of the Act.[1]

2. General Electric Capital Corporation (''GE Capital'') is a Delaware corporation and a wholly-owned subsidiary of GE. GE Capital is a diversified financial services company that, directly or through its subsidiaries, engages in various forms of financing activity, including financing real estate, financing equipment and factoring. Applicants state that GE Capital is not an investment company pursuant to section 3(c)(6) of the Act. As described below, applicants expect GE Capital to be restructured and subsequently merged out of existence as part of a reorganization of GE's financial services businesses, with certain GE Capital businesses being transferred to other wholly-owned subsidiaries of GE as part of the restructuring.

3. On April 10, 2015, GE announced a plan to reduce the size of its financial services businesses through the sale of most of the assets of GE Capital over the next 24 months and to focus on continued investment and growth in GE's industrial businesses. In connection with this plan, GE Capital has formed FinCo, an Irish unlimited company and a wholly-owned subsidiary of GE Capital and of GE. FinCo's primary purpose is to finance the operations of GE's foreign subsidiaries and, initially, will do so by issuing new notes (''New Notes'') in exchange for old notes (''Old Notes'') previously issued by GE Capital (the ''Exchange Offer''). Following the Exchange Offer, GE Capital's businesses will be reorganized into separate U.S. and non-U.S. holding companies, with GE Capital International Holdings Limited (''European Holdco'')[2] owning all of the foreign businesses currently owned by GE Capital, including FinCo, and a domestic holding company owning all of the domestic businesses (as described in greater detail in the application, the ''Reorganization''). Applicants state that any successor to GE Capital businesses will only be treated as a ''Controlled Company'' if it satisfies the requirements of section 3(c)(5) or 3(c)(6) of the Act.

4. The New Notes that FinCo will issue in the Exchange Offer will include multiple classes with various maturity dates, interest rates and other terms. The New Notes will be offered for exchange only (i) to holders of Old Notes that are ''qualified institutional buyers'' as defined in rule 144A under the Securities Act of 1933 (the ''Securities Act'') in a private transaction in reliance upon the exemption from the registration requirements of the Securities Act provided by section 4(a)(2) thereof and (ii) outside the United States, to non-U.S. holders of Old Notes in accordance with regulation S under the Securities Act. The New Notes will be guaranteed by GE and GE Capital, with European Holdco ultimately assuming GE Capital's guarantee obligation in connection with the Reorganization. In the future, FinCo may issue any manner of debt (including commercial paper exempt under section 3(a)(3) of the Securities Act) and preferred stock, in both public and private offerings in the United States or abroad, so long as such issuance is consistent with rule 3a-5 (together with the New Notes, ''Securities''). Other than as noted in the application, FinCo will comply with the applicable requirements in rule 3a–5(a)(1) through (4) and with rule 3a–5(b)(1)(i) under the Act.

5. FinCo will utilize the proceeds from the issuance and sale of Securities to finance the operations of Controlled Companies and other ''companies controlled by'' GE within the meaning of rule 3a-5 under the Act.[3] The Controlled Companies will use the proceeds of the financing from FinCo to engage in different financing activities, including, among others, (i) equipment financing, (ii) inventory financing and (iii) factoring. Applicants state that each of the Controlled Companies would be ''a company controlled by the parent'' as defined in rule 3a–5 but for the fact that the Controlled Companies rely, or upon their formation will rely, on section 3(c)(5) or 3(c)(6) of the Act for exclusion from regulation as an investment company under the Act.

6. Applicants state that in compliance with rule 3a–5(a)(5), FinCo will invest in or loan to Controlled Companies and other ''companies controlled by'' GE within the meaning of rule 3a–5 at least 85% of any cash or cash equivalents raised from the sale of Securities as soon as practicable, but in no event later than six months after the receipt of such cash or cash equivalents. In accordance with rule 3a–5(a)(6) under the Act, all investments by FinCo, including temporary investments, will be made in Government securities (as defined in the Act), securities of GE, Controlled Companies or other ''companies controlled by'' GE within the meaning of rule 3a–5, or debt securities that are exempted from the provisions of the Securities Act by section 3(a)(3) of the Securities Act.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act exempting FinCo from all provisions of the Act. Rule 3a–5 under the Act provides an exemption from the Act for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a–5(b)(3)(i) under the Act, in relevant part, defines a ''company controlled by the parent company'' to mean any corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act, or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a) of the Act. Applicants state that the Controlled Companies do not fit within the definition of ''company controlled by the parent company'' because they derive their non-

[1] For purposes of the requested order, GE will only be eligible to serve as the ''parent company'' of FinCo as contemplated by rule 3a–5 for so long as GE satisfies the definition of a ''parent company'' set forth in rule 3a–5(b)(2).

[2] European Holdco, a UK limited company, is a wholly-owned subsidiary of GE. As the successor to GE Capital's foreign businesses through the Reorganization, European Holdco will engage in financing activities, including financing real estate, financing equipment, and factoring. GE anticipates that the mix of businesses to be transferred to European Holdco from GE Capital will allow European Holdco to similarly rely on section 3(c)(6) upon completion of the Reorganization. European Holdco will only be treated as a ''Controlled Company'' if it satisfies the requirements of section 3(c)(5) or 3(c)(6) of the Act.

[3] FinCo may invest in or loan to Controlled Companies other than GE Capital and European Holdco. These other Controlled Companies will be wholly-owned subsidiaries of GE before and after the Reorganization, and wholly-owned subsidiaries of GE Capital before the Reorganization and of European Holdco thereafter.

investment company status from sections 3(c)(5) or 3(c)(6) of the Act. Accordingly, applicants request exemptive relief to permit FinCo to issue and sell Securities to finance the operations of the Controlled Companies. Applicants state that neither FinCo, GE, nor any of the Controlled Companies engage primarily in investment company activities.

3. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that its exemptive request meets the standards set out in section 6(c) of the Act.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

FinCo will comply with all of the provisions of rule 3a–5 under the Act, except FinCo will be permitted to (i) make loans to or make or hold investments in Controlled Companies that do not meet the portion of the definition of ''company controlled by a parent company'' in rule 3a–5(b)(3)(i) under the Act solely because they are excluded from the definition of investment company under sections 3(c)(5) or 3(c)(6) of the Act; (ii) have its securities owned by such Controlled Companies; and (iii) treat European Holdco as a ''company controlled by the parent company'' for purposes of rule 3a–5, if European Holdco is exempt from registration under the Act pursuant to an order issued by the Commission under section 6(c) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–24445 Filed 9–24–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31834; 812–14509]

Principal Exchange-Traded Funds, et al.; Notice of Application

September 21, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

Summary of Application: Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

Applicants: Principal Management Corporation (''PMC''), Principal Exchange-Traded Funds (''Trust'') and Principal Funds Distributor, Inc. (''PFD'').

Filing Dates: The application was filed on July 1, 2015.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 16, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: PMC and the Trust, 655 9th Street, Des Moines, IA 50392; PFD, 620 Coolidge Drive, Suite 300, Folsom, CA 95630.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, at (202) 551–6826, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is a Delaware statutory trust and is registered under the Act as an open-end management investment company with multiple series. Each series will operate as an exchange traded fund (''ETF'').

2. PMC, an Iowa corporation, will be the investment adviser to the new series of the Trust (''Initial Fund''). Each Adviser (as defined below) will be registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a ''Sub-Adviser''). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Trust will enter into a distribution agreement with one or more distributors. Each distributor for a Fund will be a broker-dealer (''Broker'') registered under the Securities Exchange Act of 1934 (''Exchange Act'') and will act as distributor and principal underwriter (''Distributor'') for one or more of the Funds. No Distributor will be affiliated with any national securities exchange, as defined in Section 2(a)(26) of the Act (''Exchange''). The Distributor for each Fund will comply with the terms and conditions of the requested order. PFD, a Washington corporation and broker-dealer registered under the Exchange Act, will act as the initial Distributor of the Funds.

4. Applicants request that the order apply to the Initial Fund and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future (''Future Funds'' and together with the Initial Fund, ''Funds''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Future Fund will (a) be advised by PMC or an entity controlling, controlled by, or under common control with PMC (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.[1]

5. Each Fund will hold certain securities, currencies, other assets, and other investment positions (''Portfolio Holdings'') selected to correspond generally to the performance of its Underlying Index. The Underlying Indexes will be comprised solely of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised solely of foreign and domestic, or solely foreign, equity and/or fixed income securities (''Foreign Funds'').

6. Applicants represent that each Fund will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (''Component Securities'') and TBA Transactions,[2] and in the case of Foreign Funds, Component Securities and Depositary Receipts[3] representing Component Securities. Each Fund may also invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the Adviser believes will help the Fund track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

7. Each Trust may issue Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies (''130/30 Funds'') or other long/short investment strategies (''Long/Short Funds''). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index[4] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. Each Business Day, for each Long/Short Fund and 130/30 Fund, the Adviser will provide full portfolio transparency on the Fund's publicly available Web site (''Web site'') by making available the Fund's Portfolio Holdings (defined below) before the commencement of trading of Shares on the Listing Exchange (defined below).[5] The information provided on the Web site will be formatted to be reader-friendly.

8. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

9. Each Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains the Underlying Index (each, an ''Index Provider'') or a sub-licensing arrangement with the Adviser, which will have a licensing agreement with such Index Provider.[6] A ''Self-Indexing Fund'' is a Fund for which an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an ''Affiliated Index Provider'') will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an ''Affiliated Index'').[7] Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of a Trust or a Fund, of the Adviser, of any Sub-Adviser to or

[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[2] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[3] Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts and Global Depositary Receipts. The Funds may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund.

[4] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

[5] Under accounting procedures followed by each Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[6] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (as defined below), or in case of a sub-licensing agreement, the Adviser, must provide the use of the Affiliated Indexes (as defined below) and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[7] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser (''Unaffiliated Accounts''). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

promoter of a Fund, or of the Distributor.

10. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated.

11. Applicants propose that each Self-Indexing Fund will post on its Web site, on each day the Fund is open, including any day when it satisfies redemption requests as required by Section 22(e) of the Act (a ''Business Day''), before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the Portfolio Holdings that will form the basis for the Fund's calculation of its NAV at the end of the Business Day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will also provide an additional mechanism for addressing any such potential conflicts of interest.

12. In addition, Applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[8]

13. Each Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, PMC will adopt policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the ETS Securities or an associated person (''Inside Information Policy''). Any other Adviser or Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics[9] and Inside Information Policy of the Adviser and any Sub-Adviser, personnel of those entities with knowledge about the composition of the Portfolio Deposit[10] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider.[11] The Adviser will also include under Item 10.C of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

14. To the extent the Self-Indexing Funds transact with an Affiliated Person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, the Adviser, Affiliated Persons of the Adviser (''Adviser Affiliates'') and Affiliated Persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission. Applications for prior orders granted to Self-Indexing Funds have received relief to operate such funds on the basis discussed above.[12]

15. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[13] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions)[14] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for

[8] *See, e.g.,* Rule 17j–1 under the Act and Section 204A under the Advisers Act and Rules 204A–1 and 206(4)–7 under the Advisers Act.

[9] The Adviser has also adopted or will adopt a code of ethics pursuant to Rule 17j–1 under the Act and Rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in Rule 17j–1) from engaging in any conduct prohibited in Rule 17j–1 (''Code of Ethics'').

[10] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing are referred to as the ''Portfolio Deposit.''

[11] In the event that an Adviser or Sub-Adviser serves as the Affiliated Index Provider for a Self-Indexing Fund, the terms ''Affiliated Index Provider'' or ''Index Provider,'' with respect to that Self-Indexing Fund, will be limited to the employees of the applicable Adviser or Sub-Adviser that are responsible for creating, compiling and maintaining the relevant Underlying Index.

[12] *See, e.g.,* Emerging Global Advisors, LLC, et al., Investment Company Act Release Nos. 30910 (February 10, 2014) (notice) and 30975 (March 7, 2014) (order); VTL Associates, LLC, et al., Investment Company Act Release Nos. 30815 (December 2, 2013) (notice) and 30849 (December 30, 2013) (order); Horizons ETFs Management (USA) LLC and Horizons ETF Trust, Investment Company Act Release Nos. 30803 (November 21, 2013) (notice) and 30833 (December 17, 2013) (order).

[13] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[14] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [15] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind [16] will be excluded from the Deposit Instruments and the Redemption Instruments; [17] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio; [18] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

16. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; [19] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[20]

17. Creation Units will consist of specified large aggregations of Shares (*e.g.,* 25,000 Shares) as determined by the Adviser, and it is expected that the initial price of a Creation Unit will range from $1 million to $10 million. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' *i.e.,* a Broker or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company (''DTC'') (''DTC Participant''), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

18. Each Business Day, before the open of trading on the Exchange on which Shares are primarily listed (''Listing Exchange''), each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

19. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[21] The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

20. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will

[15] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[16] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[17] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[18] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

[19] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[20] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[21] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

be designated to act as a market maker (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

21. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[22] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

22. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

23. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

[22] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option

continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fourteen (14) calendar days. Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fourteen calendar days following the tender of Creation Units for redemption.[23]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fourteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fourteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts (''UITs'') that are not advised or sponsored by the Adviser, and not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Funds of Funds''), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, a ''Fund of Funds Sub-Adviser''). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.[24] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group'').

15. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose

[23] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations Applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

[24] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received from a Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[25]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

Sections 17(a)(1) and (2) of the Act

19. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

20. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions ''in-kind.''

21. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making ''in-kind'' purchases or ''in-kind'' redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that ''in-kind'' purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to Applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating ''in-kind'' redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

[25] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

22. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[26] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[27] Applicants believe that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund, Long/Short Fund and 130/30 Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's Portfolio Holdings.

6. No Adviser or any Sub-Adviser to a Self-Indexing Fund, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for the Self-Indexing Fund through a transaction in which the Self-Indexing Fund could not engage directly.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of Section 2(a)(19) of the Act (''non-interested Board members''), will determine that any consideration paid by the Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–l under the Act) received from a Fund by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or

[26] Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from Section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from Section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[27] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by Section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the applicable Trust will execute a FOF Participation Agreement stating, without limitation, that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent the Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund to acquire securities of one or more investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–24446 Filed 9–24–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a conference commemorating the 75th Anniversary of the Investment Company Act and the Investment Advisers Act on Tuesday, September 29, 2015 from 9:15 a.m. to 4:15 p.m., in the Auditorium, Room L–002.

The event will include remarks from SEC Chair Mary Jo White and fellow commissioners, as well as a series of panel discussions featuring industry pioneers, former SEC chairmen and division directors, academics and other distinguished leaders to discuss significant ideas and themes in the history of the asset management industry.

The conference will be held at SEC headquarters at 100 F Street NE. in Washington, DC. The roundtable will be webcast on the Commission's Web site at *www.sec.gov* and will be archived for later viewing. Seating for the public will be available.

For further information, please contact: The Office of the Secretary at (202) 551–5400.

Dated: September 22, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–24547 Filed 9–23–15; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Privacy Act; Computer Matching Agreement

I. Introduction

The Small Business Administration (SBA) and the Department of Homeland Security, Federal Emergency Management Agency (DHS/FEMA) have entered into this Computer Matching Agreement (Agreement) pursuant to section (o) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and as amended by the Computer Matching Privacy Protection Act Amendments of 1990 (Pub. L. 101–508, 5 U.S.C. 552a(p) (1990)). For purposes of this Agreement, both SBA and DHS/FEMA are the recipient agency and the source agency as defined in 5 U.S.C. 552a(a)(9) and (11). For this reason, the financial and administrative responsibilities will be evenly distributed between SBA and DHS/FEMA unless otherwise set forth in this agreement.

II. Purpose and Legal Authority

A. Purpose of the Matching Program

The purpose of this Agreement is to establish a framework and procedures governing the Computer Matching program between SBA and DHS/FEMA. The Computer Matching program seeks to ensure that applicants for SBA Disaster Loans and DHS/FEMA Individuals and Households Program, which provides Other Needs Assistance (ONA) and Housing Assistance (HA), do not receive a duplication of benefits for the same disaster. This will be accomplished by matching specific DHS/FEMA disaster applicant data with SBA disaster loan application and decision data for a declared disaster, as set forth in this Agreement.

B. Legal Authority

SBA's legal authority for undertaking its disaster loan program without duplicating benefits is contained in section 7(b)(1) of the Small Business Act (15 U.S.C. 636 (b)(1). DHS/FEMA's legal authority contained at § 312(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155), mandates DHS/FEMA not to duplicate assistance provided by another agency or similar source.

SBA is allowed to share information with DHS/FEMA pursuant to routine uses (f) and (g) of SBA–020 Disaster Loan Case Files system of records, 74 FR 14911 (April 1, 2009). DHS/FEMA is allowed to share information with SBA pursuant to routine uses H.1. and R. of DHS/FEMA–008 Disaster Recovery Assistance Files, 78 FR 25282 (April 30, 2013) (DHS/FEMA–008 SORN). The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), as amended, (5 U.S.C. 552a(o)–(u)) establishes procedural requirements for agencies to follow when engaging in computer-matching activities.

III. Justification and Expected Results

A. Justification

As required by law, SBA and DHS/FEMA will not provide duplicative disaster assistance to individuals, and businesses including Private-Not-for Profits (PNPs) for the same disaster. To accomplish this, SBA and DHS/FEMA will participate in a computer-matching program to share data and financial/benefits award decisions of individuals, businesses and/or other entities to prevent duplicative aid from being provided in the same disaster declaration.

It is also recognized that the programs covered by this Agreement are part of a Government-wide initiative, Executive Order 13411—Improving Assistance for Disaster Victims (August 29, 2006). This order mandates DHS/FEMA to identify and prevent duplication of benefits received by individuals, businesses, or other entities for the same disaster. That initiative and this matching program are consistent with Office of Management and Budget (OMB) guidance on interpreting the provisions of the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular A–130, Appendix I, ''Federal Agency Responsibilities for Maintaining Records about Individuals.''

B. Expected Results

The matching program is to ensure that benefits provided to disaster survivors by DHS/FEMA and SBA are not duplicated. By way of the DHS/FEMA disaster registration identification (ID) number, DHS/FEMA and SBA are able to identify the applications received from mutual DHS/FEMA and SBA disaster survivors. By the nature of the sequence of delivery as outlined in FEMA Regulation, 44 CFR 206.191, survivors that register with DHS/FEMA for possible grant assistance, and meet SBA's minimum income requirements, are automatically referred to SBA for possible loan assistance. For example, DHS/FEMA received 548,953 registrations in response to hurricane Sandy, and referred 241,282 of those registrations to SBA. More recently, in FY 2013 and 2014, DHS/FEMA received 775,089 registrations and referred 337,619 registrations to SBA. The computer match will also reveal instances where the same disaster survivor has submitted applications to both DHS/FEMA and SBA, which could result in a duplication of benefits. Since FY 2010,[1] the use of the CMA has identified 224,878 instances where the same disaster survivor submitted applications to both agencies, a yearly average of 40,157. Over that same period, SBA approved 83,313 loans to homeowners and renters, who also received assistance from FEMA. This is a yearly average of 14,877 files identified with a potential DOB.

IV. Records Description

A. Systems of Records and Estimated Number of Records Involved

DHS/FEMA accesses records from its Disaster Recovery Assistance Files system of records, as provided by the DHS/FEMA–008 SORN, through its National Emergency Management Information System-Individual Assistance (NEMIS–IA), and matches them to the records that SBA provides from its SBA–020 Disaster Loan Case Files, 74 FR 14911 (April 1, 2009) system of records. SBA uses its Disaster Credit Management System (DCMS) to access records from its Disaster Loan Case Files system of records, and match them to the records that DHS/FEMA provides from its Disaster Recovery Assistance Files system of records. Under this agreement, DHS/FEMA and SBA exchange data to: (1) Check for initial registrations, (2) check for the duplication of benefits, and (3) update the SBA Loan Status.

A definitive answer cannot be given as to how many records will be matched as it will depend on the number of individuals, businesses or other entities that suffer damage from a declared disaster and that ultimately apply for Federal disaster aid.

[1] The SBA data period is from October 1, 2009 through May 11, 2015.

B. Description of the Match

The three types of match processes, for initial registration, duplication of benefits, and status updates, are described below.

1. DHS/FEMA–SBA Automated Import/Export Process for Initial Registrations.

a. SBA is the recipient (*i.e.* matching) agency. SBA will match records from its Disaster Loans Case Files system of records, as identified in Section II.B, applications and information accessed via the DCMS, to the records extracted and provided by DHS/FEMA from its DHS/FEMA Disaster Recovery Assistance Files system of records, as identified in Section II.B.

b. DHS/FEMA will provide SBA the data elements identified in the current NEMIS–IA Disaster Assistance Improvement Program (DAIP) Interface Control Document (ICD) (See Appendix A), which includes but is not limited to the following information: Applicant's FEMA Registration ID Number; applicant's personally identifiable information, which includes name, address, social security number, and date of birth; damaged property information; insurance policy data; property occupant data; vehicle registration data; and flood zone and flood insurance data.

c. SBA will conduct the match using the FEMA Disaster ID number, FEMA Registration ID number, Product (Home/Business) and Registration Occupant Social Security number (SSN) to create a New Pre-Application. The records SBA receives are of DHS/FEMA applicants who are referred to SBA for disaster loan assistance. Controls on the DHS/FEMA export of data are in place to ensure that SBA only receives unique and valid referral records.

d. When SBA matches its records to those provided by DHS/FEMA, two types of matches are possible: A full match and a partial match. A full match exists when an SBA record matches a DHS/FEMA record on each of the following data fields: FEMA Disaster ID number, FEMA Registration ID number, Product (Home/Business), and Registration Occupant Social Security Number (SSN). A partial match exists when an SBA record matches a DHS/FEMA record on one or more, but not all of the data fields listed above. If an exact (full) match is found among SBA records for the current imported record, the current record is automatically marked as a duplicate by the system with appropriate comments inserted to indicate the corresponding record that matched. If a partial match is found during the import process, the record is routed for manual examination, investigation, and resolution to determine whether it is truly a duplicate record.

2. DHS/FEMA–SBA Duplication of Benefits Automated Match Process:

a. Both DHS/FEMA and SBA will act as the recipient (*i.e.* matching) agency. SBA will extract and provide to DHS/FEMA data from its Disaster Loans Case Files system of records, as identified in Section II.B., and accessed via the DCMS. DHS/FEMA will match the data SBA provides to records in its Disaster Recovery Assistance Files system of records, as identified in Section II.B., accessed through NEMIS–IA, via the FEMA Registration ID number. SBA will issue a data call to DHS/FEMA requesting that DHS/FEMA return any records for which NEMIS–IA found a match. For each match found, DHS/FEMA sends all of its applicant information that it collects during the registration process to SBA so that SBA may match these records with its registrant data in the DCMS. SBA's DCMS manual process triggers an automated interface to query NEMIS–IA, using the FEMA Registration ID number as the unique identifier.

b. DHS/FEMA will return the following fields for the matching DHS/FEMA record, if any: FEMA Disaster Number; FEMA Registration ID number; applicant and if applicable, co-applicant name; damaged dwelling address, phone number, SSN, damaged property data, insurance policy information, contact address (if different from damaged dwelling address), flood zone and flood insurance data, FEMA Housing Assistance and Other Needs Assistance data, program, award level, eligibility, inspection data, verification of ownership and occupancy, and approval or rejection data. DHS/FEMA will return no result when the FEMA Registration ID number is not matched.

c. For each matching record received from DHS/FEMA, SBA determines whether DHS/FEMA assistance duplicates SBA loan assistance. If SBA loan officers determine that there is a duplication of benefits, the duplicated amount is deducted from the eligible SBA loan amount.

3. DHS/FEMA–SBA Status Update Automated Match Process:

a. DHS/FEMA will act as the recipient (*i.e.* matching) agency. DHS/FEMA will match records from its Disaster Recovery Assistance Files system of records, as identified in Section II.B., to the records extracted and provided by SBA from its Disaster Loans Case Files system of records, as identified in Section II.B. The purpose of this process is to update DHS/FEMA applicant information with the status of SBA loan determinations. The records provided by SBA will be automatically imported into NEMIS–IA to update the status of existing applicant records. The records DHS/FEMA receives from SBA are of DHS/FEMA applicants who were referred to SBA for disaster loan assistance. Controls on the SBA export of data are in place to ensure that DHS/FEMA only receives unique and valid referral records.

b. SBA will provide to DHS/FEMA information and data, including but not limited to the following: Personal information about SBA applicants, including name, damaged dwelling address, and SSN; application data; loss to personal property data; loss mitigation data; SBA loan data; and SBA event data. DHS/FEMA will conduct the match using FEMA Disaster Number and FEMA Registration ID number.

c. Loan data for matched records will be recorded and displayed in NEMIS–IA. Loan data will also be run through NEMIS–IA business rules; potentially duplicative categories of assistance are sent to FEMA's Program Review process for manual evaluation of any duplication of benefits. If FEMA review staff determines that there is a duplication of benefits, the duplicated amount is deducted from the eligible award. FEMA applicants receive a letter that indicates the amount of their eligible award and their ability to appeal.

C. Projected Starting and Completion Dates

This Agreement will take effect 40 days from the date copies of this signed Agreement are sent to both Houses of Congress or 30 days from the date the Computer Matching Notice is published in the **Federal Register**, whichever is later, depending on whether comments are received which would result in a contrary determination (Commencement Date). SBA is the agency that will:

1. Transmit this Agreement to Congress.
2. Notify OMB.
3. Publish the Computer Matching Notice in the **Federal Register**.
4. Address public comments that may result from publication in the **Federal Register**.

Matches under this program will be conducted for every Presidential disaster declaration and will continue for as long as this agreement, including any renewals, remains in effect.

V. Notice Procedures

A. DHS/FEMA Recipients

FEMA Form 009–0–1 ''Application/Registration for Disaster Assistance,''

Form 009–0–3 ''Declaration and Release'' (both part of OMB ICR No. 1660–0002), and various other forms used for financial assistance benefits immediately following a declared disaster, use a Privacy Act statement, *see* 5 U.S.C. 552a(e)(3), to provide notice to applicants regarding the use of their information. The Privacy Act statements provide notice of computer matching or the sharing of their records consistent with this Agreement. The Privacy Act statement is read to call center applicants and is displayed and agreed to by Internet applicants. Also, FEMA Form 009–0–3 requires the applicant's signature in order to receive financial assistance. Additionally, FEMA/DHS gives public notice via its Disaster Assistance Improvement Program Privacy Impact Assessment and in its system of records notice identified in Section II.B.

B. SBA Recipients

SBA Forms 5 ''Disaster Business Loan Application,'' 5C ''Disaster Home Loan Application,'' and the Electronic Loan Application (ELA) include a Privacy Act statement that provides notice that SBA may disclose personal information under a published ''routine use,'' as permitted by law. SBA's published system of records notice, identified in Section II. B), provides notice that a computer match may be performed to share information with another Federal agency in connection with the issuance of a grant, loan or other benefit. In addition, the Privacy Act requires that a copy of each CMA entered into with a recipient agency shall be available upon request to the public.

VI. Verification Procedure

A. DHS/FEMA–SBA Automated Import/Export Process for Initial Registrations

The matching program for the initial contact information for individuals and businesses will be accomplished by mapping applicant data for DHS/FEMA NEMIS–IA fields described earlier to the DCMS application data fields. During the automated import process, a computer match is performed against existing DCMS applications as described in Section IV.B.1.

If the applicant's data does not match an existing pre-application or application in the SBA's DCMS, then the applicant's data will be inserted into DCMS to create a new pre-Application. An SBA application for disaster assistance may be mailed to the registrant.

If the applicant's data does match an existing pre-application or application in SBA's DCMS, it indicates that there may be an existing pre-application/application for the applicant in the DCMS. If there is an exact match, the system will insert the record within the SBA's DCMS but will identify it as a duplicate with appropriate comments inserted to indicate the corresponding record that matched. If there is a partial match, the system will insert the record within the SBA's DCMS but will identify it as a potential duplicate. The record is then further reviewed by SBA employees to determine whether the data reported by the DHS/FEMA applicant is a duplicate of previously submitted registration data. Only one of the applications is kept for processing and the other duplicate pre-applications or applications will not be processed.

B. DHS/FEMA–SBA Duplication of Benefits Automated Match

The matching program is to ensure that recipients of SBA disaster loans have not received duplicative benefits for the same disaster from DHS/FEMA. The matching process begins by matching the DHS/FEMA Registration ID number. If the data matches, specific to the application or approved loan, SBA will then proceed with its manual process to determine whether there is a duplication of benefits. Upon determining that there is duplication of benefits, the dollar values for the benefits issued by DHS/FEMA may reduce the eligible amount of the disaster loan or may cause SBA loan proceeds to be used to repay the grant program in the amount of the duplicated assistance.

DHS/FEMA and SBA are responsible for verifying the submissions of data used during each respective benefit process and for resolving any discrepancies or inconsistencies on an individual basis.

At SBA, the matching program for duplication of benefits will be executed as part of loan processing and prior to each disbursement of an approved SBA disaster loan. Any match indicating that there is a possible duplicate benefit will be further reviewed by an SBA employee to determine whether the DHS/FEMA grant monies reported by the applicant or borrower are correct and matches the data reported by DHS/FEMA. If there is a duplication of benefits, the amount of the SBA disaster loan will be reduced accordingly and the applicant will be provided written notice of the changes by processing a loan modification to reduce the loan amount or, where appropriate, to repay the DHS/FEMA grant program. The notice will provide the applicant with an opportunity to apply for reconsideration of the loan modification within six months of the date of the notice.

C. DHS/FEMA–SBA Status Update Automated Processes

For informational purposes, SBA sends DHS/FEMA loan status updates as they occur and FEMA updates the loan records in NEMIS–IA based on the loan information received.

D. Policies and Procedures Regarding A, B and C Above

Authorized users of both DCMS and DHS/FEMA NEMIS–IA will not make a final decision to reduce or deny benefits of any financial assistance to an applicant or take other adverse final action against such applicant as the result of information produced by this matching program until an employee of the agency taking such action has independently verified such information and provided written notice to the applicant with a statement of the findings and informing the individual of the opportunity to respond or contest, along with the expiration of the time to respond or contest.

VII. Retention of Matched Items

Pursuant to SBA document retention policy, SBA retains applicant records in DCMS loan files, including records for matched items. DHS/FEMA will retain records pursuant to the Retention and Disposal section of DHS/FEMA—008 Disaster Recovery Assistance Files, 78 FR 25282 (Apr. 30, 2013).

VIII. Security Procedures

SBA and DHS/FEMA agree to the following information security procedures:

A. Administrative

The privacy of the subject individuals will be protected by strict adherence to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). SBA and DHS/FEMA agree that data exchange and any records created during the course of this matching program will be maintained and safeguarded by each agency in such a manner as to restrict access to only those individuals, including contractors, who have a legitimate need to see them in order to accomplish the matching program's purpose. Persons with authorized access to the information will be made aware of their responsibilities pursuant to this Agreement.

B. Technical

DHS/FEMA will transmit the data (specified in this Agreement) to SBA via the following process:

SBA will pull application data from DHS/FEMA Disaster Assistance Center (DAC) via a web services based Simple Object Access Protocol (SOAP), Extensible Markup Language (XML)/ Hypertext Transfer Protocol Secure (HTTPS) request. The data will be used to create applications inside the Disaster Credit Management System. For each record, a National Information Exchange Model (NIEM)-compliant response will be sent back to FEMA DAC indicating success or failure for the transfer of data. The SBA/DCMS to DHS/FEMA DAC export of referral data (specified in this Agreement) will occur via a web services-based SOAP, XML/HTTPS request.

The DHS/FEMA Duplication of Benefits Interface will be initiated from the DCMS to the DHS/FEMA NEMIS–IA through a secured Virtual Private Network tunnel, open only to SBA domain Internet Protocol addresses. The results of the query are returned to the DCMS in real-time and populated in the DCMS for delegated SBA staff to use in the determination of duplication of benefits.

C. Physical

SBA and DHS/FEMA agree to maintain all automated matching records in a secured computer environment that includes the use of authorized access codes (passwords) to restrict access. Those records will be maintained under conditions that restrict access to persons who need them in connection with official duties related to the matching process and grant and loan making processes.

IX. Records Usage, Duplication and Redisclosure Restrictions

SBA and DHS/FEMA agree to the following restrictions on use, duplication, and disclosure of information furnished by the other agency.

A. Records obtained for this matching program or created by the match will not be disclosed outside the agency except as may be essential to conduct the matching program, or as may be required by law. Each agency will obtain the written permission of the other agency before making such disclosure. *See* DHS/FEMA and SBA routine uses provided in the systems of records notices identified in Section II.B.

B. Records obtained for this matching program or created by the match will not be disseminated within the agency except on a need-to-know basis, nor will they be used for any purpose other than that expressly described in this Agreement.

C. Data or information exchanged will not be duplicated unless essential to the conduct of the matching program. All stipulations in this Agreement will apply to any duplication.

D. If required to disclose these records to a state or local agency or to a government contractor in order to accomplish the matching program's purpose, each agency will obtain the written agreement of that entity to abide by the terms of this Agreement.

E. Each agency will keep an accounting of disclosure of an individual's record as required by the Privacy Act (5 U.S.C. 552a(c)) and will make the accounting available upon request by the individual or other agency.

X. Records Accuracy Assessments

DHS/FEMA and SBA attest that the quality of the specific records to be used in this matching program is assessed to be at least 99% accurate. The possibility of any erroneous match is extremely small.

In order to apply for DHS/FEMA assistance online via the DAC portal, an applicant's name, address, SSN, and date of birth are sent to a commercial database provider to perform identity verification. The identity verification ensures that a person exists with the provided credentials. In the rare instances where the applicant's identity is not verified online or the applicant chooses, the applicants must call one of the DHS/FEMA call centers to complete the registrations. The identity verification process is performed again.

In order to apply for SBA's Disaster Loan Assistance online via SBA's Electronic Loan Application (ELA) an applicant's name, address, SSN, and date of birth and other information is sent to a commercial database provider to perform identity verification. The identity verification confirms that a person exists with the provided credentials. In the rare instances where the online applicant's identity cannot be verified electronically or if the applicant chooses, the applicant must call SBA's Customer Service Center to complete the online application. Once an application (electronic or paper) is completed and submitted, the information is transmitted to the DCMS system, where it is reviewed and processed by loan officers, who also verify each applicant's identity.

XI. Comptroller General Access

The parties authorize the Comptroller General of the United States, upon request, to have access to all SBA and DHS/FEMA records necessary to monitor or verify compliance with this matching agreement. This matching agreement also authorizes the Comptroller General to inspect any records used in the matching process that are covered by this matching agreement pursuant to 31 U.S.C. 717 and 5 U.S.C. 552a(b)(10).

XII. Duration of Agreement

The Agreement may be renewed, terminated or modified as follows:

A. Renewal or Termination

This Agreement will become effective in accordance with the terms set forth in Section IV.C and will remain in effect for 18 months from the commencement date. At the end of this period, this Agreement may be renewed for a period of up to one additional year if the Data Integrity Board of each agency determines within three months before the expiration date of this Agreement that the program has been conducted in accordance with this Agreement and will continue to be conducted without change. Either agency not wishing to renew this Agreement should notify the other in writing of its intention not to renew at least three months before the expiration date of this Agreement. Either agency wishing to terminate this Agreement before its expiration date should notify the other in writing of its wish to terminate and the desired date of termination.

B. Modification of the Agreement

This Agreement may be modified at any time in writing if the written modification conforms to the requirements of the Privacy Act and receives approval by the participant agency Data Integrity Boards.

XIII. Reimbursement of Matching Costs

SBA and DHS/FEMA will bear their own costs for this program.

XIV. Data Integrity Board Review/ Approval

SBA and DHS/FEMA's Data Integrity Boards will review and approve this Agreement prior to the implementation of this matching program. Disapproval by either Data Integrity Board may be appealed in accordance with the provisions of the Computer Matching and Privacy Protection Act of 1988, as amended. Further, the Data Integrity Boards will perform an annual review of this matching program. SBA and DHS/ FEMA agree to notify the Chairs of each Data Integrity Board of any changes to or termination of this Agreement.

XV. Points of Contacts and Approvals

For general information, please contact: Eric M. Leckey (202–212–5100),

Privacy Officer, Federal Emergency Management Agency, Department of Homeland Security; and Jeffrey Jackson (202–205–6595), Chief Information Security Officer, Office of the Chief Information Officer, Small Business Administration.

XVI. Signatures

The authorizing officials whose signatures appear below have committed their respective agencies to the terms of this Agreement.

Small Business Administration.

Dated: September 14, 2015.

James Rivera,

Associate Administrator for Disaster Assistance, U.S. Small Business Administration.

Dated: September 9, 2015.

Matthew Varilek,

Chief Operating Officer, Data Integrity Board Chair, U.S. Small Business Administration.

U.S. Department of Homeland Security Federal Emergency Management Agency.

Dated: August 4, 2015.

Keith Turi,

Acting Deputy Assistant Administrator, Recovery Directorate, Federal Emergency Management Agency, U.S. Department of Homeland Security.

Dated: August 19, 2015.

Karen L. Neuman,

Chief Privacy Officer Data Integrity Board Chair, U.S. Department of Homeland Security.

[FR Doc. 2015–24477 Filed 9–24–15; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14472 and #14473]

Kentucky Disaster #KY–00060

AGENCY: U.S. Small Business Administration.

ACTION: Notice

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of KENTUCKY dated 09/21/2015.

Incident: Apartment Complex Fire.

Incident Period: 09/01/2015.

Effective Date: 09/21/2015.

Physical Loan Application Deadline Date: 11/20/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 06/21/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Perry.

Contiguous Counties:

Kentucky: Breathitt, Clay, Harlan, Knott, Leslie, Letcher, Owsley.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.750
Homeowners Without Credit Available Elsewhere	1.875
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14472 5 and for economic injury is 14473 0.

The State which received an EIDL Declaration # is Kentucky.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 21, 2015.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2015–24502 Filed 9–24–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 03/03–0246 issued to BIA Digital Partners SBIC II LP, said license is hereby declared null and void.

United States Small Business Administration.

Dated: September 21, 2015.

Javier E. Saade,

Associate Administrator for Investment and Innovation.

[FR Doc. 2015–24367 Filed 9–24–15; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Windup Order of the United States District Court for the Southern District of Florida, entered July 1, 2015, the United States Small Business Administration hereby revokes the license of Crossbow Venture Partners, L.P., a Delaware Limited Partnership, to function as a small business investment company under the Small Business Investment Company License No. 04740281 issued to Crossbow Venture Partners, L.P., on June 29, 2000, and said license is hereby declared null and void as of July 1, 2015.

United States Small Business Administration.

Dated: September 21, 2015.

Javier E. Saade,

Associate Administrator for Investment.

[FR Doc. 2015–24368 Filed 9–24–15; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

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

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: Boots to Business is an entrepreneurial education initiative offered by the U.S. Small Business Administration (SBA) as a career track within the Department of Defense's revised Training Assistance Program called Transition Goals, Plans, Success (Transition GPS). The curriculum provides valuable assistance to transitioning service members exploring self-employment opportunities by leading them through the key steps for evaluating business concepts and the foundational knowledge required for developing a business plan. Participants are also introduced to SBA resources available to help access startup capital and additional technical assistance.

The Boots to Business Post Course surveys will be online, voluntary surveys that enable the Boots to Business program office to capture data related but not limited to the effectiveness of all Boots to Business courses, quality of the instructors and materials, and number of small businesses created as a result of participating in Boots to Business. Boots to Business will send an initial survey via email to all course participants immediately following course completion to gain insight on the quality of the program. Every 6 months following course completion, a follow up survey will be sent to all participants to measure participant outcomes as we link course effectiveness to the creation of veteran owned small businesses. Participants will be surveyed twice a year for 5 years following course completion to allow time for business creation.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collections

Title: Boots to Business Post Course Surveys.

Description of Respondents: Service members, veterans and spouses.

Form Numbers: N/A.

Estimated Annual Respondents: 15,000.

Estimated Annual Responses: 30,000.

Estimated Annual Hour Burden: 2,000.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015–24366 Filed 9–24–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14417 and #14418]

West Virginia Disaster Number WV–00041

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA–4236–DR), dated 08/07/2015.

Incident: Severe Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 07/10/2015 through 07/14/2015.

Effective Date: 09/17/2015.

Physical Loan Application Deadline Date: 10/06/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 05/07/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of WEST VIRGINIA, dated 08/07/2015, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Jackson.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–24498 Filed 9–24–15; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2015–0054]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov*, referencing Docket ID Number [SSA–2015–0054].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than November 24, 2015. Individuals can obtain copies of

the collection instruments by writing to the above email address.

1. *Pre-1957 Military Service Federal Benefit Questionnaire—20 CFR 404.1301–404.1371—0960–0120.* SSA may grant gratuitous military wage credits for active military or naval service (under certain conditions) during the period September 16, 1940 through December 31, 1956, if no other Federal agency (other than the Veterans Administration) credited the service for benefit eligibility or computation purposes. We use Form SSA–2512 to collect specific information about other Federal, military, or civilian benefits the wage earner may receive when the applicant indicates both pre-1957 military service and the receipt of a Federal benefit. SSA uses the data in the claims adjudication process to grant gratuitous military wage credits when applicable, and to solicit sufficient information to determine eligibility. Respondents are applicants for Social Security benefits on a record where the wage earner claims pre-1957 military service.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–2512	5,000	1	10	833

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than October 26, 2015. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. *Certificate of Support—20 CFR 404.370, 404.750, 404.408a—0960–0001.* A parent of a deceased, fully insured worker may be entitled to Social Security Old-Age, Survivors, and Disability Insurance (OASDI) benefits based on the earnings record of the deceased worker under certain conditions. One of the conditions is the parent must have received at least one-half support from the deceased worker. The one-half support requirement also applies to a spousal applicant in determining whether OASDI benefits are subject to Government Pension Offset (GPO). SSA uses the information from Form SSA–760–F4 to determine if the parent of a deceased worker or a spouse applicant meets the one-half support requirement. Respondents are (1) parents of deceased workers and (2) spouses who may meet the GPO exception.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–760–F4	18,000	1	15	4,500

2. *Vocational Rehabilitation Provider Claim—20 CFR 404.2108(b), 404.2117(c)(1)&(2), 404.2101(b)&(c), 404.2121(a), 416.2208(b), 416.2217(c)(1) & (2), 416.2201(b)&(c), 416.2221(a)—0960–0310.* State vocational rehabilitation (VR) agencies submit Form SSA–199 to SSA to obtain reimbursement of costs incurred for providing VR services. SSA requires state VR agencies to submit reimbursement claims for the following categories: (1) Claiming reimbursement for VR services provided; (2) certifying adherence to cost containment policies and procedures; and (3) preparing causality statements. The respondents mail the paper copy of the SSA–199 to SSA for consideration and approval of the claim for reimbursement of costs incurred for SSA beneficiaries. For claims certifying adherence to cost containment policies and procedures, or for preparing causality statements, State VR agencies submit written requests as stipulated in SSA's regulations within the Code of Federal Regulations. SSA uses the information on the SSA–199, along with the written documentation, to determine whether, and how much, to pay State VR agencies under SSA's VR program. Respondents are Sate VR agencies offering vocational and employment services to Social Security and Supplemental Security Income (SSI) recipients.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion (type of response as indicated below)	Number of respondents	Frequency of response	(Number of responses)	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–199 CFR 404.2108 & 416.2208	80	160	(12,800)	23	4,907
CFR 404.2117 & 416.2217 Written requests	80	1	(80)	60	80
CFR 404.2121 & 416.2221 Written requests	80	2.5	(200)	100	333
Totals	80		(13,080)		5,320

3. *Integrated Registration Services (IRES) System—20 CFR 401.45—0960–0626.* The IRES System verifies the identity of individuals, businesses, organizations, entities, and government agencies seeking to use SSA's eService Internet and telephone applications. Individuals need this verification to electronically request and exchange

business data with SSA. Requestors provide SSA with the information needed to establish their identities. Once SSA verifies identity, the IRES system issues the requestor a user identification number and a password to conduct business with SSA. Respondents are employers and third party submitters of wage data business entities providing taxpayer identification information, and data exchange partners conducting business in support of SSA programs.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
IRES Internet Registrations	662,102	1	5	55,175
IRES Internet Requestors	9,209,489	1	2	306,983
IRES CS (CSA) Registrations	23,562	1	11	4,320
Totals	9,895,153			366,478

4. *Site Review Questionnaire for Volume and Fee-for-Service Payees and Beneficiary Interview Form—20 CFR 404.2035, 404.2065, 416.665, 416.701, and 416.708—0960–0633.* SSA asks organizational representative payees to complete Form SSA–637, the Site Review Questionnaire for Volume and Fee-for-Service Payees, to provide information on how they carry out their responsibilities, including how they manage beneficiary funds. SSA then obtains information from the beneficiaries these organizations represent via Form SSA–639, Beneficiary Interview Form, to corroborate the payees' statements. Due to the sensitivity of the information, SSA employees always complete the forms based on the answers respondents give during the interview. The respondents are individuals; State and local governments; non-profit and for-profit organizations serving as representative payees; and the beneficiaries they serve.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–637	1,999	1	120	3,998
SSA–639	8,293	1	10	1,382
Totals	10,292			5,380

5. *Request for Reinstatement (Title II)—20 CFR 404.1592b—404.1592f—0960–0742.* SSA allows certain previously entitled disability beneficiaries to request expedited reinstatement (EXR) of benefits under title II of the Social Security Act when their medical condition no longer permits them to perform substantial gainful activity. SSA uses Form SSA–371 to obtain: (1) A signed statement from individuals requesting an EXR of their Title II disability benefits, and (2) proof the requestors meet the EXR requirements. SSA maintains the form in the disability folder of the applicant to demonstrate the requestors' awareness of the EXR requirements, and their choice to request EXR. Respondents are applicants for EXR of Title II disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–371	10,000	1	2	333

6. *Important Information About Your Appeal, Waiver Rights, and Repayment Options—20 CFR 404.502–521—0960–0779.* When SSA accidentally overpays beneficiaries, the agency informs them of the following rights: (1) The right to reconsideration of the overpayment determination; (2) the right to request a waiver of recovery and the automatic scheduling of a personal conference if SSA cannot approve a request for waiver; and (3) the availability of a different rate of withholding when SSA proposes the full withholding rate. SSA uses Form SSA–3105, Important Information About Your Appeal, Waiver Rights, and Repayment Options, to explain these rights to overpaid individuals and allow them to notify SSA of their decision(s) regarding these rights. The respondents are overpaid claimants requesting a waiver of recovery for the overpayment; reconsideration of the fact of the overpayment; or a lesser rate of withholding of the overpayment.

Type of Request: Revision of an OMB-approved information collection.

Modality of collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–3105	80,000	1	15	20,000

Dated: Septebmer 21, 2015.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2015–24302 Filed 9–24–15; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 9289]

Culturally Significant Objects Imported for Exhibition Determinations: ''Delacroix's Influence: The Rise of Modern Art From Cézanne to van Gogh'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Delacroix's Influence: The Rise of Modern Art From Cézanne to van Gogh,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Minneapolis Institute of Art, Minneapolis, Minnesota, from on or about October 18, 2015, until on or about January 10, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: September 22, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–24613 Filed 9–24–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 9287]

Culturally Significant Objects Imported for Exhibition Determinations: ''Sōtatsu: Making Waves'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Sōtatsu: Making Waves,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Arthur M. Sackler Gallery, Smithsonian Institution, Washington, District of Columbia, from on or about October 24, 2015, until on or about January 31, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: September 17, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–24460 Filed 9–24–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 9288]

Culturally Significant Objects Imported for Exhibition Determinations: ''Frank Stella: A Retrospective'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Frank Stella: A Retrospective,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Whitney Museum of American Art, New York, New York, from on or about October 30, 2015, until on or about February 7, 2016, at the Modern Art Museum of Fort Worth, Fort Worth, Texas, from on or about April 17, 2016, until on or about September 4, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: September 21, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–24457 Filed 9–24–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0075; Notice 1]

PACCAR, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: PACCAR, Inc. (PACCAR), has determined that certain Peterbilt and Kenworth trucks do not fully comply with paragraph S9.3.2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective devices, and Associated Equipment.* PACCAR filed an appropriate report dated June 12, 2015 pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* on June 11, 2015 and revised that report on June 12, 2015.

DATES: The closing date for comments on the petition is October 26, 2015.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and submitted by any of the following methods:

- Mail: Send comments by mail addressed to: 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 Deliver: Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- Electronically: Submit comments electronically by: Logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), PACCAR submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of PACCAR's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Trucks Involved: Affected are approximately 197 MY 2015–2016 Kenworth K270 and K370 manufactured between November 11, 2014 and March 18, 2015 and MY 2015–2016 Peterbilt 220 manufactured between November 10, 2014 and March 18, 2015.

III. Noncompliance: PACCAR explains that due to a programming error in the cab controller software in the subject trucks, the turn signal pilot indicator located on the instrument panel, flashes twice as fast as the turn signals flash and therefore do not meet the requirements of paragraph S9.3.2 of FMVSS No. 108.

IV. Rule Text: Paragraph S9.3.2 of FMVSS No. 108 requires in pertinent part:

S9.3.2 The indicator must consist of one or more lights flashing at the same frequency as the turn signal lamps.

V. Summary of PACCAR's Position: PACCAR stated its belief that the subject noncompliance is inconsequential to motor vehicle safety. PACCAR states that the purpose of the turn signal pilot indicator is to assure that the vehicle operator can determine whether the turn signal system is activated. Thus, PACCAR believes that the pilot indicators in the subject trucks fully accomplishes that purpose; *i.e.*, they flash when the turn signal is activated, and they cease flashing when the turn signal is deactivated (either manually or automatically).

PACCAR reviewed the agency's decisions on petitions for inconsequentiality in connection with various noncompliances with turn signal requirements. While PACCAR did not find any prior decisions that are similar to this noncompliance, PACCAR believes that NHTSA has granted previous petitions in connection with turn signal noncompliances that carried potentially greater safety risks.

PACCAR is not aware of any crashes or injuries associated with the noncompliance and it has not received any consumer complaints or warranty claims related to this issue.

PACCAR additionally informed NHTSA that after the noncompliance was discovered, all production of the noncompliant trucks in PACCAR's possession was put on hold until the software error can be corrected.

In summation, PACCAR believes that the described noncompliance of the subject trucks is inconsequential to motor vehicle safety, and that its petition, to exempt PACCAR from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject trucks that PACCAR no longer controlled at the time it determined that the noncompliance

existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant trucks under their control after PACCAR notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8).

Jeffrey Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–24454 Filed 9–24–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety

Administration Hazardous Materials: Actions on Special Permit Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline And Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (October to October 2014). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger—carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on September 8, 2015.

Donald Burger,

Chief, Special Permits and Approvals Branch.

S.P. No.	Applicant	Regulation(s)	Nature of Special Permit Thereof
12092–M	KMR Industries, LLC, Columbia, MD.	49 CFR 180.209	To modify the special permit to authorize DOT specification 4BW240 or 4BW260 cylinder closed by plugs or flanges to authorize up to 1000 pounds water capacity.
14791–M	Heliqwest International, Inc., Montrose, CO.	49 CFR 172.101 HMT Column (9B), 172.200, 172.300, 172.400.	To modify the special permit to remove the requirement for having two pilots aboard any multi-engine aircraft carrying explosives.
15793–M	Northern Air Cargo Inc., Anchorage, AK.	49 CFR 172.101 Column (9B)	To modify the special permit by adding the following in paragraph 7(g)(3) ''or alternatively—FAA-assigned Principal Operations or Maintenance Program''.
16427–M	Washington Department of Transportation Ferries Division, Seattle, WA.	49 CFR 172.101 Hazardous Materials Table Column (10A), stowage categories ''01'', ''02'', ''04'', and ''05''.	To reissue the special permit that was originally issued on an emergency basis with a two year renewal.
13997–M	Maritime Helicopters, Inc., Homer, AK.	49 CFR 172.101(9b), 172.204(c)(3), 173.27(b)(2), 175.30(a)(1), 172.200, 172.300, 172.400, 175.75, 172.301(c), 172.302(c), and Part 178.	To modify the special permit to authorize additional hazardous materials.
16170–M	Hydro Stat LLC, Holly, MI	49 CFR 180.213(b)(2)	To release the special permit that was originally issued on an emergency basis with a two year renewal.
15547–M	Southern California Edison (SCE), Chino, CA.	49 CFR 172.101 Column (9B), 172.204(c)(3), 173.27(b)(2) and 175.30(a)(1) in that the explosives are forbidden by cargo aircraft.	To modify the special permit by updating certain information and adding additional hazardous materials.
16346–N	FIBA Technologies, Inc., Littleton, MA.	49 CFR 173.301 (a)(1)	To authorize the manufacture, mark, sale and use of a non-DOT specification hoop-wrapped carbon fiber reinforced composite gas cylinder with seamless steel liner that meets the ISO Standard 11515, except as specified herein, for the transportation in commerce of certain hazardous materials. (modes 1, 2, 3)
16391–N	Halliburton Energy Services, Inc., Carrollton, TX.	49 CFR 173.201, 173.301(f), 173.302, 173.304a.	To authorize the manufacture, mark, sale and use of non-DOT specification cylinders used in oil well sampling. (modes 1, 2, 3, 4)
16373–N	Stainless Tank & Equipment Co.,LLC, Beloit, WI.	49 CFR 178.345–2, 178.346–2, 178.347–2, 178.348–2.	To authorize the manufacture, mark, sale and use of non-DOT specification cargo tank motor vehicles confirming in part to Specification DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles. (mode 1)
16432–N	Panasonic Corporation of North America, Newark, NJ.	49 CFR Subparts C through H of Part 172.	To authorize the manufacture, mark, sale and use of specially-designed combination packagings for damaged or defective lithium ion batteries that originally met the requirements under 49 CFR 173.185(c). (modes 1, 2)
16318–N	Technical Chemical Company, Cleburne, TX.	49 CFR 173.167, 173.304(d)	To authorize the manufacture, mark, sale and use of a non-DOT specification packaging conforming in part with specification DOT 2Q. (modes 1, 2, 3, 4, 5)

S.P. No.	Applicant	Regulation(s)	Nature of Special Permit Thereof
16492–N	Construction Helicopters, Inc., Howell, MI.	49 CFR 172.101 Hazardous Materials Table Column (9B), Subpart C of Part 172, 172.301(c), 172.302(c), 173.27(b)(2), 175.30, Part 178.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load 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)
16475–N	Volga-Dnepr Airlines LLC, Ulyanovsk, Russian Federation.	49 CFR 172.101 Hazardous Materials Table Column (9B), 173.27, 175.30(a)(1), Columns 12 and 13 of Table 3–1 of the ICAO TI.	To authorize the transportation in commerce of certain hazardous materials forbidden aboard cargo aircraft only. (mode 4)
16450–N	U.S. Department of Energy, Washington, DC.	49 CFR 173.242	To authorize the one-way transportation in commerce of stainless steel encased lithium hydride shields in an alternative packaging for disposal. (mode 1)
16509–M	Kalitta Air, LLC, Ypsilanti, MI	49 CFR 172.101 Table Column (9B), 172.204 (c)(3), and 175.30(a)(1).	To modify the special permit by adding an additional Class 1 material. (mode 4)
16547–N	Gateway Pyrotechnic Productions, LLC, dba Gateway Fireworks Displays St. Louis, MO.	49 CFR 172.300, 172.400, 172.301(c), 173.56.	To authorize the one-time, one-way transportation of unapproved fireworks from Garden City, GA to storage in Illiopolis, IL. (mode 1)
16553–N	Kalitta Air, LLC, Ypsilanti, MI	49 CFR 172.101 Column 9(b), 173.27(b)(2) and (3), and 175.30(a)(1).	To authorize the transportation in commerce of certain forbidden hazardous materials aboard cargo aircraft. (mode 4)

DENIED	
14779–M	Request by Corrosion Companies Inc. Washougal, WA August 24, 2015. To modify the special permit to increase the tank capacity to 8500 gallons.
10915–M	Request by Luxfer Gas Cylinders Riverside, CA August 5, 2015. To modify the special permit to allow cylinders of pressurized oxygen to exceed 3000 psig at 21°C (70°F).
16393–N	Request by Airopack Technology Group BV Waalwijk. The Netherlands, August 4, 2015. To authorize the manufacture, mark, sale and use of non-DOT specification plastic packagings, conforming in part with DOT Specification 2S, charged with compressed air for the sole purpose of expelling a nonflammable, non-toxic, and non-corrosive (non-hazardous) liquid, paste, powder, or gel, which are not subject to the Hazardous Materials Regulations (HMR), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO TI), or the International Maritime Dangerous Goods (IMDG) Code.
16364–N	Request by ExodusDirect LLC Des Moines, IA August 7, 2015. To authorize the manufacture, mark, sale and use of specially designed combination packagings for transportation in commerce of certain materials without hazard labels of placards, with quantity limits not exceeding one liter for liquids or 2.85 kilograms for solids.

[FR Doc. 2015–23369 Filed 9–24–15; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Delayed Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of 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.

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 precedentsetting 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 September 3, 2015.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
15744–M	Praxair Distribution, Inc., Danbury, CT	4	09–30–2015
15097–M	US Consumer Product Safety Commission, Denver, CO	4	10–31–2015
14149–M	Digital Wave Corporation, Centennial, CO	4	10–31–2015
14206–M	Digital Wave Corporation's, Centennial, CO	4	10–31–2015
15071–M	Orbital ATK, Inc., Dulles, VA	4	09–30–2015
15767–N	Union Pacific Railroad Company, Omaha, NE	4	09–30–2015
16212–N	Entegris, Inc., Billerica, MA	4	10–31–2015
16220–N	Americase, Wexahache, 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	10–31–2015
16366–N	Department of Defense, Scott AFB, IL	4	09–30–2015
16395–N	Chandler Instruments Company, LLC, Broken Arrow, OK	4	09–30–2015
16396–N	Eniware LLC, Washington, DC	4	10–15–2015
16356–N	United Launch Alliance, LLC, Centennial, CO	4	09–30–2015
16371–N	Volkswagen Group of America (VWGoA), Herndon, VA	4	09–30–2015
16414–N	Air Products and Chemicals, Inc., Allentown,PA	4	10–30–2015
16001–N	VELTEK ASSOCIATES, INC., Malvern, PA	3	09–30–2015
16279–P	Twin Enterprise International, LLC, Chandler, AZ	4	09–30–2015
12412–P	TerraChem Inc., Fellows, CA	4	09–30–2015
11860–R	GATX Corporation, Chicago, IL	4	10–31–2015
8009–R	NK Co., Ltd., Busan City, KR	4	09–30–2015

[FR Doc. 2015–23368 Filed 9–24–15; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Application for Modification of Special Permit

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of application for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before October 13, 2015.

ADDRESSES: Send comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 8, 2015.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of permit thereof
7607–M		Thermo Fisher Scientific (Former Grantee Thermo Environmental Instruments) Franklin, MA.	49 CFR 172.101; 175.3; 172.306	To modify the special permit to authorize a new non-specification cylinder design.
12562–M		Taeyang Industrial Company Ltd., Chung Nam.	49 CFR 173.304(d)(3)(ii)	To modify the special permit to authorize Division 2.1 hazardous materials and to add an additional inside container design.
15146–M		ITW Tech Spray LLC, Kennesaw, GA.	49 CFR 173.304(d)	To modify the special permit to authorize two additional nonspecification inside metal containers similar to a DOT specification 2Q.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of permit thereof
15384–M		TEA Technologies, Inc., Amarillo, TX.	49 CFR 180.509	To modify the special permit to authorize retesting tubes once every ten years and the dew point of the gases must be maintained at a temperature no greater than −52F.
15537–M		Alaska Pacific Powder Company, Watkins, CO.	49 CFR 172.101 Column (9B)	To modify the special permit to authorize transportation of ammonium nitrite by cargo aircraft in quantities greater than that authorized in the regulation.
16035–M		LCF Systems, Inc., Scottsdale, AZ.	49 CFR 173.301a, 173.302a, and 173.304a.	To reissue the special permit that was originally issued on an emergency basis with a two year renewal.
16195–M		Jaguar Instruments, Inc., Houston, TX.	49 CFR 173.302a and 173.304a	To modify the special permit to authorize manufacturing nonspecification cylinders similar to a DOT 3E cylinder by swaging and spinning.
16239–M		Trinity Containers, LLC, Dallas, TX.	49 CFR 171.7	To reissue the special permit that was originally issued on an emergency basis with a two year renewal.

[FR Doc. 2015–23364 Filed 9–24–15; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Global Positioning System Adjacent Band Compatibility Assessment Workshop IV

AGENCY: Office of the Assistant Secretary for Research and Technology (OST–R), Department of Transportation.

ACTION: Notice of meeting.

SUMMARY: The purpose of this notice is to inform the public that the U.S. Department of Transportation will host a fourth workshop on the Global Positioning System (GPS) Adjacent Band Compatibility Assessment effort. Notice of the availability of the Draft Test Plan for the U.S. Department of Transportation GPS Adjacent Band Compatibility Assessment effort was issued in the **Federal Register** on September 9, 2015 *https://www.federalregister.gov/articles/2015/09/09/2015-22634/draft-test-plan-to-obtain-interference-tolerance-masks-for-gnss-receivers-in-the-11-radiofrequency.* The public comment period closes on October 9, 2015.

The purpose of this workshop is to provide an opportunity to discuss the draft test plan and to address questions prior to the close of the public comment period. Please note that we will not be accepting written comments at this meeting. If you would like to file a comment during the comment period, please follow the directions contained in the September 9th Notice.This workshop is open to the general public by registration only. For those who would like to attend the workshop, we request that you register no later than September 25, 2015. Please use the following link to register: *https://volpecenterevents.webex.com/volpecenterevents/onstage/g.php?d=662541655&t=a.*

You must include:

- Name
- Organization
- Telephone number
- Mailing and email addresses
- Attendance method (WebEx or on site)
- Country of citizenship

The U.S. Department of Transportation is committed to providing equal access to this workshop for all participants. If you need alternative formats or services because of a disability, please contact Stephen Mackey (contact information listed below) with your request by close of business September 25, 2015.

DATES: *Date/Time:* October 2, 2015 10:00 a.m.–4:00 p.m. (Eastern Daylight Time).

Location: RTCA NBAA/Colson Room, 1150 18th ST NW., Suite 910, Washington, DC 20036.

Several days before the workshop, an email containing the agenda, dial-in, and WebEx information will be provided to registrants.

FOR FURTHER INFORMATION CONTACT: Stephen M. Mackey, U.S. Department of Transportation, John A. Volpe National Transportation Systems Center, V–345, 55 Broadway, Cambridge, MA 02142, *Stephen.Mackey@dot.gov,* 617–494–2753.

Issued in Washington, DC, on September 17, 2015.

Gregory D. Winfree,

Assistant Secretary for Research and Technology.

[FR Doc. 2015–24415 Filed 9–24–15; 8:45 am]

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FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 262, et al.
Hazardous Waste Generator Improve; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 268, 270, 273, and 279

[EPA–HQ–RCRA–2012–0121; FRL 9924–07–OSWER]

RIN 2050–AG70

Hazardous Waste Generator Improvements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to revise the hazardous waste generator regulations under the Resource Conservation and Recovery Act (RCRA) to improve compliance and thereby enhance protection of human health and the environment. Specifically, EPA proposes to revise certain components of the hazardous waste generator regulatory program; address gaps in the regulations; provide greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; reorganize the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; and make technical corrections and conforming changes to address inadvertent errors, remove obsolete references to programs that no longer exist, and improve the readability of the regulations.

These proposed changes are both a result of EPA's experience in implementing and evaluating the hazardous waste generator program over the last 30 years, as well as a response to concerns and issues identified by the states and regulated community.

DATES: Comments must be received on or before November 24, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2012–0121, to the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Jim O'Leary, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 308–8827, (*oleary.jim@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (703) 605–0761, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include between 353,000 and 543,000 industrial entities that generate hazardous waste regulated under the RCRA Subtitle C regulations. Of this universe, between 293,000 and 470,000 are conditionally exempt small quantity generators (CESQGs) that will only be affected if they choose to take advantage of two voluntary programs being proposed. Entities potentially affected by this proposed rule include practically every industrial sector, including printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coatings, iron and steelmaking, secondary smelting and refining, metal manufacturing, electroplating, circuit board manufacturing, and automobile manufacturing, among other industries.

As discussed in section XVIII, the Regulatory Impact Analysis (RIA) for this action, available in the docket for this action, estimates the future annualized cost to industry to comply with the proposed requirements is between $6.2 and $17.4 million (at a 7% discount rate). The annualized benefits for entities opting to take advantage of two voluntary programs in the proposed rule (*e.g.,* consolidation of CESQG waste by large quantity generators (LQGs) under the same ownership, and generators who change regulatory status episodically) is between $6.2 and $12.2 million (at a 7% discount rate) resulting in a net annualized cost of between $0.1 million and $5.2 million.

The proposed Hazardous Waste Generator Improvements Rule is expected to yield a variety of benefits as generators change several of their waste management practices to comply with the proposed regulations. These benefits reflect the rule's focus on enhancing protection of human health and the environment while improving the efficiency of the RCRA hazardous waste generator standards. Ideally, the Agency would prefer to quantify and monetize the rule's total benefits. However, only some categories of benefits are quantifiable. For the majority of benefits, sufficient data are not available to support a detailed quantitative analysis. For example, the added flexibility from allowing a large quantity generator accumulating ignitable or reactive hazardous waste to obtain a waiver from the local fire department for 50-foot property line requirement at 40 CFR 265.176 (provided other safety requirements are met) is difficult to quantify. In addition, quantifying the benefits associated with emergency response due to changes in container labeling would require data on the annual number of emergencies at generator sites, the current risks associated with these incidents, the extent to which more detailed labeling would affect the procedures of emergency responders, and the reduction in risk associated with these changes. Detailed data on these items are not readily available. In this and in similar cases, the benefits are described qualitatively.

B. Incorporation by Reference (IBR)

This action is not proposing to add any new IBR material, however, we are proposing to reorganize one of the existing requirements containing IBR material to make the regulation easier for the reader to follow. We are proposing to copy § 265.201(g)(2) to § 262.16(b)(3)(vii)(B). To accommodate this change, we are proposing to update § 260.11(d)(1), which is the IBR reference section for these regulations, by adding a reference to § 262.16. The materials for which we are seeking incorporation by reference are for the NFPA 30 standard, Flammable and Combustible Liquids Code, and are available for inspection at the ANSI Incorporation by Reference (IBR) Portal, *http://ibr.ansi.org.* Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.)

II. Statutory Authority

These regulations are proposed under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as ''RCRA.''

III. What is the intent of this proposal?

EPA is proposing to revise the hazardous waste generator regulations under RCRA to improve compliance by the regulated community and support the efficient implementation of the hazardous waste generator regulations by EPA and the states and, thereby enhance protection of human health and the environment. Specifically, EPA proposes to (1) revise certain components of the hazardous waste generator regulatory program, primarily at 40 CFR 261.5 and 40 CFR part 262; (2) address identified gaps in the regulations; (3) provide greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; (4) reorganize the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; and (5) make technical corrections and conforming changes to address inadvertent errors, remove obsolete programs, and improve the readability of the regulations.

These proposed changes are a result of EPA's experience in implementing and evaluating the hazardous waste generator program over the last 30 years, as well as a response to concerns and issues identified by the states and regulated community.

The hazardous waste generator regulatory program was originally promulgated in 1980. Over the course of the last 30 plus years, the Agency, through experience with implementing the program, and in various meetings, correspondence, and discussions with the states and the regulated community, has become aware of ambiguities, inconsistencies, gaps, and a lack of flexibility in the regulations, which, if revised, could result in a program that is more effective in protecting human health and the environment. Many of these problems were identified in a 2004 program evaluation of the hazardous waste generator program conducted by EPA.[1] In 2013, a separate EPA program evaluation addressing hazardous waste determinations also identified a number of problems related to generators being able to make a proper hazardous waste determination.[2] Several of the proposed provisions are also responsive to the 2014 Notice of Data Availability that EPA issued on the retail sector asking for comment on hazardous waste management practices in that sector and on challenges they face in complying with RCRA (79 FR 8926, February 14, 2014).

Many of the changes in this proposal are revisions to existing rules designed to improve generator compliance without any increase in burden. For example, the Agency has inconsistently addressed the situation where a generator generates both acute and non-acute hazardous waste in a calendar month. This inconsistency has resulted in uncertainty for the generator regarding what generator category, and thus which regulatory provisions, would apply during that calendar month. This proposal addresses the problem. The Agency is also proposing to replace the phrase ''conditionally exempt small quantity generator'' (CESQG) with the phrase ''very small quantity generator'' (VSQG) so as to be consistent with the other two generator categories—large quantity generators (LQGs) and small quantity generators (SQGs).

Another area of the program that needs revision is the closure regulations for hazardous waste generators under § 262.34(a)(1). The regulations do not expressly specify whether closure provisions apply to generators accumulating hazardous waste in containment buildings only or also to hazardous waste accumulated in containers, tanks and on drip pads. This notice proposes to revise the closure provisions to address these and other concerns.

The Agency is also proposing changes to improve flexibility for generators of hazardous wastes. One example is the proposal to enhance flexibility by allowing conditionally exempt small quantity generators (CESQGs) to send hazardous waste to an LQG that is under the control of the same person, provided certain conditions are met. Numerous situations exist in industry, government, and academia where an organization with satellite locations that qualify as CESQGs could take advantage of this provision in order to consolidate and manage the hazardous waste in an environmentally sound manner. In addition, this proposal addresses the concern that some generators, such as generators located in urban environments, may find it difficult to meet the independent requirement that containers holding ignitable or reactive waste must be placed 15 meters (50 feet) from the site's property line. To build in flexibility, while maintaining protection of human health and the environment, we are proposing to allow generators to apply for a waiver from this requirement from their local fire department or emergency response organization, and if approved, maintain documentation of that agreement.

The Agency is also proposing to reorganize the hazardous waste generator regulations to make them more user-friendly for various stakeholders. For example, the current CESQG regulations are found at § 261.5, while the regulations for SQGs and LQGs are found in 40 CFR part 262. For convenience and ease of use, the Agency is proposing to move all the generator regulations into 40 CFR part 262. As a result of this reorganization, EPA is proposing to make a number of conforming changes to other parts of the regulations that cite particular sections of the part 262 regulations.

Lastly, the Agency is proposing to make several technical corrections that address inadvertent errors in the regulations, obsolete programs, and outdated citations.

IV. What is the scope of this proposal?

EPA is proposing to revise the hazardous waste generator regulations, primarily at 40 CFR 261.5 and throughout 40 CFR part 262. The Agency is also proposing some changes to parts 260, 263, 264, 265, 268, 270, 273, and 279 mostly for the purposes of maintaining consistency with the proposed changes in part 262.

The preamble discussion of these proposed changes is organized by where the existing regulations currently appear in the Code of Federal Regulations (CFR). The preamble to this proposed rule first addresses changes to the substance of the existing generator provisions, as well as a number of related changes (sections VI through XII). These proposed revisions are discussed using existing regulatory citations to make the discussion easier to understand by those already familiar with the hazardous waste generator regulations. In the cases where the Agency is proposing to revise a regulation and is also proposing to move it as part of the reorganization, the new citation for the provision in the

[1] Summary of Hazardous Waste Generator Regulatory Program Evaluation, November 2004. See also public comments in Docket ID No. EPA–HQ–RCRA–2003–0014.

[2] Hazardous Waste Determination Program Evaluation, IEc, April 2013. *http://www.epa.gov/evaluate/pdf/waste/haz-waste-determination.pdf.*

proposed regulatory text is provided at the end of that section of preamble discussion.

Following those sections, a discussion of the proposed reorganization of the hazardous waste generator regulations is presented (section XIII), including where the existing regulatory sections would be located in the proposed reorganization. As part of this discussion, we have provided a crosswalk table that compares where a particular regulatory section is currently in the regulations and where it would appear under the proposed reorganization.

Finally, a number of technical corrections are discussed (section XIV).

A. Proposed Revisions to 40 CFR Part 260—Hazardous Waste Management System: General

EPA is proposing to revise the definition of ''small quantity generator'' and add definitions for the other two generator categories as well as a definition for ''central accumulation area'' in § 260.10. In addition, we propose to change the name of the ''conditionally exempt small quantity generator'' category to ''very small quantity generator'' or VSQG.[3] These proposed changes are discussed in section VI of this preamble.

B. Proposed Revisions to 40 CFR Part 261—Identification and Listing of Hazardous Waste

EPA is proposing four changes to the regulations currently in 40 CFR part 261. First, EPA is proposing to add a new provision that would explain what generator category would apply to a generator that generates both acute and non-acute hazardous waste in the same calendar month. Second, the Agency is proposing to revise the regulations at §§ 261.5(h) and (i) and 261.3 that address the mixing of a non-hazardous waste with a hazardous waste. Third, to make waste management more efficient in some cases and improve environmental protection, the Agency is proposing to amend § 261.5(f)(3) and (g)(3) to allow CESQGs to send their hazardous waste to LQGs that are operated under control of the same person. Under this proposal, a CESQG that wants to take advantage of this provision would need to comply with the proposed requirements. Finally, the Agency is proposing to amend § 261.6(c) to require biennial reporting for owners or operators of facilities that recycle but do not store hazardous waste before the recycling.

These proposed changes are discussed in section VII of this preamble.

C. Proposed Revisions to 40 CFR Part 262—Standards Applicable to Generators of Hazardous Waste

EPA is proposing a number of changes to the regulations for generators of hazardous waste at 40 CFR part 262 to improve the understanding of the RCRA generator regulations in order to encourage increased compliance by the regulated community. These proposed changes include the following:

- Revising the scope and applicability section to distinguish between independent requirements and conditions for exemption for generators of hazardous waste.
- Revising the regulations for making hazardous waste determinations;
- Requiring re-notification by SQGs and LQGs;
- Revising the regulations for labeling and marking of containers, tanks, drip pads, and containment buildings when accumulating hazardous wastes;
- Revising the closure provisions for LQGs;
- Updating the preparedness, prevention, planning and emergency procedures provisions for SQGs and LQGs;
- Revising the provisions for satellite accumulation areas (SAA) for SQGs and LQGs;
- Revising the SQG regulations for accumulating hazardous waste on drip pads;
- Deleting obsolete regulations that refer to the Performance Track program;
- Revising the biennial reporting provisions for LQGs;
- Adding a provision that hazardous waste generators are prohibited from disposing liquid hazardous waste in landfills.

These proposed changes to the generator regulations in part 262 are discussed in section VIII of this preamble.

D. Proposed Addition to 40 CFR Part 262 for Generators That Temporarily Change Generator Category as a Result of an Episodic Event

To provide greater program flexibility, EPA is proposing to allow a CESQG or an SQG to maintain its existing generator category in the event of either a planned or unplanned episodic event in which the CESQG or SQG generates a quantity of hazardous waste in a calendar month that would otherwise bump the CESQG or SQG into a more stringent generator regulatory category (*e.g.,* CESQG to either an SQG or an LQG, or alternatively an SQG to an LQG), provided certain conditions are met. Because these events would be temporary and episodic in nature, the generator would only be allowed to take advantage of this provision once every calendar year. Generators may also petition EPA or the authorized state to request permission to initiate a second episodic event during a calendar year.

This proposed addition to the regulations is discussed in section IX of this preamble.

E. Proposed Revisions to 40 CFR Part 263—Standards Applicable to Transporters of Hazardous Waste

To improve environmental protection, EPA is proposing to revise the marking and labeling standards for transporters to be consistent with the proposed marking and labeling standards for containers for SQGs, LQGs, and satellite accumulation areas elsewhere in this proposal.

These proposed changes are discussed in section X of this preamble.

F. Proposed Revisions to 40 CFR Parts 264 and 265—Standards for Owners and Operators of Hazardous Waste TSDFs and Interim Status Standards for Owners and Operators of Hazardous Waste TSDFs

The Agency is proposing modifications to the biennial reporting provisions in 40 CFR parts 264 and 265 to specifically include facilities receiving hazardous wastes without a permit, such as reclaimers that do not store incoming materials and reclaimers operating under a variance. EPA is also proposing to modify the special conditions for ignitable and reactive wastes at § 265.176 to allow LQGs to apply for a waiver from their local fire departments if they are unable to meet the condition that hazardous waste be stored at least 15 meters (50 feet) from the site's boundary.

These proposed changes are discussed in section XI of this preamble.

G. Proposed Revisions to 40 CFR Part 268—Land Disposal Restrictions

EPA is proposing to revise the marking and labeling requirements at § 268.50 to be consistent with the proposed marking and labeling standards for containers at SQGs, LQGs, and satellite accumulation areas elsewhere in this proposal. These proposed changes are discussed in section XII of this preamble.

[3] Despite this proposed change, in the preamble, EPA will continue refer to this category as CESQGs to make it easier to follow the other changes to the generator being proposed. We will use the term ''VSQG'' when directly quoting proposed regulatory text. This change is discussed fully in section VI of this preamble.

H. Proposed Reorganization of Hazardous Waste Generator Regulations

In addition to the proposed program changes outlined in this notice, EPA is proposing to reorganize the regulations for hazardous waste generators to consolidate most of the generator regulations into 40 CFR part 262 and reduce cross-referencing where possible. EPA believes this reorganization will assist CESQGs, SQGs, and LQGs in understanding their regulatory responsibilities.

The reorganization is discussed after completion of the other proposed changes in this proposal so that readers can more easily compare the existing regulatory framework with this proposal.

The reorganization is discussed in section XIII of this preamble.

I. Technical Corrections and Conforming Changes to 40 CFR Parts 260 Through 265, 270, 273, and 279

The Agency is proposing a number of technical corrections and conforming changes to correct existing errors in the hazardous waste generator regulations, as well as in other areas of the hazardous waste regulations, such as typographical mistakes, incorrect or outdated citations, and omissions of text. In addition, EPA is proposing technical changes to address the impacts of reorganizing the hazardous waste regulations.

These changes are discussed in section XIV of this preamble.

J. Request for Comment on Use of Electronic Tools To Streamline Hazardous Waste Reporting and Recordkeeping Requirements

As part of this proposed rule, the Agency is also exploring the feasibility of using electronic tools to streamline the hazardous waste recordkeeping and reporting requirements. EPA requests comment on the usefulness of such tools to help the regulated community comply with the recordkeeping and reporting requirements in the RCRA hazardous waste regulations.

This request for comment is discussed in section XV of this preamble.

V. Background

A. History of the Hazardous Waste Generator Program

As originally promulgated in 1980, the basic regulatory framework for hazardous waste generators consisted of two categories: Small quantity generators (SQGs) and large quantity generators (LQGs). Since then, there have been three major changes. First, as a result of the Hazardous and Solid Waste Amendments (HSWA) of 1984, a rule was promulgated that created a third generator category by splitting the SQG category in two and creating conditionally exempt small quantity generators (CESQGs). (51 FR 10146, March 24, 1986).[4]

Second, also as a result of HSWA, the Land Disposal Restriction (LDRs) regulations required hazardous waste generators to ensure that their hazardous waste either met a specified treatment standard or performance standard, or, if not, was treated to specified concentrations or performance standards prior to land disposal.[5]

Third, the Agency modified the Uniform Hazardous Waste Manifest regulations and associated manifest document used to track hazardous waste from a generator's site to its ultimate disposition (70 FR 10776, March 4, 2005; 70 FR 35034, June 16, 2005). The revisions to the Uniform Hazardous Waste Manifest standardized the content and appearance of the manifest form, made the forms available from a greater number of sources, and adopted new procedures for tracking certain types of hazardous waste shipments with the manifest. Otherwise, the changes that have occurred to the hazardous waste generator regulatory program have been, for the most part, relatively minor.

B. The Current Hazardous Waste Generator Regulations

1. Determining Generator Category

The hazardous waste generator regulatory program is structured around the quantity of hazardous waste a person (or generator) generates in a calendar month (by site). The quantity of hazardous waste generated determines a generator's category for the month, which in turn determines what requirements are applicable to the generator (including determining how the generator can qualify for an exemption from other regulations, such as having to get a storage permit).

The three generator categories—LQG, SQG, and CESQG—are based on the quantities of acute and non-acute hazardous waste generated by the generator.

For non-acute hazardous waste, the thresholds are as follows:

—LQGs generate 1,000 kilograms or greater of hazardous waste in a calendar month.

—SQGs generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month; and

—CESQGs generate no more than 100 kilograms of hazardous wastes in a calendar month.

For acute hazardous waste, the regulations at 40 CFR 261.5(e) state that if a generator generates acute hazardous waste in a calendar month in quantities greater than a total of one kilogram of acute hazardous waste listed in § 261.31 or 261.33(e) or a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill of any acute hazardous waste listed in § 261.31 or 261.33(e), then all quantities of that acute hazardous waste are subject to the full set of LQG requirements.[6]

In order to determine what requirements are applicable, a generator must first identify all the hazardous waste it generates subject to regulation using the four-step process below:

1. Determine whether the material is a solid waste subject to RCRA regulations at § 261.2;

2. If the material is a solid waste, then determine whether the solid waste is specifically excluded from regulation by examining the exclusions at § 261.4(a) and (b);

3. If not excluded, then determine whether the solid waste is a hazardous waste at § 262.11; and

4. If the material is a hazardous waste, then determine whether it is exempt from being counted towards its generator category by reviewing the exemptions at § 261.5(c) and (d).

Once that is completed, the generator must count the amount of regulated hazardous waste generated during the calendar month to determine its generator category.

Once a generator determines its generator category for the month, it then must manage the hazardous waste it generates and accumulates in a manner that complies with specified requirements, including requirements that qualify the generator for an exemption from having to obtain a permit.[7] Therefore, determining a generator's category is essential to

[4] Known as the Small Quantity Generator rule.

[5] Land Disposal Restrictions, *http://www.epa.gov/osw/hazard/tsd/ldr/index.htm.*

[6] One of the technical corrections EPA is proposing with this rulemaking is to replace the word ''waste'' in this definition with the word ''water.'' This would return the definition to what it read before it was changed, we believe accidentally, in 1985. See section XIV of this preamble for a discussion of the proposed technical corrections.

[7] Note that the exemptions provided by the regulations are not just for a permit exemption. The exemption is also from RCRA section 3004(a)(1)–(6) regulations; *i.e.,* the regulations in 262 and 264, 267, etc.

determining the part 262 requirements a generator must comply with.

2. Types of Generator Standards: Requirements and Conditions

When RCRA was enacted in 1976, the law did not explicitly address whether a permit would be required for generators accumulating hazardous wastes. However, it was clear in the legislative history of RCRA that Congress did not want to interfere with commerce and impose permitting requirements on every generator who accumulated hazardous wastes. Therefore, Congress deferred to EPA in how it would reconcile this issue. When EPA developed the regulations applicable to generators, it established two types of requirements for them: (1) Independent requirements that would apply to generators regardless of whether or not they choose to obtain an exemption from the permit requirement and from other applicable requirements (''independent requirements''); and (2) requirements to meet in order to achieve the specific purpose of obtaining such an exemption from permitting and from other applicable requirements (''conditions for exemption'').

An ''independent requirement'' in the context of the RCRA hazardous waste generator regulations is an unqualified standard. For example, the requirements of 40 CFR part 262 subpart D (Recordkeeping and Reporting), and the requirements in §§ 262.30 through 262.33, are among the independent requirements applicable to generators. If a generator violates an independent requirement, it may be subject to an enforcement action under section 3008 of RCRA. Unlike conditions for an exemption, independent requirements have no direct relationship to the option of obtaining or maintaining an exemption from certain RCRA regulations.[8]

A ''condition for exemption,'' on the other hand, is a prerequisite that is necessary to occur or be met in order for something else to take legal effect. Thus, in the context of the RCRA hazardous waste generator regulations, a RCRA ''condition for exemption'' is a requirement that a generator must comply with in order to obtain or maintain an exemption from RCRA permitting requirements in part 270 and the requirements in part 264 or part 265. For example, a conditionally exempt small quantity generators (CESQGs) must meet a condition for exemption in order for its hazardous waste to be exempt from the requirements in parts 124, 262 through 266, 268, or 270, or from any requirement for notification under section 3010 of RCRA for its hazardous waste. A CESQG that fails to meet all of the conditions for an exemption for CESQGs in § 261.5 would now be subject to all these requirements.

The conditions for exemption available to large and small quantity generators are found in the current regulations at § 262.34.[9] Should a small quantity generator or large quantity generator fail to meet all the conditions for an exemption, it would not only be subject to having to obtain a permit under part 270 but also to the requirements in part 264 or part 265.

As stated above, complying with the conditions for exemption is not required because it is not mandatory for a generator to obtain and maintain an exemption from RCRA permitting requirements. Instead, when a generator does not comply with a certain condition or conditions for exemption, the consequence is that the generator either fails to obtain—or loses—the exemption from the RCRA permitting requirements (unless it has complied with all of the conditions for a different applicable exemption from those requirements). This means that, because there is no exemption, permitting requirements become applicable to the generator for the same time period that the generator is out of compliance with the conditions for exemption.

3. Types of Conditional Exemptions

The current RCRA regulations afford generators two types of conditional exemptions: (1) An exemption from most of the 40 CFR part 262 requirements, available to farmers and to CESQGs, and (2) an exemption from 40 CFR parts 124, 264 through 268, 270, and 279 requirements, and from the notification requirements of section 3010 of RCRA, available to SQGs and LQGs that accumulate hazardous waste.

The first conditional exemption is available only to farmers and CESQGs. With respect to farmers, this conditional exemption is found in part 262 subpart G and is limited to waste pesticides that are RCRA hazardous wastes that the farmer generates, provided the farmer triple rinses each emptied pesticide container in accordance with § 261.7(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label. This exemption from part 262 relieves farmers and CESQGs from the requirements related specifically to the generation, management, and transportation of hazardous wastes provided such waste meets certain conditions, including that the waste is treated or disposed of on site or is delivered to an off-site treatment, storage, or disposal facility which is located in the United States and is one of seven specified types of facilities. Provided the farmer and/or CESQG meets these conditions, they are not subject to the 40 CFR part 262, as well as other hazardous waste management requirements.

The second type of conditional exemption relieves generators that accumulate hazardous waste from the permitting and other requirements applicable to treatment, storage, and disposal facilities and makes temporary accumulation of hazardous waste possible for generators and is found in § 262.34. In EPA's experience, virtually every generator accumulates or stores its hazardous waste on site for some period before sending it to either an on-site or off-site permitted or interim status treatment storage or disposal facility (TSDF) or other RCRA-authorized disposal site. However, provided the generator meets the conditions in this exemption, they would not be subject to the permitting requirements and operations requirements applicable to a hazardous waste management facility for storage, or a ''storage facility.''[10]

The generator regulations in part 262, therefore, are made up of both independent requirements and conditions for exemptions. All generators are subject to at least one requirement in part 262 (*i.e.,* making a hazardous waste determination); however, the total number of part 262 requirements applicable to a generator depends on the total quantity of hazardous waste it generates each calendar month and therefore what generator category it is for that month. All generators can choose the extent of their regulation under RCRA by either meeting, or failing to meet, all of the conditions for an exemption from regulation as a storage facility.

Of all the generators, LGQs are subject to the most independent requirements. The current regulations at § 262.34(a) are quite clear for LQGs where they state that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having

[8] EPA is proposing to make the distinction between ''independent requirement'' and ''condition for exemption'' more clear by placing definitions of these terms in the regulations at § 262.1. See section VIII.A.1 for additional discussion.

[9] Under this proposed rule these conditions for exemption would be moved to proposed sections §§ 262.14 through 262.17.

[10] See 40 CFR 270.2 (''hazardous waste management facility'').

interim status, provided that it meets the listed conditions for the exemption. These conditions relate to the technical requirements for containers, tanks, drip pads, and containment buildings, in addition to marking and labeling of containers, closure, personnel training, emergency response procedures, and contingency planning. In effect, should an LQG not meet any one of these conditions, it would be operating illegally without a permit. The same regulatory framework applies to CESQGs and SQGs, but with different conditions.

SQGs have fewer independent requirements and conditions for exemption than LQGs. In particular, SQGs have longer accumulation time limits than LQGs (up to 180 days, or 270 days, if the hazardous waste is shipped greater than 200 miles) and have fewer regulations related to personnel training, contingency planning, and emergency response procedures. SQGs also do not have to submit biennial reports. However, like LQGs, SQGs must obtain an EPA ID number, meet the technical standards for containers and tanks, comply with manifesting regulations, and send their hazardous waste to a RCRA permitted hazardous waste TSDF. In addition, SQGs may not accumulate more than 6,000 kilograms of hazardous waste at any one time.

CESQGs have very few conditions. Specifically, in order for CESQGs to be excluded from 40 CFR parts 124, 262 through 266, 268, and 270 and the notification requirements of section 3010 of RCRA, they must (1) make correct hazardous waste determinations; [11] (2) accumulate no more than 1,000 kilograms of hazardous waste at any one time or accumulate no more than the quantities of acute hazardous wastes set forth in § 261.5(e)(1) or (2) at any one time; and (3) send hazardous waste to one of seven specified types of facilities described in §§ 261.5(e)(3) and 261.5(g)(3).[12] All other regulations applicable to LQGs and SQGs are not applicable to CESQGs that comply with these conditions.

Table 1—Summary of Generator Regulations provides a summary of requirements that represent conditions for an exemption for CESQGs, SQGs and LQGs. As noted in the table, the category ''Conditions for Exemption'' applies to such requirements as the quantity generated and accumulated, accumulation time, the technical standards for containers, tanks, drip pads and containment buildings, marking and labeling, personnel training, contingency planning and emergency procedures. It is important to note that a waste determination is an independent requirement for SQGs and LQGs, whereas it is a condition for exemption for CESQGs as defined at § 261.5(f)(1) and (g)(1).[13]

TABLE 1—SUMMARY OF GENERATOR REGULATIONS

	CESQGs	SQGs	LQGs
Generator Category	≤100 kg/month ≤1 kg/month of acute hazardous waste. ≤100 kg/month of acute spill residue or soil. §§ 261.5(a) and (e)	>100 and <1,000 kg/month ≤1 kg/month of acute hazardous waste. ≤100 kg/month of acute spill residue or soil. §§ 262.34(d) and 261.5(e)	≥1,000 kg/month >1 kg/month of acute hazardous waste >100 kg/month of acute spill residue or soil §§ 262.34(a) and 261.5(e).
Conditions for Exemption			
Hazardous Waste Determination.	§ 262.11	N/A	N/A.
On-Site Accumulation Quantity.	≤1,000 kg ≤1 kg acute ≤100 kg of acute spill residue or soil § 261.5(f)(2) and (g)(2)	≤6,000 kg § 262.34(d)(1)	No limit.
Satellite accumulation	Not applicable	§ 262.34 (c)(1) and (2)	§ 262.34 (c)(1) and (2).
Accumulation Time Limits	None	≤180 days or ≤270 days (if greater than 200 miles). § 262.34(d)(2) and (3)	≤90 days. § 262.34(a).
Accumulation Conditions	§ 261.5 (f)(1) and (2); § 261.5 (g)(1) and (2).	Reduced standards for the management of hazardous waste in containers and tanks. § 262.34(d)(2) and (3)	Full compliance for management of hazardous waste in containers, tanks, drip pads, or containment buildings. § 262.34(a).
Sent To:	One of seven state approved or RCRA permitted/interim status facilities. § 261.5(f)(3) and (g)(3)	RCRA permitted/interim status facility.	RCRA permitted/interim status facility.
Personnel Training	Not required	Reduced training standards § 262.34(d)(5)(iii)	Full compliance with §§ 265.16 and 262.34(a)(4).
Marking and labeling	Not required	§ 262.34 (a)(2) and (3)	§ 262.34 (a)(2) and (3).
Contingency Plan	Not required	Reduced standards § 262.34(d)(5)(i)	Full compliance with part 265 subparts C and D. § 262.34(a)(4).

[11] Making a correct hazardous waste determination is a condition for the exemption for CESQGs but an independent requirement for SQGs and LQGs.

[12] A CESQG may send hazardous waste to the following types of facilities: (1) A hazardous waste facility permitted by EPA; (2) an interim status hazardous waste facility; (3) a hazardous waste facility permitted by an authorized state; (4) a facility permitted, licensed or registered by a state to manage municipal solid waste; (5) a facility permitted, licensed or registered by a state to manage non-municipal non-hazardous solid waste; (6) a facility which beneficially uses or reuses or legitimacy recycles or reclaims its wastes or treats its waste prior to beneficial use or reuse or legitimacy recycling or reclamation; or (7) universal waste handler or destination facility subject to the requirements in 40 CFR part 273. The Agency is proposing an eighth location where CESQGs would be allowed to send their hazardous wastes (*e.g.,* an LQG within the same company provided specified conditions are met).

[13] Note that state hazardous waste programs may be more stringent than the federal program and also broader in scope.

TABLE 1—SUMMARY OF GENERATOR REGULATIONS—Continued

	CESQGs	SQGs	LQGs
Emergency Procedures	Not required	Part 265 subpart C § 262.34(d)(5)(iv)	Full compliance with part 265 subparts C and D. § 262.34(a)(4).
Closure	Not required	Not required	§ 262.34(a)(1)(iv)/§§ 265.111 and 265.114.
Land Disposal Restrictions	Not required	40 CFR 262.34(a)(4)/40 CFR part 268.	40 CFR 262.34(a)(4)/40 CFR part 268.

C. Hazardous Waste Generator Demographics

In 2011, 16,447 generators reported generating approximately 34.4 million tons of hazardous waste.[14] Of the 16,447 generators, 14,262 were LQGs and 2,185 were non-LQGs, meaning these entities submitted a biennial report but did not report generating sufficient amounts of hazardous waste to be categorized as an LQG.

The fifty largest hazardous waste generators reported generating 28.7 million tons, or 83 percent of the total. Additionally, 3,148 generators, or approximately 19 percent of the total reporting universe, reported generating only one hazardous waste stream, while 8,435 generators, or 51 percent of the total reporting universe, reported generating between one and five hazardous waste streams.[15] At the other extreme were 843 generators, or 5 percent of the total reporting universe, that reported generating 41 or more hazardous waste streams. These generators included sites from the waste treatment industry as well as academic and industrial laboratories.

Of the 34.4 million tons of hazardous waste generated in 2011, 30.5 million tons, or 89 percent, were generated in just five industrial sectors: Basic Chemical Manufacturing (which alone accounted for 55 percent of the hazardous waste generated); Petroleum and Coal Products Manufacturing, Waste Treatment and Disposal; Pesticide, Fertilizer, and Other Chemical Manufacturing; and Iron and Steel Mills and Ferroalloy Manufacturing.

Unlike LQGs, who must submit a biennial report every two years describing the types and quantities of hazardous waste generated and its subsequent disposition, SQGs are not required to provide such information to the Agency. Consequently, the Agency lacks the level of detail for SQGs that is available for LQGs. However, based on a review of biennial report data provided by treatment, storage, and disposal facilities (which must report waste received from all hazardous waste generators) and site identification data (from SQGs obtaining an EPA ID number), EPA estimates the number of SQGs to range from 45,762 to 59,702.[16]

Because CESQGs are not required to obtain a RCRA ID, the information available to the Agency is limited to those states that require their CESQGs to obtain a RCRA ID. Therefore, in estimating the size of the CESQG universe, the Agency developed a methodology that extrapolated the size of the CESQG universes based on the data available in those states that require CESQGs to obtain a RCRA ID. We first established a ratio of SQGs to CESQGs in those states where information was available on the CESQG universe and then used that ratio to estimate the size of a state's CESQG universe where CESQG information was unavailable. Using this methodology, EPA currently estimates the size of the CESQG universe to range from 302,807 to 425,752.[17] However, we believe this range most likely underestimates the true number of CESQGs because we believe there are many more facilities unaware of their obligations under the RCRA hazardous waste regulations and the need to conduct correct hazardous waste determinations.

D. 2004 Hazardous Waste Generator Program Evaluation

On April 22, 2004, EPA published the ''Hazardous Waste Generator Program Evaluation'' Advanced Notice of Proposed Rulemaking (69 FR 21800). The purpose of the April 2004 notice was to seek information from stakeholders in order to evaluate the effectiveness of the RCRA hazardous waste generator program, as well as to identify areas for potential improvement.

Specifically, the April 2004 notice requested that stakeholders answer a series of questions in a number of areas of the hazardous waste generator regulatory program, including program effectiveness, improvements, redundancy, innovation, performance, burden reduction, pollution prevention and recycling, and priorities. Questions included whether the existing RCRA hazardous waste generator regulatory program is meeting its goal of protecting human health and the environment and whether the regulations are easy to understand, including questions asking which specific regulations are unclear or have been interpreted inconsistently.

EPA also included in the April 2004 notice a list of program areas that had previously been identified by stakeholders as needing improvement. These program areas included waste accumulation times, waste generation quantity thresholds and counting rules for LQGs, SQGs, and CESQGs, episodic generator provisions, waste sampling and testing, waste management standards, satellite accumulation, generator accumulation and treatment in containers or tanks, closure standards for generators, co-generator standards, RCRA identification numbers, waste minimization, and land disposal restriction requirements applicable to generators. During the comment period, EPA also held four public meetings in May 2004 in Boston, MA, Chicago, IL, Washington, DC, and Seattle, WA.

In response to the April 2004 notice and the May 2004 public meetings, EPA received over 500 comments from 55 organizations and individuals, including 9 states, 5 federal agencies, 2

[14] EPA's National Biennial RCRA Hazardous Waste Report (Based on 2011 Data) *http://www.epa.gov/osw/inforesources/data/br11/index.htm.*

[15] Summary of the number of GM forms submitted by LQGs in 2011 Biennial Report.

[16] Estimate of Total Number of SQGs and CESQGs, July 2013. We estimated this range by doing the following: (1) Identifying hazardous waste generators who shipped hazardous waste off site in 2007, 2009, and 2011 using the Biennial Report's WR form and (2) cross walking that universe with data received from Site ID forms to identify the ''active'' SQG universe. The high-end estimate represents SQGs who shipped hazardous waste off site in any one of the three Biennial Report cycles, since many hazardous waste generators fluctuate in the regulatory status from year to year. The estimate also includes new SQGs who notified after the 2011 biennial report. The low-end represents SQGs who shipped hazardous waste off site in 2011 only as well as new SQG notifiers. A copy of the results can be found in the docket to this proposal.

[17] Methodology to Estimate the National Number of CESQGs, July 2013.

universities, 12 trade associations, and 22 companies.[18] Overall, EPA's effort to seek information regarding the effectiveness of the hazardous waste generator regulatory program received a favorable response.

Many commenters agreed that implementation of the generator regulations has made significant improvements in managing hazardous waste and has resulted in fewer releases of hazardous waste to the environment. However, many commenters identified several improvements they believed needed to be made to regulations. Specifically, they suggested the following:

- Simplify the regulations to make them more user-friendly and easy to understand, such as eliminating cross-referencing and codifying guidance into regulations, where applicable.
- Improve the efficiency of the program by clearing up ambiguities and removing potential redundancies, such as defining what constitutes a closed container and clarifying parts of the satellite accumulation regulations.
- Provide greater flexibility in the regulations, such as regulations that allow for episodic generation and that allow wastes to be shipped from remote locations to a centralized location to enable better waste management.
- Require re-notification to ensure better data quality to support compliance monitoring of SQG facilities (state commenters).
- Improve regulations on hazardous waste determinations, including when it is appropriate to use generator knowledge instead of analytical testing (Industry commenters).

In response to the comments on the April 2004 notice, EPA took several actions to help improve the hazardous waste generator program in order to foster better compliance. Actions included (1) improving EPA's Web site for the hazardous waste generator regulatory program,[19] (2) developing an online guide to the hazardous waste generator regulations,[20] (3) releasing guidance for management of hazardous waste in closed containers,[21] (4) issuing a technical corrections direct final rule,[22] and (5) conducting an evaluation of the hazardous waste determination program.[23] While these actions have helped to improve the hazardous waste generator program, the Agency recognizes that many of the changes identified by commenters can only be made through rulemaking. Thus, this proposed rule requests comment on a number of changes to the hazardous waste generator regulations.

VI. Proposed Revisions to 40 CFR Part 260—Hazardous Waste Management System: General

A. Generator Category Definitions (40 CFR 260.10)

EPA is proposing to codify definitions for the three categories of hazardous waste generators (CESQG, SQG and LQG). The term ''small quantity generator'' is codified in the regulations, but is outdated, whereas ''conditionally exempt small quantity generator'' and ''large quantity generator'' have been used within the RCRA hazardous waste community for several decades, but their exact definitions have not been codified. The regulations differentiate between the categories by stating the quantity of hazardous waste generated in a calendar month in each instance.

As the terms are most commonly used, CESQGs are generators that generate 100 kilograms or less of non-acute hazardous waste and 1 kilogram or less of acute hazardous waste in a calendar month; SQGs are generators that generate greater than 100 kilograms of non-acute hazardous waste but less than 1,000 kilograms of non-acute hazardous waste and 1 kilogram or less of acute hazardous waste in a calendar month; and LQGs are generators that generate 1,000 kilograms or greater of non-acute hazardous waste and/or greater than 1 kilogram of acute hazardous waste in a calendar month. However, generators often fail to consider residues from the cleanup of a spill of acute hazardous waste or do not count both the non-acute and acute hazardous waste they generate in a calendar month. The proposed definitions have been drafted to incorporate all the various categories of hazardous wastes—that is, acute hazardous waste, non-acute hazardous waste, and residues for the cleanup of a spill of acute hazardous wastes.

Considering the significance a generator's category has in determining the appropriate set of regulations that the generator must comply with, the Agency believes it is necessary to define the specific hazardous waste generator categories in the regulations.

The proposed generator category definitions are based solely on the amount of hazardous waste generated. While EPA acknowledges that accumulation limits may trigger different generator regulations, those accumulation limits do not affect a generator's generation category, which is based on how much hazardous waste is generated in a calendar month.

Therefore, EPA is proposing to add the following definitions to § 260.10:

Very small quantity generator is a generator who generates less than or equal to the following amounts in a calendar month: (1) 100 kilograms (220 lbs) of non- acute hazardous waste; and (2) 1 kilogram (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e); and (3) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in sections § 261.31 or § 261.33(e);[24]

Small quantity generator is a generator who generates the following amounts in a calendar month: (1) Greater than 100 kilograms (220 lbs) but less than 1000 kilograms (2200 pounds) of non-acute hazardous waste; and (2) less than or equal to 1 kilogram (2.2 lbs) of acute hazardous wastes listed in § 261.31 or § 261.33(e); and (3) less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e);

Large quantity generator is a generator who generates any of the following amounts in a calendar month: (1) Greater than or equal to 1000 kilograms (2200 lbs) of non-acute hazardous waste; or (2) greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e); or (3) greater than 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water,

[18] Public comments can be found in Docket ID No. RCRA–2003–0014.

[19] *http://www.epa.gov/osw/hazard/generation/index.htm.*

[20] ''Hazardous Waste Generator Regulations: A User-Friendly Reference Document'' (*http://www.epa.gov/osw/hazard/downloads/tool2012.pdf*).

[21] Memorandum from Betsy Devlin, Acting Director of EPA's Waste Recovery and Waste Management Division, to RCRA Division Directors, ''Closed Container Guidance: Questions and Answers (Qs & As), November 3, 2011, incorporating Memorandum from Robert Dellinger, Director of EPA's Materials Recovery and Waste Management. Division, to RCRA Division Directors, ''Guidance on 40 CFR 264.173(a) and 265.173(a): Closed Containers,'' December 3, 2009, RCRA Online 14826.

[22] 75 FR 12989, March 18, 2010.

[23] Hazardous Waste Determination Program Evaluation, April 2013 (*http://www.epa.gov/evaluate/pdf/waste/haz-waste-determination.pdf*).

[24] As part of this rulemaking, EPA is proposing to change the name of ''conditionally exempt small quantity generator (CESQG)'' to ''very small quantity generator (VSQG).'' This change is discussed in section VI.B. For the sake of a consistent discussion, however, EPA is using the term CESQG throughout the preamble unless directly stating the content of the proposed regulatory text.

of any acute hazardous waste listed in § 261.31 or § 261.33(e).

EPA is also proposing to add definitions to § 260.10 for the terms ''acute hazardous waste'' and ''non-acute hazardous waste,'' which are both used in the above definitions for generator categories. The term acute hazardous waste is used for hazardous wastes that are particularly dangerous to human health and is defined as those hazardous wastes that meet the listing criteria in § 261.11(a)(2) and are therefore listed in § 261.31 and assigned the hazard code of (H) or are listed in § 261.33(e), also known as the RCRA P-list. In this proposal, any distinctions between acute and non-acute hazardous wastes are only being made in the context of determining generator category. Generally the term ''hazardous waste'' refers to both acute and non-acute hazardous waste.

As previously stated, the definitions of generator categories are based solely on the amount of hazardous waste generated in a calendar month and are generally consistent with how the regulated community understands the various categories based on EPA's references in existing publications to how much hazardous waste is generated in a calendar month. Additionally, these definitions reflect that a generator may only have one generator category in a calendar month even if the generator generates both acute hazardous waste and non-acute hazardous waste in the same calendar month, a topic discussed further in section VII.A.

In practice, five waste generation scenarios exist with different combinations of acute hazardous waste, non-acute hazardous waste, and residues from the cleanup of spills of acute hazardous waste generated in a calendar month. These scenarios are summarized in Table 2—Generator Categories Based on Quantity of Waste Generated.[25]

TABLE 2—GENERATOR CATEGORIES BASED ON QUANTITY OF WASTE GENERATED

#	Quantity of acute hazardous waste generated in a calendar month	Quantity of non-acute hazardous waste generated in a calendar month	Quantity of residues from the cleanup of acute hazardous waste generated in a calendar month	Generator category
1	> 1 kg	Any amount	Any amount	LQG.
2	Any amount	≥ 1,000 kg	Any amount	LQG.
3	Any amount	Any amount	> 100 kg	LQG.
4	≤ 1 kg	> 100 kg and < 1,000 kg	≤ 100 kg	SQG.
5	≤ 1 kg	≤ 100 kg	≤ 100 kg	VSQG/(CESQG).

Note: When calculating generator categories, the quantities of acute hazardous waste and non-acute hazardous waste are considered separately.

In three of the scenarios in Table 2—Generator Categories Based on Quantity of Waste Generated, the generator would be an LQG, in one scenario the generator would be an SQG, and in one scenario the generator would be a CESQG. In the first three scenarios, the generator is an LQG if it generates any of the following in a calendar month, regardless of the amounts of hazardous waste generated in the other categories: more than 1 kilogram of acute hazardous waste, 1,000 kilograms or more of non-acute hazardous waste, or more than 100 kilograms of residues from the cleanup of a spill of acute hazardous waste. This is made clear in the proposed regulatory definition of ''LQG'' by use of the word ''any'' and by the use of the word ''or'' between (1), (2), and (3). In these scenarios, the generator would need to comply with the independent requirements and conditions for the exemption for LQGs (specified in proposed § 262.17), as well as any applicable regulations for SAAs at § 262.15.

In the fourth scenario, the generator would be an SQG if, in a calendar month, it generates greater than 100 kilograms and less than 1,000 kilograms of non-acute hazardous waste and also 1 kilogram or less of acute hazardous waste and 100 kilograms or less of residues from the cleanup of a spill of acute hazardous waste.[26] The proposed regulatory text expresses this scenario by using the word ''and'' between (1), (2), and (3) in the definition of SQG. As a result, the generator would need to comply with the independent requirements and conditions for the exemption for SQGs (specified in proposed § 262.16), as well as any applicable regulations for SAAs at § 262.15.

Finally, in the fifth scenario, if a generator generates 1 kilogram or less of acute hazardous waste and 100 kilograms or less of non-acute hazardous waste and 100 kilograms or less of residue from the cleanup of a spill of acute hazardous waste, then the generator is a CESQG for that calendar month. The proposed regulatory text expresses this scenario by using the word ''and'' between (1), (2), and (3) in the definition. As a result, the generator would need to comply with the conditions for the exemption for CESQGs (specified in proposed § 262.14).[27]

EPA requests comment on these proposed changes.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

B. Renaming CESQG to VSQG (40 CFR 260.10)

Currently only one of the three generator categories—CESQG—uses the words ''conditionally exempt'' in its title; however both SQGs and LQGs, which typically accumulate hazardous waste on site, are also conditionally exempt from obtaining a RCRA permit or complying with the interim status standards in 40 CFR parts 264 and 265, respectively, provided they meet certain conditions. In addition, while CESQGs are subject to few conditions for exemption, they are still considered hazardous waste generators, and must comply with the relevant regulations. If a CESQG does not comply, it would be out of compliance with the hazardous waste regulations and potentially subject to enforcement action. This inconsistency in terminology has caused some confusion throughout the regulated community. Therefore, EPA is proposing to change the name of the category from ''conditionally exempt small quantity generator (CESQG)'' to ''very small quantity generator (VSQG).''

[25] EPA is proposing to include this table in the regulations as Table 1 in § 262.13.

[26] Amount of hazardous waste accumulated on site at any given time can also impact what regulations the SQG must comply with.

[27] EPA is proposing to move the CESQG regulations from §§ 261.5 to 262.14. See section XIII of this preamble for more information.

EPA notes that this change is consistent with some states, such as Minnesota, which are already using the VSQG term. All regulations applicable to a CESQG would apply to a VSQG.

EPA requests comment on this proposed change.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

C. Definition of Central Accumulation Area (40 CFR 260.10)

The Agency is also proposing to define the term ''central accumulation area'' in § 260.10 to mean any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either § 262.16 (for small quantity generators) or § 262.17 (for large quantity generators).[28] The definition also states that a central accumulation area at an eligible academic entity that chooses to be subject to part 262 subpart K must also comply with § 262.211 when accumulating unwanted material and/or hazardous waste.

LQGs may accumulate hazardous waste on site without a permit or complying with the interim status standards for up to 90 days provided they comply with § 262.34(a) and SQGs may do the same for up to 180 days, provided they comply with § 262.34(d) though (f).[29] Over the years, stakeholders have used different terms to refer to these on-site generator accumulation areas, including ''generator accumulation areas,'' ''less-than-90-day areas,'' and ''less-than-180-day areas.'' In December 2008, EPA promulgated a definition of ''central accumulation area'' in subpart K of part 262 to refer to these types of areas (''Academic Labs Rule''; 73 FR 72912, December 1, 2008). As explained in the preamble to the proposed Academic Labs Rule, EPA codified the term ''central accumulation area'' for the sake of convenience to distinguish these types of accumulation areas from satellite accumulation areas and laboratories, which are both subject to different regulations than central accumulation areas are. At the time, EPA promulgated the term in § 262.200 and indicated that the definition only applied to part 262 subpart K. Since then, the term has become more widely used and EPA is now proposing to define the term ''central accumulation area'' in § 260.10 to allow its use when referring to generator accumulation areas that are not operating under part 262 subpart K.

EPA emphasizes that we are proposing to define the term ''central accumulation area'' only as a matter of convenience. It is helpful for both the regulated community and the implementers to have a common term to use when referring to locations where generators accumulate hazardous waste other than satellite accumulation areas. Furthermore, the term is helpful for EPA to use when writing regulations, preamble, and guidance. The addition of the term does not establish any new regulatory standards or burden on generators. Generators may continue to have more than one central accumulation area on site; the use of the word ''central'' does not limit a generator to one area.

We have rephrased the proposed definition from how it currently appears in part 262 subpart K to make this clearer. The definition, as it appears in part 262 subpart K, currently states that a central accumulation area means an on-site hazardous waste accumulation area. We are proposing to revise the definition to say that a central accumulation area means *any* on-site hazardous waste accumulation area. Further, the use of the word ''central'' does not indicate that the generator must establish the central accumulation area in a location that is centrally located within the site. The use of the word ''central'' is used because many generators use a central accumulation area to consolidate or *centralize* their hazardous waste from multiple satellite accumulation areas prior to shipment off-site.

Because the proposed definition to be added to § 260.10 will now reference part 262 subpart K (the definition states that a central accumulation area at an eligible academic entity that chooses to be subject to part 262 subpart K must also comply with § 262.211 when accumulating unwanted material and/or hazardous waste), we are proposing to remove the definition of central accumulation area from part 262 subpart K.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The definition of ''central accumulation area'' references other regulatory citations that are part of the proposed reorganization. The reorganization is discussed in section XIII of this preamble.

VII. Proposed Revisions to 40 CFR Part 261—Identification and Listing of Hazardous Wastes

EPA is proposing four changes to the regulations currently in 40 CFR part 261. First, the Agency is proposing to add a new provision that would explain what generator category would apply to a hazardous waste generator that generates both acute and non-acute hazardous waste in the same calendar month. Second, EPA is proposing to modify the regulations at §§ 261.5(h) and (i) and 261.3 that address the mixing of a non-hazardous waste with a hazardous waste. Third, the Agency is proposing to amend § 261.5(f)(3) and (g)(3) to allow a CESQG to send its hazardous waste to an LQG under control of the same person. Finally, the Agency is proposing to amend § 261.6(c) to require biennial reporting for owners or operators of facilities that recycle hazardous waste without storing them before they are recycled.

A. Generators That Generate Both Acute and Non-Acute Hazardous Waste in the Same Calendar Month (40 CFR 261.5)

When a generator is determining what category it belongs in, it must consider three relevant categories of hazardous waste: hazardous waste (or non-acute hazardous waste, for purposes of this discussion), acute hazardous waste, and residues from the cleanup of a spill of acute hazardous waste. EPA is proposing regulations that make clear what a generator's category is for a calendar month when it generates any combination of non-acute hazardous waste, acute hazardous waste, and residues from the cleanup of a spill of acute hazardous waste in the same calendar month and which set of regulations apply. Currently, the RCRA hazardous waste regulations do not address situations involving combinations of wastes and Agency statements about this issue have been inconsistent.

According to the November 19,1980, FR notice discussing changes to § 261.5, ''the regulation is revised to clarify that the lower exclusion levels for acutely hazardous waste apply only to generators who otherwise are deemed small quantity generators.[30] The Agency believes that a generator who produces more than 1,000 kilograms of hazardous waste a month and is therefore subject to full regulation should handle his

[28] This proposed definition includes citations to new sections of part 262 that we are proposing to include as part of the reorganization of the generator regulations. The existing small quantity generator regulations are at §§ 262.34(d) through (f) and the existing large quantity generator regulations are at § 262.34(a). For a full discussion of the proposed reorganization, see section XIII of the preamble.

[29] As noted previously, SQGs can accumulate hazardous waste for up to 270 days if they ship the hazardous waste greater than 200 miles.

[30] Note: Prior to 1986, there were only two categories of generators: large quantity generators and small quantity generators. When the small quantity generator regulations were promulgated in 1986, a third category of generators, conditionally exempt small quantity generators, was established.

acutely hazardous wastes in the same manner as his other wastes'' (45 FR 76622).

In other words, if a generator generates 1,000 kilograms or more of non-acute hazardous waste in a calendar month, it would be considered an LQG for that month and therefore should, for both practical and environmental reasons, manage the acute hazardous wastes under the same regulations as an LQG (even if the amount of acute hazardous waste generated in a calendar month is less than 1 kilogram). However, a provision regarding how to determine one's generator category when generating a combination of non-acute hazardous waste, acute hazardous waste, and residues from the cleanup of a spill of acute hazardous waste was not included in the regulatory language.

Conversely, in a September 2, 1987, letter concerning the accumulation time for acute hazardous waste and non-acute hazardous waste in the same month, the Agency stated, ''Acute hazardous wastes are counted and managed separately from hazardous wastes (§ 261.5(e)). In the example given, the generator would have 90 days to send the acute hazardous waste off site, but would have 180 days for the non-acute hazardous waste.'' [31] These different Agency interpretations have ultimately led to confusion regarding which regulations apply to hazardous waste generators that generate different categories of hazardous waste in the same calendar month.

The Agency believes the more practical approach is for a generator to be in only one generator category in a calendar month, the approach outlined in the 1980 **Federal Register** discussion. When a generator generating only non-acute hazardous wastes counts its waste, it must consider the total amount of all its different kinds of non-acute hazardous waste, not the amount of each type of hazardous waste (such as, type of waste identified by individual EPA hazardous waste number) separately. Considering the combination of acute hazardous wastes, non-acute hazardous wastes, and residues from the cleanup of a spill of acute hazardous waste generated in a calendar month when determining what category a generator belongs to follows the same logic. In addition, many of the regulations for LQGs are site-wide, such as submitting the biennial report, developing a contingency plan, and conducting training, and therefore a generator would still have to comply with these conditions and would not gain a significant economic advantage by having more than one generator category. We note that many EPA Regions and states have taken this same approach in implementing the RCRA hazardous waste program.

This is why EPA is proposing to expressly state in the definitions which generator category would apply to hazardous waste generators that generate a combination of non-acute hazardous waste, acute hazardous waste, and/or residues from the cleanup of spills of acute hazardous waste in a calendar month as discussed in section VI of this preamble. In conjunction with these changes, EPA is proposing a new section § 262.13 explaining how a generator determines which generator category applies to it. This topic is fully discussed in section VIII of this preamble. The Agency is soliciting comment on the proposal to revise the existing regulations to indicate that a generator can only have one generator category in a calendar month, according to the quantity of acute and non-acute hazardous waste it generates.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. All the proposed definitions of generator categories would be found in § 260.10. The reorganization is discussed in section XIII of this preamble.

B. Generators That Mix a Non-Hazardous Waste With a Hazardous Waste

EPA is proposing to modify how mixtures of non-hazardous waste and hazardous waste would affect the generator categories of CESQGs and SQGs. Additionally, EPA is proposing to add a reference in 40 CFR part 262 that assists LQGs with finding the regulations applicable to mixing hazardous waste with non-hazardous waste.

1. CESQGs That Mix a Non-Hazardous Waste With a Hazardous Waste (40 CFR 261.5(h) and (i))

With the partitioning of the original 1980 SQG regulations into two sets of regulations for CESQGs and SQGs in 1986, potential confusion surrounds the current reading and implementation of § 261.5(h) and (i). When the regulations at § 261.5(h) and (i) were promulgated on November 19, 1980 (45 FR 76623), the title of § 261.5 was ''Special requirements for hazardous waste generated by small quantity generators.'' At that time, there were only two hazardous waste generator categories: LQGs and SQGs. Prior to the promulgation of the new SQG regulations on March 24, 1986 (52 FR 10146), an SQG was a generator who generates less than 1,000 kilograms of hazardous waste in a calendar month; the regulations did not make a distinction between SQGs and CESQGs at that time. Prior to 1986, paragraphs (h) and (i) of section 261.5 read as follows:

> ''(h) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in subpart C.
>
> (i) If a small quantity generator mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation.''

With the promulgation of the SQG regulations in 1986, SQGs were broken into two classes of generators: (1) CESQGs (generators who generate up to 100 kilograms of hazardous waste in a calendar month) and (2) SQGs (generators who generate greater than 100 kilograms and less than 1,000 kilograms of hazardous waste in a calendar month). The regulations for CESQGs were established at § 261.5, while those for SQGs were moved to § 262.34 (d)–(f). Similarly the title of § 261.5 was changed to read, ''Special requirements for hazardous waste generated by *conditionally exempt* small quantity generators'' [emphasis added]. The language of § 261.5(h) did not change when the SQG regulations were promulgated, while paragraph (i) was modified slightly to read: ''If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation.'' The phrase ''any person'' was substituted for the phrase ''small quantity generator.''

EPA believes that the readability of these regulations could be improved, particularly for paragraph (i), to expressly state whether the regulation applies to situations where the hazardous waste being mixed exceeds the CESQG quantity exclusion level or to situations where the mixture exceeds the CESQG quantity exclusion level. Additionally, ''full regulation,'' could be interpreted as regulation commensurate with an LQG, even if the resultant mixture exceeds CESQG quantity levels, but not SQG quantity levels.

For these reasons, EPA is proposing to modify the language regarding mixing of non-hazardous waste with hazardous waste by CESQGs (which is currently

[31] Letter from Marcia E. Williams, Director of EPA's Office of Solid Waste, to Fred Hutchison, University of Idaho, September 2, 1987, RCRA Online 11288.

located at § 261.5(h) and (i)) to make these points clear. Specifically, it states that a CESQG may mix listed or characteristic hazardous waste with non-hazardous waste and remain eligible for the conditional exemption provided that either of the following is true: [32] (1) The mixture does not exhibit any of the characteristics of hazardous waste identified in subpart C of part 261 of this chapter; or (2) the mixture does not cause the generator to exceed the very small quantity generator calendar month quantity limits identified in the definition of very small quantity generator at § 260.10.[33]

For example, if a CESQG mixed 50 kilograms of characteristic hazardous waste with 100 kilograms of non-hazardous waste and the resultant 150 kilograms mixture did not retain the characteristics of hazardous waste, then the generator could still comply with the CESQG conditions. However, if a CESQG mixed 50 kilograms of characteristic hazardous waste with 100 kilograms of non-hazardous waste and the resultant 150 kilograms mixture *did* retain the characteristics of hazardous waste, then the generator would no longer be a CESQG, but an SQG, and the generator would need to comply with all applicable regulations for an SQG for that calendar month. Similarly, if a CESQG mixed 50 kilograms of characteristic hazardous waste with 1,000 kilograms of non-hazardous waste and the resultant 1,050 kilograms mixture retained the characteristics of hazardous waste, then the generator would no longer be a CESQG, but an LQG, and the generator would need to comply with all applicable regulations for an LQG for that calendar month.[34]

EPA notes that the regulations covering mixing of hazardous and non-hazardous waste would apply regardless of when the initial wastes are generated. In other words, when a generator mixes a hazardous waste with a non-hazardous waste, the generator may have changed the properties of the hazardous waste and thus must make a hazardous waste determination on the resultant mixture. For example, if a CESQG mixed 50 kilograms of characteristic hazardous waste that it generated at different points over the last three months with 100 kilograms of non-hazardous waste and the resultant mixture *did* retain the characteristics of hazardous waste, then the generator would no longer be a CESQG at the point that the mixture was generated, but an SQG, and the generator would need to comply with all applicable regulations for an SQG for that calendar month during which the mixing occurred. The time period for the accumulation of wastes begins at the point the mixture is generated and the generator becomes a SQG.

In modifying the language, the Agency is not changing the intent of the existing hazardous waste regulations, but is improving the readability of the regulatory text. Thus, this change in language does not impose any additional burden on CESQGs.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The reorganization of the generator regulations would move these provisions to 262.14(b). The reorganization is discussed in section XIII of this preamble.

2. LQGs and SQGs That Mix a Non-Hazardous Waste With a Hazardous Waste (40 CFR 261.3)

LQGs and SQGs are subject to the mixture rule in § 261.3. In short, the mixture rule has three parts: (1) If non-hazardous waste is mixed with listed hazardous waste, then the mixture is considered the listed hazardous waste (§§ 261.3(a)(2)(iv) and 261.3(b)(2)); (2) if non-hazardous waste is mixed with listed hazardous waste that is listed solely for exhibiting an ignitability, corrosivity, or reactivity characteristic in part 261 subpart C (such as F003 hazardous waste), then the mixture is considered hazardous waste only if it exhibits a characteristic (§ 261.3(g)(2)(i)); and (3) if non-hazardous waste is mixed with characteristic hazardous waste, then the mixture is considered hazardous waste only if the mixture exhibits a characteristic of hazardous waste (§ 261.3(b)(3)) (45 FR 33066, May 19, 1980; 66 FR 27266, May 16, 2001).

However, because the mixture rule appears in § 261.3 and the SQG and LQG regulations appear in 40 CFR part 262, the regulated community may not totally appreciate how the mixture rules apply to SQGs and LQGs. Therefore, EPA is proposing to include references in §§ 262.16(c) and 262.17(f) that assist SQGs and LQGs with finding the regulations applicable to the mixing of hazardous waste with non-hazardous waste. Additionally, EPA wants to modify the regulations to improve understanding of what circumstances an SQG may mix hazardous waste with non-hazardous waste and still remain subject to the SQG requirements.

Specifically, EPA is proposing to add a provision for SQGs that states that a small quantity generator may mix its hazardous waste with non-hazardous waste and remain eligible for the conditional exemption applicable to a small quantity generator under two circumstances: (1) The mixture is not a hazardous waste according to the mixture rules in §§ 261.3(a)(2)(iv), 261.3(b)(2), 261.3(b)(3), and 261.3(g)(2)(i); or (2) if the mixture is a hazardous waste, the mixture does not cause the generator to exceed the small quantity generator quantity limits for a calendar month, as identified in the definition of small quantity generator at § 260.10.[35]

For example, if an SQG mixed 100 kilograms of listed hazardous waste (that was not listed solely for the ignitability, corrosivity and/or reactivity characteristic) with 1,000 kilograms of non-hazardous waste, then the resultant 1,100 kilogram mixture would be considered a listed hazardous waste and the generator would no longer be an SQG, but rather an LQG. The generator would then need to comply with all applicable regulations for an LQG for that month during which the SQG mixed the waste.[36]

However, if an SQG mixed 100 kilograms of either characteristic hazardous waste or listed hazardous waste (that *was* listed solely for the ignitability, corrosivity and/or reactivity characteristic) with 1,000 kilograms of non-hazardous waste and the resultant 1,100 kilograms mixture did not retain the characteristics of hazardous waste, then the generator could still comply with the SQG regulations because the resulting mixture would no longer be considered a hazardous waste (although it would still be subject to applicable land disposal restriction requirements in 40 CFR part 268).

EPA is also proposing to add a provision for LQGs that states that mixtures of hazardous waste with non-hazardous waste are subject to the mixture rule in § 261.3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i).

In modifying the language, the Agency is not changing the existing hazardous waste regulations, but is improving the readability of the

[32] EPA is proposing to use the term ''very small quantity generator (VSQG)'' in place of ''conditionally exempt small quantity generator.'' See section VI.B of this preamble for more information.

[33] This regulatory citation is the proposed new location for the definition of a VSQG. See section VI.B of this preamble for more information.

[34] Additionally, the generator would have to comply with the SQG or LQG regulations for as long as its total quantity of hazardous waste accumulated on-site was greater than or equal to the CESQG accumulation limit of 1000 kg.

[35] This regulatory citation is the proposed new location for the definition of SQG. See section VIII of this preamble for more information.

[36] Additionally, a generator would have to comply with the LQG regulations for as long as its total quantity of hazardous waste accumulated on-site was greater than or equal to the SQG accumulation limit of 6000 kg.

regulatory text. Thus, this change does not impose any additional burden on SQGs and LQGs.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. EPA is proposing to address the mixing regulations for SQGs at § 262.16(c) and the mixing regulations for LQGs at § 262.17(f). The reorganization is discussed in section XIII of this preamble.

3. Request for Comment

The Agency requests comment on whether the proposed language for CESQGs and SQGs improves the understanding of the regulations regarding how mixtures of non-hazardous waste and hazardous waste would affect the generator category for CESQGs and SQGs. Additionally, EPA requests comment on whether the proposed language for LQGs assists LQGs in more easily finding the applicable mixture regulations.

C. Allowing CESQGs To Send Hazardous Waste to LQGs Under the Control of the Same Person

EPA is proposing to allow CESQGs to send their hazardous waste to an LQG that is under the control of the same person, as defined at § 260.10, provided both the CESQG and LQG comply with specified conditions.[37]

1. Purpose

Under the existing regulations at § 261.5(f)(3) for acute hazardous waste, and § 261.5(g)(3) for non-acute hazardous waste, a CESQG may either treat or dispose of its hazardous waste on site or ensure delivery to an off-site treatment, storage, or disposal facility, which can include RCRA-permitted hazardous waste facilities, interim status hazardous waste facilities, municipal solid waste facilities, non-municipal non-hazardous waste facilities, recycling facilities, and universal waste handlers. The existing CESQG regulations do not allow a generator to send its hazardous waste off site to another generator, unless the receiving generator has a storage permit or is otherwise one of the types of facilities cited above. Thus, persons looking to reduce their overall environmental liability across multiple sites are prohibited from managing their CESQG hazardous waste at one or more of their LQG sites without first obtaining a permit or complying with the interim status standards, both of which would increase regulatory burden and costs.

EPA believes that allowing CESQGs to send their hazardous waste to an LQG that is under the control of the same person would provide an additional option for CESQGs to manage their hazardous waste. It may also improve the management of that hazardous waste for four main reasons.

First, LQGs are subject to more stringent management conditions, such as accumulation time, labeling, training, emergency planning, and containment standards, as compared to CESQGs. In addition, LQGs may only transport hazardous waste to a RCRA-permitted or interim status hazardous waste TSDF, which in turn, is subject to more stringent management standards than the municipal or non-municipal solid waste facilities that CESQGs are allowed to use. Therefore, allowing hazardous waste generated by a CESQG to be sent to an LQG under the control of the same person could improve overall oversight and management of the hazardous waste and enable more effective environmental protection. Furthermore, a company, because of economies of scale, may reduce its overall waste management costs, as well as its potential financial liabilities for hazardous waste it generates at CESQG facilities, as it would be handled under the more comprehensive LQG and TSDF regulatory programs.

Second, whereas LQGs have up to 90 days to accumulate hazardous waste in compliance with all the LQG conditions for exemption without having to obtain a RCRA storage permit or comply with all the other standards otherwise applicable, CESQGs may accumulate up to 1,000 kilograms of non-acute hazardous waste or up to 1 kilogram of acute hazardous waste or up to 100 kilograms of residues from the cleanup of a spill of acute hazardous waste without any time constraint. Even though the amount of hazardous waste allowed on site by CESQGs at any one time is limited, the longer that hazardous waste is accumulated on site the greater the risk of adverse impacts to human health and the environment. Allowing CESQGs to send their hazardous waste to an LQG under the control of the same person may reduce the overall time that the CESQG accumulates hazardous waste on site, which would further reduce the potential risk to human health and the environment.

Third, this proposed change would allow consolidation by an LQG of hazardous waste generated by several CESQGs under its control, which increases the potential opportunities for hazardous waste recycling by the LQG.

Fourth, this proposed change would give companies flexibility in allocating labor and resources required to manage the company's total quantity of hazardous waste generated, as the company would be allowed to consolidate its hazardous waste from CESQG facilities at its LQG sites.

EPA has received requests over the years from industry for the regulations to allow CESQGs to send their hazardous waste to LQGs for consolidation. EPA believes that such a change in the regulations would enable generators to employ greater control over the management of their hazardous waste, thereby resulting in improved efficiency and reduced liability for the generator. EPA believes numerous situations exist where CESQGs and LQGs under the same ownership could take advantage of this proposed change. For example, Army National Guard and Reserve units that may be CESQGs would have the opportunity to send their hazardous waste to an active Army base that is an LQG. The same situation applies to Air Force, Navy, and Marine Corps reserve units as well. Additionally, many universities have engineering, medical, and science laboratories located on campus, with each laboratory building possibly qualifying as a CESQG. Allowing different laboratory buildings within a university or industrial environment that are CESQGs to send their hazardous waste to another university or industrial entity that is an LQG would provide both economic and environmental benefits. Furthermore, utilities, retailers, and remote oil and gas production facilities also represent examples of industrial sectors that may realize benefits from the intra-company transfer of hazardous waste from CESQGs to LQGs.

2. Scope

As discussed above, EPA is proposing to amend the regulations under the existing regulatory framework at § 261.5(f)(3) and (g)(3) to allow CESQGs to send hazardous waste to an LQG under the control of the same person.[38] ''Person'' is defined in § 260.10 to mean an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state or any interstate

[37] EPA is also proposing to rename ''CESQG'' to ''VSQG'' (very small quantity generator) (see section VIII.A.1 of the preamble for more information). However, for this discussion, we continue to use CESQG as this term is most familiar to the regulated community.

[38] EPA is proposing to reorganize the regulations for CESQGs by moving provisions from § 261.5 to § 262.14. The proposed revision to allow CESQGs to send hazardous waste to LQGs under control of the same person can be found at § 262.14(b)(3)(viii).

body. For the purposes of this section, ''control'' would mean the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person shall not be deemed to ''control'' such facilities.

The Agency believes limiting transfers to facilities under control of the same person is appropriate because it ensures common control is maintained over both facilities and takes advantage of strong incentives to ensure the hazardous waste is safely managed. Additionally, if a CESQG sends hazardous waste to an LQG under the control of the same person, the LQG is likely to be familiar with the type of hazardous waste generated by the CESQG. Furthermore, questions regarding liability and responsibility for such hazardous waste are likely to be clearer than is the case with facilities from unrelated companies.

EPA is also proposing some labeling and marking standards for CESQG waste being transferred to LQGs under the control of the same person under this provision. Note that aside from these two conditions, the same standards for management of CESQG waste apply to materials going to an LQG under this provision as to other CESQG waste, including the exemption from the requirement to ship using a hazardous waste manifest. DOT shipping requirements do still apply.

3. Conditions for Exemption

Condition for Exemption for CESQGs

As part of this provision, CESQGs would be required to meet the following conditions for exemption, proposed at § 262.14(a)(viii).

Under control of the same person. As described above, the CESQG and the LQG would have to be under control of the same person, according to the existing definitions in § 260.10.

Labeling and marking of containers. The Agency is proposing that a CESQG transferring waste to an LQG under the control of the same person label its containers with (1) the words ''Very small quantity generator hazardous waste''; (2) other words that identify the contents of the containers (*e.g.,* the name of the chemical(s), such as ''acetone'' or ''methylene dichloride'' or the type or class of chemical, such as ''organic solvents'' or ''halogenated organic solvents'' or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation (DOT) requirements at 49 CFR part 172 subpart D); (3) an indication of the hazards of the contents of the container, such as the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); a hazard class label consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association (NFPA) code 704; a hazard pictogram consistent with the United Nations' Globally Harmonized System (GHS); or any other marking and labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers; and (4) the applicable EPA hazardous waste number(s) (EPA hazardous waste code) in subparts C and D of part 261 to assist the receiving LQG in managing the hazardous waste received. This condition is also consistent with the changes proposed for labeling and marking of containers in the revisions to 40 CFR parts 262, 263, and 268 discussed in various sections elsewhere in this preamble. A generator subject to DOT shipper/carrier packaging requirements should be familiar with and aware of the marking requirements at 49 CFR 172.301 and 49 CFR 172.304, as well as prohibited labeling and label visibility requirements at 49 CFR 172.401 and 172.406, respectively.

Because the hazardous waste generated and accumulated by a CESQG will be subsequently sent off site to an LQG under the same company in compliance with DOT hazardous material regulations, the CESQG may choose to use an appropriate DOT proper shipping name found in the 49 CFR 172.101 hazardous materials table to identify the contents of the container while hazardous waste is accumulating on site. That way, the generator will fulfill EPA and DOT requirements simultaneously; however, EPA is not proposing to require the use of the DOT shipping names while the hazardous waste is accumulating on site. We only suggest that the DOT shipping name may be one way that some generators may choose to identify the contents of the container.

EPA believes use of the DOT marking requirement should be sufficient in many situations involving DOT Class 9 hazardous materials that are also hazardous waste, with the DOT shipping name ending in N.O.S. (not otherwise specified). As noted at 49 CFR 172.301(b), generators using a DOT shipping name ending in N.O.S. must also provide the technical name of the hazardous material in association with the proper shipping name. However, the Agency is requesting comment on examples of when the DOT shipping name would not meet EPA's intent of ''identifying the contents of the container'' and suggestions for addressing this situation.

EPA believes that CESQGs should label and mark containers of hazardous waste sent to LQGs in order to communicate the contents of the containers to facility personnel that can then safely manage the hazardous waste in compliance with the LQG regulations. Since CESQGs already must make a hazardous waste determination to determine if and what types of hazardous waste they generate, the Agency does not believe this condition will pose an undue burden. In fact, if the CESQG was not required to provide this information, the burden to the LQG receiving the hazardous waste may increase because the LQG would then have to do so.

Conditions for Exemption for LQGs

EPA is proposing that LQGs receiving hazardous waste from CESQGs under the control of the same person comply with the following conditions for exemption, all proposed at § 262.17(g).

a. Notification. EPA is proposing that LQGs receiving hazardous waste from CESQGs under the control of the same person submit a notification to EPA or their authorized state using EPA form 8700–12 (*i.e.,* the Site Identification (Site ID) form) 30 days prior to receiving the first shipment of hazardous waste from the CESQG. LQGs would be required to identify in the Comments section of the Site ID form the name(s), site address(es), and contact information for the CESQG(s) that will be transferring hazardous waste to the LQG. LQGs would also be required to submit an updated Site ID form within 30 days should the name, site address, or contact information for the CESQG change.

Notification in this instance serves to inform the regulatory authorities of which LQGs are receiving hazardous waste from which CESQGs under control of the same person. The Agency believes notification is necessary in order to communicate to inspectors the origin of the hazardous waste received by the LQG and to ensure that the received shipment is managed in compliance with the conditions of the provision. EPA also believes that notification by the LQG, rather than notification by the CESQG, is more efficient and less burdensome, because LQGs are already required to submit

Site ID forms as part of obtaining a RCRA Identification Number and as part of the biennial reporting process. Additionally, it is more efficient for one LQG to notify on behalf of many CESQGs.

EPA has recently made available an electronic interface for states and the regulated community to use to submit Site ID forms electronically, which will further reduce burden on LQGs. Facilities should check with their states regarding whether their state will use EPA's electronic submittal process.

b. Recordkeeping. LQGs would be required to maintain records for three years from the date the hazardous waste was received from the CESQG with the following information:

- The name, site address, and contact information for each CESQG; and
- A description of each waste shipment received from the CESQG, including the quantity, EPA hazardous waste number(s) of each waste received, and the date the hazardous waste was received.

EPA believes recordkeeping is necessary to ensure the requirement that the CESQG and LQG are under control of the same person is met, as well as to ensure that the hazardous waste from the CESQG is managed according to the other conditions for exemption of this provision, such as that LQGs are receiving shipments of hazardous waste from CESQGs in quantities commensurate with the CESQG's generator category. EPA believes this recordkeeping condition could be fulfilled through routine business records, such as a bill of lading, and would not present undue burden to the LQG. Additionally, the LQG could use this information in order to report the hazardous waste from the CESQG on its biennial report forms.

c. Labeling and marking of containers. The Agency is proposing that LQGs comply with the labeling and marking conditions for exemption under proposed § 262.17(a)(5), including the date accumulation started (*i.e.,* the date the hazardous waste was received from the CESQG). (Note: These are the same proposed standards that CESQGs must comply with in labeling and marking containers that they send to LQGs, as discussed above.) If the LQG is consolidating incoming hazardous waste from a CESQG with either its own hazardous waste or with hazardous waste from another CESQG, the LQG would be required to mark each container with the earliest date any hazardous waste in the container was accumulated on site.

Because the LQG must manage the hazardous waste it receives from CESQGs according to the LQG regulations, EPA believes that the same labeling and marking regulations should apply to hazardous waste from a CESQG that is accumulated and managed by an LQG. EPA believes that it is important that employees, transporters, downstream handlers, emergency personnel, EPA, and the states know as much as possible about the potential hazards of the contents in containers that LQGs accumulate, transport, and manage.

d. Waste management. Under this proposal, an LQG would be required to manage all incoming hazardous waste from a CESQG in compliance with the regulations applicable to its LQG generator category. In other words, there would be no difference in how the hazardous waste from a CESQG was managed relative to the management of the LQG's own hazardous waste, although hazardous waste from a CESQG would not be eligible for management under the satellite accumulation regulations (proposed § 262.15).

4. Biennial Reporting

An LQG would also be required to report the hazardous waste it receives from CESQGs on its biennial report, as required under § 262.41. EPA plans to include a new source code in the biennial report instructions (if this provision is made final) that LQGs would use to identify the hazardous waste as being received from a CESQG (to differentiate from hazardous waste the LQG generates on site). Generators would be required to report hazardous waste they receive from CESQGs by type of hazardous waste. In other words, if an LQG receives the same type of hazardous waste from multiple CESQGs, it would only need to report the total quantity of that hazardous waste received from all CESQGs. This provision is consistent with the existing provision that LQGs must report information on the quantities and types of hazardous waste they generate as part of the biennial reporting process. It will also enable states and EPA to better understand the additional volumes and types of hazardous wastes managed at an LQG, which will assist in prioritizing compliance assistance.

5. No Maximum Limit of Hazardous Waste LQGs Receive From CESQGs

Because LQGs currently have no maximum limit on the amount of hazardous waste they can accumulate, and because the regulations that are applicable to LQGs are protective, the Agency believes there is no need to establish a maximum limit on the amount or types of hazardous waste that an LQG could receive from CESQGs. In fact, we believe the more hazardous waste that is shipped to LQGs, the greater potential for reduced risk, since these hazardous wastes would be managed under the more comprehensive hazardous waste regulations, as opposed to potentially being sent to non-hazardous waste disposal facilities.

6. Enforcement

EPA believes the proposed conditions to allow CESQGs to send their hazardous waste to an LQG under the control of the same person are necessary to ensure protection of human health and the environment. Failure to meet one or more of the conditions could lead to potential mismanagement of the hazardous waste, potentially resulting in a release of hazardous waste or hazardous waste constituents to the environment. Persons taking advantage of the proposed provision that fail to meet one or more of the conditions for exemption would be subject to an enforcement action under RCRA section 3008 for violations of applicable independent requirements in part 264, 265, 267, 268, and 270. EPA and authorized states would also have the authority to cease certain transfers of hazardous waste from CESQGs to an LQG in the context of an enforcement action. EPA also notes that failure on the part of the LQG to meet one of the conditions for exemption would not mean that the CESQG is subject to permitting or other standards in 264, 265, and 270, provided that the CESQG met its conditions for exemption and vice versa.

7. Interstate Shipments

Under RCRA, authorized state programs may be more stringent than the federal program and thus states may choose not to adopt the proposed provision allowing CESQGs to send their hazardous waste to an LQG under the control of the same person. In the case of interstate shipments where a CESQG wants to transfer its waste to an LQG located in a different state than the CESQG, the CESQG must ensure that both states have adopted the provision in order to ship the hazardous waste to an LQG. Additionally, if a CESQG wants to transfer its waste through states that have not adopted the proposed provision, these transit states may also impose state requirements on the shipment while it is being transported through the state. Therefore, EPA recommends that generators contact any states through which the hazardous

waste will be shipped to ascertain their policy about such shipments.

8. Request for Comment

EPA requests comment regarding its proposal to allow CESQGs to ship their hazardous waste to an LQG under the control of the same person.

EPA is also requesting comment on whether to establish a process that would allow an entity (whether CESQG or LQG) to request approval from its EPA Regional Administrator or the authorized state to transfer hazardous waste from CESQGs to LQGs that are not under the control of the same person. For example, such inter-company transfers could occur between high school laboratories and university laboratories or other waste management companies, such as those assisting with school chemical clean-outs. While the Agency believes that this should not be allowed as a general matter, we also recognize that there may be instances where such an arrangement may be appropriate, and thus, are taking comment on allowing such arrangements on a case-by-case basis. EPA is interested in whether such inter-company transfers would produce the same benefits as for intra-company transfers in enabling greater control over the management of CESQG hazardous waste, thereby resulting in improved efficiency and reduced liability for the generator.

The request for approval submitted to the state or Regional office would have to include the name, address, and contact information for each entity involved in the arrangement, how the entities will assign responsibility for the safe management of the hazardous waste during transport to and accumulation by the LQG, as well as a description of the actual practices that will be followed by the CESQG and LQG to ensure the safe management of the hazardous waste. EPA does not believe that these requests for approval would need publication in the **Federal Register** and, instead, would either be approved or denied by the EPA Regional Administrator or the authorized state. If a request is granted by the EPA Regional Administrator or the authorized state, the CESQG(s) and LQG would need to comply with the conditions discussed above for those CESQGs and LQGs that are ''under control'' of the same person. In addition, the LQG would need to keep a copy of the request for approval, as well as EPA's or the state's approval for as long as the CESQG sends their hazardous waste to the LQG.

EPA is requesting comment on an additional variation for allowing LQGs to consolidate CESQG hazardous waste when the generators are not under the control of the same person with a self-implementing request for approval. Under this variation, the implementing agency would have sixty days from the date the request was sent to approve or deny it. After sixty days, the generator may start consolidating regardless of whether it has heard back from the implementing agency. This option provides the state or Regional office the ability to deny requests that pose a risk to human health or the environment or that come from entities that have a history of not managing waste responsibly, but puts a limit on how long a generator must wait for a response to its request for approval.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The reorganization of the generator regulations would move the conditions for CESQGs from § 261.5 to § 262.14 and the conditions for LQGs from § 262.34 to § 262.17. The reorganization is discussed in section XIII of this preamble.

D. Requiring Biennial Reporting for Owners or Operators of Facilities That Recycle Hazardous Waste Without Storing It (40 CFR 261.6(c)(2))

EPA is proposing to modify 40 CFR 261.6(c)(2) to require owners or operators of facilities that recycle hazardous waste without storing it prior to recycling to comply with the biennial reporting requirements at 40 CFR 265.75. Because these entities receive hazardous waste using a hazardous waste transporter and hazardous waste manifest, similar to a permitted TSDF or a facility with interim status, the Agency is proposing to amend its regulations and instructions to specify that such facilities must complete and submit a biennial report to EPA. Without this information, the Agency and states may have an incomplete picture of which facilities recycle hazardous waste and the quantities of regulated hazardous wastes that are recycled, impeding their ability to provide adequate oversight for those facilities.

The Agency believes that only a few recycling facilities will be affected by this change. Additionally, considering that most facilities already have sophisticated information systems to manage and track incoming shipments of hazardous waste, we believe the burden imposed on such facilities should be minimal.

The Agency requests comment on this proposed change. Additionally, the EPA is interested in information regarding whether these facilities already routinely submit biennial reports or are required by the states to submit biennial reports.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

VIII. Proposed Revisions to 40 CFR Part 262—Standards Applicable to Generators of Hazardous Waste

A. Proposed Addition of Terms Used in This Part and Changes to Purpose, Scope, and Applicability (40 CFR 262.1 and 262.10)

As previously discussed, one of the objectives of this proposal is to revise the hazardous waste generator regulations to make them more user-friendly and easily understood by both the regulated community and federal and state regulators. Currently, the hazardous waste generator regulations are located primarily in three different parts of the CFR (40 CFR parts 261, 262, and 265). In some cases, it is difficult to determine what components of the regulations apply to different categories of hazardous waste generators.

The proposed reorganization will address many of these problems by moving the regulations at § 261.5 and some of the technical standards of part 265 into part 262 and by organizing the regulations based on a generator's category so generators can more easily determine which regulations they are subject to. That is, EPA is proposing that § 262.14 contain conditions for exemption for conditionally exempt small quantity generators, that § 262.15 contain conditions for exemption for satellite accumulation areas, that § 262.16 contain conditions for exemption for small quantity generators, and that § 262.17 containing conditions for exemption for large quantity generators.

In concert with the reorganization of the generator conditions for exemption, EPA is proposing to add some regulatory language to more clearly explain how the regulations work for generators and to lay out which provisions the various categories of generators are responsible for complying with. The proposed addition of § 262.1 and the proposed revisions to § 262.10 are meant to achieve these goals.

1. Proposed Addition of 40 CFR 262.1

One concern regarding the current generator regulations is that they are not sufficiently clear about the distinction between the two types of generator requirements: Those that a generator must meet because it is an entity that generates hazardous waste—independent requirements—and those that a generator must meet only if it

wants the benefits of an exemption from RCRA permitting—conditions for exemption. In order to make the regulations clearer regarding this distinction, EPA is proposing to include definitions for these terms in a new section of the regulations at § 262.1.

The difference between independent requirements and conditions for exemption, as discussed previously in this preamble, lies in the nature of each, and in the consequences that result when each is not met. An independent requirement is an unqualified or unconditional requirement imposed without reference or regard to obtaining an optional exemption from regulation. That is, independent requirements must be met whether or not the generator accumulates hazardous waste. An independent requirement is applicable and enforceable, independent of whether the generator is attempting to obtain an exemption.

A condition for exemption, on the other hand, is a requirement that is contingent in nature, in that it is only necessary to meet in order to obtain an optional exemption from other requirements. As an example, the regulations in § 262.34(a) introduce the conditions of the LQG exemption by stating that the LQG may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that it meets the conditions listed in that paragraph.

This distinction is relevant because while an entity can ''violate'' and be penalized for violating an independent requirement, an entity cannot be penalized for not complying with a condition for an optional exemption. Instead, if the entity does not comply with the conditions of the exemption, that exemption no longer applies and the entity becomes subject to full regulation. Violation of an independent requirement, such as an SQG failing to obtain an EPA identification number, can result in a notice of violation and enforcement action for that particular provision. Noncompliance with a condition for exemption, such as an LQG accumulating hazardous waste for more than 90 days, however, can result in an entity losing its conditional status and becoming the operator of a non-exempt storage facility subject to the applicable requirements for storage facilities in parts 124, 264, 265, 267, 268 and 270, and for generators in part 262.

EPA is proposing to define an ''independent requirement'' as a requirement of any of part 262 that states an event, action, or standard that must occur or be met and that applies without relation to, or irrespective of, the purpose of obtaining a conditional exemption from a permit or having interim status under § 262.14, 262.15, 262.16, or 262.17.

EPA is proposing to define a ''condition for exemption'' as any requirement in § 262.14, 262.15, 262.16, or 262.17, that states an event, action, or standard that must occur or be met in order to obtain a conditional exemption from any requirement in parts 124, 262 through 268, or 270, or from any requirement for notification under section 3010 of RCRA.

We will be using these terms throughout this preamble to distinguish between these two types of provisions for generators.

EPA is requesting comment on this proposed change to the regulations, particularly whether it clarifies implementation of the generator regulations by industry and the regulating entities.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

2. Proposed Changes to 40 CFR 262.10(a)

As part of the reorganization of the generator regulations, § 262.10(a), which addresses the purpose, scope, and applicability of the hazardous waste generator regulations, will list which generator provisions are independent requirements and which are conditions for a generator exemption from part 124, from the applicable standards of parts 264 through 268, from the permitting requirements of part 270, and from section 3010 of RCRA.

Specifically, EPA is proposing two changes to § 262.10(a): (1) Stating that a hazardous waste generator is subject to all the applicable independent requirements of part 262 and listing those independent requirements and (2) stating that a generator that accumulates hazardous waste on site is also considered to be a facility storing hazardous waste unless it meets the conditions for one of the generator exemptions in § 262.14, 262.15, 262.16, or 262.17.

a. *Independent requirements.* As stated above, under the RCRA hazardous waste program, certain regulations are independent requirements and certain regulations are conditions for exemption from RCRA permitting and the interim status standards.

To be clear about the distinctions between these types of standards, EPA is proposing to state at § 262.10(a)(1) that a person who generates a hazardous waste as defined by 40 CFR part 261 is subject to all the applicable independent requirements in the subparts and sections listed, unless the person is a conditionally exempt small quantity generator (or ''very small quantity generator,'' in the terminology of the proposed rule) that meets the conditions for exemption in § 262.14. This new addition will reinforce to generators that they must meet these independent requirements whether or not they accumulate hazardous waste on site.

b. Conditional exemption for CESQG, SQG, and LQG. The RCRA hazardous waste generator regulations provide generators that accumulate hazardous waste on site with exemptions from the hazardous waste permitting standards and compliance with interim status standards in 40 CFR parts 264 and 265, provided certain conditions are met.

Therefore, EPA is proposing to state at § 262.10(a)(2) that a generator that accumulates hazardous waste on site is also considered a facility that stores hazardous waste, unless it is excluded because it meets the conditions of being a generator. The paragraph then lists the generator categories and where to find the relevant conditions for each, in § 262.14, 262.16, or 262.17.

These proposed changes to § 262.10 do not constitute substantive changes to the hazardous waste generator regulations. Rather, these changes simply reorganize the independent requirements and conditions for exemption applicable to all hazardous waste generators based on their generator category into one section of the regulations. EPA also believes these changes will reduce confusion for the regulated community in the context of enforcement actions. It has been the Agency's longstanding position that generators that do not comply with a condition of a generator exemption fail to qualify for the exemption and, if they have not qualified for any other exemption, they would be considered an operating TSDF without a permit and/or in violation of the storage facility operating standards in parts 264 or 265. The Agency believes this proposed reorganization will improve the use of and compliance with the regulations.

EPA is requesting comment on these proposed changes.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The reorganization is discussed in section XIII of this preamble.

3. Proposed Deletion of § 262.10(c)

Section 262.10(c) of the hazardous waste regulations is a provision that describes the requirements for a generator who treats, stores, or disposes of hazardous waste on-site and includes

a list of provisions these generators must comply with. EPA believes that this provision in the regulation is outdated and confusing and can be removed. EPA is proposing to delete and reserve this paragraph.

When § 262.10(c) was initially promulgated on February 26, 1980, the hazardous waste generator regulations distinguished between the generators that sent hazardous waste to be managed off site and those that managed their hazardous waste on site. Generators that sent hazardous waste off site could manage it for 90 days in an accumulation area, but generators that managed hazardous waste on site were expected to manage it under their permits or under interim status regulations. The purpose of § 262.10(c) was to provide the list of requirements that generators managing hazardous waste were required to follow in addition to those permits or interim status requirements.

This distinction meant that the two types of generators had very different standards for the areas where newly generated hazardous waste was managed. Significantly, generators sending hazardous waste off site could easily make physical changes to their accumulation areas, whereas a similar generator managing hazardous waste on site under a permit had to go through the permit modification process to make the same kind of changes. EPA effectively eliminated the distinctions by revising these regulations (45 FR 76624, November 19, 1980 and 47 FR 1248, January 11, 1982). The final rule promulgated in January 11, 1982, made a change to § 262.10(c) that added the generator accumulation provisions at § 262.34 to the list of things a generator who treats, stores, or disposes of hazardous waste on site must comply with. Currently, the Agency does not make this distinction between generators that send waste for treatment off site and those that manage waste on site. This revision is therefore outdated and not well understood and can be deleted and reserved without disruption to the generator hazardous waste regulations.

EPA seeks comment on whether anyone is using this provision or has objection to its removal and what the reasoning for that objection is.

Effect of the Proposed Reorganization: This proposed deletion is not affected by the proposed reorganization.

4. Generators Are Subject To Enforcement of Applicable Requirements and Penalties Under Section 3008 of RCRA if They Fail To Meet the Independent Requirements Made Applicable by the Failure To Obtain a Conditional Exemption *(40 CFR 262.10(g))*

The existing regulation at § 262.10(g) states that a generator is subject to the compliance requirements and penalties prescribed in section 3008 of [RCRA] if it does not comply with the requirements of that part. However, this paragraph does not expressly state that a generator that is not meeting the conditions of its exemption—and is, therefore, an illegal TSDF—is liable under section 3008 of RCRA for failing to meet the requirements for TSDFs in parts 124, 264 through 268, and 270.

Therefore, EPA is proposing to revise § 262.10(g) to state that a generator is subject to enforcement of the applicable requirements and penalties under section 3008 of RCRA if it fails to meet its applicable independent requirements under part 262: § 262.11 (Hazardous waste determinations and recordkeeping), § 262.12 (Obtaining an EPA identification number), part 262 subpart B (Manifest), §§ 262.30 through 260.33 (Pre-transport) and part 262 subpart D (Recordkeeping and reporting). The new language would further explain that a generator is subject to enforcement of the applicable requirements and penalties under section 3008 of RCRA if it fails to meet the applicable requirements of parts 124, 263 through 268, and 270, including such requirements made applicable when such person is not meeting the conditions of the generator exemption.

EPA is requesting comment on these proposed changes.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

5. Proposed Deletion of Laboratory XL Project Regulations (40 CFR 262.10(j) and Part 262 Subpart J)

The Laboratory XL Project was created for Boston College, the University of Massachusetts, and the University of Vermont, and was finalized in the **Federal Register** on September 28, 1999 (64 FR 53292). Originally, the program was to expire on September 30, 2003. But on June 21, 2006, EPA extended the program and the new expiration date was changed to April 15, 2009 (71 FR 35550). Since the program has now expired, EPA is proposing to remove paragraph (j) from § 262.10, as well as part 262 subpart J.

EPA is requesting comment on this proposed change.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

6. Generators Shall Not Transport to a Non-Designated Facility

The Agency is proposing to add a new provision at § 262.10(a)(3) that would clearly and succinctly state that a generator cannot offer or otherwise cause its waste to be sent to a facility that is not authorized to accept it.

As the Agency has stated numerous times in the development and implementation of the RCRA hazardous waste program, a fundamental aspect of the program is the responsibility placed on the generator of hazardous waste to ensure its hazardous waste is properly managed from cradle to grave. Numerous existing regulatory provisions are designed to ensure that generators send their hazardous waste only to authorized TSDFs or other authorized facilities. See for example, §§ 262.12(c), 262.20(b), 262.40(a). However, from experience with the program, the Agency has found situations where a generator failed to send its hazardous waste to a facility authorized to receive that waste, thus creating both regulatory and potential hazardous waste mismanagement problems. The Agency believes this provision is necessary to ensure generators understand they have this obligation and, for that reason, is placing it in the initial provisions of the generator regulations.

This provision is being added to the regulatory framework and not replacing §§ 262.12(c), 262.20(b), 262.40(a), as those provisions are aimed at other aspects of the generator program (for example, ensuring manifests are properly completed).

The Agency requests comment on adding this new provision.

B. Waste Determinations (40 CFR 262.11)

EPA is proposing to revise the hazardous waste determination regulations at § 262.11 in order to provide a more complete explanation of the regulation and improve compliance by hazardous waste generators. The proposed changes are intended to provide more information about when a waste determination must be made, as well as to better explain the methods and procedures for generators to determine whether they have a listed hazardous waste or a characteristic waste. The proposed changes also address some deficiencies in the current recordkeeping regulations.

Specifically, the proposed changes discussed in this section are the following: (1) Confirming that a generator's waste must be classified at its point of generation and, for wastes potentially exhibiting a hazardous characteristic, at any time during the course of its management when the properties of the wastes may change; (2) revising the language on making a determination for a listed hazardous waste in § 262.11 to explain more fully how generators can make this kind of determination, including use of acceptable kinds of generator knowledge; (3) explaining more completely in the regulations in § 262.11 how a generator should evaluate its waste for hazardous characteristics; (4) moving the independent recordkeeping and retention requirements for hazardous waste determinations currently found at § 262.40(c) into § 262.11 to integrate this provision more directly into the hazardous waste determination regulations; (5) revising the hazardous waste determination recordkeeping regulations to require that SQGs and LQGs maintain records of any test results, waste analyses, or other determinations made in accordance with § 262.11 for at least three years, including waste determinations where a solid waste (as defined in § 261.2) is found not to be a RCRA hazardous waste (as defined in § 261.3); (6) revising the hazardous waste determination regulations by copying § 262.40(d) into § 262.11 to address situations where an enforcement action has been initiated and the period of record retention (*e.g.,* three years from when the record was generated) must be extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator; and (7) making clear at the very beginning of § 262.11 that the hazardous waste determination must be accurate.

In addition, EPA is asking for comment in this section on two additional potential changes regarding the accuracy of hazardous waste determinations and the length of time records must be maintained.

Finally, EPA discusses the potential development of an electronic decision making tool for hazardous waste determinations and takes comment on whether that would be a helpful tool to generators.

The revisions proposed at § 262.11 are designed to improve compliance by generators in making a hazardous waste determination for their solid wastes. To a great extent, the success of the RCRA hazardous waste regulatory program begins with and relies on generators making this determination. Failure to make an accurate hazardous waste determination may lead to mismanagement of the waste, with potential adverse consequences to human health and the environment. As described below, generators may have a difficult time making an accurate hazardous waste determination for a variety of reasons.

Many of the proposed changes at § 262.11 derive from policy statements and clarifications the Agency has made through the years in FR notices, guidance documents, and policy letters to help explain how hazardous waste determinations should be made. The proposed changes also derive from issues identified in EPA's 30 years of experience implementing the RCRA hazardous waste program.

1. Background

The regulations at § 262.11 require generators of solid waste (as defined at § 261.2) to determine whether their waste is also a hazardous waste. Under RCRA, a solid waste may be hazardous if it is either listed as hazardous or exhibits a hazardous waste characteristic. Listed hazardous wastes are wastes that the Agency has specifically evaluated and determined may present a risk to human health and the environment, if improperly managed. Such wastes can be generated by specific processes of particular industries or by many different types of industry (*e.g.,* spent degreasing solvents) or hazardous commercial chemical products being discarded as surplus, off specification, or for another reason. Wastes that exhibit any of the four hazardous characteristics (ignitability, corrosivity, reactivity, toxicity) are also classified as hazardous. Hazardous wastes are subject to a number of handling and disposal requirements intended to prevent them from damaging human health or the environment.

Once a generator has determined from § 261.2 that it has generated a solid waste, the regulations at § 262.11 currently provide the following method for a generator to determine if a waste is a hazardous waste:

(1) It should first determine if the waste is excluded from regulation under the exclusions found in 40 CFR 261.4.

(2) It must then determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261. Note that even if the waste is listed, the generator still has an opportunity under 40 CFR 260.22 to demonstrate to the Administrator that the waste from his particular facility or operation is not a hazardous waste.

(3) For purposes of compliance with the land disposal restrictions in 40 CFR part 268, or if the waste is not listed in subpart D of 40 CFR part 261, the generator must then determine whether the waste is identified in subpart C of 40 CFR part 261 by either:

(A) Testing the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or

(B) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(4) Finally, if the waste is determined to be hazardous, the regulations state that the generator must refer to parts 261, 264, 265, 266, 267, 268, and 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.

A generator's responsibility begins with applying due diligence through knowledge of its processes, feedstocks, and wastes generated, and/or testing to make an accurate hazardous waste determination for the solid waste it has generated (see § 261.2). The Agency considers the application of the above information (*e.g.,* knowledge of the production processes, feedstocks, and wastes generated and/or information from testing) to be acceptable types of generator knowledge. Failure to consider any relevant types of knowledge could be viewed critically if a situation arose in which a particular generator's waste determination came under scrutiny. Once a determination has been made that a generator's solid waste is a hazardous waste, then the generator can initiate the process of quantifying the total amount of hazardous waste generated in a calendar month to determine its generator category, and from that, determine the regulations with which it must comply. If an incorrect hazardous waste determination is made (*i.e.,* a hazardous waste is identified as non-hazardous), there is a strong possibility that the waste will not be managed appropriately, potentially leading to environmental releases and damage.

From experience with the waste determination program, the Agency has found that there are a number of situations in which generators may misclassify their wastes. In some cases, generators overlook certain wastes that are unrelated to their production processes, discarding them in the trash without realizing that they have discarded a hazardous waste. In other cases, generators may not understand how the hazardous waste characteristics or listings regulations may apply to the waste. There are also instances in which

generators have not even known that RCRA and its regulations apply to their wastes.

States have also identified difficulties generators have in making hazardous waste determinations as a concern. A study conducted by the State of New Hampshire found that generators often overlooked hazardous wastes they had generated apart from their main production operations, for example, solvent-contaminated wipes and aerosol cans.[39] [40]

The Georgia Department of Natural Resources (GADNR) has also highlighted this problem in one of its publications, stating ''Many solid waste streams at facilities tend to be overlooked as hazardous wastes because the solid waste usually does not resemble what one would think a hazardous waste looks like [*i.e.,* wastes that are not a liquid chemical waste (rags, absorbents, or filters); or wastes that are not directly generated in manufacturing process (universal wastes, computers, electronics, or sludge in drains or sumps); wastes that are newly regulated (electronics); or wastes that are similar to household hazardous wastes (mercury thermometers, aerosol cans, batteries, and lamps), which are excluded as hazardous waste in accordance with § 261.4(b)(1).].'' [41]

The importance of generators making an accurate hazardous waste determination cannot be over-emphasized. In 2013, a contractor for EPA completed a third-party program evaluation of the hazardous waste determination regulations to better understand the reasons generators may have difficulty making reliable hazardous waste determinations.[42] This study involved examining national compliance statistics associated with hazardous waste determinations and meeting with representatives of three state programs—Texas, Minnesota, and Colorado—and the regulated community in those states. Questions focused on rates of non-compliance with the hazardous waste determination regulations, obstacles to generator compliance, the role of state waste management programs and the role of third parties, such as environmental services companies or industry trade organizations. The interviewers also solicited stakeholder recommendations for improvement of the waste determination regulations.

The evaluation reported the following findings. First, the average non-compliance rate with the RCRA hazardous waste determination regulations across the United States is approximately 34 percent. This figure is based on an analysis of hazardous waste determination violations during EPA compliance inspections recorded in EPA's RCRAInfo data system from 2001 to 2011.[43] These results are supported by the results of other EPA analyses. For example, in a review of inspection reports of the foundry sector by EPA's Office of Compliance, EPA found 26 of 69 facilities, or 38 percent, with hazardous waste determination violations.[44] Additionally, an EPA analysis of inspections at CESQG facilities conducted by the State of Kansas inspectors for the 2009–2012 time period found a waste determination non-compliance rate of 21 percent, and an EPA analysis of inspections of Iowa CESQG facilities conducted by EPA Region 7 inspectors for the same time period found a waste determination violation rate of 36 percent.[45] [46]

Probably the most comprehensive analysis involved examining all compliance evaluation inspections of LQGs, SQGs, and CESQGs conducted by both the EPA Regions and the states for fiscal years 2008–2012.[47] Of the 62,003 compliance evaluation inspections conducted during that time period, EPA and the states found 8,148 waste determination violations, resulting in a non-compliance rate of 13.1 percent. While the estimates of waste determination violation rates vary somewhat across the studies examining them, all of them identify violation rates that are significant.

The evaluation also discussed a number of implementation challenges that lead to non-compliance with the hazardous waste determination regulations. The evaluation identified 30 recurring themes that describe various obstacles, challenges, and factors that influence hazardous waste generators' compliance with the hazardous waste determination regulations. These 30 themes fall into three overarching categories: (1) Challenges related to the regulations; (2) challenges related to generators; and (3) challenges related to regulatory agencies.[48]

The Agency is proposing changes intended to address the two challenges identified that are related to the regulations. These are (1) difficulty understanding the regulations as written and (2) difficulty interpreting and applying the regulations to specific circumstances. The proposed changes to § 262.11 are intended to elaborate on the meaning and intent of these regulations to make them easier for generators to understand. We believe the better understanding resulting from these changes will also make it easier to appropriately apply the requirements to a broader range of specific circumstances.

2. Improvements to the Existing Hazardous Waste Determination Regulations

EPA's evaluation of the waste determination regulatory program noted that improving compliance in making accurate waste determinations is a multi-faceted problem. The Agency believes improving the clarity of the regulatory text is an important step because it represents the foundation from which all subsequent EPA and state outreach, technical assistance and enforcement efforts begin. In this regard, EPA identified several particular areas for possible improvements to the current regulations:

—Confusion about where and when to make a hazardous waste determination, particularly when further management of that material may result in a change in the hazardous waste determination.

—§ 262.11(b), which relates to whether or not a solid waste is a listed hazardous waste, does not describe how a generator should determine if the material in question is a listed hazardous waste.

—§ 262.11(c) states that a generator can either test its waste or use process knowledge or knowledge about its waste to determine whether a solid waste is a characteristic hazardous waste.

[39] A final rule for solvent-contaminated wipes was published in the **Federal Register** on July 31, 2013. This rule provides an exclusion from the definition of solid waste for solvent-contaminated wipes that are recycled and an exemption from the definition of hazardous waste for discarded wipes provided specific conditions are met (78 FR 46447).

[40] Summary of Waste Determination Meetings with VT and NH State Officials on September 27–28, 2010.

[41] ''10 Most Common Hazardous Waste (RCRA) Violations in Georgia: 40 CFR 262.11 ''Hazardous Waste Determination,'' Georgia Department of Natural Resources *https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/guidehwdet.pdf.*

[42] Hazardous Waste Determination Program Evaluation, IEc, April 2013. *http://www.epa.gov/evaluate/pdf/waste/haz-waste-determination.pdf.*

[43] RCRAInfo is EPA's national repository for hazardous waste generation and management data.

[44] ''Review of RCRA Inspection Report Practices,'' May 2007.

[45] EPA administers Iowa's hazardous waste program.

[46] Iowa CESQG Inspections 2009–2012, October 2012; Kansas CESQG Inspections 2009–2012, December 2012.

[47] State Compliance Evaluation Inspections (CEI) for FY 2008–2012.

[48] Hazardous Waste Determination Program Evaluation, IEc, April 2013. *http://www.epa.gov/evaluate/pdf/waste/haz-waste-determination.pdf.*

However, there is little guidance in the regulation on using knowledge to classify waste.

—The existing regulatory text notes that test methods are included in the hazardous characteristic definitions in subpart C of part 261,but does not note that tests are not provided for all aspects of the hazardous characteristics identified there.

The Agency has provided guidance on these issues over the past 30 years and through these proposed regulatory revisions intends to incorporate key aspects of that guidance into the regulatory language.

Finally, EPA is proposing to address deficiencies in the recordkeeping for hazardous waste determinations. These deficiencies include both a lack of specificity regarding what materials used in a hazardous waste determination must be maintained and lack of a specific statement that the independent requirement to maintain records is extended when there is an unresolved enforcement action. In addition, there are large number of hazardous waste determinations for which records are not being kept because the generator determines that the material in question is not a hazardous waste. Failure to maintain records in these cases makes it difficult for regulatory agencies to determine how a generator made the determination and to quickly assess whether the determination is accurate.

3. When and Where To Make a Hazardous Waste Determination

To respond to generator concerns about identifying the most appropriate point at which to make a hazardous waste determination, EPA is proposing to revise § 262.11 to add a paragraph (a), which would state that a hazardous waste determination must be made at the point of waste generation (*i.e.,* when the material becomes a solid waste).[49] The RCRA statute makes clear that the term ''hazardous waste generation'' means the act or process of producing hazardous waste.[50] By requiring that the initial hazardous waste determination be made at the point of generation, the regulation clarifies that the determination cannot be made downstream in the process where other materials could be mixed with the waste or where the waste changed its physical characteristics simply as a result of time elapsing affecting the hazardous waste determination. This standard must be met even in instances in which another entity, such as a waste management facility, makes the waste determination on behalf of the generator.

The 1980 preamble to the original hazardous waste regulations explicitly discussed this scenario, stating that a solid waste which is a hazardous waste because it is listed in part 261 subpart D must begin to be managed as a hazardous waste when it first meets the subpart D listing description. The preamble explains that most of the hazardous wastes listed in §§ 261.31 and 261.32 of subpart D (the F-list and the K-list) are process residues, emission control dusts, or wastewater treatment sludges and the point in time when they are created is generally well defined. For other hazardous wastes, such as spent solvents or those hazardous wastes listed in § 261.33, the point at which they meet the listing description is somewhat less well defined, but generally occurs when their intended use has ceased and they begin to be accumulated or stored for disposal, re-use, or reclamation. The preamble then goes on to provide several examples illustrating how this provision would operate in practice (45 FR 33095–96, May 19, 1980).

The 1980 regulatory preamble also addressed this issue for characteristic hazardous waste. In defining what waste is considered hazardous, § 261.3(b)(3) states that ''a solid waste becomes a hazardous waste . . . when the waste exhibits any of the characteristics.'' EPA elaborated on this regulatory definition in 1980 by noting that ''paragraph (b) provides that a solid waste is a hazardous waste whenever it exhibits one or more of the characteristics. As a practical matter, this means that persons handling solid waste must determine whether they meet the characteristics whenever the management of the waste would be subject to EPA's part 262–265 regulations'' (45 FR 33095, May 19, 1980).

This implies that a generator's waste characterization obligations may continue beyond the determination made at the initial point of generation. In the case of a non-hazardous waste that may, at some point in the course of its management, exhibit a hazardous waste characteristic, there is an ongoing responsibility to monitor and reassess its regulatory status if changes occur that may cause the waste to become hazardous. Thus, the generator must monitor the waste for potential changes if there is reason to believe that the waste may physically or chemically change during management in a way that might cause the waste, or a portion of the waste, to become hazardous.

The preamble to the final rule for the toxicity characteristic reiterated that the current rules require that the determination of whether a waste is hazardous is to be made at the point of its generation (*i.e.,* when the material becomes a solid waste).[51] In the preamble to that rule, EPA stated that it believes that the determination of the regulatory status of a waste at the point of generation continues to be appropriate and that EPA was retaining the existing approach of requiring that a determination be made at the point of generation (55 FR 11830, March 29, 1990).

Thus, for determining whether a waste exhibits a hazardous characteristic, generators of solid waste are required to make a hazardous waste determination at the initial point of generation, in the form the waste is generated in (*i.e.,* ''as is''), following the procedure described in § 262.11, which allows use of generator knowledge and/or testing, as appropriate. A generator's hazardous waste determination at the initial point of generation is critical to ensure proper management of the waste not only by the generator, but also by transporters and TSDFs who rely upon the generator's determination to allow them to safely manage the waste and provide appropriate treatment.[52]

As an example, in a letter regarding a waste consisting of solvents mixed with water that separates and becomes biphasic over time, the Agency stated that in this situation, the generator must make the hazardous waste determination not only at the initial point of generation, but also after the waste separates into phases. This letter went on to say that a generator's responsibility to make a hazardous waste determination may continue beyond the determination made at the initial point of generation. In the case of a nonhazardous waste that may, at some point in the future, exhibit a hazardous waste characteristic, there is an ongoing responsibility to monitor and reassess if changes occur that may cause the waste to become hazardous.

Again, if there is reason to believe that the waste may physically or chemically change during management in a way that might cause the waste, or portion of the waste, to become hazardous, the generator must monitor the waste for these changes. The generator should also notify any subsequent handlers of the waste so they are aware that they

[49] A material must be a solid waste before it can be a hazardous waste under RCRA.

[50] See Solid Waste Disposal Act, Sec. 1004, page 9.

[51] A material must be a solid waste before it can be a hazardous waste under RCRA.

[52] Note that making a solid and hazardous waste determination is also applicable for the exemptions identified at §§ 261.2 and 261.4 since such exemptions negate the determination.

should also monitor the waste for changes. This is analogous to and consistent with situations the Agency has discussed in the past such as when, over time, sludges that exhibit the characteristic of toxicity settle out of nonhazardous wastewaters managed in surface impoundments.[53]

Therefore, to clarify that hazardous waste determination must be made at the point of generation, the Agency is proposing to revise the regulations at 40 CFR 262.11 by adding a new paragraph (a) that would state that a hazardous waste determination for each solid waste must be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste.

This addition of paragraph (a) would change current § 262.11(a) into § 262.11(b) and bump all subsequent paragraphs in that section.

EPA requests comments on the proposed changes to § 262.11 and in particular is soliciting comment on whether the proposed new language is sufficient to improve the existing regulatory text and better assist generators in making effective hazardous waste determinations. Additionally, EPA is interested in comments regarding improvements the Agency could make to the proposed regulatory text.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

4. Determining Whether a Waste Is a Listed Hazardous Waste

a. Identifying listed hazardous wastes. As a general matter, determining whether a waste is a listed hazardous waste consists of comparing the waste that the generator generates to the hazardous waste listing descriptions in §§ 261.31 through 261.33. For many wastes, identifying the origin of the waste is sufficient to determine whether it is a listed waste and this determination is rather straightforward. However, this is not always the case. Sometimes additional information about the waste, the process that generated it (including production feedstocks), and the listing regulations is needed to make a reliable determination, including the following: (1) The regulatory language of the hazardous waste listing; (2) the regulatory intent of the original hazardous waste listing (as evidenced by FR notices and technical support documents and interpretative letters from the original listings); and (3) facts specific to the waste stream at issue.[54]

These three types of information can be considered as acceptable types of generator knowledge about a waste stream for making a hazardous waste determination. A November 20, 1997, **Federal Register** notice elaborates on the use of knowledge to make a listing determination—that is, determining whether a waste is a listed hazardous waste can be accomplished by comparing information on the waste stream origin with the RCRA listings set forth in 40 CFR part 261 subpart D. These listings are separated into four major categories or lists and are identified by EPA hazardous waste numbers starting with the letters K, F, P, or U, depending on the category of the waste. The hazardous waste numbers are associated with a specific waste description, specific processes that generate the wastes, or certain chemical compounds. For example, EPA hazardous waste number K103 is defined as ''Process residues from aniline extraction from the production of aniline.'' A generator that produces such residues should know, without any sampling or analysis, that these wastes are ''listed'' RCRA hazardous wastes by examining the K103 hazardous waste description in the hazardous waste lists and comparing this with the production process that generated the waste.

Other hazardous waste listings describe wastes generated from generic processes that are common to various industries and activities. They include, for example, waste solvents (*e.g.,* EPA hazardous waste numbers F001–F005), which are often used in the degreasing or cleaning processes of manufacturing operations, and thus are widely generated. EPA hazardous waste number F001 is a listed waste from a non-specific source that is defined by providing a list of spent halogenated solvents at a particular concentration before use and stating that they are F001 when used in degreasing. Because this listed waste is from a non-specific source, the generator would compare this listing description to any industry operation where solvent degreasing is conducted to determine whether this waste meets the specific listing description.

Note that these spent solvents are regulated as hazardous under RCRA, but only if the total of all the solvent constituents before use is greater than or equal to ten percent of the material's volume. This adds a layer of complexity to the hazardous waste determination and requires that the generator have knowledge of the composition of the unused solvent before the waste is generated.

Finally, the hazardous waste regulations include the ''derived from'' and ''mixture'' rules, which state that any solid waste derived from the treatment, storage, or disposal of a listed RCRA hazardous waste, or any solid waste mixed with a listed RCRA hazardous waste, respectively, is itself a listed RCRA hazardous waste until delisted (see § 261.3(a)(2)(iv) and § 261.3(c)(2)(i), respectively) (62 FR 62082, November 20, 1997). The exception to these rules is when the waste is listed solely because it exhibits a hazardous waste characteristic, but the particular waste in question no longer exhibits any hazardous characteristic (§ 261.3(g)).

b. Proposal to provide further explanation in regulatory text about listed waste determinations. The current regulation at § 262.11(b) provides minimal information to generators for determining whether their waste is a listed hazardous waste. EPA is proposing that this paragraph be expanded and that it be redesignated as § 262.11(c) to make room for existing paragraph (a) of § 262.11, which would be redesignated as paragraph (b) under the proposed new regulatory framework at § 262.11 and which addresses the generator determination of whether the solid waste it has generated is excluded from regulation under 40 CFR 261.4.

The new § 262.11(c) would identify the types of acceptable information that the generator could consider in evaluating its waste against the hazardous waste listing descriptions and would assist them in determining if they have generated a listed hazardous waste. This proposed paragraph would state that if the waste is not excluded under 40 CFR 261.4, the person must then use knowledge of the waste to determine if the waste meets any of the listing descriptions under subpart D of 40 CFR part 261. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed includes, but is not limited to, waste origin, composition, the process producing the waste, feedstock, and

[53] Letter from Betsy Devlin, Director of EPA's Materials Recovery and Waste Management Division, to Gary Jones, Printing Industries of America, November 20, 2012, RCRA Online 14834.

[54] Note that once listed at §§ 261.31–33 wastes remain listed as hazardous wastes unless and until they are delisted in accordance with §§ 260.20 and 260.22 or unless they are specifically excluded from § 261.3, regardless of their actual composition and constituent concentrations even if the manufacturing and/or treatment processes do not use any of the constituents for which the wastes were listed.

other relevant information. If the waste is listed, the person may file a delisting petition under 40 CFR 260.20 and 260.22 to demonstrate to the Administrator that the waste from this particular site or operation is not a hazardous waste.

EPA requests comments on these proposed modifications to § 262.11(c).

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization, but the contents of the current § 262.11(b) are proposed to be revised and moved to § 262.11(c) to account for the proposed inclusion of a new § 262.11(a).

5. Determining Whether a Waste Is a Characteristic Hazardous Waste

The RCRA hazardous waste regulations identify four characteristics that can result in a hazardous waste classification: ignitability, corrosivity, reactivity, and toxicity. Wastes exhibiting any of these characteristics have EPA hazardous waste numbers starting with the letter ''D'' and the regulations defining these characteristics are at §§ 261.20 through 261.24. The current § 262.11 regulations identify two methods for determining whether a solid waste is hazardous because it exhibits a hazardous characteristic: (1) Testing of the waste or (2) using knowledge of the hazard characteristic and the materials and processes used in generating the waste. Further, even if a waste is a listed hazardous waste, the regulations require the generator to determine whether it also exhibits a hazardous characteristic to ensure that all waste treatment obligations under part 268 are met. This ensures that the waste can be treated to mitigate hazards posed by chemicals or properties for which it was listed, and also any characteristic hazards, which may be different from hazards that are the basis for listing.

a. Use of testing to identify waste exhibiting a hazardous characteristic. The current regulations at §§ 261.20 through 261.24 describe two different ways to determine whether a solid waste is a hazardous waste because it exhibits certain characteristics. In some cases, the regulations identify specific test methods, the results of which can be used directly to determine whether the waste exhibits that characteristic (although testing is not required, and knowledge may be used). These include for example, the pH test for the corrosivity characteristic, the flashpoint test for liquids for the ignitability characteristic, and the toxicity characteristic leaching procedure (TCLP) for the toxicity characteristic. Other hazardous characteristics are defined narratively, such as the definitions for ignitable solids or oxidizers in the ignitability characteristic, and the reactivity characteristic. When there is no regulatory test, then knowledge of the waste's origin, production processes, feedstocks, chemical composition, and other relevant information is acceptable and necessary for determining whether wastes exhibit one of these characteristics. Testing that may illustrate and support identification of the properties of the waste (even though it is not part of the regulation) can be part of the generators' knowledge of the waste.

The proposed language associated with testing at § 262.11(d)(1) specifies that generators testing their waste must obtain a representative sample for testing, as defined at § 260.10 and as required by all of the hazardous characteristic regulations. For those characteristics that include a specific test as part of the regulation, the results of that test, when properly performed and compared with regulatory thresholds, are definitive for determining whether the waste is hazardous. The tests specified by the regulations are available in EPA's ''Test Methods for Evaluation Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846. This document which contains all of OSWER's analytical methods, is available on EPA's Web site at: *http://www.epa.gov/epawaste/hazard/testmethods/index.htm.*

When evaluating a waste for one of the hazardous characteristics for which there is a regulatory test, generators are not required to use the test provided the generators' knowledge about the waste is adequate to make a reliable determination about the RCRA status of the waste, as discussed in the next section. However, if a disagreement arises between a generator and an inspector about whether a particular waste is hazardous, we would recommend that the generator use the regulatory test, since the results of the test, when properly performed, should resolve such a disagreement.

For those characteristics that do not include a specific test, but provide a narrative definition, the generator can use appropriate tests, such as those identified in SW–846 that identify hazardous properties as part of their knowledge about the waste to help determine whether the waste exhibits the hazardous waste characteristic. In addition, test methods used by DOT, the National Fire Protection Association, or other third-party testing organizations may be useful or relevant for evaluating a particular waste. However, the generator would need to show the relevance of the test to the waste evaluation.

The Agency has discussed the use or requirement of testing in various **Federal Register** notices, guidance documents, and letters. In promulgating the toxicity characteristic regulations in 1990, EPA considered whether to require TCLP testing. However, the Agency determined that the flexibility of the current approach resulted in a more effective and practical program overall and that liability for incorrect determinations would provide a strong incentive for generators to not misclassify their wastes as non-hazardous (55 FR 11829–30, March 29, 1990). In a 1992 letter, the Agency re-emphasized that generators are not required to test their waste to determine whether it is hazardous. As part of that letter, the Agency made clear that to ensure proper handling and treatment, the generator must identify all the hazardous characteristics a waste may exhibit as identified in part 261 subpart C.[55] In another letter, the Agency discussed the importance of testing a representative sample of the waste, as required by the hazardous characteristics regulations.[56] The introductory chapters (1–13) of SW–846 provide guidance on a number of important analytical issues, including development of sampling plans and sampling methods, as well as quality control and an overview of the different types of methods in the guidance.

b. Use of knowledge to identify waste exhibiting a hazardous characteristic. As we discussed previously with respect to the identification of listed hazardous wastes, EPA is also proposing to modify § 262.11 to include the acceptable types of information that a generator can consider when applying generator knowledge for making hazardous waste determinations for potentially characteristic hazardous waste. Much of this information has been discussed in **Federal Register** notices and other guidance documents over the past 30 years.

Specifically, several FR notices discuss what constitutes ''process knowledge'' for making a hazardous waste determination and include the following potential sources: (1) Waste analysis data or studies on wastes generated from processes similar to that

[55] Letter from Sylvia Lowrance, Director of EPA's Office of Solid Waste to Basil Constantelos, Safety-Kleen, October 28, 1992, RCRA Online 13570.

[56] Letter from Sylvia Lowrance, Director of EPA's Office of Solid Waste to James Maes, Blue Beacon International, Inc., May 1, 1991, RCRA Online 11603.

which generated the original waste;[57] (2) waste analysis data obtained by TSDFs from the specific generators that generated the waste and sent it off site, and (3) waste analysis data obtained by generators or TSDFs from other generators, TSDFs, or areas within a facility that test chemically identical wastes.[58] In addition, information about chemical and physical properties of manufacturing feedstocks or product contained in Material Safety Data Sheets (MSDS), or Safety Data Sheets (SDS) under OSHA's regulations implementing the UN Global Harmonized System of Classification and Labelling of Chemicals (GHS), or other reliable data sources may be used to assist the generator in determining whether any of the product's constituents or properties would make it a characteristic waste, when discarded.[59] Also, an FR notice from 2003 identifies still other information that the Agency has considered appropriate and useful in using knowledge to classify waste, including special handling of waste by the generator to temporarily prevent it from exhibiting a hazardous characteristic (*e.g.,* keeping it either wet or dry to prevent reaction to air or water, respectively); testing using non-regulatory tests that may illustrate some of the waste's properties; classification under certain Department of Transportation hazardous material designations that may be similar to or overlap with RCRA hazardous characteristics, as well as identification of environmental damage attributable to mismanagement or disposal of the waste.[60] [61] All of the above examples are considered as acceptable types of knowledge that can be used by a generator.

Some states have also provided guidance to their generators on some of the challenges of only using process knowledge. For example, the Connecticut Department of Energy and Environmental Protection notes that although knowledge of process information can be very useful (especially in identifying hazardous constituents that are known to be present), it may not always be adequate to fully and properly characterize a waste. In particular, knowledge of the process may not account for factors such as trace contaminants that may not be listed on an MSDS (only chemicals present at concentrations greater than 1% are typically identified), contaminants introduced during use, and cross-contamination from other wastes. As a result, some sampling may be required by the state to properly characterize a waste.[62]

Similarly, the Georgia DNR has highlighted some of the challenges of only using process knowledge. In particular, a GADNR publication states, ''Using [process] knowledge alone to make a hazardous waste determination may not always be adequate due to the variability of the waste, or the lack of knowledge of chemical processes in generating the waste. In those cases where the waste generated is variable, generators may choose to make a determination that the waste is hazardous waste rather than testing the waste each time it is generated. In addition, in the case of a hazardous waste that is always hazardous, but is characteristic for certain constituents at times, but not at others, the generator may choose to be inclusive of all potential waste codes, rather than test the waste each time it is generated. If the generator with a variable waste chooses not to treat the waste as described above in this paragraph, the waste must be tested as generated.'' [63]

The Georgia DNR has also issued useful guidance for its generators regarding the testing and recordkeeping for waste, stating that, ''If test methods are used to determine if the waste exhibits a characteristic, a description of how the waste was sampled to obtain a representative sample and copies of the analytical results for that sample should be included as documentation of the hazardous waste determination. The generator may apply knowledge of the waste and the generation process to determine which constituents/parameters to include in analyses, as well as where and when sampling is most appropriate. However, if the full suite of analyses is not applied, the generator must have sufficient documentation to demonstrate why only certain analyses were applied, and not all. Adequate documentation includes a list of constituents/chemicals that make up the waste, their physical and chemical properties, the effects of the process on the product/materials in the waste, and whether the product/material picks up additional hazardous constituents (contaminants) in the process; all of which provide knowledge as to what constituents should be included in the analyses.'' [64] Other states have also issued guidance illustrating the need for generators to understand the wastes they generate and to consider all factors affecting waste composition and properties in making hazardous waste determinations.

c. *Proposal on using process knowledge.* In consideration of the above discussion and to better assist generators in making hazardous waste determinations, EPA is proposing to revise the regulations associated with using knowledge to identify waste exhibiting a hazardous characteristic currently found at § 262.11(c)(2). Under this proposed rule, § 262.11(c)(2) would move to § 262.11(d)(2) and would identify various types of information that EPA has identified in the past as potentially relevant and acceptable for making a RCRA waste determination, including information about chemical feedstocks and other inputs to the production process; knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the processor or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents.

A test other than a test method set forth in subpart C of 40 CFR part 261, or an equivalent method approved by the Administrator under 40 CFR 260.21, is also acceptable and may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results and the generator may need to identify why the test is relevant.

The Agency requests comments on the proposed changes associated with revising § 262.11(c) and moving it to

[57] 62 FR 62081–2, November 20, 1997; 58 FR 48111–12, September 14, 1993.

[58] 62 FR 62081–2, November 20, 1997.

[59] Letter from Matt Hale, Director of EPA's Office of Solid Waste, to Michael Beckel, 3E Company, June 6, 2008, RCRA Online 14790, and 68 FR 59940, October 20, 2003.

[60] 68 FR 59939–40, October 20, 2003.

[61] Test methods developed by the UN Committee on Transport of Dangerous Goods, the National Fire Protection Association, or others may be useful and relevant for evaluating a particular waste. However, the generator must show the relevance of the test to waste evaluation.

[62] See Connecticut Department of Environmental Protection Web site, Hazardous Waste Determinations/Knowledge of Process at *http://www.ct.gov/deep/cwp/view.asp?a=2718&q=325422&deepNav_GID=1967.*

[63] ''10 Most Common Hazardous Waste (RCRA) Violations in Georgia: 40 CFR 262.11 ''Hazardous Waste Determination,'' Georgia Department of Natural Resources *https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/guidehwdet.pdf.*

[64] ''10 Most Common Hazardous Waste (RCRA) Violations in Georgia: 40 CFR 262.11 ''Hazardous Waste Determination,'' Georgia Department of Natural Resources *https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/guidehwdet.pdf.*

§ 262.11(d). In particular, EPA requests comment on whether the proposed language is sufficient to improve the existing regulatory text and better assist generators in making more effective hazardous waste determinations or whether other improvements should be made to the proposed regulatory text.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization, but the contents of current § 262.11(c) are being revised and bumped to § 262.11(d) to account for the new § 262.11(a).

6. Documenting and Maintaining Records for Hazardous Waste Determinations

The Agency is proposing to make one organizational change and several revisions to the recordkeeping provisions associated with making a hazardous waste determination, a provision found currently at § 262.40(c). Section 262.40(c) currently states that a generator must keep records of any test results, waste analyses, or other determinations made in accordance with § 262.11 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. This independent recordkeeping requirement is applicable to SQGs and LQGs only. CESQGs are not affected by this section.

First, the Agency is proposing that this paragraph be moved to § 262.11(e) to integrate this provision with the hazardous waste determination regulations in that section. Additionally, EPA is proposing to revise the wording to better articulate the types of information acceptable to making an accurate hazardous waste determination that must be maintained and to emphasize the importance of this section.

These records must include, but are not limited to, the following types of information that have been used by the generator in making the waste determination: The results of any tests, sampling, or waste analyses; records documenting the tests, sampling, and analytical methods used and demonstrating the validity (or quality assurance/quality control) and relevance of such tests; records consulted in order to determine the process by which the waste was generated, information on the composition of the waste and the properties of the waste; and records which explain the basis for the generator's determination as described at § 262.11(d)(2).

Second, the Agency is also restating that these records must be maintained for at least three years from the date that the waste was last generated by the facility and also stating that should the generator be involved in any unresolved enforcement action regarding a waste determination, then the periods of record retention are extended automatically or if requested by the Administrator. An ''unresolved enforcement action'' means any formal administrative, civil or criminal enforcement action which has been filed or issued against a generator by EPA or authorized state pursuant to RCRA subchapter III or VII and for which all rights of appeal have not been exhausted.

Additionally, EPA is proposing to revise the wording of the section to better articulate the types of waste determination information that must be maintained and to emphasize the importance of this section. In an effort to improve compliance with the hazardous waste determination regulations, and therefore improve environmental protection, EPA is proposing to revise the recordkeeping regulations to require small and large quantity generators making a waste determination to document and maintain records of all their hazardous waste determinations, including determinations where a solid waste is found not to be a hazardous waste.[65] In many respects, this proposed change also relates to the above proposed change in the regulations to clarify that generators must use due diligence in making a hazardous waste determination by applying process knowledge and/or testing results to the solid waste they generated. The Agency believes it is very important that generators make accurate hazardous waste determinations to avoid potential adverse impacts to human health and the environment from the possible mismanagement of hazardous waste. Therefore, we believe the benefits to human health and the environment far outweigh the minimal costs of requiring SQGs and LQGs to document hazardous waste determinations, including determinations where the solid waste was found not to be a hazardous waste.

CESQGs would not be affected by this change. However, maintaining a copy of their hazardous waste determinations may be beneficial to a CESQG to support any questions posed during an inspection by EPA or state inspector, as well as to support their waste generator category. In analyzing Kansas and Iowa inspection data of CESQG facilities, instances were found where the generator failed to make an accurate hazardous waste determination resulting in the generator moving into a higher generator category and becoming subject to the regulations of either an SQG or LQG.

The hazardous waste determination process is the gateway to the hazardous waste generator regulatory program and, to a great extent, its ultimate success. If a generator can accurately identify the types of hazardous wastes it generates, it can then identify the applicable regulations it must comply with to ensure safe management of that waste. Conversely, if a generator fails to make an accurate hazardous waste determination, that failure can potentially lead to the mismanagement of hazardous waste and environmental damages. In addition, the generator could then be cited in an enforcement action not only for that violation, but also for failing to comply with other generator regulations, including operating without a RCRA permit (see § 262.34(a) and (d)).

The Agency made this point clear when it initially promulgated the hazardous waste generator rules in February 1980, where it stated, ''The determination is the crucial, first step in the regulatory system, and the generator must undertake this responsibility seriously'' (45 FR 12727, February 26, 1980). Unfortunately, as previously discussed, there is a high rate of noncompliance with the hazardous waste determination regulations.

Under the current regulations at § 262.40(c), a generator is required to document and maintain records of any test results, waste analyses, or other determinations made in accordance with § 262.11 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. When an inspector sees a container or other waste management unit, that inspector has the authority to ask the generator how it determined the regulatory status of the waste, and the generator should be able to articulate how that determination was made. In many instances, the inspector will also ask to see any documentation supporting a questionable determination that a material is not a hazardous waste in order to understand how the generator applied process knowledge or the results of testing the waste to support its non-hazardous waste determination.

The Agency strongly believes that documentation must be maintained for waste determinations, not only when a solid waste is a hazardous waste but also when a solid waste is determined by the generator to not be a hazardous

[65] As will be discussed later in this section, the Agency does not intend for this provision to apply to those generators that generate a solid waste that clearly has no potential to be a hazardous waste.

waste. The primary obligation for generators is to accurately determine whether or not a solid waste is a hazardous waste. Requiring documentation of this determination, regardless of the outcome, is critical in ensuring compliance with the current hazardous waste determination regulations.

The requirement that a generator maintain records of determinations that a solid waste is not a hazardous waste was originally discussed in the preamble to the 1978 proposed rule for the hazardous waste regulatory program. In fact, the Agency proposed the following at 40 CFR 250.10(d)(1)(iii): ''Generators who determine that their waste is not hazardous shall retain copies of the evaluation performed and shall repeat the necessary evaluation or testing when there is a significant change in their feed material or operations which may alter the test results.'' (43 FR 58955, December 18, 1978). In the February 26, 1980, final rule for hazardous waste generators, however, the Agency did not make this requirement final. Rather, the Agency simply promulgated the provision stating that a generator must keep records of any test results, waste analyses, or other determinations made in accordance with § 262.11 for at least three years from the date the waste was last sent to on-site or off-site treatment, storage or disposal (45 FR 12734), which could be interpreted to mean either that a generator was required to keep records or that a generator was not required to keep records of solid wastes that were not hazardous wastes. (This provision is currently located at § 262.40.)

The Agency next discussed this issue in a March 29, 1990, **Federal Register** notice which clarified the rules by stating that recordkeeping for determinations that a solid waste was not a hazardous waste was not necessary. Specifically, the preamble to this final rule stated, ''If a waste is determined to be hazardous, the generator must keep records establishing the basis for that determination (40 CFR 262.40(c)). These records must be maintained for at least 3 years after the generator no longer handles the waste in question. Neither of these recordkeeping requirements, however, applies to solid waste generators who do not generate hazardous wastes'' (55 FR 11829, March 29, 1990).

At the time the 1980 rules were finalized, the Agency had no experience with their implementation and whether documentation associated with determinations that a waste was not a hazardous waste was necessary. The Agency now believes that the original approach was insufficient. We now have 30 years of experience and compliance data to support an independent requirement that, as part of their obligation to determine whether a waste is hazardous under § 262.11, generators need to keep records and documentation of their waste determinations, including determinations that a solid waste is not a hazardous waste.

As an example, Georgia DNR requires that, in using generator knowledge, the determination must be valid, correct, and supported by documentation, especially when that determination is that the waste is not a hazardous waste or does not carry certain waste codes (contain certain contaminants).[66] Even in cases where state regulations do not explicitly require documentation supporting a determination that a solid waste is not a hazardous waste, they will seek documentation supporting that determination when evidence suggests the material is a hazardous waste. Should documentation not be presented, EPA and the states will often take a sample to answer their own questions about waste status.

The Agency does not believe requiring generators to retain documents used to make their non-hazardous waste determinations will pose an undue burden. In a review of 26 state waste determination regulations as well as discussions with several state agencies, the Agency found that 17 states already require documentation and recordkeeping of a solid waste that is not a hazardous waste.[67] In EPA's discussions with states, several states mentioned that they interpret the term ''other determinations'' at § 262.40(c) to mean determinations that a solid waste is not a hazardous waste. Further, generators should already have this information collected as part of their compliance with other parts of § 262.11.

An examination of biennial report data for a small sample of LQGs for both 2009 and 2011 reporting cycles demonstrated that the majority of generators generate the same hazardous waste streams from year to year. In other words, the Agency believes that, for the most part, SQGs and LQGs will make a hazardous waste determination once and will not need to make a new solid waste determination unless something changes in their process, thereby reducing the need to document waste determinations. This suggests that the burden of documenting a non-hazardous waste determination should be relatively minimal.[68]

In light of the importance of making accurate hazardous waste determinations, and because of the high rates of non-compliance with § 262.11 among generators, the Agency is proposing to modify § 262.11 to specifically require that SQGs and LQGs document and maintain records of all determinations, including determinations that their solid waste is not a hazardous waste. Again, the Agency is not proposing to apply this independent requirement to CESQGs.

A key issue with this provision will be defining the scope of applicable entities for this requirement. First, documentation will not be required for entities that do not generate a solid waste, as defined by § 261.2, or that generate a solid waste that has been excluded or exempted from RCRA Subtitle C controls. However, all potential entities, with the exception of households, must determine whether they generate a solid waste as defined by § 261.2 for purposes of the existing RCRA hazardous waste regulations. Solid wastes under § 261.2 include spent materials, sludges, by-products, scrap metal, and commercial chemical products (CCPs) that are discarded. Specifically:

- Spent materials as defined in § 261.1(c)(1), include any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.
- Sludge, as defined in § 260.10, means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility.
- A by-product, as defined in § 261.1(c)(3), is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

[66] ''10 Most Common Hazardous Waste (RCRA) Violations in Georgia: 40 CFR 262.11 ''Hazardous Waste Determination,'' Georgia Department of Natural Resources *https://epd.georgia.gov/sites/epd.georgia.gov/files/related_files/site_page/guidehwdet.pdf.*

[67] As an example, some states interpret the term ''other determinations'' at 40 CFR 262.40(c) to mean determinations that a solid waste is not a hazardous waste.

[68] Assessment of the Potential Costs, Benefits, and Other Impacts of the Improvements to the Hazardous Waste Generator Regulatory Program, As Proposed, prepared for U.S. Environmental Protection Agency by Industrial Economics, Incorporated, May 2015, page 3–8.

• Scrap metal, as defined in § 261.1(c)(6), is bits and pieces of metal parts (*e.g.,* bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering, which when worn or superfluous can be recycled.

• CCPs are those materials listed in § 261.33 or those CCPs which exhibit one or more of the hazardous waste characteristics. The tern CCP includes those chemical substances which are manufactured or formulated for commercial or manufacturing use and consist of commercially pure grades of the chemical substance, any technical grades of the chemical substance that are produced or marketed, and all formulations in which the chemical substance is the sole active ingredient. CCPs do not include or refer to wastes, such as a manufacturing process residue, that contain any of the chemical substances.

Where there is a potential for a discarded material to be a hazardous waste listed under part 261 subpart D or when the material may contain hazardous constituents that would exhibit a characteristic of hazardous waste (*i.e.,* ignitability, reactivity, corrosivity or toxicity) under part 261 subpart C, these entities must make a hazardous waste determination and document that determination, including for those solid wastes that are not hazardous wastes.

If an entity is generating a hazardous waste (and is, therefore, a hazardous waste generator) and if it is generating sufficient amounts of hazardous waste in a calendar month to be considered an SQG or an LQG, then these generators would be responsible for documenting determinations under this proposed revision.

We would note that the existing hazardous waste regulations already require every generator to make a waste determination and that the only additional provision that this proposal is addressing is that they document that waste determination, including for those wastes that are not hazardous waste. The focus of this provision is on solid wastes that have the potential to be hazardous wastes. Thus, for the purposes of this proposed provision, the Agency is not interested in entities that generate solid wastes that clearly have no potential to be hazardous, such as food waste, restroom waste, or paper products. There are literally hundreds of thousands of entities who generate such wastes. In addition, lawyers and accountants, business offices, religious organizations, governmental organizations, engineering and architectural firms, among other sectors, are not meant to be impacted by this provision for everyday municipal waste that does not have the potential to be hazardous. Most elementary schools also should not be affected by this provision unless they have laboratories that use large amounts of hazardous chemicals where greater than 100 kilograms of non-acute hazardous waste (or 1 kilogram of acute hazardous waste) is discarded monthly or another source of potentially hazardous waste.

In addition, as noted previously, for the purposes of this proposed provision, the Agency is not interested in entities that generate 100 kilograms or less of non-acute hazardous waste or 1 kilogram or less of acute hazardous waste in a calendar month (*e.g.,* CESQGs). The Agency requests comment on verifying the above sectors and identifying other industrial or non-industrial sectors where the probability is high that generators either do not generate solid wastes that would be identified or characterized as hazardous under RCRA, or if they do, they generate small enough amounts to most likely qualify as a CESQG.

The Agency does not believe the cost of documenting a waste determination, whether non-hazardous waste or hazardous waste, will be substantial. As previously discussed, generators may use either the results of testing their waste or process knowledge to make a hazardous waste determination. If a generator tests its waste or hires a third party to do so, then the written results of those tests will be the documentation. Similarly, if generator knowledge is used to make the waste determination, then a statement describing what the basis of that knowledge was (*e.g.,* information about chemical feedstocks and other inputs to the production process and how those chemical feedstocks may change when introduced into the production process; knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the processor or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents) will most likely be sufficient.

In estimating the impact of requiring SQGs and LQGs to document their non-hazardous waste determinations, the Agency examined the relationship of the number of hazardous wastes generated per facility to non-hazardous waste generated per facility and established an approximate relationship of 60% to 40%. As part of this analysis, the Agency also found from examining the biennial report data that 50 percent of LQGs generate from one to five hazardous waste streams annually and that many of these generators continue to generate the same waste streams from year to year.[69] Therefore, for most LQGs, the incremental cost to document their non-hazardous waste determinations should be minimal. The Agency believes that many SQGs also generate the same waste streams from year to year.

However, from examining biennial report data, the Agency is also aware of situations where a generator generates many different hazardous waste streams each year. Examples include academic and industrial laboratories, chemical manufacturers, and TSDFs. As an example, an analysis of the 2011 Biennial Report identified 843 LQGs reporting that they generated 41 or more hazardous waste streams. This analysis derived an average of 17 hazardous waste streams being generated by LQGs. EPA can infer that these entities also generate numerous types of solid, but not hazardous, waste streams.[70]

Although TSDFs and chemical manufacturers may generate many different types of hazardous waste, many of them also have sophisticated protocols and testing procedures in place to make a hazardous waste determination. These processes should be sufficient to provide the proposed documentation to verify that the solid waste is or is not a hazardous waste. Other organizations may not and the Agency is interested in how best to address this important subject.

The Agency believes that requiring SQGs and LQGs to document their non-hazardous waste determinations is important to the success of RCRA hazardous waste program in protecting human health and the environment. Additionally, the Agency believes the proposed change will encourage generators to develop better internal processes and improve overall compliance with the RCRA hazardous waste regulations. At issue is how best to implement this provision in the most cost-effective manner possible. Therefore, the Agency seeks comment

[69] Assessment of the Potential Costs, Benefits, and Other Impacts of the Improvements to the Hazardous Waste Generator Regulatory Program, As Proposed, prepared for U.S. Environmental Protection Agency by Industrial Economics, Incorporated, May 2015, page 3–8.

[70] A more detailed discussion of this analysis can be found in the Regulatory Impact Analysis that accompanies this preamble and that can be found in the docket to this rulemaking.

on how to balance the burden of recordkeeping with the benefits from ensuring waste is properly identified and managed.

The Agency seeks comment from those generators that generate many new wastes each year, on ways that could be used to reduce burden while maintaining sufficient protection. The Agency also seeks comment on whether there are particular industrial sectors where many, if not most, solid wastes generated could be clearly determined not to be hazardous wastes and whether there are families of solid wastes where it is clear that they will not be hazardous wastes and thus can be eliminated from this provision.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization and is located at § 262.11(e) of the proposed regulation. The proposed reorganization is discussed in section XIII of this preamble.

7. Specifically Stating That the Hazardous Waste Determination Must Be Accurate

Generators have an obligation to apply due diligence in making an accurate hazardous waste determination by using either knowledge of their processes and waste and/or testing of their waste. As discussed above, RCRA inspectors often cite generators for ''failing to make a waste determination'' at § 262.11. By that we mean the generator failed to accurately identify a material that could be a solid waste, or failed to accurately make a hazardous waste determination. In both cases, the generator's failure to make accurate solid and hazardous waste determinations may result in adverse impacts to human health and the environment.

As previously stated, at the core of the RCRA hazardous waste program is the need for generators to make an accurate hazardous waste determination. Therefore, to emphasize this point the Agency is modifying the regulatory text at 40 CFR 262.11 to emphasize and make clear that a generator who generates a solid waste, as defined in 40 CFR 261.2, must accurately determine if that waste is a hazardous waste.

A 1993 FR notice states that in the case where a generator sends waste off site for treatment, storage, or disposal, the TSDF may rely on process knowledge supplied by the generator as a basis for the TSDF's waste characterization (40 CFR 264.13). The notice points out that while using process knowledge is ''seemingly attractive because of the potential savings associated with using existing information (such as published data), the facility must ensure that this information accurately characterizes applicable wastes'' (58 FR 48111, September 14, 1993).

Generators often rely on a third party, such as a TSDF, to help them make a hazardous waste determination. Whether the generator uses a third party or not, the generator is responsible for that determination. As such, the generator should still apply its due diligence to ensure a solid waste is not a hazardous waste, and if a hazardous waste, that it is characterized accurately.

Also with respect to characterizing a hazardous waste accurately, a generator identifying all possible RCRA waste numbers (or RCRA hazardous waste codes) on its manifest or container marking does not satisfy the requirement to make an accurate waste determination. First, the TSDF will not be able to treat the waste effectively or efficiently to comply with land disposal restriction requirements because it will not know precisely what waste it needs to treat. Second, the generator clearly did not apply its due diligence seriously.

The Agency also realizes that generators, whether inadvertently or intentionally, often make a hazardous waste determination when the material is actually a non-hazardous solid waste. The intent of this proposed change would not impact such determinations. The generator is always free to manage its solid waste as a hazardous waste if it so desires. However, the Agency is concerned about other related situations, such as when a generator applied due diligence but still made an incorrect hazardous waste determination potentially posing a risk to the environment, or where a generator intentionally tried to circumvent waste determination requirements.

EPA specifically requests comment on reasons why it may not be feasible to require a generator's solid and hazardous waste determinations to be accurate and how best the Agency can make clear that generators are responsible for making an accurate hazardous waste determination. EPA also requests comment regarding ways the proposed regulatory text could be improved to better assist generators in making more effective hazardous waste determinations.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

8. Taking Comment on Maintaining Records Until the Generator Closes

EPA is also using this notice to take comment on an additional revision to the hazardous waste determination regulations at § 262.11, but is not proposing any regulatory text for this change. The Agency requests comment on requiring SQGs and LQGs to maintain records of their waste determinations until the generator closes its site, rather than for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage and disposal. Because an inspector may not be able to inspect every SQG and LQG within three years from when the solid or hazardous waste was first generated, a generator may discard its waste determination records prematurely. For practical reasons, the Agency believes a generator will want to maintain records of its solid and hazardous waste determinations to support and respond to any questions an inspector may have about a particular waste determination—even if it is more than three years from when it was first generated. Similarly, the Agency believes generators that generate large numbers of solid and hazardous waste streams annually will computerize their records, making it easy to store and retrieve them when necessary. For these reasons, the Agency does not believe requiring SQGs and LQGs to maintain records of their active solid and hazardous waste streams should be overly burdensome.

Finally, while the Agency is not proposing that CESQGs maintain documentation of their non-hazardous waste determinations, the Agency does seek comment on the economic costs and environmental benefits of potentially requiring CESQGs to maintain documentation of their hazardous waste determinations, including their non-hazardous waste determinations. The Agency realizes that the total number of CESQGs is very large—ranging from an estimated 293,000 to 463,000; however, the Agency believes that based on the number of waste streams generated by SQGs and LQGs that such generators should only be generating a few solid waste streams and in many cases using their knowledge of the process and process materials in making hazardous waste determinations. In other words, the burden of documenting their hazardous waste determination should not be that costly for each CESQG.

Conversely, the costs of not making an accurate hazardous waste determination could be significant environmentally and financially to the CESQG. For

example, in the case that a CESQG fails to make an accurate hazardous waste determination, resulting in the CESQG actually being either a SQG or LQG, hazardous wastes will likely be illegally managed. Hazardous wastes that should have been sent to a RCRA-permitted treatment, storage or disposal facility would instead be sent to a municipal solid waste landfill, potentially posing future environmental problems for that landfill and community. EPA requests comment on the potential environmental benefits that could be achieved if the Agency were to require that CESQGs document determinations that their solid waste is or is not a hazardous waste.

9. Hazardous Waste Determination Electronic Decision Tool

Building upon the above discussion and the importance of making accurate hazardous waste determinations, the Agency also seeks comment on the feasibility of developing a user-friendly electronic hazardous waste determination decision tool that generators could use to assist them in making a hazardous waste determination. This electronic tool would guide generators through a series of analytical decision-type (Yes or No) questions to assist them in determining whether the solid waste they have generated is also a hazardous waste subject to the applicable RCRA hazardous waste regulations. As part of this decision tool, generators would be able to document reasons why the solid waste is a hazardous waste, or conversely, why the solid waste is not a hazardous waste.

Given the large number and great variety of hazardous waste streams, a key challenge would be to determine how best to design this decision tool if the Agency went forward in developing it. Potential approaches include designing the tool conceptually around the following: (1) Industrial sectors; (2) families of industrial materials (*i.e.,* solvents, acids, metals, etc.); (3) broad type of hazardous secondary material (*i.e.,* spent material, by-product, sludge, etc.); (4) listed hazardous waste organized by specific industrial sector or non-specific sectors (*e.g.,* solvents, electroplating wastes, and characteristic hazardous waste), or (5) an eclectic approach that combined different aspects of the approaches in (1) through (4).

This decision tool could assist generators to make the following determinations under § 262.11:

- Whether the waste is excluded from regulation under § 261.4 [§ 262.11(a)]
- Whether the waste meets any of the hazardous waste listing descriptions in part 261 subpart D [§ 262.11(b)]
- Whether the waste exhibits one or more hazardous characteristics of hazardous waste, as identified in part 261 subpart C [§ 262.11(c)]
- What are all applicable EPA hazardous waste codes for wastes determined to be hazardous [§ 262.11(f)]

An electronic decision tool could also possibly provide a way for SQGs and LQGs to maintain records supporting their waste determinations [§ 262.11(e)].

Developing this decision tool would be a major investment on the part of the Agency and could take several years to fully develop, test, and make operational, with different components produced for use over time. However, even when completed (assuming it was a worthwhile Agency investment to pursue), this decision tool would never be able to account for all the industrial sector/family of industrial materials/type of hazardous secondary material possibilities that exist in industry. Therefore, scoping such a decision tool to capture as much of the most likely industrial sector/family of industrial materials/type of hazardous secondary material possibilities would be the Agency's goal.

Additionally, if such a decision tool were to be developed, the generator would still be ultimately responsible for making the hazardous waste determination, since no decision tool could ever account for its site-specific circumstances.

Hazardous waste determination software or tools could be web-based, off-the-shelf, or both. The software or tools could be developed by EPA, by authorized states and tribes, by private parties, or by public and private sector collaboration.

The Agency particularly requests comment on the feasibility of the private sector developing electronic application software (apps). An initial search for preexisting hazardous waste determination software identified no relevant, privately-developed, off-the-shelf software products to assist generators in making accurate waste determinations. However, EPA did identify a variety of state and academic internet-based hazardous waste determination tools and workbooks.[71] At issue is whether there is a market for such an app and what EPA could do to facilitate software development. The Agency estimates the universe of hazardous waste generators to be approximately 400,000 to 500,000, with a large majority being conditionally-exempt small quantity generators that generate up to 220 pounds in a calendar month.

EPA is seeking comment on whether development of an electronic hazardous waste determination decision tool is feasible and by whom. The Agency requests comment on what circumstances would encourage the private sector to develop such a tool or app and on what generators would like to see in terms of components and organization that would facilitate a generator using it.

C. SQG and LQG Re-notification (40 CFR 262.12)

1. Background

Under existing 40 CFR 262.12, SQGs and LQGs are required to notify EPA using EPA form 8700–12 (Site ID form) in order to obtain an EPA identification number (EPA ID). Without such identification, a generator cannot treat, store, dispose of, or transport, its hazardous waste. Once a generator applies for and receives an EPA ID, information provided by the generator (*e.g.,* name, address, contact, industrial sector, EPA hazardous waste numbers) is entered into the state system and/or EPA's national data system (RCRAInfo) to support program management activities.

Subsequent to obtaining an EPA ID, there is no federal regulation requiring LQGs or SQGs to re-notify EPA to update their site information or confirm the information remains accurate. However, LQGs do update their site information as part of the biennial report.

EPA believes that about half the states require annual reporting by LQGs and some require periodic reporting by SQGs in order to determine user fees based on the amount of hazardous waste they generate. However, the data from these annual reports may not always be submitted to EPA's national RCRA database. Additionally, although many LQGs currently submit a Site ID form as part of their biennial report, this

[71] See, for example, the Washington Department of Ecology created an Excel program titled ''Designation Tool 2.0 for Excel 2007,'' to help business make accurate waste designations in the state of Washington. *http://www.ecy.wa.gov/programs/hwtr/manage_waste/des_intro.html*; the Texas Commission on Environmental Quality created an online hazardous waste determination tool, the ''Waste Designation Decision Matrix.'' *http://www.tceq.texas.gov/assistance/waste-matrix/matrixenter.html*, and The Connecticut Department of Energy and Environmental Protection's RCRA Help page provides a guide designed to help businesses and individuals figure out which hazardous waste requirements apply and how to comply with them. *http://www.ct.gov/deep/cwp/view.asp?a=2718&q=434308&deepNav_GID=1967%20.*

independent requirement does not apply to SQGs or to entities that initially notified as an LQG, but were an SQG during the biennial reporting year and, thus, were not required to submit a biennial report.

2. Problems With Outdated Information

The lack of re-notification at the federal level greatly impairs EPA's and the states' ability to use the information for compliance monitoring and programmatic purposes. This is because a one-time notification provides no assurance that the information collected in EPA's and the states' databases over time will accurately reflect which facilities are generating hazardous waste. For example, a recent examination of EPA's data reveals that there are thousands of SQGs who last notified over 20 years ago.[72] EPA is concerned that the probability a generator that last notified prior to 1990 is still active and still an SQG is quite small. Because of the outdated information, it is difficult for EPA to ascertain even simple statistics, such as the number of SQGs currently operating, let alone information that can be reliably used for programmatic and compliance monitoring purposes.

Because of the lack of integrity in the data, the Agency and states must spend their limited resources to 'clean up' the data every time regulatory authorities try to use it, for example, to estimate regulatory burden and benefits to the regulated community, offer compliance assistance, or produce public reports on hazardous waste generation. Furthermore, regulatory authorities may waste time and resources monitoring compliance at entities that no longer generate hazardous waste. This inefficient use of resources lowers the effectiveness of regulators to monitor compliance overall and could potentially increase the risk of environmental damage from mismanagement of hazardous waste. In summary, the Agency and many states have, for the most part, an outdated, incomplete, and inaccurate understanding of the LQG and SQG universe. Consequently, over time, this undermines the ability of EPA or the states to make effective programmatic decisions.

3. Proposed Periodic Re-Notification

EPA is proposing to add an explicit independent requirement to the regulations that both LQGs and SQGs re-notify EPA using the Site ID form (EPA form 8700–12).[73] The intent of this re-notification provision is to provide basic information to the regulatory agencies about who is generating and managing hazardous waste. The information required in the Site ID form includes:

- Site name, address, contact information, and EPA ID number
- NAICS (North American Industry Classification System) code
- Information regarding the entity's legal owner and operator
- Type of regulated waste activity (*e.g.,* hazardous waste generator category and whether the entity is a transporter, treater, storer, disposer, or recycler of hazardous waste)
- Universal waste activities
- Used oil activities
- Notification for opting into or withdrawing from managing laboratory hazardous waste under 40 CFR part 262 subpart K
- Description of hazardous waste, including a list of applicable federal and state hazardous waste numbers
- Notification of hazardous secondary material activity managed under certain definition of solid waste exclusions.
- Certification signed by the entity's legal owner, operator, or authorized representative.

The specific information included in the notification will enable regulatory agencies to monitor compliance adequately and to ensure hazardous wastes are managed according to the appropriate RCRA hazardous waste regulations. The information can be used to assist RCRA inspectors in determining which facilities may warrant greater oversight and provides a basis for setting enforcement priorities. Notification information is collected in EPA's RCRAInfo database, which is the national repository of all RCRA Subtitle C site identification information, whether collected by a state authority or EPA. EPA provides public access to this information through EPA's public Web site at *http://www.epa.gov/enviro/html/*.

Once an initial notification (to obtain an EPA ID number) is submitted, to re-notify, a generator need only review the previous notification and either make changes if necessary or confirm that the information remains accurate. Furthermore, EPA has recently made available an electronic system for the regulated community to use to submit Site ID forms electronically, which will further reduce burden on generators. Facilities should check with their states regarding whether their state will use EPA's electronic submittal process.

The proposed rule would require LQGs, having first obtained an EPA ID number, to re-notify EPA using the Site ID form prior to March 1 of each even-numbered year. This time frame is the same as that for the biennial reports in 40 CFR 262.41. Adding this provision to § 262.12 in the existing regulations (which is § 262.18 in the proposed reorganization in this proposed rule) reflects existing processes by which LQGs already submit Site ID forms as part of the biennial reporting process. EPA also believes that the requirement to re-notify is particularly important considering generators may change regulatory status from LQGs to SQGs and vice versa.

EPA is also proposing that SQGs, having first obtained an EPA ID number, must re-notify EPA using the Site ID form prior to February 1 of each even-numbered year. We propose the two-year time frame to mimic the current biennial reporting process for LQGs; however, we propose to require that SQG re-notifications (due by February 1 of each even-numbered year) to occur one month prior to the due date for LQG re-notifications (due by March 1 of each even-numbered year) to help reduce the burden on states that must process the re-notifications. We are also taking comment on whether re-notifying every four years would be appropriate for SQGs.

EPA also considered whether to require SQGs to re-notify on alternate years—that is, by March 1 of each odd-numbered year, from LQGs, in order to further reduce the burden on states. However, this may complicate the regulations because a generator can change its generator category year-to-year. For example, it is possible that a generator who is an LQG during the SQG-reporting year and an SQG during the LQG-reporting year would not have to submit any notification to EPA. Furthermore, requiring SQG and LQG re-notifications during the same year enables EPA to include information regarding SQGs in its National Biennial RCRA Hazardous Waste Report.

EPA believes that requiring a set due date (*i.e.,* February 1) will ease implementation and compliance with the re-notification provision. However, one alternative that the Agency seeks comment on is to allow for 'rolling' notifications, in that generators could re-notify at any time of the year as long as they re-notified within two years of the date of their last notification. EPA understands that this alternative may further reduce burden on the states that would process the re-notifications, in

[72] Count of SQGs by Year of Last Notification Received, December 12, 2012. Developed from RCRAInfo data system using Form 8700–12 Site Identification Form information.

[73] To the extent that other parts of the RCRA regulations require the submittal of EPA form 8700–12, for example, used oil generators or handlers, the proposed re-notification provision would not impact them, unless they were also an LQG or SQG of hazardous waste.

that the state would receive the notifications throughout the year rather than all at once; however, it may also complicate compliance by the regulated community, as well as compliance monitoring by the states and EPA, as each LQG and SQG would have a unique 'due date' that must be individually tracked.

Another alternative to requiring periodic notification (*e.g.,* every two years) that the Agency seeks comment on would be for EPA to require an SQG or LQG to re-notify only in the event of a change to certain information, such as (1) change in ownership and (2) change in generator category.[74] The Agency believes that updating this specific information is particularly important because:

- Re-notifying when a generator has a change of ownership is important so that EPA and the states understand who is legally responsible for managing the generated hazardous waste.
- Re-notifying due to a change in generator category provides EPA and the state with information regarding what regulations apply to the generator and thus assist with compliance assistance and monitoring activities.

EPA notes that, because an EPA ID number is specific to a site location, a change in site address for an entity already requires the entity to apply for a new EPA ID number using the Site ID form.

In this case, EPA would require re-notification within 30 days of when the change occurred. Re-notification in the event of change to these two items may further reduce burden on LQGs and SQGs, because EPA assumes that these changes would happen fairly infrequently. However, EPA also notes that although LQGs and SQGs would only have to re-notify in the event of a change in its ownership or generator category, re-notification would require a complete submittal of all information included in the Site ID form. EPA understands that this alternative may also increase the complexity of implementing the regulation because it would be difficult for regulatory authorities to ensure that re-notifications were received according to the regulations. For example, if a facility last notified ten years ago, it would be difficult for EPA and the states to ascertain whether the generator has failed to re-notify in compliance with the regulations or that the generator's information simply hasn't changed since its last notification. Additionally, EPA notes that re-notification based on a change does not result in data that is as reliable as data provided in periodic re-notifications because it provides no information on generators that have stopped operations.

4. Request for Comment

EPA requests comment on its proposed change to require re-notification for SQGs and LQGs, including information regarding the benefits and burden of such a provision. EPA also requests comment on whether such re-notification should be every two years or one of the other alternatives discussed above. Finally, EPA requests comment on any other alternatives for an independent re-notification requirement, including suggestions that would reduce the burden on states that must process re-notifications.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. EPA is proposing to move § 262.12 (EPA identification numbers) to § 262.18 and is proposing to revise the title of the section to read ''EPA identification numbers and re-notification for large quantity generators and small quantity generators.''

D. Determining Generator Category (Proposed New Section 262.13)

EPA is proposing a new section § 262.13, which would describe how a generator determines which generator category it would be subject to. Proposed § 262.13 discusses the framework for making a generator determination in paragraph (a) and stresses that the calculation is made monthly and that the generator category can change from month to month. The proposed regulatory text would state that a generator's category is determined each month by the amount of hazardous waste it generates and may change from month to month. The regulation sets forth procedures to determine whether a generator is a very small quantity generator, a small quantity generator, or a large quantity generator for a particular month, as defined in § 260.10.

The discussion in § 262.13(a) is not a new requirement for generators, but these steps are not currently laid out in the regulations in as succinct a manner. EPA believes that the addition of the definitions of generator categories to § 260.10 and this paragraph on how to make a generator category determination should provide specific instructions on this matter for the regulated community and thereby improve compliance with the generator regulations.

Proposed paragraph (b) of § 262.13 would specifically address the situation in which a generator generates any combination of non-acute hazardous waste, acute hazardous waste, and the residues from the cleanup of a spill of acute hazardous waste. This paragraph presents a series of steps for a generator to follow when determining its generator category to ensure that it selects the appropriate category for the total amount and types of hazardous waste generated.

Proposed §§ 262.13(c) and (d) are existing provisions that we are proposing to move from §§ 261.5(c) and (d) of the existing regulations with a few small wording changes to reinforce that category determinations are made monthly and do not otherwise represent a change in the generator regulations.

EPA is requesting comment on the proposal to add this description of how a generator is to determine its generator category to the regulations.

Effect of the Proposed Reorganization: This section is partially affected by the proposed reorganization. Some of the language proposed for § 262.13 on what materials to count when determining generator category are moved from existing § 261.5, but much of this proposed regulation is new text.

E. Requiring Hazardous Waste Numbers When Marking of Containers Prior to Shipping Hazardous Waste Off Site to a Designated RCRA Facility (40 CFR 262.32)

The Agency is proposing to modify 40 CFR 262.32 to require SQGs and LQGs to mark their containers with the applicable EPA hazardous waste number (RCRA hazardous waste code) prior to transporting their hazardous waste off site to a designated RCRA facility for subsequent management. EPA is proposing this revision so that TSDFs can readily identify the contents of hazardous waste containers they are receiving from generators and effectively treat the wastes to meet land disposal restriction requirements (LDRs). As described elsewhere in this proposal, the Agency is proposing revisions to the marking and labeling of containers and other waste accumulation units in order for employees, inspectors, emergency responders, and waste handlers to better understand the potential hazards associated with the contents of hazardous waste contained in a unit.

This proposed provision should not increase burden on generators as it reaffirms commonly used waste management practices. Most generators, or their designated waste handlers, already mark their containers with the

[74] EPA is also proposing a notification requirement for (1) generators undergoing closure (section VIII.G.); (2) LQGs that receive hazardous waste from CESQGs (section VII.C) and (3) episodic generators (section IX), which are discussed in other parts of this preamble.

applicable EPA hazardous waste numbers prior to transporting their hazardous waste off site. In fact, requiring that applicable EPA hazardous waste numbers be marked on containers decreases overall burden because it avoids the need for a TSDF to identify the hazardous waste or send it back to the generator for proper identification.

The Agency requests comment on this proposed change.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

F. Modifications to Management of Containers, Tanks, Drip Pads, and Containment Buildings (40 CFR 262.34(a)(2) and(3) and 40 CFR 262.34(a)(1))

The existing regulations for LQGs that address the conditions for exemption related to marking and labeling are at § 262.34(a)(2) and (3) for containers and at § 262.34(a)(3) for tanks. The marking and labeling condition for SQGs who accumulate hazardous waste in both tanks and containers are at § 262.34(d)(4), which references § 262.34 (a)(2) and (3). For practical reasons, there are no requirements to mark drip pads or containment buildings that accumulate hazardous waste other than requiring that documentation must exist that describes the procedures to ensure that each waste volume remains in the unit for no more than 90 days.

EPA is proposing to modify § 262.34(a)(2) to strengthen the marking and labeling conditions for exemption for containers and to modify § 262.34(a)(3) to strengthen and consolidate the marking and labeling conditions for exemption for hazardous waste tanks, drip pads, and containment buildings by LQGs. The Agency is also proposing to modify § 262.34(d) to strengthen the marking and labeling conditions of containers, tanks, drip pads, and containment buildings by SQGs.

The proposed changes are consistent with the applicable discussion of marking and labeling of containers in SAAs in section VIII.I. Where differences may occur is when the container may be shipped off-site as opposed to when the contents of the container are managed on-site, or temporarily managed on-site (*e.g.,* when the container is moved from the SAA to a central accumulation area and then shipped off-site to a TSDF).

1. Container Marking and Labeling for LQGs and SQGs (40 CFR 262.34(a)(3))

Currently, § 262.34(a)(3) requires each container and tank to be labeled or marked clearly with the words, ''Hazardous Waste.'' However, while the words ''Hazardous Waste'' on containers and tanks provide some measure of information regarding the contents of these units, this information fails to describe the specific hazards of the contents and what risk these wastes could pose to human health and the environment. EPA believes it is important that employees, transporters, downstream handlers, emergency personnel, and EPA and state inspectors know as much as possible about the potential hazards of the contents in containers being accumulated, transported, and managed, whether on-site and/or off-site, so that the hazardous wastes are managed in an environmentally sound manner.

The Agency is proposing two modifications that would strengthen the labeling and marking conditions for LQGs and SQGs accumulating hazardous waste in containers. These changes are similar to those proposed for containers stored in satellite accumulation areas (see section VIII.I.) First, the Agency is proposing that SQGs and LQGs accumulating hazardous waste in containers mark their containers with both the words ''Hazardous Waste'' and other words that identify the contents of the containers that a third party, such as an emergency responder, co-worker unfamiliar with the material, or even the general public may recognize. Although the words ''Hazardous Waste'' are important to convey that the container contains a waste, as opposed to a product, and that a hazardous waste determination has been made for the contents, it does not convey more practical information regarding the contents of the container. Examples of other words that identify the contents of the container may include, but are not limited to the name of the chemical(s), such as ''acetone'' or ''methylene dichloride''; or the type or class of chemical, such as ''organic solvents'' or ''halogenated organic solvents.'' Another option for complying with this provision is to use the proper shipping name and technical name markings used to comply with DOT requirements at 49 CFR part 172 subpart D. The Agency does not consider chemical formulas, such as CH_2Cl_2 for methylene dichloride, to be ''words that identify the contents of the container'' since chemical formulas may not be widely known among emergency responders, workers, and hazardous waste handlers other than chemists.

If the hazardous waste will subsequently be sent off-site for treatment and disposal, an SQG or LQG may choose to use an appropriate DOT proper shipping name found on the hazardous materials table at 49 CFR 172.101 to identify the contents of the container while it is accumulating on-site. That way, the generator will fulfill EPA and DOT requirements simultaneously; however, EPA is not proposing to require the use of the DOT shipping names while the hazardous waste is accumulating on-site. We only suggest that the DOT shipping name may be one way that some generators may choose to identify the contents of the container.

EPA also believes use of the DOT marking requirement should be sufficient in many situations involving DOT Class 9 hazardous materials that are also hazardous waste, with the DOT shipping name ending in N.O.S. (not otherwise specified). As noted at 49 CFR 172.301 (b), generators using a DOT shipping name ending in N.O.S. must also provide the technical name of the hazardous material in association with the proper shipping name. However, the Agency is requesting comment on examples of when the DOT shipping name would not meet EPA's intent of ''identifying the contents of the container'' and suggestions for addressing this situation. EPA notes that additional pre-transport requirements, other than the DOT shipping name, apply when shipping hazardous waste off-site. We are not proposing to change EPA's existing requirements for pre-transport requirements that are currently found in §§ 262.30 through 262.33. Similarly, for packages subject to 49 CFR, the generator or shipper/carrier should be familiar with and aware of the marking requirements at 49 CFR 172.304 and prohibited labeling and label visibility requirements at 49 CFR 172.401 and 172.406, respectively.

The second modification we are proposing for labeling containers in central accumulation areas is to add a provision that SQGs and LQGs mark and label their containers with an indication of the hazards of the contents of the containers. SQGs and LQGs will have flexibility in how to comply with this new provision. That is, generators can indicate the hazards of the contents of the container using any of several established methods, including, but not limited to an EPA hazardous waste characteristic(s) (ignitable, corrosive, reactive or toxic); a hazard class label consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the OSHA Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with NFPA code 704; or a hazard pictogram consistent with the

United Nations' Global Harmonized System (GHS). Generators also may use any other marking or labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers.

EPA believes that placing both the appropriate label and marking on containers during hazardous waste accumulation will enable persons who may come in contact with it to be aware of the hazardous contents of the container with little or no additional cost to generators. In many instances, this proposed condition will already have been satisfied if the generator elects to move a container accumulating hazardous waste in a satellite accumulation area to a central accumulation area.

In summary, EPA is proposing to modify § 262.34(a)(3) and require LQGs and SQGs to mark containers with the following: (1) the words ''Hazardous Waste,'' (2) other words that identify the contents of the containers, and (3) an indication of the hazards of the container's contents. We are not proposing to change § 262.34(a)(2), which requires LQGs and SQGs to mark clearly and visibly the date accumulation began on each container and make that marking visible for inspection.

The Agency requests comment on the proposed changes for container marking and labeling for LQGs and SQGs.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization in that the labeling and marking regulations would be moved from § 262.34 to § 262.16(b)(6) (for SQGs) and to § 262.17(a)(5) (for LQGs). The reorganization is discussed in section XIII of this preamble.

2. Tank Marking and Labeling for LQGs and SQGs (40 CFR 262.34(a)(3))

The Agency is proposing to modify the regulations at § 262.34(a)(3) to require LQGs and SQGs to use inventory logs, monitoring equipment, or records indicating the date the hazardous waste first entered the tank in order to support a generator's determination that it has not exceeded its 90 day accumulation time limit, or in the case of an SQG, its 180-day time limitation. Exceeding the 90- or 180-day time limitation for LQGs and SQGs, respectively, would be a violation of a condition for an exemption from permitting requirements. Records from tank level sensors also may be used which could be either automatically logged from the sensors to a computer record, or recorded as part of a tank's operational daily inspection (see 40 CFR 265.195). Generators may also use any other methods that clearly demonstrate the date hazardous waste first entered the tank and show that the hazardous waste was subsequently emptied within 90 days of the date it first entered that tank, or 180 days in the case of an SQG (unless the hazardous waste must travel greater than 200 miles to a TSDF in which case 270 days is allowed). The generator must also use inventory logs to identify the hazardous waste contents and hazards of the tank.

With respect to the accumulation start date, in the preamble to the promulgation of the SQG regulations (51 FR 10160, March 24, 1986), EPA stated that § 262.34 contains the conditions for exemption for generators that accumulate hazardous waste on site. Under § 262.34(a), an LQG may accumulate hazardous waste on site in tanks or containers in any quantity for up to 90 days (and up to 180 days for a SQG unless the hazardous waste must travel greater than 200 miles to a TSDF in which case 270 days is allowed) without the need to have interim status or obtain a storage permit under RCRA, provided the generator complies with the conditions of § 262.34, which include marking the date upon which the period of accumulation begins. While the preamble mentions marking tanks and containers, the final regulation at § 262.34(a)(2) requires generators to mark the date upon which each period of accumulation begins only on containers.

As part of EPA's Hazardous Waste Technical Corrections and Clarifications Direct Final Rule (75 FR 12989, March 18, 2010), the Agency sought to correct this oversight by including what it thought to be the appropriate clarifying language. The proposed regulatory language required generators to mark the date upon which each period of accumulation begins on each container and tank, which would bring the regulation in line with the preamble to the 1986 rule. However, EPA received numerous adverse comments regarding this change and as a result withdrew that proposed change. The comments stated, among other things, that, unlike containers, the Agency failed to realize that generators do not actually mark their tanks with the date upon which each period of accumulation begins because the tank is often a fixture that is used and emptied repeatedly. Commenters argued that marking tanks would cause confusion since there would be numerous markings all over the tank making it difficult for the generator and inspector to identify when the last period of accumulation began or could cause an extra effort of removing the old marking before applying a new one.

At least one commenter also cited an EPA letter clarifying § 262.34(a)(l)(ii) in connection with the turnover of hazardous waste stored in generator accumulation tanks.[75] In that letter, EPA stated that ''LQGs utilizing a batch process must meet the requirements of § 262.34(a)(l)(ii). For example, the use of inventory records in conjunction with tank markings may provide confirmation that the tank has been emptied within an appropriate time period. Specifically, the inventory records typically show the dates and quantity of hazardous waste entering the tank, as well as the dates the tank was emptied. Shipping or hazardous waste manifest records also may be used to verify when the tank was emptied. Likewise, tanks accumulating hazardous wastes may have information indicating the time and date hazardous waste first entered the tank.'' The Agency went on to say that there may be other methods to demonstrate that a tank has been emptied, but any method used to confirm compliance with § 262.34(a)(l)(ii) must be reasonable and easily discernible to EPA or an authorized state.

Later in this letter, EPA stated that LQGs accumulating hazardous wastes through a continuous flow process must ''demonstrate that the hazardous waste has not been stored for more than 90 days . . . For example, a generator could confirm that the volume of a tank has been emptied every 90 days by recording the results of monitoring equipment both entering and leaving a tank. This recordkeeping, in conjunction with the tank volume, would enable inspectors, as well as [site] personnel, to demonstrate compliance with § 262.34(a)(l)(ii). Likewise, in marking the tank, a generator could mark both the tank volume and estimated daily throughput to allow inspectors to determine the number of days that hazardous wastes resides in a tank to determine compliance with § 262.34(a)(l)(ii). As noted above, there may be other methods to demonstrate that the tank has been emptied, but any method or demonstration to confirm compliance must be reasonable and easily discernible to EPA or an authorized state.''

Subsequent to withdrawing the provision at § 262.34(a)(2) as part of

[75] Letter from Matt Hale, Director of EPA's Office of Solid Waste to John Hopewell, National Paint and Coatings Association, February 16, 2007, RCRA Online 14764.

EPA's Hazardous Waste Technical Corrections and Clarifications Direct Final Rule due to adverse comment, EPA also confirmed with state officials that current operating practices do not include generators physically marking their tanks. Instead, generators are able to use inventory logs, monitoring equipment, or other methods to demonstrate that a tank has been emptied within 90 days of the date hazardous waste first entered the tank.

Therefore, with respect to the accumulation start date for tanks, EPA is proposing that generators may use inventory logs, monitoring equipment or records indicating the date the hazardous waste first entered the tank, as long as this information is immediately accessible for inspection. Records from tank level sensors also may be used that are either automatically logged from the sensors to a computer record or recorded as part of a tank's operational daily inspection (required by 40 CFR 265.195). Generators may also use any other methods that clearly demonstrate the date hazardous waste first entered the tank and was subsequently emptied within 90 days of the date hazardous waste first entered that tank.

The same issue potentially applies to a generator physically marking and labeling the contents of the tank and its associated hazards. If the contents and associated hazards frequently change, then physically marking the tank could result in numerous markings and labels on the tank, making it difficult for employees and others to identify its contents. Therefore, following the same logic, the Agency is proposing that generators use inventory logs or records to identify the contents of the tank and its associated hazards. The Agency is also proposing that such tank logs be immediately accessible by the generator should the need arise.

The Agency requests comment on the feasibility and effectiveness of using inventory logs or records to identify the contents and hazards of a hazardous waste tank. The Agency also requests comment on alternative methods of identifying the contents and hazards of a hazardous waste tank in a more cost-effective manner.

Consistent with the existing regulations for tanks at § 262.34(a)(3), the Agency will continue to require that hazardous waste tanks be labeled with the words ''Hazardous Waste.''

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The labeling and marking regulations would be moved from § 262.34 to § 262.16(b)(6) (for SQGs) and to § 262.17(a)(5) (for LQGs). The reorganization is discussed in section XIII of this preamble.

3. Drip Pad and Containment Building Marking and Labeling for LQGs and SQGs (40 CFR 262.34(a)(3)) [76]

The existing regulations for drip pads at § 262.34(1)(iii)(A) and (B) require generators to produce a description of the procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least every 90 days, and to produce documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal. Likewise, the existing regulations for containment buildings at § 262.34(1)(iv)(A) and (B) require the generator to produce a written description of the procedures to ensure that each waste volume remains in the containment building for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respect to the 90-day limit, and documentation that the procedures are complied with. However, in both instances, the existing regulation explicitly fails to account for when the hazardous waste is first placed in or on the unit, which raises questions as to how a generator documents that it has met the 90-day limit.

Therefore, to address this shortcoming, and because the risks for accumulating hazardous wastes on drip pads and containment buildings are similar to those accumulating in tanks, and for purposes of consistency and uniformity with the marking and labeling provisions for tanks, the Agency is proposing the same marking and labeling regulatory framework for hazardous wastes accumulated on drip pads and in containment buildings that it is proposing for tanks.

Specifically, the Agency is proposing that hazardous waste accumulated on drip pads and in containment buildings be labeled in a conspicuous place near these units with the words ''Hazardous Waste.'' The Agency is also proposing to revise the existing marking regulations and clarify that LQGs and SQGs document the date that the hazardous waste was first placed on the drip pad and the sump or collection system in order to verify that the removal or turnover of the hazardous wastes on the drip pad took place within 90 days or less in order to support a generator's determination that it has not exceeded its 90-day accumulation time limitation. Exceeding the 90-day time limitation for LQGs and SQGs, respectively would be a violation of a condition for an exemption from permitting requirements. Note that this is also important because, as described in section VIII.J below, SQGs may move their wastes from one type of unit to another (*e.g.,* drip pad to containers), and without knowing the start and end dates, the generator will not be able to confirm that it met the appropriate accumulation time limitations.

Consistent with current drip pad regulations in 40 CFR 262.34(a)(1)(iii)(A) and (B), these provisions will continue to include a description of the procedures to be followed by both SQGs and LQGs to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days as well as documentation of each waste removal.

Finally, the Agency is proposing that generators use inventory logs or records to identify the contents of the drip pad and its associated hazards and that such logs and records be immediately accessible. The Agency believes that these requirements are necessary to ensure that workers and emergency responders handling or coming in contact with the waste understand the hazards and dangers that they may be exposed to.

In addition, as with the proposed changes for hazardous wastes accumulated in tanks and on drip pads, the Agency is proposing to clarify that LQGs and SQGs may use inventory logs, monitoring equipment, or any other effective means to document the date the hazardous waste was first placed in the containment building and the date when the hazardous waste was removed to verify that the waste was accumulated no more than 90 days at any one time.

Consistent with the existing regulation at § 262.34(a)(1)(iv)(A) and (B) for containment buildings, the proposed regulation for both LQGs and SQGs will state that the generator must maintain the following records and that they can do so by using inventory logs, records from monitoring equipment, or any other effective means:

(1) A professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101 in the facility's operating record prior to operation of the unit; and

(2) A written description of procedures to ensure that each waste volume remains in the unit for no more

[76] Note: Under a separate provision discussed in section VIII.J, the Agency is proposing to allow hazardous waste to be accumulated by SQGs in drip pads and containment buildings.

than 90 days by identifying the date hazardous waste first started to be accumulated, a written description of the waste generation and management practices for the site showing that they are consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

(3) Documentation that the unit is emptied at least once every 90 days.

Finally, the Agency is proposing that generators use inventory logs or records to identify the contents of the containment building and its associated hazards and that such logs and records be immediately accessible. As with the proposed changes to the marking and labeling of drip pads, the Agency believes that these requirements are necessary to ensure that workers and emergency responders handling or coming in contact with the waste understand the hazards and dangers that they may be exposed to.

As with the proposed changes to the tank marking and labeling regulations at § 262.34(a)(3), the Agency requests comment on the necessity and effectiveness of explicitly requiring generators to use inventory logs or records to identify the contents and hazards of hazardous waste accumulated on a drip pad or in a containment building. The Agency also requests comment on alternative methods of identifying the contents and hazards of a hazardous waste on a drip pad or in a containment building in a more cost-effective manner. Lastly, the Agency requests comment on how a generator can more effectively mark or label a drip pad or containment building with the words ''Hazardous Waste.''

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The labeling and marking regulations would be moved from § 262.34 to § 262.16(b)(6) (for SQGs) and § 262.17(a)(5) (for LQGs). The reorganization is discussed in section XIII of this preamble.

4. Request for Comment on Documentation of Waste Accumulation Unit Inspections

a. Container inspections at §§ 262.34. The Agency is requesting comment in this proposal on requiring both LQGs and SQGs, as a condition for exemption to record the results of their required ''at least weekly'' inspections to emphasize the importance of these inspections in preventing releases into the environment and to provide a measure of accountability that a generator inspection of its containers actually took place.

As part of the proposed reorganization to make the generator regulations more user-friendly, the Agency is proposing to incorporate parts of the existing regulatory text at § 265.174 (Container Inspections) into § 262.34 (§ 262.16(b)(2) for SQGs and § 262.17(a)(1) for LQGs under the proposed reorganization) and to revise these paragraphs to incorporate the existing regulatory text at § 265.171 for remedial action that is required if deterioration or leaks are detected.

The requirement for container inspections at § 265.174 states that the owner or operator must inspect areas where containers are stored at least weekly and that the owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

Currently, neither SQGs nor LQGs are required to record the results of their weekly inspections. As a result, EPA and some states have no reliable way to verify that such inspections took place unless, by the rare chance, an inspector is inspecting a generator site at the same time that the ''at least weekly'' inspection occurs or an inspector notices a release from a container during an inspection. This problem is compounded by the fact that generators accumulating hazardous wastes in containers are not required to have any type of secondary containment for their containers. Therefore, should a release occur, these problems could be compounded if the ''at least weekly'' inspection fails to occur.

A review of state programs found that many states already require generators accumulating hazardous waste in containers to maintain records of their weekly inspections. Many of these states provide templates for generators to use to assist them in recording the results of their inspections.[77]

EPA does not believe the burden imposed upon generators to record the results of its weekly inspections would be significant, particularly if generators use a template of some type to document the results of inspections (see examples of templates provided by states to generators to assist them in recording the results of inspections in the docket to this proposal).

The Agency also believes that best management practices for generators would already include documenting the results of their weekly inspections to not only prevent any releases, but also identify situations, such as a damaged container, that could lead to a potential release to the environment. That is, the Agency believes that the incremental cost of documenting the results of weekly inspections would be less than the costs of having to clean up after a release.

The Agency is also seeking comment on modifying the generator accumulation conditions (the proposed language at §§ 262.16(b)(2)(iv) and 262.17(a)(1)(v) under the reorganization) to add a provision that generators document their weekly inspections of containers in central accumulation areas and keep the log of the inspections at the site for at least three years. The record of each inspection would document the following: the visual inspection of containers to identify any hazardous wastes accumulated in rusting, bulging, or leaking containers; a description of any discrepancies or problem areas encountered in the inspection and corrective actions taken; and the signature or initials of the inspector and the date of the inspection.

In requesting comment on documenting the results of ''at least weekly'' container inspections, the Agency is interested in the environmental and economic impacts of requiring all generators accumulating hazardous waste in containers to document weekly container inspection, as a condition for exemption. Additionally, the Agency requests comment on whether to require documentation of such inspections if the generator has a secondary containment system to control leaks in the event of a release of hazardous wastes or other such incidents. The Agency also requests comment on whether this documentation requirement should be limited to those generators that accumulate a certain amount of hazardous waste at any one time or generators that accumulate more than a certain number of containers in a central accumulation area at any one time. Lastly, the Agency also seeks comment from generators in states who already must maintain records of their container inspections on their experience with this provision and whether there are effective alternative options worth considering that achieve the same goals.

b. Tank inspections for SQGs at § 262.34(d)(3) with cross-reference to §§ 265.201(c) and (d). The Agency also requests comment on requiring small quantity generators accumulating hazardous waste in tank systems to document the results of their tank inspections in order to emphasize the importance of these inspections in preventing releases into the environment and to provide a measure of accountability that a generator inspection of its tanks actually took place. Unlike LQGs accumulating

[77] See *Sample of States With Container Documentation Requirements* in the docket for this rulemaking.

hazardous wastes in tanks, who must document the results of their inspections, SQGs have no such provision in part 262. EPA proposes to incorporate the regulatory text of § 265.201(c) and (d) into § 262.16.

The regulations at § 265.201(c)(1) through (5) state that SQGs must inspect discharge equipment, data from monitoring equipment, and levels of waste in a tank daily, unless the tanks have secondary containment and leak detection equipment or procedures, in which case these can be inspected at least weekly. In addition, SQGs must inspect the construction of tanks and of discharge confinement structures like dikes and the areas immediately surrounding them at least weekly.

Section 265.201(d) also requires that SQGs with full tank secondary containment to document in the facility's operating record when an alternative inspection schedule is used. However, neither § 265.201(c) nor (d) contains a requirement to document the results of any inspection findings. Therefore, the Agency requests comment on adding a paragraph to § 262.16 that would require that generators record in a log the daily and weekly results of inspecting their tanks and maintain a record of those inspections on site for at least three years.

Similarly, the Agency requests comment on adding a similar provision to § 262.16 to address tanks with secondary containment and leak detection systems or practices to ensure that leaks that are identified, that the generator would be required to record in a log the results of inspecting these areas, including any leakage that may occur and maintain a record of those inspections on site for at least three years.

In commenting on this matter, please consider, in particular, whether it is environmentally and economically worthwhile to require SQGs accumulating hazardous waste in tanks to document the results of daily and weekly tank inspections. The Agency also requests comment on whether to require the documentation of such inspections if the SQG has a secondary containment system to control leaks in the event of the release of hazardous wastes. Additionally, the Agency requests comment on whether this documentation requirement should be limited to those generators that accumulate a certain amount of hazardous waste at any one time or generators that accumulate hazardous waste in more than a certain number of tanks in a central accumulation area. Lastly, the Agency also seeks comment from SQGs in states who already must maintain records of their tank inspections on their experience with this requirement and whether there are effective alternative options worth considering that achieve the same goal.

c. Drip pad inspections for both SQGs and LQGs at § 262.34. The Agency also requests comment on requiring both LQGs and SQGs accumulating hazardous waste on drip pads to document the results of their drip pad inspections. The current regulation in § 262.34(a)(1)(iii) references subpart W of part 265. Section 265.444 in subpart W currently requires that after installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters and that while a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of various types of damage to the drip pad or the systems that prevent and detect run-off and leakage.

As with hazardous waste accumulated in containers by LQGs and SQGs and hazardous waste accumulated in tank systems by SQGs, there is no regulation requiring them to document the results of drip pad inspections. Therefore, the Agency requests comment on modifying the generator accumulation conditions (§§ 262.16(b)(4) and 262.17(a)(3) in the proposed reorganization) to add a condition that the generator record in a log the results of weekly inspections and inspections after storms and that the records address deterioration, malfunctions or improper operation of run-on and run-off control systems; the presence of leakage in and proper functioning of leakage detection systems; and deterioration or cracking of the drip pad surface. The generator would be required to keep a record of the inspections on site for at least three years from the date of the last inspection.

In commenting, please consider whether it is environmentally and economically worthwhile to require SQGs accumulating hazardous waste on drip pads to document the results of weekly drip pad inspections. Additionally, the Agency requests comment on whether this documentation requirement should be limited to those generators that accumulate a certain amount of hazardous waste at any one time. The Agency also seeks comment from SQGs and LQGs in states who already must maintain records of their drip pad inspections on their experience with this provision, including whether it makes environmental and economic sense to ensure releases do not occur and whether there are effective alternative options that achieve the same goals.

G. Generator Closure Regulations

EPA is proposing three changes to the closure conditions for exemption from permitting for LQGs in § 262.34(a)(1)(iv)(B). First, EPA is proposing to consolidate the closure regulations for LQGs accumulating hazardous waste at § 262.17(a)(8). This consolidation would include both the general performance requirements found at §§ 265.111 and 265.114 for containers, tanks, drip pads, and containment buildings, and the unit specific requirements found at § 265.197 for tanks, § 265.445 for drip pads, and § 265.1102 for containment buildings.

Second, EPA is proposing to strengthen the closure regulations for LQGs accumulating hazardous waste in containers in central accumulation areas that plan to stop hazardous waste accumulation in those containers by requiring them to meet the same type of closure regulations that apply for tanks, drip pads and containment buildings, including in those situations where a generator is not able to demonstrate that its contaminated soils can be practicably removed or decontaminated.

Third, EPA is proposing to require an LQG to notify EPA or the authorized state using EPA form 8700–12 at least 30 days prior to closing the generator's site or when the generator closes a unit accumulating hazardous waste. Additionally, EPA is proposing that an LQG notify EPA or their authorized state within 90 days after closing the site or the unit accumulating the hazardous waste. This notification would state that the LQG has clean closed or failed to clean close and therefore must close as a landfill.

1. Consolidation of Closure Regulations for LQGs in Part 262

EPA is proposing to consolidate all of the closure regulations for LQGs accumulating hazardous waste in tanks, drip pads, and containment buildings in the generator accumulation conditions (§ 262.17(a)(8) under the proposed reorganization). EPA believes that the current structure of these regulations can be confusing and difficult to follow.

Currently, the closure regulations for LQGs are found at § 262.34(a)(1). These regulations refer to the general performance requirements for closure at §§ 265.111 and 265.114. Section 265.111 references the unit specific closure regulations found at subpart J of part 265 (for tanks), subpart W of part 265 (for drip pads) and subpart DD of part 265 (for containment buildings). The

closure regulations for LQGs refer to the TSDF regulations because the waste accumulation units at LQGs (tanks, drip pads, and containment buildings) are similar to those at TSDFs and, thus, present the same potential for adverse impacts to human health and the environment if closure is not conducted properly.

However, while §§ 265.111 and 265.114 cite the specific closure regulations for different types of units, missing from § 265.111 is a reference to drip pads and missing from § 265.114 is a reference to both drip pads and containment buildings. The Agency believes these are inadvertent oversights where EPA failed to make the appropriate conforming changes when the regulations for drip pads and containment building were promulgated in 1990 and 1992, respectively.[78]

Furthermore, as with other parts of the hazardous waste generator regulations, the accumulation regulations at § 262.34 often reference the detailed technical regulations of part 265 to reduce duplication. Part 265 describes the technical regulations for interim status TSDFs. Usually, the technical requirements in part 265 are clear in distinguishing the generator standards from standards for interim status TSDFs (*e.g.,* § 265.201 specifies that the provisions of that paragraph are only for SQGs); however, this is not the case for the LQG closure regulations.

Finally, EPA believes the closure regulations are unnecessarily confusing. For example, the tank system regulations for LQGs at § 262.34(a)(1)(ii) make clear that the requirements of § 265.197(c) do not apply to LQGs. Yet, LQGs must comply with § 265.111, which in turn, at paragraph § 265.111(c) requires LQGs to comply with § 265.197, which includes paragraph (c). One commenter wrote about this confusion when the Agency proposed to clarify the closure regulations for LQGs as part its March 18, 2010, Hazardous Waste Technical Corrections and Clarifications Direct Final Rule (75 FR 12989).[79] The Agency has made clear in guidance that generators are not subject to § 265.111(c), except if the facility cannot clean close its waste accumulation unit(s), but we believe that a regulatory change would make this even more clear.[80]

Therefore, as a first step in improving the usefulness of the closure regulations for LQGs accumulating hazardous waste in containers, tanks, drip pads, and containment buildings, EPA is proposing to consolidate and integrate all relevant closure provisions for LQGs accumulating hazardous waste in tanks, drip pads, and containments buildings at § 262.17(a)(8). The closure regulations include the following: (1) the general closure performance standards found at § 265.111(a) and (b); (2) a modified version of the standards found at § 265.114 (Disposal or decontamination of contaminated equipment, structures, and soils) that incorporates regulatory language applicable to containers, tanks, drip pads, and containment buildings undergoing closure; (3) the unit-specific closure regulations relevant to tanks, drip pads, and containment buildings found at §§ 265.197(a) and (b), 265.445(a) and (b), and 265.1102(a) and (b), respectively;[81] (4) a provision addressing the disposition of any hazardous waste generated in the process of closing either the generator's site or unit(s) accumulating hazardous waste, and (5) a provision addressing the situation when a waste accumulation unit or site cannot clean close and must close as a landfill. This includes situations where an LQG accumulating hazardous wastes in containers cannot clean close. More specifically, the proposed new closure regulations in the generator accumulation conditions at § 262.17(a)(8)(ii) would require LQGs at closure to close the waste accumulation unit or site in a manner that achieves all of the following:

(1) Minimizes the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, the post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere;

(2) Properly disposes of or decontaminates all contaminated equipment, structures and soil and any remaining hazardous waste residues from waste accumulation units including containment system components (pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment contaminated with waste. Any hazardous waste residues remaining in the unit(s) being closed must be removed from the unit(s). Any leakage must also be decontaminated or removed and managed as a hazardous waste unless § 261.3(d) applies;

(3) Manages any hazardous waste generated in the process of closing either the generator's site or unit(s) accumulating hazardous waste in accordance with all applicable requirements of parts 260 through 270, including removing any hazardous waste contained in these units within 90 days of generating it and managing these wastes in a RCRA Subtitle C hazardous waste permitted or interim status treatment, storage and disposal facility or interim status facility; and

(4) Ensures that if the generator demonstrates that all contaminated soils cannot be practicably removed or decontaminated as required in this section, then the generator must close the waste accumulation unit(s) and perform post-closure care in accordance with the closure and post-closure care regulations that apply to landfills (§ 265.310). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator must meet all of the standards for landfills specified in subparts G and H of part 265.

2. Closure Regulations for LQGs Accumulating Hazardous Waste in Containers

As an additional condition to qualify to accumulate hazardous waste without a permit or interim status, EPA is proposing to require LQGs accumulating hazardous wastes in containers in central accumulation areas that plan to stop hazardous waste accumulation in those containers to meet the same type of closure regulations discussed above—that is, the closure regulations for tanks, drip pads, and containment buildings. This includes situations where an LQG accumulating hazardous wastes in containers can demonstrate that any

[78] Memo from Robert Springer, Director of EPA's Office of Solid Waste, to RCRA Directors, September 24, 2003, RCRA Online 14681; Drip Pad Closure Notification and Certification Requirements, November 1, 1997, RCRA Online 14130; and RCRA/Superfund Hotline Monthly Report, December 1998, RCRA Online 14321, that states: ''LQGs are subject to the most stringent requirements, which include general closure provisions and unit-specific ones. The general closure requirements appear in Section 265.111 and Section 265.114 (Section 262.34(a)(1)).'' Additionally, the report states: ''LQGs storing or treating waste in tanks, on drip pads, or in containment buildings are also subject to closure requirements specific to these types of units.''

[79] Comments from the National Mining Association, May 3. 2010. Docket ID No: ID EPA–HQ–RCRA–2008–0678.

[80] RCRA/Superfund Hotline Monthly Report, December 1998, RCRA Online 14321.

[81] Note: During the partial and final closure periods, all contaminated equipment, structures and soil must be properly disposed of, or decontaminated unless specified otherwise in § 265.197, 265.228, 265.258, 265.280, or 265.310. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of part 262.

contaminated soils cannot be practicably removed or decontaminated and as a result, the generator must close the waste accumulation unit(s) and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 265.310). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator must meet all of the requirements for landfills specified in subparts G and H of part 265.

Supporting these proposed regulations are damage cases by generators who accumulated hazardous wastes in containers. An examination of Superfund removal actions shows LQGs accumulating hazardous waste in containers have sometimes closed their doors or abandoned their sites, resulting in environmental problems.[82] Most LQGs use containers to accumulate hazardous wastes. Some LQGs may generate relatively small quantities of hazardous waste and therefore may not need many containers to accumulate their hazardous wastes, but other generators generate a sufficient quantity of hazardous waste to require the use of a large number of containers each day. Not ensuring that these sites are closed properly increases the risk of more damage cases.

For LQGs that accumulate hazardous waste in containers or container units, EPA is proposing closure regulations that replicate the regulations in paragraphs § 262.17(a)(8)(ii), mentioned above. The Agency believes the closure regulations are applicable to LQGs who have accumulated hazardous waste in containers as well as to LQGs who have accumulated hazardous waste in tanks, drip pads and containment buildings in order to prevent adverse impacts to human health and environment. Therefore, as with LQGs that accumulate hazardous wastes in tanks, drip pads, and containment buildings, should a generator decide to close a container or stop accumulating hazardous waste in containers at the site altogether, it would be responsible for complying with the regulations proposed at § 262.17(a)(8)(ii) and removing all relevant hazardous wastes accumulated within 90 days of generating it and any hazardous wastes that also may have been accumulated in SAAs. Otherwise, the generator would fail to meet the conditions for the exemption from permitting and would be subject to the requirements of 40 CFR parts 264, 265, 267 and the permit requirements of part 270.

3. Notification by LQGs Upon Closure of their Hazardous Waste Accumulation Units

EPA is also proposing that an LQG notify either EPA or its authorized state at least 30 days prior to closure of a hazardous waste accumulation unit, such as a container, tank, drip pad, or containment building, or closure of the site altogether. EPA is also proposing that such generators subsequently notify EPA or its authorized state no later than 90 days after closure of the site or a hazardous waste accumulation unit that they have either clean closed (*e.g.,* complied with the applicable generator closure regulations) or, if they cannot clean close, that they must close as a landfill. If these changes are finalized, EPA will amend EPA form 8700–12 to incorporate collection of this information.

The hazardous waste regulatory program is a ''cradle to grave'' system in which any hazardous waste generated by an LQG (or SQG) must be subsequently managed, either on site or off site at an appropriate RCRA destination facility. Missing from the current regulatory framework is knowledge by the regulatory authority that the LQG, upon closing either a waste accumulation unit or closing the site altogether, properly closed the accumulation unit in compliance with the applicable closure regulations. Without this knowledge, regulatory authorities do not know whether generators have abandoned the site, leaving behind hazardous waste that could subsequently result in a release to the environment and adverse impacts to human health and the environment. Thus, these closure notifications are important to ensure that LQGs close their waste accumulation unit, or site, in compliance with the applicable closure regulations. Fail to properly close would be a violation of the waste accumulation exemption.

4. Request for Comment

EPA requests comment regarding its proposal to consolidate the closure regulations for hazardous waste generated by LQGs in § 262.17(a)(8) and whether this approach would improve the readability/understandability of the rules, and thus, improve compliance. EPA also requests comment on whether parts of the proposed closure regulations at § 262.17(a)(8) should be modified.

EPA also requests comment regarding its proposal to strengthen the closure regulations for LQGs accumulating hazardous waste in containers.

In addition, EPA requests comment on whether it should require LQGs to notify EPA regarding closure both prior to closure (*e.g.,* at least 30 days prior to closure) and after closure (*e.g.,* notify no later than 90 days after the site has closed one or all of its hazardous waste accumulation units either by clean closure or closed as a landfill) or whether EPA should just require notification only once—that is, after closure (*e.g.,* no later than 90 days after closure). Requiring notification only after closure of the hazardous waste accumulation unit or site reduces the generator's paperwork burden in half and allows EPA and the state to focus on results. However, requiring notification both before and after closure creates greater visibility for this important activity. The notification creates an incentive for the generator to take all appropriate actions once the unit or site is closed and also provides notice to EPA and the state to be aware of this important activity and to plan for a possible inspection to verify clean closure has successfully occurred or determine if additional closure efforts are needed. EPA is currently of the opinion that the additional environmental benefits accrued from requiring both notifications will exceed the additional paperwork costs to the generator. In conjunction with an LQG notifying EPA no later than 90 days after closure, EPA is also requesting comment on whether, as part of the closure notification requirements, LQGs should be required to certify that they have clean closed or failed to clean close all applicable hazardous waste accumulation units. This type of notification would have the added benefit of ensuring EPA knows that an LQG performed their due diligence in closing and can certify to either clean closing or closing as a landfill.

Because there are no federal regulations for closure of a waste accumulation unit or site closure by SQGs, SQGs are not required to comply with the clean closure regulations, as well as notify when they close any or all waste accumulation units. Unlike LQGs, which have no waste accumulation limits as long as they remove any hazardous waste within 90 days of generating it, SQGs do have a waste accumulation quantity limitation of 6,000 kilograms. Given this waste accumulation quantity limitation, EPA sees no reason at this time to propose requiring SQGs to clean close or close as a landfill if they cannot clean close. However, EPA sees a potential benefit in having SQGs notify EPA when SQGs

[82] See EPA's On Scene Coordinator (OSC) Web site: *http://www.epaosc.org.*

close to allow the regulatory authority to follow-up and ensure that all hazardous waste was removed and properly managed. Therefore, EPA is requesting comment regarding whether SQGs that stop accumulating and close any or all of their hazardous waste accumulation units should notify EPA within 60 days after closing.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The LQG closure regulations would move to § 262.17(a)(8). The reorganization is discussed in section XIII of this preamble.

H. Changes to the Preparedness, Prevention, and Emergency Procedures Provisions (40 CFR 262.34(a)(4) and 262.34(d)(4) and (5))

EPA is proposing a number of modifications to the conditions for exemption for both SQGs and LQGs regarding preparedness, prevention and emergency procedures. The conditions for SQGs are found at §§ 262.34(d)(4) and (5) (which refer to the technical standards at 40 CFR part 265 subpart C) and the conditions for LQGs are found at § 262.34(a)(4) (which refers to the technical standards at part 265 subparts C and D).

The proposed revisions are organized in this section as follows: (1) Revising the scope of the contingency planning and emergency procedures regulations; (2) revising § 265.37(a) to state that when making arrangements with local authorities regarding emergency procedures, an SQG or LQG must first attempt to make emergency preparedness and procedures agreements with its Local Emergency Planning Committee (LEPC), and, if this attempt is not successful (or there is no LEPC in the area), the generator must make an arrangement with its local fire department and other emergency responders; (3) modifying the regulations for contingency plans for LQGs in §§ 265.52 and 265.53 to add an executive summary to the plan that a new LQG would submit to the LEPC and to adjust the content of an element of the required contingency plan; (4) making two revisions to the technical standards regarding required equipment that are part of the preparedness and prevention regulations in part 265 subpart C that are applicable to both SQGs and LQGs; (5) modifying the preparedness and prevention provisions for SQGs at § 262.34(d)(5) regarding posted emergency coordinator information and responsibility for cleaning up a spill; (6) modifying the personnel training provision for LQGs; (7) taking comment on what personnel should have mandated personnel training, and (8) taking comment on whether any of these proposed revisions would be appropriate for TSDFs in addition to generators.

Recent catastrophic chemical accidents in the United States, such as the 2013 West, Texas, fire and explosion that killed 15 people, the 2010 explosion and fire at Tesoro Refinery in Anacortes, Washington, that killed seven employees, and the 2012 Chevron Refinery hydrocarbon fire in Richmond, California, that affected 15,000 people in the surrounding area, highlight the need for continued improvement in a number of areas related to chemical facility safety. To address these concerns, the President issued Executive Order 13650—Improving Chemical Facility Safety and Security (EO) on August 1, 2013.[83] The EO directed the Department of Homeland Security, EPA, the Department of Labor, the Department of Justice, the Department of Agriculture, and the Department of Transportation to identify ways to improve operational coordination with state, local, tribal, and territorial partners; enhance federal agency coordination and information sharing; modernize policies, regulations, and standards to enhance safety and security in chemical facilities; and work with stakeholders to identify best practices to reduce safety and security risks in the production and storage of potentially harmful chemicals.

One of the key goals the EPA is addressing through this effort is enhancing and providing additional support to State Emergency Response Commissions (SERCs) and LEPCs to assist them in collecting and analyzing the chemical information they receive from local facilities and developing local emergency response plans to mitigate or prevent a devastating chemical disaster. Several of the proposed requirements are aligned with these EO efforts and will assist in furthering this goal and with those of the EO in general because they update the regulations to make them compatible with the current infrastructure of emergency planning and response by referencing LEPCs. Additionally, these revisions would provide a more usable contingency plan to emergency responders en route to a time-sensitive emergency at a generator of hazardous waste. Before finalizing these provisions, EPA will ensure that they are aligned with the efforts to improve chemical plant safety and security under the EO.

This preamble also discusses how EPA might incorporate modern technology into the emergency planning and procedures regulations for generators in order to provide information more quickly to emergency responders when faced with an event at a generator.

In addition to the changes listed above, as part of the reorganization of the preamble discussed in section XIII, EPA is proposing to copy the preparedness and prevention regulations for SQGs into § 262.16 and to create a new subpart in part 262—subpart M—that would contain the more extensive preparedness, prevention, and emergency procedures regulations for LQGs. Copying a version of these regulations into part 262 allows most of the preparedness, prevention, and emergency procedures regulations for generators to be easily found without accessing part 265 and with minimal cross-referencing.[84]

As part of this reorganization, our proposed regulation has replaced the word ''facility'' in the regulations with ''site'' because ''facility'' is defined in § 260.10 as specific to TSDFs. Another small revision that we propose because of the reorganization of these regulations is folding the ''comment'' in § 265.55 into the body of the corresponding proposed regulation at § 262.264. We are proposing this because **Federal Register** style no longer permits this kind of comment in new regulations.

1. Areas Subject to Preparedness, Contingency Planning, and Emergency Procedures Regulations

The current preparedness and emergency procedures regulations do not clearly state whether they are applicable to the entire generator site or only to areas where hazardous waste is generated and accumulated on site (or where allowable treatment may occur in accumulation units) and when transported off site for subsequent treatment, storage, and disposal. EPA is proposing that the regulations for preparedness and prevention and for contingency planning and emergency procedures apply only to those areas of a generator's site where hazardous waste

[83] *http://www.whitehouse.gov/the-press-office/2013/08/01/executive-order-improving-chemical-facility-safety-and-security.*

[84] Note that throughout this section, although we are referring to the regulations by their current citations, the fact that we are also proposing in most cases to reorganize those requirements and copy them into the generator requirements in part 262 means that the revisions discussed in this section would not automatically apply to interim status TSDFs, as the proposed revisions only apply to the version of these regulations that is being proposed to be in part 262.

is generated and accumulated and, where applicable, to those areas where allowable treatment may occur in accumulation units.

The Agency is proposing to explicitly state that the RCRA preparedness and emergency procedures regulations are limited strictly to areas where hazardous waste is generated and accumulated.

The Agency has previously signaled that these requirements do not apply to the entire generator site. In a November 7, 2006, letter, EPA stated that the 40 CFR part 265 regulations for LQGs set forth in § 262.34(a)(4) apply to units accumulating hazardous wastes. The letter states that in order to comply with the part 265 requirements referenced in § 262.34(a)(4), LQGs only need to address those tanks, containers, drip pads, and containment buildings that accumulate hazardous wastes and are subject to the 90-day generator accumulation provision. As an example, the letter states that when developing a contingency plan, LQGs would only need to include those 90-day accumulation units involving the on-site management of hazardous waste.[85]

It makes sense to limit the applicability of these regulations only to these areas because several other statutes already address the development and implementation of contingency plans associated with other areas of a generator site, such as the storage of chemical materials other than hazardous wastes. We also note that considerable overlap exists in the requirements in the various statutes and, since 1997, the federal government has encouraged facilities to develop integrated contingency plans and has provided guidance for doing so in the **Federal Register**. The integrated contingency plan is discussed further in section VIII.H.3, below.

The language EPA is proposing to change currently appears in §§ 265.30 and 265.50, though we are proposing to move it to a new part 262 subpart M to make it specific to generators. EPA proposes that subpart M apply only to those areas of a large quantity generator where hazardous waste is generated and accumulated on site in accordance with the conditions in § 262.17. This proposal includes a parallel change for the emergency procedures regulations for small quantity generators in § 262.16.

The Agency requests comment on making it explicit in the regulations that the preparedness, prevention, and emergency procedures regulations apply only to those areas of the generator's site where hazardous waste is generated and accumulated, and where applicable, those areas where allowable treatment may occur in accumulation units.

Effect of Proposed Reorganization: This section is affected by the proposed reorganization. The proposed revisions would appear at § 262.250 in a new subpart M of part 262 and would not appear in part 265. The reorganization is discussed in section XIII of this preamble.

2. Making Arrangements With the Local Emergency Planning Committee

Sections 262.34(a)(4) and (d)(4) set forth conditions for LQGs and SQGs that accumulate without a permit. Both these paragraphs include references to part 265 subpart C, which contains a reference to § 265.37. Section 265.37(a) states that ''The owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations'' and goes on to list the types of local emergency officials that should be informed about hazardous waste at a facility, such as fire departments and emergency response teams, and the information the generator should provide them.

The Agency is proposing to revise this provision for generators to state that SQGs and LQGs must first attempt to enter into agreements with their LEPC, but if there is no LEPC in the area or if the LEPC does not respond or is unwilling to enter an agreement, the generator must enter into an agreement(s) with the local fire department and other emergency responders. This proposed revision would add to the regulations both a reference to LEPCs and an explicit statement that generators must enter into an agreement with emergency planning officials, rather than just attempt to enter into an agreement.

a. Local emergency planning committees. The Agency is proposing to revise regulations that were finalized in 1980. The national and local infrastructure for emergency planning and response has changed significantly since that time, but these regulations have not been updated to reflect those changes. The proposed revision to specifically name LEPCs in this regulation addresses that deficiency.

The Superfund Amendments and Reauthorization Act (SARA) was enacted in 1986. Title III of SARA is also known as the Emergency Planning and Community Right-To-Know Act (EPCRA). EPCRA helps increase the public's knowledge and access to information regarding chemicals at individual facilities, their uses, and releases into the environment. States and communities, working with facilities, can use the information to improve chemical safety and protect public health and the environment. EPCRA requires both small and large entities to report chemical information to the SERC, the LEPC, the local fire department, and tribal nations.

EPCRA requires LEPCs to prepare a comprehensive plan for local communities designed to help them prepare for and respond to emergencies involving extremely hazardous substances (EHS). Facilities covered by EPCRA planning provisions are required to cooperate in emergency plan preparation and designate a facility emergency coordinator to participate in the planning process as well as notify their SERC and LEPC within 60 days of becoming subject to the emergency planning requirements (when an EHS is first present at the facility from a shipment or production). Additionally, as part of the community-right-to-know provisions of EPCRA, facilities that have hazardous chemicals for which they must have or prepare an MSDS or SDS and have at or above the threshold amount of those chemicals must also annually complete and submit an Emergency and Hazardous Chemical Inventory form (also known as a Tier II) to the LEPC, to the SERC, and to the local fire department by March 1. These facilities must send copies of their MSDS, SDS, or a list of hazardous chemicals to the LEPC, to the SERC, and to the fire department.[86]

In turn, LEPCs must develop an emergency response plan, review it at least annually, and provide information about chemicals in the community to citizens. These plans are developed by LEPCs with stakeholder participation. There are more than 3,000 designated local emergency planning districts, although not all of these districts have functioning LEPCs. The LEPC membership must include (at a minimum) elected state and local officials; police, fire, civil defense, and public health professionals; environment, transportation, and hospital officials; facility representatives; and representatives from community groups and the media. Although in many areas the LEPCs are the main organizing entities for emergency response, the RCRA hazardous waste regulations do not

[85] Memorandum from Matt Hale, Director of EPA's Office of Solid Waste, to RCRA Division Directors, November 7, 2006, RCRA Online 14758.

[86] The regulations implementing the emergency planning and notification requirements of EPCRA can be found at 40 CFR part 355.

mention them or their role in contingency planning.

The proposed language directly references LEPCs, stating that the generator must make arrangements with the Local Emergency Planning Committee for the types and quantities of hazardous waste handled at the site.[87] This modification merely updates the RCRA hazardous waste regulations to match the current emergency planning landscape.

Consistent with this proposed modification at § 265.37, the Agency is also proposing that when the language in current § 265.52(c) is copied into part 262, it state that the plan must describe arrangements agreed to with the Local Emergency Planning Committee. Should there be no Local Emergency Planning Committee, should it not respond, or should the Local Emergency Planning Committee determine that it is not the appropriate organization to make arrangements with, then the large quantity generator must make arrangements with its local fire department and other relevant emergency responders (*e.g.,* police and hospitals) to coordinate emergency services, pursuant to § 262.256.

The Agency requests comment on this proposal to modify the language in §§ 265.37(a) and 265.52(c) when they are copied into part 262.

Effect of Proposed Reorganization: These sections are affected by the proposed reorganization. The proposed regulation would appear in the SQG standards at § 262.16(b)(8)(vi) and in the new part 262 subpart M for LQGs at § 262.256 for arrangements and § 262.261(c) for the content of the contingency plan. The reorganization is discussed in section XIII of this preamble.

b. Making required arrangements. The other proposed modification to the language currently in § 265.37(a) when it is copied into part 262 addresses the ambiguity of the current language, which requires only that the owner or operator ''attempt to make'' arrangements with local emergency response authorities.

Section 265.37(a) states that the owner or operator must attempt to make arrangements with local fire and emergency organizations, as appropriate for the type of waste handled at the facility and the potential need for the services of these organizations. Paragraph (a)(1) makes clear that these arrangements involve familiarizing these organizations with the layout of the facility, properties of the hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes. Because an SQG is not required to submit a contingency plan, this language suggests that SQGs need only invite local officials to visit and familiarize themselves with the site as compared to LQGs, which are required to develop a written contingency plan and provide it to local officials.

Given the importance of emergency preparedness and planning, EPA is proposing to require that an SQG or an LQG must make direct arrangements with its LEPC as part of this condition. The Agency believes the LEPCs, in turn, will work with their local responders to integrate the activities of SQGs and LQGs into the overall emergency response plan.

Many SQGs and LQGs may already have arrangements with their LEPCs because most SQGs and LQGs either have EHSs that require reporting to the LEPC, which triggers EPCRA emergency planning requirements, or use chemicals that require an SDS, triggering the EPCRA community right-to-know requirement to report to LEPCs. However, in the case that a hazardous waste generator does not have a relationship with the LEPC, that LEPC may view working with non-EPCRA facilities as outside the scope of their authority. Alternatively, there may be a hazardous waste generator in a location where there is no organized LEPC. Therefore, as part of this regulation, EPA proposes to require that an SQG or LQG attempt to make formal arrangements with its LEPC unless there is no LEPC, the LEPC does not respond, or the LEPC determines that it is not the appropriate organization to make an arrangement with. In this case, the SQG or LQG would be required to make arrangements with its local fire department, as well as with other relevant emergency responders, such as the police department and local hospitals.

The proposed regulatory text for this condition would state that the generator must make arrangements with the Local Emergency Planning Committee for the types and quantities of hazardous waste handled at the site, as well as the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals.[88] Should there be no Local Emergency Planning Committee, should it not respond, or should the Local Emergency Planning Committee determine that it is not the appropriate organization to make arrangements with, then the generator must make arrangements with the local fire department and other relevant emergency responders (*e.g.,* police and hospitals).

EPA is also proposing regulatory text that describes procedures for how a facility that is not able to make arrangements with the LEPC would make such arrangements with the fire department and other local emergency services. Much of this language corresponds with the existing standards for making arrangements with emergency responders. These mandated steps are not necessary in the case of arrangements with the LEPC because that group is likely to have standardized procedures of its own to follow to make these arrangements with facilities.

The Agency requests comment on its proposal to require an SQG or an LQG to enter into arrangements with its LEPC unless there is no LEPC, the LEPC does not respond, or the LEPC determines that it is not the appropriate organization to make arrangements with, in which case the SQG or LQG would enter into an arrangement with its local emergency responders.

EPA is also proposing to add new language to supplement this condition because current § 265.37(a) does not specify the frequency that hazardous waste generators must make arrangements with local authorities. For example, should arrangements be updated according to a set schedule or only when modification is needed. Considering that some SQGs and LQGs may already coordinate with their LEPCs annually as part of their EPCRA requirements, the Agency is of the opinion that it is not necessary to include time frames for updating in this rule. The Agency requests comments on whether the regulations should mandate how frequently a generator must communicate with its LEPC or local fire department if it has not otherwise communicated with them.

Effect of Proposed Reorganization: This section is affected by the proposed reorganization. The proposed regulation would appear in the SQG standards at § 262.16(b)(8)(vi) and in the new part 262 subpart M for LQGs at § 262.256. The reorganization is discussed in section XIII of this preamble.

[87] Although much of the discussion of these provisions for the purposes of this rule revolves around hazardous waste generators, because the provisions are located in part 265 for interim status hazardous waste TSDFs, they will refer to the persons regulated as ''owner or operator'' and the entity being regulated as the ''facility.''

[88] This condition is being proposed at § 262.16(b)(8)(vi)(A) for SQGs and § 262.256 for LQGs due to the proposed reorganization.

c. Documenting arrangements. As noted above, the EPA thinks it is important for both SQGs and LQGs to make arrangements with their LEPCs. In addition, EPA believes that documentation of these arrangements would be useful in ensuring that generators have taken the necessary steps to prepare for an emergency and have a clearly defined plan with the LEPC for emergency response. Therefore, when EPA copies this condition into part 262, EPA is proposing to modify the language to state that the generator shall maintain records documenting the arrangements with the Local Emergency Planning Committee, or if appropriate, with the local fire department as well as any other organization necessary to respond to an emergency. This documentation may include a certified letter or any other documentation that confirms such arrangements actively exist.

One alternative suggested as part of the 2004 Program Evaluation of the hazardous waste generator regulatory program would be to require hazardous waste generators to list the emergency response agencies that have agreed to respond in the event of an emergency with some documentation confirming that the arrangements exist. In addition to helping generators prepare for emergencies, documentation of these arrangements would provide the necessary information for inspectors when determining compliance. The Agency believes this alternative may be the most effective approach to addressing the ambiguity that exists with the existing regulations at § 265.37(b).

The Agency seeks comment on this proposed change to documentation, in particular whether local ordinances already require generators to have documentation of arrangements with local emergency response organizations.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The proposed regulation would appear in the SQG standards at § 262.16(b)(8)(vi) and in the new part 262 subpart M for LQGs at § 262.256(b). The reorganization is discussed in section XIII of this preamble.

d. Request for comment on emergency procedures at large facilities with internal emergency teams. Many large organizations, particularly those that operate 24 hours a day, such as airports and military bases, have their own emergency response capabilities. This raises the question of whether and under what circumstances arrangements with local authorities would not be needed to ensure effective emergency response. The Agency seeks comment on the feasibility of providing a waiver from requiring either an SQG or LQG to enter into arrangements with an LEPC or, if appropriate, other local authorities when they have 24-hour on-site emergency response capabilities, particularly under what circumstances a waiver would be granted.

3. Changes to Contingency Plan Regulations for LQGs

Under § 262.34(a)(4), LQGs are required to comply with 40 CFR part 265 subpart D, §§ 265.50–265.56, which describes the regulations on contingency planning and emergency procedures. These regulations address the purpose of the contingency plan, what it must contain, who receives copies, how to amend the contingency plan, and responsibilities of the facility's emergency coordinator and emergency procedures. One important thing to note is that the owner or operator of the facility can develop one contingency plan that meets all the regulatory standards for the various statutory and regulatory provisions for contingency planning:

- EPA's Oil Pollution Prevention Regulation (SPCC and Facility Response Plan Requirements) at 40 CFR 112.7(d), 112.20, and 112.21;
- EPA's Risk Management Programs Regulation at 40 CFR part 68;
- EPA's Resource Conservation and Recovery Act Contingency Planning Requirements at 40 CFR part 264 subpart D, 40 CFR part 265 subpart D, and 40 CFR 279.52;
- Department of Interior's Bureau of Safety and Environmental Enforcement (BSEE) Facility Response Plan Regulation at 30 CFR part 254;
- Pipeline and Hazardous Materials Safety Administration (PHMSA) Response Plans for Onshore Oil Pipelines at 49 CFR part 194;
- U.S. Coast Guard's (USCG) Facility Response Plan Regulation at 33 CFR part 154 subpart F;
- OSHA's Emergency Action Plan Regulation at 29 CFR 1910.38(a);
- OSHA's Process Safety Standard at 29 CFR 1910.119; and
- OSHA's HAZWOPER Regulation at 29 CFR 1910.120.

EPA recommends that generators base their contingency plan on the National Response Team's Integrated Contingency Plan Guidance (One Plan), discussed in the **Federal Register** on June 5, 1996, at 61 FR 28642.

In this action, EPA is proposing three modifications to the contingency planning regulations for generators: One is meant to improve the ability of emergency response teams to respond to an emergency at an LQG and the other two are technical changes to the content of the contingency plan.

a. Submitting a contingency plan executive summary to emergency management authorities. The Agency is proposing to require that a new LQG, as of the effective date of the rule, submit an executive summary of its contingency plan to the emergency management authorities. As part of this revision, EPA proposes to change the language of the regulation to include LEPCs, as discussed above in section VIII.H.2.

The current regulations at § 265.53 state that a copy of the contingency plan must be submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

In discussions with EPA, emergency management professionals indicated that the length of the facility contingency plans prevents first responders from being able to fully review a facility's contingency plan when responding to an emergency.[89] Instead, they need readily available information that describes what they must confront when they arrive at the scene. Once the incident is under control, the first responders can then review the detailed contingency plan to determine their next steps, if applicable. Thus, the Agency believes that a shorter document, such as an executive summary of the contingency plan would be more effective for an emergency responder when responding to an incident at a facility accumulating hazardous waste. As currently happens in practice, once the incident is under control, then the emergency responders can review the more detailed contingency plan if necessary for long-term responses.

A review of the information required as part of a RCRA contingency plan in § 265.52, as well as information required by the local fire department, identified certain components that would be useful in an executive summary and EPA used this information in developing this proposed regulation. Specifically, the Agency is proposing to require that the following information be included in an executive summary to assist emergency responders in the event of an incident: (1) The types/names of hazardous wastes in layman's terms and the associated hazard associated with each waste present at any one time (*e.g.,* toxic paint wastes,

[89] Notes from discussion with Phil Oakes and Jim Narva, International Association of Fire Marshalls, concerning Contingency Planning and Emergency Response Regulations, July 2012.

spent ignitable solvent, corrosive acid); (2) the estimated maximum amount of each waste that may be present at any one time; (3) the identification of any hazardous wastes where exposure would require a unique or special treatment by medical or hospital staff; (4) a map of the site showing where hazardous wastes are generated and accumulated and routes for accessing these wastes; (5) a street map of the facility in relation to surrounding businesses, schools, and residential areas to understand how best to get to the facility and also evacuate citizens and workers; (6) the locations of water supply (*e.g.,* fire hydrant and its flow rate, drafting locations); (7) the identification of on-site notification systems (*e.g.,* a fire alarm that rings off-site, smoke alarms); and (8) the name of the emergency coordinator and 24/7 emergency telephone number.

EPA believes these are the appropriate elements for the executive summary but is taking comment on them. In addition, for identification of the hazardous waste under element (1), EPA is taking comment on whether providing the name of the waste in layman's terms is sufficient for ensuring that first responders will be able to identify the appropriate actions to take in response. A reference to the material in the North American Emergency Response Guide, where appropriate, would likely reduce the time it takes for first responders to get the necessary information for managing the situation. EPA is interested in whether this type of reference would be useful to first responders and whether generators can easily access this information to add to their contingency plans.

EPA is also taking comment on whether the executive summary should add to element (3) a requirement that the generator provide information on the medical information for exposure to those hazardous wastes that do require special treatment. EPA is specifically interested in whether this information is readily available to the generator to be included in the executive summary of the contingency plan and whether first responders would find this additional information useful for responses.

Under the proposed condition for contingency plans at LQGs, EPA is proposing that an LQG that becomes subject to this rule after the rule's effective date be required to develop and submit an executive summary of its contingency plan to the LEPC in addition to the full contingency plan. The Agency is not proposing to require that an LQG that has already developed and submitted a contingency plan to local emergency responders develop an executive summary because of the additional burden that would be imposed on existing LQGs to go back to their contingency plans and develop this summary. The Agency has determined that developing the executive summary during the initial writing of the contingency plan would not be a significant extra step. However, we recommend that an LQG that is not required to develop an executive summary of its contingency plan may want to do so and submit that executive summary to the LEPC when doing a periodic update on its contingency plan to ensure that the emergency responders have the appropriate information on hand in the event of an emergency.

EPA, therefore, is proposing to modify the condition regarding copies of the contingency plan to require that a copy of the contingency plan and all revisions to the plan must be maintained at the large quantity generator's site and the large quantity generator must submit a copy of the contingency plan to the Local Emergency Planning Committee. If there is no Local Emergency Planning Committee, if it does not respond, or if the Local Emergency Planning Committee determines that it is not the appropriate organization to make arrangements with, the facility must then submit the copy to the local emergency responders.

We are proposing to list in the regulations the eight elements described above as the most valuable items for emergency responders.

The Agency requests comment on this proposed revision. In addition, EPA requests comment on whether an existing LQG that has already provided its full contingency plan should also be required to submit an executive summary to the LEPC or, if appropriate, the fire department or other emergency responders.

The Agency also requests comment on whether an SQG should be required to develop an executive summary of a contingency plan. The major differences between the preparedness, prevention, and emergency procedures regulations applicable to SQGs and those applicable to LQGs are the development and implementation of a contingency plan and more rigorous responsibilities for the LQG emergency coordinator. Realizing that many SQGs may already have developed contingency plans to comply with other statutory and regulatory requirements, however, many of the elements of an executive summary may already be available and that the only addition would be summary information on the types and quantities of hazardous waste on site, their associated risks, and their location within the facility. Therefore, requiring SQGs to provide an executive summary of a contingency plan to first responders could provide information that is critical during emergencies with little extra effort by the SQGs.

Effect of Proposed Reorganization: This section is affected by the proposed reorganization. These proposed regulations would appear in the new part 262 subpart M for LQGs at §§ 262.261 and 262.262. The reorganization is discussed in section XIII of this preamble.

b. Eliminating employee personal information in LQG contingency plans. As stated above, the condition for exemption for LQGs at § 262.34(a)(4) references part 265 subpart D, which includes a list of what the contingency plan must contain. The Agency is also proposing to modify the language currently at § 265.52(d) when it is copied into part 262 to now allow an LQG the flexibility to eliminate unnecessary employee personal information that is currently required in the contingency plan. This would protect those individuals' privacy, but still provide necessary information to address emergencies. Section 265.52(d) currently states that the plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see § 265.55), and requires that this list be kept up to date. It specifies that where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. The proposed revision would remove the unnecessary references to addresses in this language and change the reference to home and office telephone numbers to ''emergency telephone number.''

Also as part of this revision, the Agency is proposing revisions to address situations where the facility has an emergency coordinator on duty 24 hours every day of the week. In those situations, the plan may list the staffed position (*e.g.,* operations manager, shift coordinator, shift operations supervisor), as well as an emergency telephone number that can be guaranteed to be answered 24 hours a day, 7 days a week, 365 days a year. The EPA proposes to add language stating that in situations where the generator site has an emergency coordinator continuously on duty because it operates 24 hours per day, every day of the year, the plan may list the staffed position (*e.g.,* operations manager, shift coordinator, shift operations supervisor,

or some other similar position) as well as an emergency telephone number that can be guaranteed to be answered at all times.

The Agency requests comment on this proposed modification.

Effect of Proposed Reorganization: This section is affected by the proposed reorganization. The proposed regulation would appear in the new part 262 subpart M for LQGs at § 262.261(d). The reorganization is discussed in section XIII of this preamble.

c. Request for comment to include alternative evacuation routes in contingency plan (40 CFR 265.52(f)). The Agency also requests comment on modifying the condition on alternative evacuation routes in a contingency plan, currently found at § 265.52(f). This paragraph currently states that the plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary and that this plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

At issue is whether a contingency plan must contain information about alternative evacuation routes or whether a different approach for addressing alternative evacuation routes would be more effective. As part of the 2004 Program Evaluation of the hazardous waste generator regulatory program, the Agency received a comment stating that it does not make sense to include in the contingency plan the hundreds of possible evacuation routes that may be present at a facility depending on its configuration. The commenter argued that the regulation should be modified to require that evacuation routes be posted and drills be conducted but that the regulations should not require the routes to be in the contingency plan.[90]

The Agency does not believe the current regulation requires all potential evacuation routes be identified and believes emergency responders may need this type of information in order to determine the most efficient and timely approach to reach the facility, which raises the question of whether the regulation should be modified in this way. However, the Agency seeks comment on whether the commenter's proposal to require the posting of evacuation routes and holding annual evacuation training and drills would be an effective substitute to maintaining alternative evacuation routes in the contingency plan. The Agency also seeks comment on whether this paragraph of the regulations should discuss shelter-in-place as part of contingency plans.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. Under the reorganization, the proposed regulation would appear in the new part 262 subpart M for LQGs at § 262.261(f). The reorganization is discussed in section XIII of this preamble.

d. Request for comment on the usefulness of a potential electronic RCRA contingency planning application.

The Agency requests comment on whether contingency plans should be submitted electronically to emergency responders to enhance their ability to respond safely and effectively to an emergency at an LQG and what EPA's role should be in electronic submittals. Currently EPA makes numerous electronic databases and tools available for helping first responders with emergency management. These tools include CAMEO (Computer-Aided Management of Emergency Operations), which assists with data management requirements under EPCRA, such as the required annual submittal of an Emergency Hazardous Chemical Inventory Form to the LEPC. EPA is taking comment on whether an additional tool to manage contingency plans under RCRA would be a useful addition to this software suite and whether it would assist LEPCs by integrating the contingency plan with their existing data on facilities, making the information available to the first responders in the most usable way.

Specifically, we request comment on the feasibility and effectiveness of private sector parties or non-profit or governmental entities developing software that LQGs could use to provide important information to emergency responders in responding to an emergency. Building on the concept of a standard list of information to be included in a contingency plan executive summary that was discussed above, private sector or non-profit parties could design electronic software to identify the appropriate information emergency responders quickly need to assess an emergency. In turn, LQGs would then input that information into the application and provide that information to their local LEPC or emergency response organization for use should an emergency arise. The objective would be to allow emergency responders to more quickly and effectively analyze and respond to emergencies rather than having to review a lengthy document.

4. Technical Changes Applicable to Both SQGs and LQGs

The Agency is proposing two additional clarifications and modifications to the existing preparedness, prevention, and emergency procedures regulations for SQGs and LQGs and is taking comment on one more.

The Agency is proposing revisions based on 30 years of experience with these rules, feedback from stakeholders as part of the Agency's 2004 Program Evaluation of the hazardous waste generator regulatory program and discussions and communication with stakeholders. EPA believes these clarifications will foster improved compliance without adversely affecting the protection of human health and the environment.

a. Proposed technical changes to introductory paragraph on required equipment. Sections 262.34(a)(4) and (d)(4) include the condition that LQGs and SQGs comply with part 265 subpart C, which includes § 265.32. Section 265.32 requires that all facilities must be equipped with certain types of equipment unless none of the hazards posed by waste handled at the facility could require that particular kind of equipment. The paragraph goes on to list required equipment such as an internal communications system, a telephone or radio, fire extinguishers, and access to adequate water. The existing regulation is not clear as to whether the required equipment must be placed in those areas of operation where hazardous waste is generated and accumulated, (or treated, stored and disposed in the case of an interim status TSDF) or whether other parts of the facility could store this equipment—that is, where hazardous waste is not generated or accumulated.

The Agency believes it may not always be appropriate or safe to have this equipment stored in the actual waste generation or accumulation area and instead, we are proposing that the regulation state that the hazardous waste generator should have this equipment located where it can be immediately accessed without jeopardizing a timely and effective response to any emergency. For example, the waste generation area may be in an enclosed room. Should a fire occur in the enclosed room, it might be more appropriate to exit the room and call the fire department rather than stay inside and be exposed to smoke inhalation and other risks. EPA believes

[90] Summary of Hazardous Waste Generator Regulatory Program Evaluation, November 2004. See also public comments in Docket ID No. RCRA–2003–0014.

the existing regulatory text should be revised to explain that while this equipment applies to only those areas applicable to the generation and accumulation (and treatment, as appropriate) of hazardous waste, the generator has the flexibility to store this equipment in other areas of the facility to address those situations where it is infeasible or inappropriate for safety reasons to have the equipment immediately next to hazardous waste generation and accumulation areas.

Therefore, EPA is proposing to modify the introductory paragraph to provide generators subject to subpart C of part 265 the flexibility to determine the most appropriate locations within the facility to locate equipment necessary to prepare for and respond to emergencies.

The proposed regulation would state that all areas where hazardous waste is either generated or accumulated must be equipped with the listed types of equipment (unless none of the hazards posed by waste handled at the site could require a particular kind of equipment or the actual waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment). It would also state that a generator may determine the most appropriate locations within its generator site to locate equipment necessary to prepare for and respond to emergencies.

The Agency requests comment on its proposal to modify § 265.32.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The proposed regulation would appear in the SQG standards at § 262.16(b)(8)(ii) with some changes to make it specific to SQGs and in the new part 262 subpart M for LQGs at § 262.252. The reorganization is discussed in section XIII of this preamble.

b. The meaning of ''immediate access.'' Sections 262.34(a)(4) and (d)(4) include the condition that LQGs and SQGs comply with part 265 subpart C, which also includes § 265.34. Section 265.34(a) states that whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, *unless* such a device is not required under § 265.32. At issue is whether the phrase ''immediate access'' is clearly understood or whether additional clarity is necessary. As part of the Agency's 2004 Program Evaluation of the hazardous waste generator program, stakeholders raised a concern about whether the regulated community has a sufficient understanding about what this phrase means and we are proposing to address that concern here.

In the interest of clarity, the Agency is proposing to modify this language to read, ''immediate access (*e.g.,* direct or unimpeded access).'' The Agency believes that adding this parenthetical example provides further guidance on the meaning of ''immediate access.'' This phrase is used again in the next paragraph in a similar context and EPA is proposing to add the words ''(direct or unimpeded access)'' in that case as well.

The Agency requests comment on the usefulness of modifying this language.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The proposed regulation would appear in the SQG standards at § 262.16(b)(8)(iv) and in the new part 262 subpart M for LQGs at § 262.254. The reorganization is discussed in section XIII of this preamble.

5. Technical Changes Applicable to SQGs

Current preparedness and prevention standards for SQGs are found at § 262.34(d)(5). SQGs must comply with the following:

- § 262.34(d)(5)(i)—have at least one employee either on the premises or on call with the responsibility for coordinating all emergency response measures (*e.g.,* the emergency coordinator);
- § 262.34(d)(5)(ii)—post specified information next to the telephone, including the name and telephone number of the emergency coordinator; the location of fire extinguishers and spill control material, and, if present, fire alarm; and the telephone number of the fire department, unless the facility has a direct alarm;
- § 262.34(d)(5)(iii)— ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies; and
- § 262.34(d)(5)(iv)— have the emergency coordinator or his designee follow the specified procedures in the event of a fire, spill, or explosion.

EPA is proposing changes to two of these provisions.

a. Require certain information be posted ''next to the telephone'' (40 CFR 262.34(d)(5)(ii)). The Agency is proposing to revise § 262.34(d)(5)(ii) in order to facilitate improved compliance on the part of SQGs. This language requires, among other items, that certain information be posted ''next to the telephone,'' such as the name and telephone number of the emergency coordinator and the location of fire extinguishers and spill control material. Based on experience and feedback received from the regulatory community, the Agency believes it is unclear in this description where in the facility this information should be posted. A facility may have many operations and components that have no relationship with the generation and accumulation of hazardous waste.

Stakeholders have recommended deletion of § 262.34(d)(5)(ii) because, in this age of near-universal 911 availability, they state it is simply not important from a regulatory point of view to have emergency telephone numbers posted. They argue that locations of fire extinguishers, spill control material, fire alarms, etc., should be conveyed to relevant employees and displayed in a worker break area rather than the facility office and that posting the name and telephone number of the emergency coordinator is also not necessary. For the majority of the SQG universe, the emergency coordinator is the owner or shop supervisor.[91]

EPA disagrees with eliminating this provision because we believe that posting this information is important for workers and others to have readily available information so that they would know what to do and where to go in the case of an emergency. However, the Agency believes that the regulation should be modified to state clearly that the pertinent information should be posted where hazardous waste is generated and accumulated, since facility personnel can quickly seek assistance from it there.

Also unstated is whether the telephone number refers to the emergency coordinator's home phone or business phone. Over the years the Agency has received requests that we modify this provision to ensure that personal information not be used or distributed, particularly to individuals or organizations that could use such information to cause harm to the individual.[92] With cell phones and other means of instant communication now prevalent, EPA is proposing to clarify this provision to provide the hazardous waste generator with the necessary flexibility to allow its emergency coordinator to perform specified responsibilities effectively

[91] Summary of Hazardous Waste Generator Regulatory Program Evaluation, November 2004. See also public comments in Docket ID No. RCRA–2003–0014.

[92] Letter to Jim O'Leary from Derek Swick, American Petroleum Institute, September 28, 2011.

using the emergency telephone number of the emergency coordinator.

Therefore, EPA is proposing that § 262.34(d)(5)(ii) be modified to state that the small quantity generator must post the name and emergency telephone number of the emergency coordinator next to telephones or in areas directly involved in the generation and accumulation of hazardous waste. Section 262.34(d)(5)(ii)(B) and (C) are unchanged.

EPA requests comment on this proposed change.

Effect of the Reorganization: This section is affected by the reorganization and would move to § 262.16(b)(9)(ii)(A). The reorganization is discussed in section XIII of this preamble.

b. Allow containment and cleanup to be conducted by a contractor (40 CFR 262.34(d)(5)(iv)(B)). Section 262.34(d)(5)(iv)(B) currently reads, ''In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil.'' If such a spill were considered an emergency under OSHA's regulations in 29 CFR 1910.120, an SQG would be required to take a minimum of eight hours of initial training with an annual refresher, and in certain circumstances additional hours of training. Feedback from stakeholders suggests that most SQGs would hire a spill cleanup contractor to provide such services, if needed, rather than train employees to perform the response. We would agree that allowing an SQG to hire a contractor that is trained to address hazardous waste spills would certainly be appropriate. However, the regulations in § 262.34(d)(5)(iv)(B) arguably do not provide this flexibility.[93]

Therefore, the Agency is proposing to modify § 262.34(d)(5)(iv)(B) and place the responsibility on the SQG to either perform the necessary cleanup of hazardous wastes or contract out the cleanup. The proposed language would state that in the event of a spill, the small quantity generator is responsible for containing the flow of hazardous waste to the extent possible, and as soon as is practicable, cleaning up the hazardous waste and any contaminated materials or soil. The proposal would allow such containment and cleanup to be conducted either by the small quantity generator or by a contractor on behalf of the small quantity generator.

The Agency requests comment on the proposed revision to § 262.34(d)(5)(iv)(B) and whether any unintended consequences arise from providing SQGs with this flexibility.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization and would move to § 262.16(b)(9)(iv)(B). The reorganization is discussed in section XIII of this preamble.

6. Technical Changes on Personnel Training Applicable to LQGs

The Agency is proposing to modify the condition regarding personnel training for LQGs, currently found at § 262.34(a)(4), which refers to § 265.16. The proposed modification would allow a generator to use online computer training, in addition to classroom instruction and on-the-job training, to complete the personnel training requirements. Since the personnel training regulations were promulgated in the 1980s, use of computerized training has become a common practice for generators to teach their workers about the management of hazardous waste. In fact, many generators already use this method for training workers and this modification would simply bring the hazardous waste personnel training regulations up to date with existing industry practices.

The proposal would modify the first sentence of this provision by adding the words ''online training'' and would state that site personnel must successfully complete a program of classroom instruction, online training, or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part.

The Agency requests comment on the proposed modification.

Effect of the Proposed Reorganization: This section would be affected by the proposed reorganization. Under the reorganization this provision would be found at § 262.17(a)(7)(i)(A). The proposed reorganization is discussed in section XIII of this preamble.

7. Taking Comment on Applicability of Personnel Training

The Agency seeks comment on clarifying what positions within an LQG must be responsible for receiving training associated with the management of hazardous waste, as well as identifying those positions for which a written job description is necessary. Under the current regulations, LQGs are responsible for complying with § 262.34(a)(4), which references, among other technical requirements, the personnel training provisions in § 265.16. Under the proposed reorganization discussed in section XIII, this condition for LQGs would move into 40 CFR 262.17.

The current regulations are not specific about which personnel at an LQG must complete the hazardous waste training. Other than stating that under § 265.16(a)(3) personnel must be able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, no other areas of hazardous waste management are cited.

At issue is the scope of these training standards and the applicability of the training provision to employees that are not assigned to work in the 90-day accumulation areas. The Agency is considering whether to require training and a written job description for specific types of employees working in areas of hazardous waste management related to 90-day accumulation areas. This clarification would have the benefit of assisting LQGs in determining more readily the scope of their hazardous waste training program.

The Agency, with the assistance of staff from the states of Vermont, Connecticut and New York,[94] have identified the following areas of hazardous waste management for which personnel training and a written job description should be required: Anyone who (1) completes and/or signs the hazardous waste manifest, (2) manages hazardous waste in areas where hazardous wastes are accumulated, (3) maintains hazardous waste inventory, (4) conducts daily or weekly inspections of areas where hazardous wastes are accumulated, and (5) plans or responds to emergencies that involve hazardous wastes.

The Agency seeks comment on whether the regulations should specifically identify positions at LQGs where hazardous waste training would be required and for which a written job description is necessary and what those areas should be. In addition, the Agency seeks comment on whether personnel involved in handling or managing hazardous wastes in SAAs should be required to undergo hazardous waste training. Current Agency guidance excludes staff working in satellite accumulation areas from the training requirements.[95] The Agency is of the

[93] Summary of Hazardous Waste Generator Regulatory Program Evaluation, November 2004. See also public comments in Docket ID No. RCRA–2003–0014.

[94] Correspondence between Steve Simoes, State of Vermont, with Ross Bunnell and Bill Yeman, from Connecticut and New York, respectively, a copy of which is found in the docket to this proposal.

[95] Memorandum from Robert Springer, Director of the Office of Solid Waste to RCRA Directors, EPA Regions 1–10, ''Frequently Asked Questions about Satellite Accumulation Areas,'' March 17, 2004, RCRA Online 14703 *http://yosemite.epa.gov/osw/*

Continued

opinion that such personnel have a similar need to know the risks associated with hazardous wastes as personnel working in central accumulation areas.

8. Taking Comment on Applying Emergency Planning and Procedures Revisions to Parts 264 and 265

The proposed revisions discussed throughout this section of the preamble on the emergency planning and procedure regulations would only pertain to generators, as the proposed language would be found in the expanded generator regulations in part 262. However because many of the preparedness and emergency procedure provisions discussed in this section are taken from part 265 with only slight revisions, we are taking comment on whether these same proposed revisions should also be made in the applicable paragraphs of parts 264 and/or 265 as well to ensure consistency between the generator regulations and those for permitted facilities or facilities operating under interim status. The Agency requests comment on whether these revisions for consistency would be helpful and appropriate for facilities operating under part 264 or part 265 or whether the regulations should remain unchanged despite the result that generators and TSDFs would be left with some regulations that are very similar but not exactly the same.

I. Revisions to Satellite Accumulation Area Regulations for SQGs and LQGs (40 CFR 262.34(c))

The Agency is proposing a number of changes that would revise and strengthen the conditions for exemption for satellite accumulation areas (SAA) at § 262.34(c). These include (1) requiring SQGs and LQGs accumulating hazardous waste in SAAs to comply with the special requirements for incompatible wastes found at § 265.177; (2) providing limited exceptions to the regulation requiring generators to keep containers closed at all times; (3) strengthening the marking and labeling standards for SAAs (note these marking and labeling changes are the same as those proposed for containers in central accumulation areas); (4) confirming that three days means three consecutive calendar days, not business days; (5) providing a maximum weight for the accumulation of acute hazardous waste in SAAs in addition to a volume; (6) rewording the regulations for when the maximum volume or weight is exceeded in an SAA; (7) rescinding a guidance memo regarding the accumulation of reactive (D003) hazardous waste away from the point of generation; and (8) providing examples in the preamble to help generators better understand the term ''under the control of the operator,'' which is used in the SAA regulations.

In addition to these proposed changes, the SAA regulations would be moved as part of the proposed reorganization. These regulations would all be found together in § 262.15. The reorganization is discussed in section XIII of this preamble.

Using an SAA is not required of hazardous waste generators, but the regulations allowing them and setting the conditions for their use are designed to assist generators who generate and accumulate small amounts of hazardous waste in different parts of their facilities. SQGs and LQGs, however, may choose to accumulate hazardous waste only in central accumulation areas (CAAs) rather than SAAs or they may accumulate up to 55 gallons of non-acute hazardous waste and/or one quart of acute hazardous waste within each facility's SAAs and once that threshold has occurred, ship the hazardous waste to a designated facility. A generator may also accumulate hazardous waste within an SAA(s) and never move the waste to a CAA once the 55 gallons limit is reached, but instead, ship the waste directly to a RCRA designated facility.

1. Requiring SQGs and LQGs to Comply with the Special Requirements for Incompatible Wastes for Containers Accumulating Hazardous Wastes in SAAs

Under the current regulations in § 262.34(c)(1)(i), generators accumulating hazardous waste in SAAs must meet the conditions for exemption, including complying with the container requirements at §§ 265.171, 265.172, and 265.173(a). These container requirements include accumulating hazardous waste in containers of good condition, ensuring the waste is compatible with, or will not react with, the contents of the container, and ensuring that the container accumulating hazardous waste is closed, except when it is necessary to add or remove waste. We are proposing to modify this part of the SAA container management standards by requiring that hazardous wastes not be mixed or be placed in the same container with other hazardous waste that are incompatible and could potentially result in fires, explosions, gaseous emissions, leaching, or other discharge of hazardous waste or hazardous waste constituents.[96]

The Agency believes that in developing the regulations for SAAs, it inadvertently failed to account for the potential for accumulating incompatible wastes, especially since the current regulations already prohibit placing hazardous waste in containers that it may react with and that impair the containers ability to contain the hazardous waste. Therefore, the Agency is proposing that SQGs and LQGs accumulating hazardous waste in SAAs also comply with the part 265 subpart I container management standards for incompatible hazardous wastes at § 265.177. The Agency believes most generators already are aware of and comply with this best management practice at their SAAs since they must comply with this regulation when they move the SAA container(s) into a 90-day or 180-day central accumulation area.

The Agency requests comment on this proposed modification.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The SAA regulations are currently at § 262.34(c). We are proposing to move this provision to § 262.15(a)(1)(iii). The reorganization is discussed in section XIII of this preamble.

2. Limited Exceptions to Keeping Containers Closed at all Times in SAAs

As noted in the previous section, the current regulation in § 262.34(c)(1)(i) for generators accumulating hazardous waste in SAAs requires containers accumulating hazardous waste to be kept closed, except when it is necessary to add or remove waste. The SAA regulations reference the requirement in § 265.173(a) that containers be closed while accumulating hazardous wastes at interim status treatment, storage and disposal facilities. We are proposing to modify this provision from § 262.34(c)(1)(i) in the new section for SAA conditions at § 262.15, but only as it pertains to SAAs; it will not affect the requirements for container management at interim status treatment, storage and disposal facilities. Because this modification is only meant to apply to containers accumulating hazardous waste in SAAs, and not to containers being stored at interim status treatment, storage, or disposal facilities, we are proposing to modify this requirement by eliminating the reference in the SAA regulations in part 262 to the container management standards for interim status treatment, storage or disposal facilities at § 265.173(a) and

rcra.nsf/0c994248c239947e85256d090071175f/0ac9e15424b2897d8525770600609793!Open Document.

[96] See Comment in § 265.177.

incorporating the closed container provision directly into the SAA regulations in § 262.15, under the proposed reorganization.

Specifically, we are proposing to modify the standard in order to allow containers of hazardous waste in SAAs to remain open under limited circumstances. Specifically, we are proposing that containers of hazardous waste in SAAs may be open when it is necessary either for the operation of equipment to which the SAA container is attached or to prevent dangerous situations, such as the build-up of extreme pressure or heat because closing a container can be more dangerous than keeping it open temporarily in those situations. Stakeholders have identified situations where keeping SAA containers closed can interfere with the operation of equipment when the container is attached directly to the equipment via piping or tubing. Stakeholders have also identified situations in which closing a container can be more dangerous than keeping it open temporarily; for example, when the hazardous waste is very hot.

Therefore, EPA is proposing to modify the regulations to allow containers to be vented in such situations. However, we are also proposing that when the danger passes (*e.g.,* the contents cool), then the requirement to keep the container closed applies and when the equipment is not in operation, the requirement to keep the container closed applies.

As noted above, the flexibility proposed for containers to remain open in specific situations applies only to containers in SAAs since that is where hazardous waste initially accumulates. The Agency does not anticipate that it is necessary to extend this flexibility to containers of hazardous waste in central accumulation areas.

The Agency requests comment on this proposed modification.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The SAA regulations are currently at § 262.34(c). We are proposing to move this provision to § 262.15(a)(1)(iv). The reorganization is discussed in section XIII of this preamble.

3. Strengthening the Marking and Labeling Provisions for Containers in SAAs

Currently, the regulations for SAAs in § 262.34(c)(1)(ii) require a generator to mark ''his containers either with the words 'Hazardous Waste' *or* with other words that identify the contents of the containers'' [emphasis added]. The Agency is proposing two modifications that would strengthen the labeling and marking regulations for containers accumulating hazardous waste in SAAs. First, EPA is proposing to change the ''or'' to an ''and'' and thus require that generators mark containers in the SAA with both the words ''Hazardous Waste'' and other words to identify the contents of the container that are accumulated in SAAs.

Second, EPA is proposing that generators also indicate the hazards of the contents of the containers. EPA believes these proposed changes will alert workers, emergency responders, and others to the potential hazards posed by its contents. Identifying the hazard increases awareness to workers and others who might come into contact with the hazardous waste container and reduces potential risks to human health and the environment from container mismanagement. As discussed previously in section VIII.E, these changes are similar to those proposed for containers stored in central accumulation areas.

Specifically, EPA is proposing to modify the marking and labeling regulations for SAAs to require LQGs and SQGs to mark containers with the following: (1) The words ''Hazardous Waste''; (2) other words that identify the contents of the containers. Examples may include, but are not limited to the name of the chemical(s), such as ''acetone'' or ''methylene dichloride,'' or the type or class of chemical, such as ''organic solvents'' or ''halogenated organic solvents'' or, as applicable, the proper shipping name and technical name markings used to comply with DOT requirements at 49 CFR part 172 subpart D; and (3) an indication of the hazards of the contents of the container. Examples of hazards include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); a hazard class label consistent with the DOT requirements at 49 CFR 172 part 172 subpart E (labeling); a label consistent with the OSHA Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the NFPA code 704; or a hazard pictogram consistent with the United Nations' GHS. Generators also may use any other marking and labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers.

The pre-transport requirements of part 262 subpart C already require hazardous waste generators to comply with the DOT labeling/marking requirements of 49 CFR part 172. By requiring generators to include other words that identify the contents of the containers, the Agency is proposing that generators perform a task that is already required when preparing the container prior to transporting the hazardous waste off site for subsequent waste management. In addition, the Agency is proposing to modify the marking and labeling of containers prior to shipping the hazardous waste. We are proposing that SQGs and LQGs can use the DOT hazard class labels to comply with the new labeling and marking regulation for containers in SAA. Alternatively, they may choose another method to indicate the hazards of the container that suits them better, as noted above.

The Agency requests comment on these proposed changes.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The SAA regulations are currently at § 262.34(c). We are proposing to move this provision to § 262.15(a)(1)(v). The reorganization is discussed in section XIII of this preamble.

4. Clarify What Is Meant by ''Three Days''

The current regulations at § 262.34(c)(2) state that a generator who accumulates either hazardous waste or acutely hazardous waste must, with respect to that amount of excess waste, comply ''within three days'' with paragraph (a) of that section or other applicable provisions of the chapter. The Agency is proposing to state in the regulations that the term ''three days'' means three consecutive calendar days, not three business days or three working days. The Agency has already clarified this term in a memo, which was based on preamble discussions from the proposed and final SAA regulations.[97] [98] As stated in the memo, ''Originally, the Agency had proposed to use 72 hours as the time limit but realized that determining when 72 hours had elapsed would have required placing both the date *and* time of day on containers. In the final rule the Agency switched to using three days so that generators only need to date containers that hold the excess of 55 gallons of non-acute hazardous waste (or 1 quart of acute hazardous waste).''

The Agency requests comment on this codification of an existing interpretation.

[97] Memorandum from Robert Springer, Director of EPA's Office of Solid Waste, to RCRA Regional Directors, ''Frequently Asked Questions About Satellite Accumulation Areas,'' March 17, 2004, RCRA Online 14703.

[98] Proposed rule: January 3, 1983 48 FR 118; Final rule: December 20, 1984; 49 FR 49569.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The SAA regulations are currently at § 262.34(c). We are proposing to move this provision to § 262.15(a)(2)(i). The reorganization is discussed in section XIII of this preamble.

5. Providing a Maximum Weight for the Accumulation of Acute Hazardous Waste in Containers at SAAs

Currently, the regulations at § 262.34(c)(1) impose maximum volumes of hazardous waste that may be accumulated in an SAA without requiring a permit, complying with interim status standards, or complying with the generator accumulation standards. For non-acute hazardous waste, the maximum volume is 55 gallons. For acute hazardous waste, the maximum volume is 1 quart. When the SAA regulations were finalized, EPA explained that 55 gallons was selected for non-acute hazardous waste in part because it is the size of the most commonly used accumulation container.[99] EPA also explained that 1 quart was chosen for acute hazardous waste because it is the volumetric equivalent to 1 kilogram of acute hazardous waste used elsewhere in the regulations and commenters expressed opposition to using a weight measure. Since then, however, stakeholders have indicated that the 1-quart volume maximum is not a practical way to measure the accumulation of some wastes, particularly non-liquid acute hazardous wastes. Therefore, we are proposing to add a weight measurement to the SAA regulations for the maximum accumulation of acute hazardous wastes. Specifically, we are proposing that 1 quart or 1 kilogram (2.2 pounds) of acute hazardous waste may be accumulated in an SAA. Generators that accumulate acute hazardous waste in SAAs will have the choice of whether to use 1 quart or 1 kilogram, but they will be required to identify which metric they choose to use.

We are not proposing to add a similar weight equivalent to the 55-gallon threshold for non-acute hazardous waste since stakeholders have not expressed a similar need. However, we request comment on whether it would be useful to have a maximum weight for the accumulation of non-acute hazardous waste in SAAs.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The SAA regulations are currently at § 262.34(c). We are proposing to move this provision to § 262.15(a)(1). The reorganization is discussed in section XIII of this preamble.

6. Modifying the Language for When the Maximum Volume or Weight Is Exceeded in an SAA

Currently, the regulation at § 262.34(c)(2) states that when the maximum volumes are exceeded in an SAA, a generator ''must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter.'' The Agency is rewording this regulation in order to more clearly state the generator's options for managing the materials that exceed the limit. The proposed regulatory text states that a generator who accumulates either non-acute hazardous waste or acute hazardous waste listed in § 261.31 or § 261.33(e) in excess of the amounts listed in paragraph (a)(1) of this section at or near any point of generation must remove the excess from the satellite accumulation area within three calendar days either to a central accumulation area, an on-site interim status or permitted treatment, storage, or disposal facility, or an off-site designated facility. Similarly, during the three-calendar-day period the generator must continue to comply with paragraphs (a)(1)(i) through (iv) of this section and must mark the container(s) holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

The Agency does not view this as a substantive change to the SAA regulations. Nevertheless, the Agency solicits comments on this proposed change.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. The SAA regulations are currently at § 262.34(c). We are proposing to move this provision to § 262.15(a)(6). The reorganization is discussed in section XIII of this preamble.

7. Rescinding a Memo Regarding Accumulating Reactive Hazardous Waste Away From the Point of Generation

In a memo dated January 13, 1988, EPA wrote that a storage shed that is outside of a building where a reactive hazardous waste (D003) is initially generated, could be considered an SAA.[100] EPA is proposing to revoke this interpretation. EPA acknowledges that in some instances it is safer to accumulate hazardous waste away from the initial point of generation, such as with hazardous wastes that are explosive. However, because SAAs are subject to less stringent conditions than CAAs, EPA believes it is not appropriate for such dangerous hazardous wastes to be stored in SAAs. Rather, EPA believes that if a generator accumulates hazardous waste that is so dangerous it needs to be accumulated away from the point of generation, it should be accumulated under the more rigorous accumulation standards for central accumulation areas.

The Agency requests comment on proposing to revoke this interpretation of the SAA regulations.

8. Examples of the Meaning of ''Under the Control of the Operator''

The SAA regulation at § 262.34(c)(1) uses the term ''under the control of the operator.'' EPA has not defined this term in the regulations, nor have we discussed it in preamble or guidance letters. However, over the years, the Agency has received inquiries about what constitutes ''under the control of the operator.'' In an effort to assist generators to better understand this term and to foster improved compliance with the SAA provisions, the Agency is providing examples in this preamble of what constitutes ''under the control of the operator.'' For example, EPA would consider waste to be ''under the control of the operator'' if the operator controlled access to an area, building, or room that the SAA is in, such as with entry by access card, key or lock box. Another example would be if the operator accumulates waste in a locked cabinet and controlled access to the key, even if the cabinet is stored inside a room to which access is not controlled.

The Agency requests comment on additional practices that would constitute ''under the control of the operator.''

J. SQGs Accumulating Hazardous Waste on Drip Pads and in Containment Buildings (40 CFR 262.34(d))

EPA is proposing to modify the regulations at § 262.34(d) to require SQGs that accumulate hazardous waste for 90 days or less on drip pads without a permit or interim status to comply with the technical standards of 40 CFR part 265 subpart W and with all other conditions for an exemption associated with the accumulation of hazardous waste by an SQG.

Additionally, EPA is proposing to modify the conditions for an exemption currently at § 262.34(d) to require SQGs that accumulate hazardous waste for 90 days or less in a containment building

[99] December 20, 1984; 49 FR 49569–70.

[100] Letter from Marcia E. Williams, Director of EPA's Office of Solid Waste, to Michael E. Young, Atlantic Research Corporation, January 13, 1988, RCRA Online 11317.

without a permit or interim status to comply with the technical standards of 40 CFR part 265 subpart DD and with all other conditions for exemption associated with the accumulation of hazardous waste by an SQG.

1. Accumulation of Hazardous Waste on Drip Pads

On December 30, 1988, EPA issued a proposed rule listing three additional hazardous wastes from wood preserving operations that use chlorophenolic, creosote, and/or inorganic (arsenic and chromium) preservatives, and listing one hazardous waste from surface protection processes that use chlorophenolics (53 FR 53282). As part of this rule, the Agency proposed additional standards ''applicable to drip pads in treated wood storage yards and in kick back areas used in managing hazardous wastes at wood preserving and surface protection facilities. These standards are intended to provide for proper handling of treated wood drippage'' (53 FR 53308).

In terms of the types of RCRA facilities this regulation would apply to, the proposed rule identified and discussed the regulatory requirements for two groups: Hazardous waste TSDFs subject to the part 264 permitting standards and LQGs subject to the part 265 interim status drip pad standards. More specifically, the preamble stated that ''in the event that drippage is collected and is moved from the drip pad within 90 days following generation, generators may avail themselves of the 90-day accumulation standards of 40 CFR 262.34, and would not need Part B permits for their drip pads or tanks (consistent with § 264.1(g)(3), 265.1(c)(7), and 270.1(c)(2)(i)) provided that they comply with the Part 265 standards, as required by 40 CFR 262.34'' (53 FR 53309).

When EPA promulgated the final rule for these hazardous wastes (55 FR 50450, December 6, 1990), the discussion addressed the same universe of facilities (*i.e.,* hazardous waste TSDFs subject to the part 264 permitting standards and LQGs subject to the part 265 interim status drip pad standards).

Pursuant to § 262.34(a), LQGs may accumulate the hazardous waste they generate without having to obtain a RCRA permit provided they comply with several specified conditions, including the technical standards for containers, tanks, drip pads, or containment buildings found at part 265 subparts I, J, W, and DD, respectively. Similarly, pursuant to § 262.34(d), SQGs may accumulate the hazardous waste they generate without having to obtain a permit, provided they comply with several specified conditions, including the technical standards for containers and tanks found at part 265 subparts I and J, respectively. Although there is no explicit condition for SQGs accumulating and managing their hazardous waste on drip pads, EPA intended SQGs accumulating hazardous wastes on drip pads either to comply with all of the conditions for exemption, as well as any associated independent requirements for LQGs at part 265 subpart W, or else obtain a Part B permit for their drip pads (consistent with §§ 264.1(g)(3), 265.1(c)(7), and 270.1(c)(2)(i)).

EPA has consistently interpreted this regulatory requirement to apply to SQGs. For example, as stated in the wood preserving technical guidance document issued by EPA in 1996, a copy of which is found in the docket, ''this 90-day limit applies to both large quantity and small quantity generators. While small quantity generators may normally accumulate hazardous waste in accumulation units for up to 180 days, this is not the case for small quantity generators accumulating waste on Subpart W drip pads. Owners/operators of wood preserving facilities who generate between 100–1,000 kilograms of hazardous waste per calendar month and who accumulate the waste on drip pads are not eligible for the reduced standards normally provided for small quantity generators. Instead, these generators must comply with all the management conditions for large quantity generators accumulating hazardous waste on drip pads.'' [101]

Similarly, the RCRA training module for drip pads, a copy of which is found in the docket to this proposal, reinforced this principle by stating the following: ''Under § 262.34(d), small quantity generators (SQGs) are subject to a reduced set of requirements when accumulating hazardous wastes in tanks or containers meeting the interim status unit standards. SQGs who accumulate wood-preserving wastes on drip pads do not qualify for this partial exemption. Consequently, all generators of more than 100 kilograms of waste per month who manage wood-preserving wastes on drip pads must comply with the requirements applicable to LQGs in § 262.34(a). As a result, the maximum generator accumulation time period on drip pads is 90 days.'' [102]

At the end of the same paragraph, the document states, ''Generators using drip pads must also comply with the requirements that apply to large quantity generators for personnel training, development of a full contingency plan, and biennial reporting,'' suggesting that SQGs accumulating hazardous waste on drip pads must comply with all of the conditions and independent requirements for LQGs, and not just the accumulation time limits.

Because of this statement, the Agency believes that confusion may potentially exist about the applicability of the regulations. As stated above, if an SQG accumulates hazardous waste in containers, it can comply with a reduced set of regulations, including accumulation of hazardous waste for up to 180 days, whereas if the SQG accumulates hazardous waste on drip pads, it must comply with the regulations for LQGs. The Agency believes a more effective and efficient approach is to require SQGs accumulating hazardous waste on drip pads to comply with the technical standards of part 265 subpart W, including compliance with the LQG 90-day accumulation limit (as opposed to the SQG 180-day accumulation limit), but to otherwise comply with less stringent conditions for SQGs found at 40 CFR 262.34(d). EPA notes that hazardous waste that is generated elsewhere at the wood preserving facility and accumulated in tanks or containers (*i.e.,* not accumulated on drip pads) will remain subject to the SQG accumulation limits. Only waste that is accumulated on drip pads must comply with the LQG accumulation limits.[103]

Because both the monthly generation quantities (*e.g.,* greater than 100 kg and less than 1,000 kg) and accumulation total (*e.g.,* not to exceed 6,000 kg at any one time) for SQGs are significantly less than the generation and accumulation quantities for LQGs, the Agency believes that SQGs complying with the less stringent conditions at § 262.34(d) (*e.g.,* personnel training, contingency plan) will be protective of human health and the environment. Other than complying with the management standards at 40 CFR part 265 subpart W, the Agency sees no difference in the risks associated with hazardous wastes accumulated in tanks or containers. Therefore, EPA is proposing to modify the SQG regulations to require SQGs who

[101] ''Wood Preserving Resource Conservation and Recovery Act Compliance Guide—A Guide to Federal Environmental Regulation,'' U.S. EPA, EPA–305–B–96–001, June 1996, Section 5–8.

[102] ''Introduction to Drip Pads (40 CFR parts 264 and 265, subpart W),'' RCRA, Superfund & EPCRA Call Center Training Module, U.S. EPA, EPA530–K–02–008I, October 2001, page 7.

[103] ''Wood Preserving Resource Conservation and Recovery Act Compliance Guide—A Guide to Federal Environmental Regulation,'' U.S. EPA, EPA–305–B–96–001, June 1996, Section 5–8.

accumulate hazardous waste on drip pads to comply with the technical standards of 40 CFR part 265 subpart W, with the 90-day accumulation limit for that hazardous waste, and with all of the other hazardous waste accumulation standards for an SQG currently found at § 262.34(d).

Situations may also occur where an SQG initially accumulates hazardous waste on a drip pad but subsequently transfers this waste to a container or tank for subsequent management. Similarly, the opposite situation may occur where hazardous wastes are generated and first accumulated by an SQG in a tank or in containers and then transferred to a drip pad. The Agency is proposing that the SQG have up to a total of 180 days to accumulate the hazardous wastes, which includes both the time the waste is on a drip pad and when it is in a tank or container, but that the total amount of time to accumulate the hazardous waste on the drip pad must not exceed 90 days. For example, if an SQG accumulates hazardous wastes on a drip pad for 80 days prior to transferring its waste to a tank, the SQG would be able to accumulate waste up to 100 days in the tank before it would be required to send it off-site for subsequent waste management, or conversely, treat and dispose of the waste on-site in compliance with all applicable RCRA regulations under parts 262 through 268 and 270.

In the case of an SQG first accumulating a hazardous waste in a tank or container and then transferring the waste to a drip pad, the generator would still have up to a total of 180 days, depending on the circumstances, to send the waste off-site for subsequent waste management, or conversely, treat and dispose of the waste on-site in compliance with all applicable RCRA regulations under parts 262 through 268 and 270. However, under the proposal, the amount of time allowed for the SQG to accumulate the hazardous waste on a drip pad may not exceed 90 days. For example, if an SQG first accumulated hazardous wastes in a tank or container for 100 days and then transferred the waste to a drip pad, the SQG would be able to accumulate up to 80 days more (for a total of 180 days) to accumulate the waste on the drip pad before the generator would be required to send the waste off-site for subsequent waste management, or conversely, treat and dispose of the waste on-site in compliance with all applicable RCRA regulations under parts 262 through 268 and 270.

However, if an SQG first accumulated hazardous wastes in a tank or container for 80 days and then transferred the waste to a drip pad, the SQG would only have 90 days more (or a total of 170 days) to accumulate the waste on the drip pad before the generator sent the waste off-site for subsequent waste management, or conversely, treat and dispose of the waste on-site in compliance with all applicable RCRA regulations under parts 262 through 268 and 270.

EPA solicits comments on these proposed revisions. In particular, EPA requests comment on whether SQGs accumulating hazardous waste on drip pads should be subject to the accumulation time limit of 180 days, similar to SQGs accumulating hazardous wastes in containers and tanks. Conversely, EPA is seeking comment on whether SQGs accumulating hazardous waste on drip pads should be subject to all applicable conditions and requirements for LQGs, and not just the 90-day accumulation time limit.

The Agency also requests comment on the procedures for documenting and ensuring hazardous wastes are removed from the sump or collection system 90 days or less from being first placed on the drip pad and also for situations where hazardous waste accumulation involves both drip pads and containers or tanks.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. As part of the reorganization in this action, EPA is proposing to move the conditions for exemption for SQGs accumulating hazardous waste from § 262.34 to § 262.16. The proposed drip pad conditions for SQGs can be found at § 262.16(b)(4). The reorganization is discussed in section XIII of this preamble.

2. Accumulation of Hazardous Waste in Containment Buildings

Consistent with the changes proposed for hazardous wastes accumulated on drip pads by SQGs, the Agency is also proposing that SQGs that accumulate hazardous waste in containment buildings for 90 days or less without a permit or interim status must comply with the technical standards of part 265 subpart DD and with all other conditions associated with the accumulation of hazardous waste by SQGs currently found at § 262.34(d).

Similar to the drip pad regulations, the containment building regulations promulgated in 1992 (August 18, 1992, 57 FR 37194) did not discuss the possibility of an SQG accumulating hazardous wastes in a containment building, but instead only discussed TSDFs and LQGs accumulating hazardous waste in containment buildings (57 FR 37212). Thus, under the current regulations, SQGs that choose to manage hazardous wastes in containment buildings can only do so if they comply with the LQG requirements or obtain a Part B permit for their containment building.

EPA is proposing to modify the regulations to allow SQGs to accumulate hazardous wastes in containment buildings for 90 days or less without a permit or without having interim status provided they comply with the technical standards of part 265 subpart DD and comply with all other conditions associated with the accumulation of hazardous waste by an SQG found at § 262.34(d). As with wastes accumulated by SQGs on drip pads, the Agency believes that SQGs complying with the less stringent conditions at § 262.34(d) (*e.g.,* personnel training, contingency plan) will be protective of human health and the environment and other than complying with the management standards at 40 CFR part 265 subpart DD, the Agency sees no difference in the risks associated with hazardous wastes accumulated in tanks or containers.

As with drip pads, situations may potentially arise where hazardous wastes are first accumulated in a containment building and then transferred to containers for subsequent accumulation, or vice-versa. The Agency is proposing the same framework as described in the discussion on drip pads above for how long SQGs may accumulate hazardous wastes in a containment building to maintain their hazardous waste accumulation exemption.

EPA solicits comments on this proposed revision. In particular, EPA requests comment regarding whether SQGs accumulating hazardous waste in containment buildings should be subject to the accumulation time limit of 180 days, similar to SQGs accumulating hazardous wastes in containers and tanks or, conversely, whether SQGs accumulating hazardous waste in containment buildings should be subject to all applicable conditions for an exemption and independent requirements for LQGs, and not just the 90-day accumulation time limit. EPA also seeks comment on situations where hazardous waste accumulation involves both containment buildings and containers or tanks.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization. As part of the reorganization in this action, EPA is proposing to move the conditions for

exemption for SQGs accumulating hazardous waste from § 262.34 to § 262.16. The proposed containment building regulations for SQGs can be found at § 262.16(b)(5). The proposed containment building regulations for LQGs can be found at § 262.17(a)(4). The reorganization is discussed in section XIII of this preamble.

K. Deletion of Performance Track Regulations

EPA launched The National Environmental Performance Track in 2000 to provide regulatory and administrative benefits to Performance Track members. Performance Track was a public-private partnership that encouraged continuous environmental improvement through use of environmental management systems, community outreach, and measurable results. In order to provide regulatory benefits to members, EPA made changes to the RCRA hazardous waste regulations, among others, that specifically referenced members of Performance Track.

EPA terminated the Performance Track program in 2009. Therefore, EPA is proposing to remove obsolete references to Performance Track in the RCRA hazardous waste regulations as a part of this rulemaking. In some cases, a whole paragraph of regulation will be removed and in other instances we will remove just the part of the paragraph that references Performance Track. The deleted paragraphs would then be reserved to reduce the possibility of confusion by replacing them with other regulations. The references that would be removed would be the following:

- § 260.10: Definition of Performance Track member facility;
- § 262.34(j), (k), and (l): Regulations for accumulation of hazardous waste by LQGs in Performance Track;
- § 262.211(c): Two parenthetical references to § 262.34 (j) and (k) in the regulations for academic labs in subpart K of part 262;
- §§ 264.15(b)(4) and 265.15(b)(4): References to the requirements for inspection of areas of the facility subject to spills in §§ 264.15(b)(5) and 265.15(b)(5), respectively;
- §§ 264.15(b)(5) and 265.15(b)(5): Requirements for Performance Track member facilities that reduce inspection frequency for areas subject to spills;
- §§ 264.174 and 265.174: References to Performance Track requirements for inspections of areas where containers are stored;
- §§ 264.195(e), 265.195(d), and 265.201(e): Requirements for Performance Track member facilities for inspections of tank systems;
- §§ 264.1101(c)(4) and 265.1101(c)(4): Requirements for Performance Track member facilities for reduced inspections of containment buildings;
- § 270.42(l): Procedures for permit modifications for Performance Track member facilities; and
- Appendix 1 to § 270.42—Classification of Permit Modification, Section O.1: Indication that a permit modification for reduced inspections for a Performance Track member facility is a Class 1 permit modification.

The provisions that EPA is proposing to remove were added to the regulations in the National Environmental Performance Track Program final rule, dated April 22, 2004 (69 FR 21737), the Resource Conservation and Recovery Act Burden Reduction Initiative final rule, dated April 4, 2006 (71 FR 16862), and the Academic Laboratories final rule, dated December 1, 2008 (73 FR 72912). The Agency is requesting comment on whether there are additional references to the Performance Track program in the RCRA hazardous waste regulations that should be removed as a part of this rulemaking.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

L. Clarification of Biennial Reporting Requirements (40 CFR 262.41)

EPA is proposing to modify the biennial reporting regulations for generators found at 40 CFR 262.41 in order to make the regulations consistent with Agency guidance, including its biennial report instructions and forms. More specifically, the Agency is proposing the following revisions: (1) Only LQGs need to submit biennial reports; (2) LQGs must report all of the hazardous waste they generate for the entire reporting year, not just the month(s) the generator was an LQG; (3) LQGs completing a biennial report must report all hazardous wastes they generated in the reporting year, regardless of whether they transferred the waste off site during the reporting year; and (4) a reference to the biennial report form (EPA form 8700–13) at § 262.41 rather than the list of specific data elements in currently at that citation.

Additionally, EPA is proposing to modify the title of subpart D from ''Recordkeeping and Reporting'' to ''Recordkeeping and Reporting Applicable to Small and Large Quantity Generators'' in order to highlight which entities need to comply with this subpart.

1. Biennial Report Requirements Are Only Applicable to LQGs

The first proposed change is to modify the biennial reporting regulations in § 262.41 to make these only applicable to LQGs (and thus not applicable to SQGs and CESQGs). Currently, the biennial report regulations at § 262.41(a) and (b) refer to ''a generator'' and ''any generator,'' but do not further specify which categories of generators must complete and submit a biennial report. However, current EPA guidance, as well as a 1986 FR notice, states that only LQGs must complete and submit a biennial report to EPA.[104] [105] To reduce confusion between the regulations and EPA's current guidance regarding the applicability of biennial reporting requirements, EPA is proposing to modify § 262.41 to state that only LQGs are required to complete and submit a biennial report. This proposed change would not result in a substantive change to the existing regulations, but would make clear who is required to submit the biennial report. Additionally, EPA is proposing to modify the phrase ''prepare and submit'' which is the existing language in § 262.41, to ''complete and submit'' because the Agency believes that ''complete and submit'' more accurately reflects that LQGs must complete all applicable elements of the biennial report forms.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

2. LQGs Must Report All Hazardous Waste Generated During the Reporting Year, Not Just for the Month(s) the Generator Was an LQG

The second proposed change is to modify the biennial reporting regulations to require LQGs to report all of the hazardous waste they generate for the entire reporting year, not just the month(s) the generator was actually an LQG. (Additionally, if EPA were to make final the proposed provision allowing an LQG to receive hazardous waste from a CESQG under control of

[104] The **Federal Register** notice states, ''the Agency is today finalizing the proposed exemption from the biennial report requirements of § 262.41 for generators of 100–1000 kg/mo, including an exemption from the provisions of this section requiring a description of efforts taken during the reporting year to minimize waste generation.'' (51 FR 10160, March 24, 1986). Additionally, EPA's Hazardous Waste Report Instructions and Forms specify that only LQGs (as well as facilities that treat, store, or dispose of RCRA hazardous waste on-site) must complete and file the biennial report (*http://www.epa.gov/osw/inforesources/data/biennialreport/index.htm*).

[105] Both EPA and the states have received questions from generators regarding whether they must submit a biennial report.

the same person, an LQG would also have to report the waste it received during the reporting year. See section VII.C of the preamble for discussion of this provision.) The Agency is proposing this change since there have been different positions provided by EPA regarding whether LQGs must report on the amount of hazardous waste generated and managed for the entire reporting year or only for those months they were an LQG, and, thus, were subject to the LQG standards, including biennial reporting. In addition, although the vast majority of states require LQGs to report the total amount of hazardous waste they generate for the entire reporting year, even if they were an LQG for only one calendar month, there are at least two states that only require LQGs to report the amount of hazardous waste generated and managed for those months they were an LQG.[106]

Specifically, in a 1980 **Federal Register** notice, the Agency stated, ''The recordkeeping and reporting requirements of part 262 apply, however, only to those periods in which the generator's hazardous waste is subject to full regulation under part 262. Thus, for example, the annual report of a generator whose waste is subject to full regulation under part 262 for three months in a year would cover the generator's activity only for those three months'' (45 FR 76621, November 19, 1980). However, current EPA guidance in the Hazardous Waste Report Instructions and Forms instructs generators to report the total quantity of hazardous waste generated during the reporting year. The regulations in § 262.41 are silent on this issue.

In the interest of national consistency, EPA proposes to modify the regulations at § 262.41 to require LQGs to report the total amount of hazardous waste generated during the entire reporting year. EPA believes that this change will ensure a more complete and reliable estimate on the total amount of hazardous waste generated in order to support various RCRA program development and implementation efforts by EPA and the states.

The Agency does not anticipate significant added burden from this provision. First, EPA knows of only two states (Idaho and Kentucky) that currently require generators to report only those hazardous wastes generated during the months the generator was an LQG. Thus, this modification will only affect a small percentage of the LQG universe that in certain months are not LQGs. Second, these LQGs are already completing a biennial report, so the change in burden will be in reporting the additional amounts of hazardous waste they generate for the remaining months of the reporting year that they were not an LQG. Third, generators are already required under § 261.5(c) and (d) to count the amount of hazardous waste they generate monthly to determine their regulatory status and thus would be counting hazardous waste during months they are not LQGs. Fourth, most generators transfer the hazardous waste they generate off site and, thus, should be able to use their hazardous wastes manifests to calculate the total amount of hazardous wastes they generate annually.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

3. LQGs Must Report All Hazardous Waste Generated During the Reporting Year, Regardless of When the Waste Was Transferred Off Site

The third proposed change requires LQGs completing a biennial report to report all hazardous wastes they generated during the reporting year, regardless of when the hazardous waste was transported off site. Although the current biennial report instructions clearly state that LQGs should report the total quantity of hazardous waste that was generated during the reporting year, the regulations do not address cases in which the generator generates hazardous waste during the reporting year, but ships the waste off site during the next calendar year.

For purposes of completeness and to be consistent and avoid confusion with the current biennial report and its instructions, the Agency is proposing to state in § 262.41 that LQGs must report all hazardous wastes they generate in the reporting year, regardless of when the generated hazardous waste was transferred off site. The Agency believes that this change will not pose a significant burden since the information is already available; it is simply stating clearly in which year the data is reported.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

4. Replace the List of Specific Data Elements With an Independent Requirement To Complete and Submit All Data Elements Required in the Biennial Report Form (EPA Form 8700–13)

EPA is proposing to modify the regulations at 40 CFR 262.41 to eliminate the specific list of data elements and to require the completion and submission of all data elements contained in the biennial report form (EPA form 8700–13).

Section 262.41(a) currently requires that the biennial report include a specific list of data elements, including the name, address, and EPA ID number of the generator and each transporter and TSDF, the EPA hazardous waste number for each hazardous waste shipped off site, and a signed certification, among other things.

In the nearly three decades since the biennial report regulations were first promulgated, EPA's biennial report form and instructions have evolved to enable better data analysis and to reduce burden, where possible. Thus, the regulations at § 262.41 no longer accurately reflect the data elements currently listed in EPA's biennial report instructions and forms. For example, current EPA guidance for biennial reporting requires generators to identify their hazardous wastes using not only the EPA hazardous waste number, but also using source, form, and management method codes. Additionally, EPA no longer requires the collection of the name and EPA identification number of each transporter in the biennial report. In order to maintain consistency between the regulations at § 262.41 and the EPA biennial report instructions and forms, EPA is proposing to remove the list of specific data elements currently in the regulations and to simply require completion and submission of all the data elements required in EPA form 8700–13. This change eliminates the need to update the list of data elements in the regulations, which would require periodic rulemakings, every time that changes were made to the information to be provided.

At least every three years, EPA's biennial report instructions and forms are reviewed and approved through the information collection request (ICR) process under the Paperwork Reduction Act (PRA). The PRA requires EPA to issue proposed and final notices in the **Federal Register** and to provide opportunity for public comment, thus ensuring that the regulated community is informed and has the opportunity to comment on the report instructions and

[106] Relatedly, EPA is also proposing to allow CESQGs and SQGs that generate additional amounts of hazardous waste in response to an episodic event that would have required a bump up in generator category to maintain their generator category provided certain conditions are met. See section IX of this preamble for more information.

form. The PRA also requires approval by the Office of Management and Budget. Eliminating the list of specific data elements currently in the regulations therefore does not eliminate public input and avoids duplication with the review and approval processes established under the PRA.

EPA does not believe this change in any way affects the enforceability of the biennial reporting regulations. Generators must complete and submit all information required by EPA form 8700–13. EPA also notes that this approach is similar to the current regulations at § 262.12, which require generators to obtain an EPA identification number using EPA form 8700–12 (Site ID form). Section 262.12 does not contain an itemized list of specific data elements contained in EPA form 8700–12. Instead, it requires the completion and submission of the specified form.

EPA also notes that some states develop their own biennial report forms, based on the federal forms. EPA does not believe this proposed change would impact the biennial reporting processes in these states. Authorized states that use a different form for collecting biennial report information would simply refer to their authorized state form in their state regulations.

5. Request for Comment

The Agency requests comment on the proposed changes to § 262.41. EPA also specifically requests whether commenters believe the proposed change to eliminate the specific data elements in § 262.41 will ease compliance and understanding of the current biennial reporting procedures.

M. Provision Prohibiting Generators from Disposing of Liquids in Municipal Solid Waste Landfills (Proposed § 262.14 and § 262.35)

EPA is proposing to add a paragraph at § 262.14 (for CESQGs) and § 262.35 (for SQGs and LQGs) that hazardous waste generators are prohibited from disposing of liquid hazardous wastes in landfills. This is not a new requirement; it is a reflection of existing regulations found at § 258.28 for municipal solid waste landfills (MSWLFs), and §§ 264.314 and 265.314 for permitted and interim status hazardous waste landfills. The Agency believes it is important to emphasize that the responsibility for complying with this provision not only resides with municipal and hazardous waste haulers and landfill operators, but also with hazardous waste generators.

The restriction for disposal of liquid hazardous waste in MSWLFs has been in place since 1991 at § 258.28 and specifically restricts ''bulk or noncontainerized liquid wastes, except (1) household wastes (other than septic wastes), and (2) leachate and gas condensate that is derived from the MSWLF unit where the unit is equipped with a composite liner and a leachate collection system. . . designed and constructed to maintain less than 30 centimeters of leachate over the liner'' (56 FR 51055, October 9, 1991).[107]

In the same preamble, EPA went on to state that liquids restrictions are necessary because the disposal of liquids into landfills can be a significant source of leachate generation and that restricting the introduction of liquids into landfills would minimize the leachate generation potential of landfills and reduce the risk of liner failure and subsequent contamination of the ground water.[108] The special requirements for bulk and containerized liquids in part 264 address similar concerns about the management of liquids in landfills.[109]

Under current practices and operations, the primary onus for seeing that hazardous waste liquids are restricted from landfills generally resides with the hauler. Should a random inspection at a landfill of the hauler's waste find liquid hazardous waste, the landfill operator cannot accept the hauler's waste without violating its landfill permit. As a result, the hauler would be required to transport its waste back to the generator or to a RCRA-permitted treatment facility and pay the significantly higher tipping fees for any required treatment prior to disposal. While the waste management hauler or transporter can provide a measure of oversight, ultimately the hauler must rely on the due diligence and waste management practices of the hazardous waste generator to avoid such an outcome. In other words, the hazardous waste generator is responsible for ensuring that hazardous waste liquids are not disposed of in landfills.

Considering the importance of restricting liquid hazardous wastes in landfills, the Agency believes including a mirror provision in the 40 CFR part 262 hazardous waste generator regulations would increase awareness, and thus compliance, by generators with the liquids restriction that currently exists in §§ 258.28, 264.314(a) and 265.314(a) Therefore, the Agency is proposing to incorporate this provision into the generator regulations at part 262.

Effect of the Proposed Reorganization: This section is affected by the proposed reorganization in that we are proposing to include the provision as a condition in § 262.14 for CESQGs, as well as in § 262.35 for SQGs and LQGs.

N. Extending Time Limit for Accumulation Under Alternative Requirements for Laboratories Owned by Eligible Academic Facilities (40 CFR Part 262 Subpart K)

The Agency is proposing to extend the accumulation time for unwanted material by eligible academic entities with laboratories operating under 40 CFR part 262 subpart K from six months to one year.

Under 40 CFR part 262 subpart K eligible academic entities have the choice of operating their laboratories under the alternative subpart K standards instead of the satellite accumulation area regulations at 40 CFR 262.34(c). Currently, if the eligible academic entity chooses to operate its laboratories under subpart K, the entity must remove the unwanted material from each laboratory under the following two circumstances: (1) Every 6 months; or (2) within 10 days, if the laboratory accumulates more than 55 gallons of unwanted material or 1 quart of reactive acutely hazardous unwanted material.

Operating under the SAA regulations, an eligible academic entity has no time limit for accumulation. Therefore, for smaller eligible academic entities that do not accumulate 55 gallons in a laboratory, subpart K's six month accumulation time limit can mean a shorter, more stringent, accumulation time than they have under the satellite accumulation area regulations. Eligible academic entities have cited this shorter accumulation time as a disincentive for opting into the alternative standards in subpart K. The Agency therefore requests comment regarding its proposal to increase the accumulation time limit in an eligible academic entity's laboratory to 12 months.

Lengthening the time would yield a cost savings for those operating under subpart K compared to the costs they have now. The longer accumulation time would come with no increased risk because the volume limits—which are the same as the SAA volume limits—would continue to be in place for the rare cases where labs do accumulate 55 gallons of unwanted material or 1 quart of reactive acutely hazardous unwanted material.

The Agency requests comment on extending the accumulation time for

[107] The prohibition on liquid wastes in MSWLFs applies to all liquid wastes and not just liquid hazardous wastes.

[108] 56 FR 51055, October 9, 1991.

[109] 40 CFR 264.314(a) and 265.314(a).

unwanted material by eligible academic entities with laboratories operating under 40 CFR part 262 subpart K, from six months to one year.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

IX. Proposed Addition to 40 CFR Part 262 for Generators that Temporarily Change Generator Category as a Result of an Episodic Event

EPA is proposing to allow a CESQG or an SQG to maintain its existing generator category if, as a result of a planned or unplanned episodic event, the generator would generate a quantity of hazardous waste in a calendar month sufficient to bump the facility into a more stringent generator category (*i.e.,* CESQG to either an SQG or an LQG; or an SQG to an LQG). This proposed change would allow a CESQG or SQG to generate additional quantities of hazardous waste—exceeding its normal generator category limits temporarily—and still maintain its existing regulatory category provided it complies with specified conditions discussed below. Because these events are considered to be temporary and episodic in nature, the hazardous waste generator would only be allowed to take advantage of this provision once every calendar year. Also as explained below, a CESQG or SQG could petition EPA to manage one additional episodic event per calendar year.

A. Background

Under the current RCRA regulatory framework for hazardous waste generators, a generator's category is determined by the quantity of hazardous waste it generates in a calendar month. For example, if a generator generates less than or equal to 100 kilograms of non-acute hazardous waste and 1 kilogram of acute hazardous waste in a calendar month, then it can comply with the regulations applicable to a CESQG.[110] However, if that same generator generates more than 100 kilograms but less than 1,000 kilograms of non-acute hazardous waste and less than or equal to 1 kilogram of acute hazardous waste in the following calendar month, then it must comply with all applicable regulations associated with an SQG.

At issue is when the generator generates an additional quantity of hazardous waste in a calendar month as a result of an episodic event—(planned or unplanned)—only to revert back to its normal waste generation quantities in the following month. For example, a CESQG plans a short-term demolition project that generates an additional 500 kilograms of hazardous waste in the calendar month, resulting in the CESQG becoming an SQG for that calendar month. However, once the demolition project has been completed, the generator's waste generation drops such that it again qualifies as a CESQG. Other examples of planned episodic events include tank cleanouts, short-term construction projects, site remediation, equipment maintenance during plant shut downs, and removal of excess chemical inventories.

Unplanned episodic events, which may be less frequent, include production process upsets, product recalls, excess inventory, accidental spills, or ''acts of nature,'' such as a tornado, hurricane, or flood. For example, an SQG suffers an unplanned disruption in production that results in the generation of 3,000 kilograms of an off-specification product that cannot be sold and must be discarded, therefore bumping the generator from an SQG to an LQG for that calendar month.

Currently, for the one month the hazardous waste generator was subject to more stringent regulations, the generator has two options: (1) Temporarily change its waste management practices to comply with those of the more stringent generator category for the duration of the event or (2) permanently adjust and manage all subsequent quantities it generates in the more stringent generator category (even though it is in a less stringent generator category in subsequent months). Generators that do not comply will be out of compliance with the applicable regulations.

Under the current regulatory framework, a CESQG must comply with minimal conditions for an exemption. For non-acute hazardous waste, these include the following: making a hazardous waste determination; counting the amount of hazardous waste it generates to ensure it is a CESQG (*e.g.,* generates less than or equal to 100 kilograms of non-acute hazardous waste and 1 kilogram of acute hazardous waste in a calendar month); accumulating no more than 1,000 kilograms on site at any one time; and sending its hazardous waste for subsequent off-site waste management to one of several specified designation facilities.[111] However, if an episodic event were to occur, such as the generation of an additional 500 kilograms of non-acute hazardous waste resulting from a disruption in production process, the generator would need to comply with the SQG regulations that include both independent requirements and conditions for exemption. Having to obtain a RCRA identification number would be an example of an independent requirement, whereas managing its hazardous wastes in containers or tanks subject to the applicable 40 CFR part 265 subparts I and J regulations, and marking and labeling the containers would be examples of conditions for exemption. EPA believes requiring a CESQG to comply with the additional SQG or LQG regulations or an SQG to comply with the LQG regulations for the month its hazardous waste exceeded the quantity limits based on an episodic event (planned or unplanned) may be unnecessary to protect human health and the environment. Instead, the Agency is proposing a more practical approach to ease compliance for episodic generators and still protect human health and the environment. By complying with the specified conditions, the generator would be able to maintain its current generator category and would not be required to comply with the more stringent site-wide regulations applicable to the higher generator category.

Although EPA does not have specific information regarding the number of generators that may take advantage of its proposed alternative episodic standards, we can make certain estimates using data collected through the biennial report. EPA currently estimates that 1,270–2,550 generators could potentially take advantage of this provision if it is finalized.[112] However, EPA believes that the potential universe of generators that may want to take advantage of the episodic event standards may be significantly higher and is seeking comment on what a more reliable estimate might be. For example, there may be certain industrial sectors in which generators have a higher probability of being episodic generators

[110] Note: Besides the generation of non-acute hazardous waste, a generator's category is also determined by the quantities of acute hazardous waste it generates in a calendar month.

[111] A CESQG may send its hazardous waste to (1) a hazardous waste facility permitted by EPA; (2) an interim status hazardous waste facility; (3) a hazardous waste facility permitted by an authorized state; (4) a facility permitted, licensed or registered by a state to manage municipal solid waste; (5) a facility permitted, licensed or registered by a state to manage non-municipal non-hazardous solid waste; (6) a facility which beneficially uses or reuses or legitimacy recycles or reclaims its wastes or treats its waste prior to beneficial use or reuse or legitimacy recycling or reclamation; or (7) universal waste handler or destination facility subject to the requirements in 40 CFR part 273.

[112] Assessment of the Potential Costs, Benefits, and Other Impacts of the Improvements to the Hazardous Waste Generator Regulatory Program, As Proposed, prepared for U.S. Environmental Protection Agency by Industrial Economics, Incorporated, May 2015.

than in others (*e.g.,* retail, oil and gas exploration, utilities, and military bases).

On February 14, 2014, EPA published a Notice of Data Availability for the Retail Sector in which the Agency requested, among other topics, comments from retailers on issues they face in complying with the RCRA regulations. Some commenters mentioned the challenge posed by complying with the hazardous waste regulations when an irregular event causes them to exceed the threshold of their normal generator category for a single month. This provision would provide a way for retailers and others to manage that challenge.

B. Proposed Conditions for Episodic Generators

Under the proposed framework, a CESQG or an SQG generating an increased quantity of hazardous waste because of an episodic event that resulted in a temporary change in a generator's category would be able to maintain its existing generator category provided specified conditions are met as the waste is accumulated. We believe these conditions will be sufficient to ensure these additional hazardous wastes are managed in an environmentally sound manner. Similar to the existing hazardous waste regulatory framework, should a CESQG fail to meet the specified conditions, it would immediately lose the CESQG accumulation exemption and be the operator of a non-exempt storage facility unless it also immediately complied with all of the conditions for exemption for an SQG or LQG. If an SQG failed to meet any specified condition for exemption, it would immediately lose its exemption and be the operator of a non-exempt storage facility unless it had immediately complied with all of the conditions for an exemption for an LQG.

For both CESQGs and SQGs taking advantage of this provision, the following conditions must be met:

(1) Episodic events are limited to one per calendar year;

(2) The generator must notify EPA at least 30 calendar days prior to initiating a planned episodic event or within 24 hours after an unplanned episodic event or as soon as possible; identify the start and end dates, which may be no more than 45 days apart, as well as other information about the event; and identify a facility contact and/or emergency coordinator with 24-hour telephone access to discuss notification submittal or respond to emergency;

(3) The generator must obtain an EPA ID number (CESQGs);

(4) The generator must comply with specified hazardous waste management conditions as the waste is accumulated on-site;

(5) The generator must use a hazardous waste manifest and hazardous waste transporter to ship the waste generated by the episodic event to a RCRA-designated facility within 45 calendar days from the start of the episodic event;

(6) The generator must complete and maintain specified records.

EPA is also proposing a petition process to allow hazardous waste generators to request from EPA one additional episodic event within the same calendar year and/or an extension of up to 30 calendar days to complete an episodic event and still be eligible to maintain its generator category. An example of how the implementation of these provisions would work in practice, particularly the start and end dates in conjunction with normal waste generation and accumulation operations, follows a discussion of these requirements.

The proposed regulations for episodic generators are located at a new part 262 subpart L, §§ 262.230–232.

1. Number of Episodic Events per Calendar Year

The Agency is proposing that a CESQG or a SQG be allowed to exceed its generator category limits only once per calendar year without affecting its generator category.[113] [114] EPA has several reasons for this restriction. First, if a CESQG or SQG exceeds its generator category limits more frequently than once per calendar year, EPA is concerned that these generators are more likely to be routinely generating greater amounts of hazardous waste and thus it may be more appropriate for the generator to comply with the regulations applicable to the higher generator category, at least for the months they exceed the quantity limits for their generator category. Second, EPA believes most hazardous waste generators experience an episodic event infrequently, such as once every few years, and these events are typically planned maintenance projects. Third, the Agency does not consider an episodic event to be limited to one project within the generator's site. In fact, a generator could start and complete multiple projects (*e.g.,* a small demolition project, a tank cleanout, and removal of excess chemicals) at different dates within the 45 day time limit so long as it stayed within the 45 day start and end dates identified on the notification form with all hazardous waste generated considered part of the same episodic event.

2. Notification

A SQG or CESQG would have to notify EPA no later than 30 days prior to initiating a planned episodic event using EPA form 8700–12 (Site ID form). Should EPA finalize this provision, EPA will provide instructions in the Site ID form on how to report an episodic event (for example, using the notes section of the form). The hazardous waste generator would be required to identify the dates the episodic event will begin and end—a time frame not to exceed 45 calendar days—as well as describe the reason for the event and the types and estimated quantities of hazardous wastes that would be generated during the event. Should an unplanned event occur, the generator would be required to notify EPA as soon as possible via phone or email, but must submit EPA form 8700–12 (Site ID form) within 24 hours of the unplanned event, or as soon as possible depending upon the circumstances. Unless notified by EPA or an authorized state, a CESQG or SQG would be allowed to begin its episodic event on the date identified on its form 8700–12.

The date identified on the notification form as the start date for the episodic event is assumed to be the date the generator initiates physical action in generating and accumulating the hazardous waste. Whether such action actually occurs on that date or after by the generator will have no impact in changing the end date of the episodic event identified on the notification form.

No matter what, the end date must be no later than 45 calendar days from the date identified on the notification form as the start date of the episodic event. The end date will be the date on which all hazardous waste generated from the episodic event, and possibly other hazardous waste also generated during that time period as part of normal operations, will have had to be removed and sent to a RCRA designation facility as verified by the hazardous waste manifest. The Agency does not see any reason to preclude a generator taking advantage of this provision to also dispose of other hazardous wastes generated during the time of the episodic event.

[113] As discussed later, the length of a generator's episodic event may overlap two calendar years in which case discretion would be provided to EPA or the authorized state as to how it would address a request for another episodic event in the second year by a generator.

[114] EPA is proposing a process to petition the Agency for an additional event, if warranted.

As part of the notification form, a CESQG would have to notify its local fire department that it was taking advantage of an episodic event. The notice would need to include the start and end dates and identify the types and quantities of hazardous wastes that would be generated.

EPA believes notification is essential to inform regulatory authorities of the facility's activities in order to enable adequate compliance monitoring of the facility with the conditions of the alternative standards.

3. EPA ID Number

A CESQG generating and accumulating quantities of hazardous waste that would otherwise result in a higher generator category because of an episodic event (whether planned or unplanned) would be required, under the proposed regulations, to obtain an EPA ID number using EPA form 8700–12 if one had not previously been assigned. A generator cannot initiate a hazardous waste shipment to a RCRA-designated facility without an EPA ID number. (SQGs are already required to obtain an EPA ID number.)

4. Waste Management Standards

a. Accumulation standards for CESQGs. Under the current regulations, a CESQG must not accumulate more than 1,000 kilograms of non-acute hazardous waste at any one time, but otherwise does not have any on-site waste management standards when accumulating hazardous waste, primarily because the quantities generated every month are so small. EPA is proposing to require a CESQG that generates episodic hazardous waste that would cause the CESQG to exceed its generator category limit for the calendar month to comply with the following accumulation standards for containers and tanks that manage the episodic wastes if it wants to take advantage of the episodic generator provision (CESQGs are prohibited from using a drip pad or a containment building). EPA believes that these standards are necessary because the quantity of hazardous waste that is accumulated during this episodic period requires standards for safe management in order to adequately protect human health and the environment.

When accumulating hazardous waste in containers, the CESQG would be required to mark its containers with the following: (1) The words ''Episodic Hazardous Waste''; (2) other words that identify the contents of the containers—examples may include, but are not limited to the name of the chemical(s), such as ''acetone'' or ''methylene dichloride,'' or the type or class of chemical, such as ''organic solvents'' or ''halogenated organic solvents'' or, as applicable, the proper shipping name and technical name markings used to comply with DOT requirements at 49 CFR part 172 subpart D; and (3) an indication of the hazards of the contents of the container—examples of hazards include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic). In the case of hazardous wastes ultimately treated and disposed of off-site, the generator could use a hazard class label consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling), use a label consistent with the OSHA Hazard Communication Standard at 29 CFR 1920.1200, or use a chemical hazard label consistent with the NFPA code 704; or a hazard pictogram consistent with the United Nations' GHS. Generators also may use any other marking or labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers.

These marking standards are the same as those for LQGs and SQGs accumulating hazardous wastes in containers in the course of normal business operations and are necessary to protect human health and the environment. In addition to these, the CESQG would be required to mark the date that the episodic event began clearly on each container.

For tanks, the CESQG would have to mark or label the tank containing hazardous waste accumulated during the event with the words ''Episodic Hazardous Waste'' and would be required to use inventory logs, monitoring equipment, or other records to identify the contents of the tank, the quantity accumulated as a result of the episodic event, and the associated hazards and to identify the date that the episodic event began. The records containing this information would have to be immediately accessible by the generator.

In addition, the generator would be required to manage the hazardous waste in a manner that minimizes the possibility of an accident or release. Management standards are critical to ensure the hazardous waste does not pose a risk to human health and the environment. A CESQG may use best management practices to comply with this condition. In practice, this includes managing the hazardous waste in containers that are in good condition and chemically compatible with any hazardous waste accumulated therein and keeping the containers closed except to add or remove waste. Complying with the standards in part 265 subpart I would satisfy this condition.

With respect to tanks, the following standards are proposed: (1) Having procedures in place to prevent overflow (*e.g.,* the tank is equipped with a means to stop inflow with systems such as a waste feed cutoff system or bypass system to a standby tank when hazardous waste is continuously fed into the tank); (2) inspecting the tank(s) at least once each operating day during the episodic event to ensure all applicable discharge control equipment, such as waste feed cutoff systems, bypass systems, and drainage systems, are in good working order and (3) using appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems including at a minimum spill prevention controls (*e.g.,* check valves, dry disconnect couplings), overfill prevention controls (*e.g.,* level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank), maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation. Such practices are necessary to prevent the release of the hazardous waste or hazardous constituents to air, soil, or water, which could threaten human health and the environment.

As mentioned above, an emergency coordinator (in compliance with proposed § 262.16(b)(9)(i)) must be identified for the duration of the episodic event on the notification form. A CESQG taking advantage of this provision would also need to notify the local fire department of who their emergency coordinator was if they had not done so already for other emergency preparedness and planning reasons. An emergency coordinator is needed because the CESQG will be generating greater amounts of hazardous waste than normal and, should an accident occur, the emergency coordinator would need to be prepared to handle the situation.

EPA believes these management standards are necessary to adequately protect human health and the environment because of the additional quantities of hazardous waste generated and accumulated as a result of an episodic event. The Agency, however, seeks comment on these proposed management standards. In particular, the Agency is aware of concerns expressed by generators in the past that the marking and labeling of tanks with the date the generator first began

accumulating hazardous waste could prove problematic since the tank could have numerous markings on it. (See comments found in RCRA Docket EPA–HQ–RCRA–2008–0678 in response to EPA's Technical Corrections Direct Final rule, 75 FR 12989.) The Agency has responded to this concern by allowing generators to use log books and other means to identify the hazardous waste accumulation start date. However, the Agency is proposing that CESQGs (and SQGs) label their tanks with the words ''Episodic Hazardous Waste'' so that emergency responders and others are readily aware of the tank's contents and situation. The Agency requests comment on whether this requirement could also prove problematic, and if so, why, and what cost-effective alternatives exist to address those concerns and still allow emergency responders, inspectors, workers, etc. to be readily aware of the tank's hazardous waste contents.

Under the existing regulations, CESQGs may not treat hazardous waste generated on site in a manner equivalent to SQGs and LQGs under § 262.34, except in an on-site elementary neutralization unit. Elementary neutralization units, as defined in § 260.10, are exempt from RCRA treatment, storage, and disposal standards and permitting requirements. The elementary neutralization unit exclusion does not preclude a CESQG from treating waste in the exempt unit as long as the generator meets the criteria outlined in §§ 264.1(g)(6), 265.1(c)(10), and 270.1(c)(2)(v). Specifically, the elementary neutralization unit must meet the definition of a container, tank, tank system, transport vehicle, or vessel, and must be used for neutralizing wastes that are hazardous only because of the corrosivity characteristic.[115]

Considering that CESQGs will be required to meet additional waste management requirements under this proposed rule for episodic generation, the Agency seeks comment on whether CESQGs taking advantage of this provision should be allowed to treat their episodic hazardous waste on site in a manner equivalent to SQGs and LQGs at § 262.34. In particular, the Agency seeks comment on whether the volume of hazardous waste generated from an episodic event exceeds the capacity and expertise of CESQGs, which are accustomed to managing smaller quantities of hazardous waste, and whether the Agency should identify a select list of allowable types of treatment that would not pose a risk to human health and the environment.

b. Manifest use by CESQGs and management at a RCRA-designated facility. EPA is proposing to require CESQGs to manifest the hazardous waste generated from an episodic event and send it to a RCRA-designated facility. Under current regulations, CESQGs are not required to manifest their hazardous waste to a RCRA-designated facility, but can ship them without a manifest and to one of seven types of facilities listed in § 261.5(f)(3). Because the CESQG will be generating quantities of hazardous waste that exceed its normal generator category thresholds, the Agency believes the use of a hazardous waste manifest and the shipment of the hazardous waste to a RCRA-designated facility is necessary to protect human health and the environment. However, the condition to manifest the hazardous waste and send it off site to a RCRA-designated facility would only apply to the hazardous waste generated as a result of the episodic event. The condition would not apply, unless if for economic or logistical reasons, the CESQG desired to ship off site to a RCRA-designated facility all hazardous waste generated and accumulated either as a result of the episodic event, independent of the episodic event, or prior to the event.

c. Accumulation standards for SQGs. Under the current regulations, SQGs must comply with the waste accumulation, waste management, employee training, and emergency preparedness and prevention conditions at 40 CFR 262.34 (d)–(f) with references to 40 CFR 265 subparts C, I, and J in order to accumulate hazardous waste without a RCRA storage permit or compliance with interim status standards. SQGs may not take advantage of this proposed episodic generation provision for wastes accumulated on drip pads or in containment buildings although EPA does seek comment on allowing episodic event wastes to be accumulated in these units prior to sending the hazardous waste off-site for treatment and disposal to a RCRA designated facility. Under this proposed rule, EPA is proposing to require an SQG that generates episodic hazardous waste that would cause the SQG to exceed their generator category limits for the calendar month to comply with certain standards for containers and tanks if it desires to take advantage of the episodic generator provision.

When accumulating hazardous waste generated as a result of an episodic event in containers, the SQG would be required to mark its containers with the following: (1) The words ''Episodic Hazardous Waste''; (2) other words that identify the contents of the containers—examples may include, but are not limited to the name of the chemical(s), such as ''acetone'' or ''methylene dichloride,'' or the type or class of chemical, such as ''organic solvents'' or ''halogenated organic solvents'' or, as applicable, the proper shipping name and technical name markings used to comply with DOT requirements at 49 CFR part 172 subpart D; and (3) an indication of the hazards of the contents of the container—examples of hazards include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic). In the case of hazardous wastes ultimately treated and disposed of off-site, the generator could use a hazard class label consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling), a label consistent with the OSHA Hazard Communication Standard at 29 CFR 1920.1200, a chemical hazard label consistent with the NFPA code 704, or a hazard pictogram consistent with the United Nations' GHS. Generators also may use any other marking or labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers.

These standards are the same as those for SQGs accumulating hazardous wastes in containers in the course of normal business operations and are necessary to protect human health and the environment. In addition to these, the SQG would be required to mark the date that the episodic event began clearly on each container.

For tanks, the SQG would be required to mark or label the tank containing hazardous waste accumulated during the event with the words ''Episodic Hazardous Waste'' and would be required to use inventory logs, monitoring equipment, or other records to identify the contents of the tank and the associated hazards and to identify the date that the episodic event began and ended. The generator would need to have records containing this information immediately accessible.

In addition, the SQG would need to comply with all the conditions of the exemption in § 262.34 (d) through (f) with references to 40 CFR 265 subparts C, I, and J, part 268 land disposal restrictions (§ 262.16 under the proposed reorganization)—that is, the waste accumulation, waste management, employee training, and emergency preparedness and prevention conditions.

[115] RCRA Hotline Q & A, February 1996, RCRA Online 13778.

d. Manifest use by SQGs. As under the current regulations, EPA is proposing that SQGs manifest the hazardous waste generated from an episodic event and send it to a RCRA-designated facility, unless the waste is managed on site. The Agency believes the use of a hazardous waste manifest and shipment of the hazardous waste to a RCRA-designated facility is necessary to protect human health and the environment. However, unlike CESQGs, the use of the hazardous waste manifest would apply not only to the wastes generated from the episodic event, but all other hazardous wastes the SQG generates within its generator category.

5. Forty-five (45) Days or Less Would be Allowed to Treat and Dispose of Hazardous Wastes On Site (SQGs) or Manifested and Shipped Off Site (CESQGs or SQGs) to a RCRA-Designated Facility

The Agency is proposing to allow SQGs and CESQGs 45 calendar days to initiate and complete an episodic event, which includes generation, accumulation and management (*e.g.,* recycling, treatment and disposal—either on site, such as waste neutralization in a container, or off site at a RCRA-designated facility) of all hazardous waste resulting from the episodic event. The Agency believes 45 days is sufficient time for a generator to complete management of the hazardous waste from the time that the generator begins generating and accumulating the hazardous waste. However, as discussed below, a CESQG or SQG can petition the Agency for additional time to complete the generation and removal of the hazardous waste during the episodic event, if necessary.

6. Recordkeeping

Finally, generators would need to keep the following information in their records: (1) Beginning and end dates of the episodic event; (2) a description of the episodic event; (3) a description of the types and quantities of hazardous wastes generated during the episodic event; (4) a description of how the hazardous waste was managed as well as the name of the RCRA designated facility that received the hazardous waste; (5) name(s) of hazardous waste transporters, as appropriate; (6) an approval letter from EPA, if the generator successfully petitioned to conduct an additional episodic event during the calendar year; and (7) an approval letter from EPA, if the generator successfully petitioned for an additional 30 calendar day extension. These records would need to be maintained on site by the generator for three years from the completion date of each episodic event.

EPA believes the recordkeeping condition is critical to enable effective and credible oversight. We also believe that the information to be maintained is the minimum information necessary to determine that any hazardous waste generated during the episodic event is managed properly.

7. Petitions

a. Petition To Request one Additional Episodic Event

While the Agency believes that most generators will experience an episodic event infrequently, we also recognize that there may be situations, often unexpected, where a hazardous waste generator may have more than one episodic event within a calendar year, such as an unexpected product recall, a major spill, or an act of nature. Therefore, the Agency is proposing to allow CESQGs and SQGs to petition EPA (at least 30 days before initiating a planned episodic event and within 24 hours after an unplanned event) for permission to manage one additional episodic event without impacting the hazardous waste generator category. The petition must include (1) the reason why an additional episodic event is needed and the nature of the episodic event; (2) the estimated amount of hazardous waste to be managed from the event; (3) how the hazardous waste is to be managed; (4) the estimated length of time needed to complete management of the hazardous waste generated from the episodic event—not to exceed 45 days; and (5) information regarding previous episodic event(s) managed by the generator and whether it complied with the proposed conditions. EPA will then evaluate this and other site-specific information to determine whether a generator should be allowed to initiate a second episodic event under the proposed alternative standards. The petition by the generator may be made via fax, email, or letter. The generator may not manage hazardous waste for an additional episodic event until written approval by EPA (or the authorized state) has been received. The generator must retain written approval in its records for three years from the date the episodic event ended.

b. Petition To Request Additional Time To Complete an Episodic Event

Events may arise, particularly unplanned events, such as an ''act of nature,'' where 45 days is insufficient to complete the event. The Agency is proposing to allow generators to petition EPA for an additional 30 days to complete the generation and removal of hazardous waste, if needed. The petition must include (1) the nature of the episodic event; (2) the estimated amount of hazardous waste to be managed from the event; and (3) and the generator's rationale for needing an extension for an additional 30 days beyond the 45-day limit to complete the episodic event. EPA will then evaluate the generator's request to determine whether it should be allowed up to an additional 30 days to complete the episodic event. For example, a situation may exist where a hazardous waste transporter cannot arrive and remove hazardous waste generated until the 46th day because of unforeseen problems with its truck or the generator did not foresee problems with completing a tank cleanout because cleanout equipment failed to operate. These are all site-specific situations that EPA or authorized state would evaluate when making its decision. The generator cannot go beyond the 45-day limit unless written approval by EPA has been received.

The generator would need to petition EPA for approval at least 15 days before the original end date of the episodic event. The petition by the generator may be made via fax, email, or letter. The generator must retain written approval in its records for three years from the date the episodic event ended.

Should the generator request an extension from the Agency or authorized state with less than 15 days remaining and be denied the extension, then the generator would have to remove all hazardous wastes generated as a result of the episodic event as of the specified end date in its notification or be in violation of its exemption.

Unlike rulemaking petitions in part 260 subpart C of the hazardous waste regulations, the Agency is not proposing to have a notice and comment period for granting an episodic event or an extension. The Agency believes a generator's actions and performance will dictate approval or disapproval of a generator's request. In addition, in some cases a timely response to these requests is critical, especially with requests for extension. Taking notice and comment would delay that response.

8. Tracking and Accounting for Hazardous Waste Generation and Accumulation as a Result of an Episodic Event Along With Normal Production Operations

In practice, a generator taking advantage of this rule, in particular a CESQG or SQG, must track and monitor the start and end dates of the episodic event in conjunction with the date the

calendar month ends to ensure compliance with all RCRA regulatory provisions associated with waste generation and management. An example may be the best way of explaining how this rule would work.

A CESQG could have a number of facility operations (*e.g.,* tank cleanouts, disposal of off-spec products it cannot sell or reclaim, repair work involving the removal of lead paint chips) that will often result in a temporary change in its regulatory category. The CESQG decides to notify its authorized state two months prior (as well as identifying a point of contact and emergency coordinator) that it will initiate the planned episodic event on July 20 and take advantage of the full 45 days allowed to conduct the event and end on September 2. Beginning on July 20, the generator must comply with all of the regulatory standards of subpart L discussed above to maintain its exemption as a CESQG. Under this example, if the generator complies with subpart L, it need not be concerned about the total amount of hazardous waste it will generate in the calendar months of July and August (*e.g.* 100 kg or less) or whether it will exceed the hazardous waste accumulation total of less than 1,000 kilograms associated with a CESQG.

However, on or before September 2, the generator must remove and dispose of all the hazardous wastes it generated over the course of the last 45 days that represented the episodic event. Provided the generator meets that deadline, that waste would not count when determining the generator's status. In this example, the generator chooses to also dispose of waste generated from its normal operations by September 2. In this case, it would then not count that waste in determining its generator status for July, August, and September. The CESQG would then estimate the quantity of hazardous waste it generates and accumulates for the remainder of September (starting on September 3 until the end of the month) to determine its regulatory category.

If the generator decides to separate out normal production operations from episodic event operations, then the waste from normal operations is counted each month to determine the generator's status. For example, assume the generator at the beginning of the episodic event had accumulated 950 kg of hazardous waste and proceeds to accumulate another 75 kg over the course of the 45-day episodic event that is associated with normal operations.[116] On September 3, if the generator had not disposed of that 1,025 kg of hazardous waste along with all of the episodic event hazardous wastes it generated and accumulated, then it would have violated the accumulation provision of a CESQG at 40 CFR 261.5(g)(2) (*e.g.,* less than 1,000 kg) and would be in violation of the conditions of the CESQG exemption. A similar concern might occur if the generator generated 101 kg of hazardous wastes on September 1 and 2 from normal operations and did not dispose of it by September 2 with the waste from the episodic event. The generator would not be in compliance with the CESQG threshold for the calendar month and would be required to comply with the SQG conditions for exemption or be in violation of the exemption.

There are numerous variations on the above example (*e.g.,* request to extend the length of time for the episodic event, etc.) that a generator would have to be aware of when it ended its episodic event to avoid exceeding waste generation totals for the calendar month or waste accumulation limitation totals.

9. An Episodic Event Involving Two Calendar Years

An episodic event may also involve overlapping two calendar years. The Agency is proposing that the generator count all the waste from the episodic event in the year with the most days involved in the episodic event. In other words, if the episodic event begins on December 16 of year 1 and ends on January 30 of year 2, the waste would count in year 2.

C. Request for Comment

The Agency requests comment on its proposed approach for addressing hazardous waste generated during an episodic event. Specifically, the Agency requests comment on whether the overall approach proposed would assist generators and allow a CESQG or SQG to maintain its generator category and not be bumped up into a more stringent generator category temporarily.

EPA also requests comment on the number of episodic events that would be allowed under these proposed alternative regulations. As stated above, we are proposing to allow CESQGs and SQGs to take advantage of this alternative regulatory framework for one episodic event per calendar year, with the ability to petition EPA for one additional event per calendar year. EPA is interested in ideas on how best to structure this alternative framework in terms of identifying a reasonable number of episodic events allowed per year and identifying an appropriate time period allowed to conduct and manage the hazardous waste from an episodic event in a way that would be effective while still ensuring protection of human health and the environment.

Additionally, the Agency requests comment regarding its proposed conditions for CESQGs and SQGs managing hazardous waste generated from the episodic event, such as the proposed 45-day limit to generate and manage the waste and the ability for CESQGs and SQGs to petition the Agency for one additional episodic event per calendar year or an additional 30 days to complete an episodic event. The Agency also requests comment on whether the proposed conditions for CESQGs and SQGs are reasonable and sufficient to protect human health and the environment.

Finally, the Agency requests comment on whether to allow a CESQG or SQG to accumulate hazardous waste either on a drip pad or in a containment building in compliance with 40 CFR part 265 subparts W and DD, respectively, as a result of an episodic event. As proposed, the Agency has focused on hazardous wastes accumulated in containers or tanks as a result of an episodic event since almost all CESQGs and SQGs accumulate waste in containers with a small percentage accumulated in tanks. However, there may be circumstances that lend themselves to a CESQG or SQG accumulating hazardous wastes on a drip pad or in a containment building.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

X. Proposed Revisions to 40 CFR Part 263—Standards Applicable to Transporters of Hazardous Waste

The current regulations at § 263.12 for transporters handling hazardous waste at a transfer facility for ten days or less state that the transporter is not subject to the storage regulations in 40 CFR parts 264, 265, 267, 268 and 270. In addition, the regulation stipulates that containers that hold hazardous waste must meet the provisions in § 262.30 that reference DOT's packaging regulations at 49 CFR parts 173, 178, and 179.

The Agency is proposing to change the marking and labeling requirements for transporters handling hazardous waste at transfer facilities, found at § 263.12, to be consistent with the proposed changes for marking and

[116] Note that it would not matter how much the CESQG had generated during a calendar month in which the episodic event begins because all of that hazardous waste is now folded into the hazardous waste generated as a result of the episodic event. Otherwise, the rule would not work from a practical viewpoint.

labeling conditions for containers for SQGs, for LQGs, and in SAAs.[117] In addition to these proposed changes, EPA is also proposing to require that containers of hazardous waste at transfer facilities be labeled prior to being transported off site to a RCRA-designated facility with the applicable EPA hazardous waste number(s) (EPA hazardous waste codes), which will help the TSDF receiving the hazardous waste comply with the LDR regulations in 40 CFR part 268. The Agency is proposing these modifications to ensure that hazardous wastes are appropriately labeled and marked throughout transportation to a RCRA-permitted or interim status TSDF or to another transfer facility.

Specifically, EPA is proposing that transporters storing hazardous wastes in containers at transfer facilities mark the containers with the following: (1) The words ''Hazardous Waste''; (2) the applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in subparts C and D of part 261; (3) other words that identify the contents of the containers—examples may include, but are not limited to the name of the chemical(s), such as ''acetone'' or ''methylene dichloride''; or the type or class of chemical, such as ''organic solvents'' or ''halogenated organic solvents'' or, as applicable, the proper shipping name and technical name markings used to comply with DOT requirements at 49 CFR part 172 subpart D; and (4) an indication of the hazards of the contents of the container—examples of which include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); a hazard class label consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the OSHA Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the NFPA code 704; or a hazard pictogram consistent with the United Nations' GHS. Transfer facilities also may use any other marking and labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers.

A transfer facility may choose to use an appropriate DOT proper shipping name found in the 49 CFR 172.101 hazardous materials table to identify the contents of the container. That way, the transfer facility will fulfill EPA and DOT requirements simultaneously; however, EPA is not proposing to require the use of the DOT shipping names while the hazardous waste is accumulating on-site. We only suggest that the DOT shipping name may be one way that some generators may choose to identify the contents of the container.

As previously discussed, the Agency believes providing this information on the container will alert workers and other handlers to the contents of the container and the potential hazards of the materials therein. This information increases the awareness of workers and others who might come into contact with the hazardous waste in the containers and reduces potential adverse impacts from container mismanagement. The Agency does not believe this proposed change will adversely impact transfer facility operations since similar marking and labeling standards are proposed for hazardous waste generators. One difference, however, is the inclusion of the EPA hazardous waste number in the list of labeling requirements. Although generators are not required to have the EPA hazardous waste number on the hazardous waste while accumulating it, we are proposing in this rulemaking that generators must include the EPA hazardous waste number on the label before transporting the hazardous waste off site, so when a container arrives at the transfer facility it should already have the EPA hazardous waste number on its label.

Given that containers received by the transfer facility will already be marked and labeled by the generator, the Agency believes the additional burden on the transfer facility will be minimal. However, there may be situations where the transporter would be required to mark and label a container. One example of when a transfer facility would be required to mark and label its containers would be when it consolidates two containers with the same hazardous waste into a new container or when it is able to combine and consolidate two different hazardous wastes that are compatible with each other and are able to be subsequently managed consistently in compliance with the applicable regulations in parts 264, 265, 267, 268 and 270 of this chapter.

The Agency requests comment on this proposed change, particularly the identification of any unintended problems from this requirement.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

XI. Proposed Revisions to 40 CFR Parts 264 and 265—Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

The Agency is proposing to modify the biennial report requirements for facilities subject to 40 CFR 264.75 and 40 CFR 265.75 and the special requirements for ignitable and reactive wastes at 40 CFR 265.176.

A. Proposed Changes to Biennial Reporting Requirements (40 CFR 264.75 and 40 CFR 265.75)

EPA is proposing to modify the regulations at §§ 264.75 and 265.75 to eliminate the list of specific data elements and to require the completion and submission of all data elements in the biennial report form (EPA form 8700–13).

Section 264.75 currently requires that the biennial report include a specific list of data elements, including the name, address, and EPA ID number of the generator and each transporter and TSDF, the EPA hazardous waste number for each hazardous waste shipped off site, and a signed certification, among other things.

Section 265.75 includes the above data elements as well as requiring monitoring data under § 265.94(a)(2)(ii) and (iii), and (b)(2), where required.

Similar to the approach EPA is proposing for the biennial reporting requirements for LQGs in § 262.41, EPA believes removing the specific data elements in the regulations and replacing it with a requirement to complete and submit all the data elements required in the biennial report form will ensure that the regulations and forms remain consistent. For example, the existing regulations require closure cost information and, at § 265.75(f), groundwater monitoring data under § 265.94(a)(2)(ii) and (iii), and (b)(2) to be submitted as part of the biennial report; however, these data elements are not collected on EPA's current biennial reporting form 8700–13.[118] Thus, EPA believes removing this

[117] EPA is proposing to move these provisions as a part of the reorganization of the generator regulations. They can be found in the proposed regulatory text at the following citations: SAAs—§ 262.15(a)(1)(iv); SQGs—§ 262.16(b)(6)(i); and LQGs—§ 262.17(a)(5).

[118] Closure cost estimates must be submitted in accordance with § 264.142 or 265.142 which requires owners or operators using the financial test or corporate guarantee to update closure costs for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator under § 264.143(f)(3) or 265.143(e)(3), respectively. Additionally, disposal facilities must submit the most recent post-closure cost estimate under § 264.144 or 265.144, which requires owners or operators using the financial test or corporate guarantee to update for inflation within 30 days

list from the regulations will help TSDFs understand what EPA currently requires to be submitted as part of the biennial report. This approach eliminates the need to update the list of specific required data elements through rulemaking and reduces duplication with review and approval processes established under the PRA.

EPA does not believe this change in any way affects the enforceability of the biennial report regulations. Owners and operators must complete and submit EPA form 8700–13.

EPA also notes that some states develop their own state biennial report forms. EPA does not believe this proposed change would impact a state's ability to use their own biennial report forms or to collect more information than is required by the federal forms. Authorized states that use a different form for collecting biennial report information would simply refer to their authorized state form in their state regulations. Additionally, EPA is aware that some states use their state biennial report form as a vehicle for collecting closure cost data, required to be submitted under § 264.142, and groundwater monitoring data, required to be submitted under § 264.97(j). Because the existing federal regulations already specify collection of this information, EPA would not consider states that continue collecting this data using their state authorized biennial report form to be more stringent than the federal program.

Additionally, as discussed in section VIII.L of this preamble, EPA is proposing to modify the phrase ''prepare and submit,'' which is the existing language in §§ 264.75 and 265.75, to ''complete and submit'' because the Agency believes that ''complete and submit'' more accurately reflects that facilities must complete all applicable elements of the biennial report forms.

The Agency requests comment on these proposed changes to §§ 264.75 and 265.75. EPA also specifically requests whether commenters believe the proposed change to eliminate the specific data elements in these regulations will ease compliance and understanding of the current biennial reporting procedures.

after the close of the firm's fiscal year and before the submission of updated information to the Regional Administrator. Groundwater monitoring data must be submitted in accordance with § 265.94(b)(2), which requires the owner or operator to submit annually, until final closure of the facility, to the Regional Administrator a report containing the results of the groundwater quality assessment program no later than March 1 following each calendar year.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

B. Special Requirements for Ignitable and Reactive Wastes

Sections 262.34(a)(1)(i) and 262.34(d)(2) contain conditions for exemptions for LQGs and SQGs that accumulate hazardous waste on site for up to 90 or 180 days without a permit. These regulations both reference part 265 subpart I, which contains regulations for owners and operators of interim status hazardous waste facilities that store hazardous waste in containers.

The LQG conditions in § 262.34(a)(1)(i) reference § 265.176. Section 265.176 states that containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line. SQGs are not required to comply with this provision.

In some cases, to comply with this standard for ignitable and reactive wastes, LQGs may modify their production feedstocks or production processes to generate a waste that is not an ignitable or reactive hazardous waste or reexamine the site's layout to identify alternative accumulation areas. However, there are some cases where it may not be physically possible to meet this standard, particularly if the width of the site is 100 feet or less or when the generator's operations have expanded such that it no longer has the ability to accumulate ignitable or reactive waste at least 15 meters (50 feet) from the site's property line. Insurance companies and local fire departments often assist hazardous waste generators in minimizing their environmental hazards and liabilities, but site dimensions may sometimes physically prevent a facility from complying with this condition.

Therefore, the Agency is proposing to modify the regulatory text for generators to allow LQGs to apply for a site-specific waiver from their local fire department if they are unable to meet the hazardous waste accumulation property line condition.[119] The proposed change would require LQGs to obtain a waiver from this provision, in writing, from local fire departments. LQGs would then be required to keep the written waiver in their records. In addition, as part of the reorganization of the generator regulations, discussed in section XIII of the preamble, we are also including this provision directly in the LQG accumulation regulations.

Because it is the local fire department that has the expertise to address this problem when it arises, EPA is relying on those local fire departments to work with the generators on any waivers that may be requested and on finding the most appropriate place on site to accumulate this hazardous waste.

Section 265.176 contains a comment that references § 265.17(a) and states that there are additional requirements in that section, which also contains provisions for ignitable, reactive, and incompatible wastes. The Agency is also proposing to incorporate the language from existing § 265.17(a) into § 262.17(a)(1)(vi)(B) of the generator regulations. EPA is proposing to replace the words ''owner and operator'' with ''large quantity generator'' as part of this revision. By eliminating the cross-references, generators should be able to more easily discern what provisions are applicable and therefore should be better able to properly manage any ignitable or reactive hazardous waste.

The Agency seeks comment on the proposed addition of this language to the generator conditions for exemption, as well as the change to allow LQGs to seek a waiver from the provision that containers holding hazardous waste must be located at least 15 meters (50 feet) from the property line. Specifically, EPA requests comment on whether this waiver option provides a sufficient level of protection for the facility and the surrounding community and whether generators would benefit from the increased flexibility. Additionally, EPA requests comment on whether it is appropriate to delegate the responsibility for issuing waivers in this case to the fire department and whether EPA should promulgate criteria that must be met as a condition of the waiver as part of this provision. For example, conditions may include a limit on the amount of ignitable or reactive hazardous waste that could be accumulated at any time or a requirement that the facility have certain technical controls, such as fire suppression devices or walls that meet a certain fire-resistance rating. Furthermore, EPA requests comment on whether the insertion of the language from § 265.17(a) in this section is helpful.

Finally, EPA requests comment on whether including a waiver to the provision for ignitable and reactive wastes would also be appropriate for interim status facilities or for permitted facilities in §§ 264.176 and 265.176.

Effect of the Proposed Reorganization: This section is affected by the proposed

[119] The Agency is not proposing to modify § 265.176 to allow interim status facilities to apply for a site-specific waiver from their local fire department if they are unable to meet the hazardous waste accumulation property line condition.

reorganization. The revised language would appear directly in § 262.17(a)(1)(vi) as a condition for exemption for LQGs, rather than being located in 40 CFR part 265 subpart I and referenced from the generator regulations. The reorganization is discussed in section XIII of this preamble.

XII. Proposed Revisions to 40 CFR Part 268—Land Disposal Restrictions

The Agency is proposing to change the regulations on marking and labeling of containers by the owner/operator of a hazardous waste TSDF in § 268.50 to be consistent with the proposed marking and labeling changes for LQGs, for SQGs, for SAAs, and for transfer facilities.[120] EPA is also proposing to require that containers be labeled with the applicable EPA hazardous waste number(s) (EPA hazardous waste codes), which help the TSDF comply with the LDR regulations. More specifically, the Agency is proposing to modify § 268.50(a)(2)(i), which states that one of the requirements for storing hazardous wastes restricted from land disposal is that each container is clearly marked to identify its contents and the date each period of accumulation begins.

Consistent with the other proposed changes that clarify the contents and hazards posed by the contents of hazardous waste in containers, the Agency is proposing to modify this language to state that each container must be clearly marked with (1) the words ''Hazardous Waste''; (2) the applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in subparts C and D of part 261; (3) other words that identify the contents of the containers—examples may include, but are not limited to the name of the chemical(s), such as, ''acetone'' or ''methylene dichloride''; or the type or class of chemical, such as ''organic solvents'' or ''halogenated organic solvents'' or, as applicable, the proper shipping name and technical name markings used to comply with DOT requirements at 49 CFR part 172 subpart D; (4) an indication of the hazards of the contents of the container (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; or a hazard pictogram consistent with the United Nations' Globally Harmonized System); or any other marking or labeling commonly used nationwide in commerce that would alert workers and emergency responders to the nature of the hazards associated with the contents of the containers. The Agency will continue to require each container to be clearly marked with the date each period of accumulation begins.

The Agency believes this proposed change will not adversely impact facility operations. In fact, because these are consistent with the requirements for marking and labeling that are proposed elsewhere in the regulations, we believe it will be easier for all those who manage the hazardous waste to know and comply with the consistent system of marking and labeling. In addition, a clear description of what material is in each container makes the facility safer for employees, first responders, and the public. The Agency requests comment on this proposed change.

Effect of the Proposed Reorganization: This section is not affected by the proposed reorganization.

XIII. Proposed Reorganization of Hazardous Waste Generator Regulations

EPA is proposing to reorganize the hazardous waste generator regulations to make them more user-friendly, which should facilitate better generator compliance. As part of the Agency's 2004 Program Evaluation of the hazardous waste generator program, the most frequent comment by stakeholders was to improve the user-friendliness of the regulations.

Although many existing generators are familiar with the current regulations, every year many generators either enter the hazardous waste generator program or switch their generator category and therefore need to become familiar with their obligations. Similarly, an existing generator may need to examine a particular regulatory citation to ensure it is complying with the regulations correctly. The Agency believes that providing these generators with a user-friendly regulatory framework is an effective way to make the regulations easier to understand for those who need to comply with them.

Therefore, in response to these concerns, EPA is proposing the following organizational changes:

(1) Integrate the generator regulations in § 261.5 into the generator regulations at part 262 by moving § 261.5 (which contains the regulations applicable to CESQGs, counting of hazardous waste, and mixing of hazardous wastes with non-hazardous wastes);

(2) Move the existing regulations at § 262.34 for SQGs and LQGs into three new sections:

(a) Satellite accumulation areas regulations for small and large quantity generators,

(b) Conditions for exemption for an SQG that accumulates hazardous waste; and

(c) Conditions for exemption for an LQG that accumulates hazardous waste;

(3) Use subtitles in these new sections; and

(4) Where reasonable, incorporate regulations that currently cross reference part 265 into these new sections.

A. Moving and Integrating Regulations from 40 CFR 261.5 into 40 CFR Part 262

Currently, certain hazardous waste generator regulations are located in a different part of the regulations (40 CFR 261.5) from the rest of the generator regulations (40 CFR part 262). Stakeholders have stated that this current organization is confusing and not user friendly and have asked EPA to move the CESQG regulations in § 261.5 into part 262 so that all the generator regulations are in the same place. The Agency believes this reorganization would alleviate much confusion in the regulated community and, in the process, would foster greater compliance with the regulations.

Specifically, EPA is proposing to move the definition of a CESQG that generates non-acute hazardous waste at § 261.5(a) into the CESQG definition at § 260.10, move § 261.5(c) through (e) to a new section at § 262.13 titled ''Generator category determination'' and move § 261.5(b) and (f) through (j) to a new section at § 262.14 titled ''Conditions for exemption for a very small quantity generator.'' [121]

1. Hazardous Waste Generation Quantity Limits for CESQGs (40 CFR 261.5(a) and (e))

Currently § 261.5(a) sets forth the non-acute hazardous waste quantity limits for a CESQG and § 261.5(e) provides quantity limits for generating acute hazardous waste and any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill of

[120] EPA is proposing to move some of these provisions as a part of the reorganization of the generator regulations. They can be found in the proposed regulatory text at the following citations: SAAs—§ 262.15(a)(1)(iv); SQGs—§ 262.16(b)(6)(i); and LQGs—§ 262.17(a)(5)(i).

[121] EPA is proposing to rename CESQGs to VSQGs (very small quantity generators). For a detailed discussion on this proposed change see section VI.B of this preamble.

acute hazardous waste. As mentioned previously, EPA is now proposing to define each category of generator at § 260.10, and, thus, under the reorganization, § 261.5(a) and (e) will be incorporated into those definitions.

2. Determining Generator Category (40 CFR 261.5(c) and (d))

Section 261.5(c) and (d) set forth the provisions for a hazardous waste generator to use in making its generator category determination. Every hazardous waste generator must determine its generator category so it knows what regulations are applicable to it. Since these regulations are applicable to all hazardous waste generators, it makes sense to move them into 40 CFR part 262 along with the other hazardous waste generator regulations. To further aid in making the regulations more user friendly, the Agency is proposing to make a new section for generator category determination at § 262.13, titled ''Generator category determination.'' This new section is appropriate because, after a generator of a solid waste determines it has generated a hazardous waste (§ 262.11), the generator must then determine its hazardous waste generator category for the calendar month. Table 3—Crosswalk of Existing Citations to Proposed Citations for Determining Generator Category provides a summary of the crosswalk between the existing and proposed regulatory citations for determining a generator's category.

TABLE 3—CROSSWALK OF EXISTING CITATIONS TO PROPOSED CITATIONS FOR DETERMINING GENERATOR CATEGORY

Regulation	Existing citation	Proposed citation	Comment
Definitions of Generator Categories	§§ 260.10, 261.5 and 262.34.	§ 260.10	Current definition of SQG in § 260.10 is outdated. Current usage of generator categories is based on §§ 261.5 and 262.34.
Hazardous Waste Limits for CESQGs	§ 261.5(a) and (e)	§ 260.10	
Purpose, Scope, and Applicability	§ 262.10	§ 262.10	Not moved, but expanded significantly.
Hazardous Waste Determination and Recordkeeping	§§ 262.11 and 262.40(c)	§ 262.11	Content in § 262.11 is expanded and § 262.40(c) is incorporated.
Generator Category Determination	§ 261.5(c)–(e)	§ 262.13	

3. CESQG Conditions for Exemption (40 CFR 261.5(b) and (f) through (j))

Sections 261.5(b) and (f) through (j) establish a CESQG's conditions for exemption from regulation as an SQG or LQG. More specifically, these conditions for exemption establish the regulations for accumulating acute and non-acute hazardous waste, where the acute and non-acute hazardous waste may be managed off-site, and what the implications are when hazardous waste is mixed with solid waste or used oil. Since these regulations set forth conditions for exemption for CESQGs, just as the regulations found in existing § 262.34 set forth conditions for exemption for SQGs and LQGs, EPA is proposing to move § 261.5(b) and (f) through (j) to the newly created § 262.14 titled, ''Conditions for exemption for a very small quantity generator.'' All these regulations would then be located parallel to one another in part 262. Section 262.14 would also include the CESQG landfill ban for liquids. In addition, CESQGs who episodically generate higher amounts of hazardous waste could follow the newly proposed standards for episodic generation in part 262 subpart L in order to maintain their CESQG status while managing these higher amounts of hazardous waste. Table 4—Crosswalk of Existing Citations to Proposed Citations for CESQGs provides a crosswalk between the existing and proposed CESQG conditions for exemption.

TABLE 4—CROSSWALK OF EXISTING CITATIONS TO PROPOSED CITATIONS FOR CESQGS

Regulation	Existing citation	Proposed citation	Comment
CESQG Definition	§ 261.5(a)	§ 260.10	
Conditions for Exemption for a Very Small Quantity Generator.	§ 261.5(b) and (f) through (j).	§ 262.14	
CESQG Consolidation by LQGs Within the Same Company.	N/A	§ 262.14(a)(3)(viii)	Proposed new provision.
Landfill Ban for Liquids	§ 258.28	§ 262.14(d)	
Episodic Generation	N/A	Part 262 subpart L	Proposed new provision.

B. SQG and LQG Conditions for Exemption (40 CFR 262.34)

SQGs and LQGs may accumulate their hazardous waste on site without a permit or without having interim status provided they follow all of the conditions for exemption established in § 262.34. Section 262.34 can be difficult to navigate because the SQG and LQG conditions for exemption are intertwined and there are many references to sections in 40 CFR part 265. Therefore the Agency is proposing to break § 262.34 into three new sections at §§ 262.15, 262.16 and 262.17. Section 262.15 would establish the conditions for exemption for SQGs and LQGs who wish to operate an SAA, § 262.16 would establish conditions for exemption for SQGs, and § 262.17 would establish the conditions for exemption for LQGs.

1. Satellite Accumulation Area Conditions for Exemption for SQGs and LQGs (40 CFR 262.15)

Many generators use an SAA at their sites. These areas allow generators to accumulate hazardous waste near the point of generation, which provides for

efficiencies and greater safety in the handling of hazardous waste. When the generator has accumulated 55 gallons of hazardous waste (or one quart of acutely hazardous waste) in the SAA, the generator must then move the hazardous waste to the 90- or 180-day central accumulation area within three days. Currently the conditions for exemption for operating an SAA are located at § 262.34(c). The location of this provision in the regulations creates confusion as to whether it applies to LQGs only or both SQGs and LQGs because it is located between the hazardous waste accumulation conditions for LQGs and those for SQGs. Therefore, the Agency is proposing to move 40 CFR 262.34(c) into its own section at § 262.15 titled, ''Satellite accumulation area regulations for small and large quantity generators.''

Additionally, the Agency is proposing to duplicate §§ 265.171, 265.172 and 265.173(a) (which are currently referenced from § 262.34(c)(1)(i)) into § 262.15 in order to eliminate cross-referencing and improve the user friendliness of the regulations. Table 5—Crosswalk of Existing Citations to Proposed Citations for SAAs provides a summary of the crosswalk between existing and proposed regulations for SAAs.

TABLE 5—CROSSWALK OF EXISTING CITATIONS TO PROPOSED CITATIONS FOR SAAS

Regulation	Existing citation	Proposed citation
Satellite Accumulation Area Provisions	§ 262.34(c)	§ 262.15.
Selected Part 265 Subpart I Provisions	§ 265.171	§ 262.15(a)(1)(i).
Selected Part 265 Subpart I Provisions	§ 265.172	§ 262.15(a)(1)(ii).
Selected Part 265 Subpart I Provisions	§ 265.173(a)	§ 262.15(a)(1)(iii).

2. Conditions for Exemption for an SQG Accumulating Hazardous Waste (§ 262.16)

As previously mentioned, the Agency is proposing to create 40 CFR 262.16 titled, ''Conditions for exemption for a small quantity generator that accumulates hazardous waste.'' This reorganization would move § 262.34(d) through (f) and (m) into § 262.16. Specifically, the Agency proposes to move the bulk of § 262.34(d) to § 262.16(b),[122] move § 262.34(e) to § 262.16(d), move § 262.34(f) to § 262.16(e) and move § 262.34(m) to § 262.16(f). Paragraph (c) of § 262.16, which covers the mixing of hazardous waste, is a new paragraph that EPA is proposing to add in this rulemaking.[123] EPA is also proposing to add subtitles and eliminate several cross-references to 40 CFR part 265 in order to make the regulations easier to navigate.

a. Addition of subtitles. EPA is proposing to add subtitles to § 262.16 to highlight to the reader the topic of each section or paragraph. Every subtitle is italicized after the regulatory citation. For example § 262.16(b)(2) addresses ''*Accumulation in Containers.*''

b. Incorporating 40 CFR part 265 subpart I, § 265.201, and part 265 subpart C into 40 CFR 262.16. EPA is proposing to integrate three sections of 40 CFR part 265—subpart I, § 265.201 and subpart C—into § 262.16. First, at § 262.34(d)(2), the regulations state an SQG must comply with subpart I of part 265 except for §§ 265.176 and 265.178. Therefore, EPA is proposing to incorporate the text of the appropriate subpart I regulations at § 262.16(b)(2). Second, at § 262.34(d)(3) the regulation states that an SQG must comply with § 265.201 in subpart J when using a tank. Thus, EPA is proposing to incorporate the text of all of § 265.201 except for paragraph (a) at § 262.16(b)(3). Paragraph (a) of § 265.201 is not necessary because it describes what is already stated in § 262.16—the requirements for an SQG accumulating hazardous waste in a tank for less than 180 days and accumulating no more than 6,000 kg on site at any time. Third § 262.34(d)(4) states an SQG must comply with subpart C of part 265. Therefore, EPA is proposing to incorporate the text of subpart C—Preparedness and Prevention—at § 262.16(b)(8).

c. Other part 262 provisions for SQGs. In addition, part 262 subpart L would contain the newly proposed standards for SQGs who episodically generate higher amounts of hazardous waste to maintain their designation as SQGs during these episodic events. Also, § 262.35 would include the landfill ban for liquids that applies to SQGs and LQGs.

Table 6—Crosswalk of Existing Citations to Proposed Citations for SQGs provides a summary of changes between the existing and proposed citations for SQGs.

TABLE 6—CROSSWALK OF EXISTING CITATIONS TO PROPOSED CITATIONS FOR SQGS

Regulation	Existing citation	Proposed citation	Comment
Definition of Small Quantity Generator	§ 262.34(d)	§ 260.10	
Accumulation Time Limit	§ 262.34(d)	§ 262.16(b)	
Accumulation Limit	§ 262.34(d)(1) and (f)	§ 262.16(a) and (e)	
Accumulation in Containers	§ 262.34(d)(2) references part 265 subpart I.	§ 262.16(b)(2)	
Accumulation in Tanks	§ 262.34(d)(3) references part 265 subpart J.	§ 262.16(b)(3)	
Marking of Tanks and Containers	§ 262.34(d)(4) references § 262.34(a)(2) and (3).	§ 262.16(b)(6)	
Preparedness and Prevention	§ 262.34(d)(4) references part 265 subpart C and § 262.34(d)(5).	§ 262.16(b)(8) and (9)	
Land Disposal Restrictions	§ 262.34(d)(4) references part 268.	§ 262.16(b)(7)	

[122] The portions of § 262.34(d) that state what the generation limits are for this category of generator would be moved to the definition of ''small quantity generator'' in § 262.10.

[123] For a detailed discussion of this proposed addition please see section VII.B of this preamble.

TABLE 6—CROSSWALK OF EXISTING CITATIONS TO PROPOSED CITATIONS FOR SQGS—Continued

Regulation	Existing citation	Proposed citation	Comment
Transporting Over 200 Miles	§ 262.34(e)	§ 262.16(d)	
Accumulation Time Limit Extension	§ 262.34(f)	§ 262.16(e)	
Episodic Generation	N/A	Part 262 subpart L	Proposed new provision.
Landfill Ban for Liquids	§ 258.28	§ 262.35	

3. Conditions for Exemption for an LQG Accumulating Hazardous Waste (40 CFR 262.17)

As previously mentioned the Agency is proposing to create 40 CFR 262.17 titled, ''Conditions for exemption for a large quantity generator that accumulates hazardous waste.'' The Agency is proposing to move § 262.34(a), (b), (g) through (i) and (m) into § 262.17. Specifically, the Agency is proposing to move § 262.34(a) to § 262.17(a), move § 262.34(b) to § 262.17(b), move § 262.34(g) to § 262.17(c), move § 262.34(h) to § 262.17(d), move § 262.34(i) to § 262.17(e), and move § 262.34(m) to § 262.16(g). EPA is additionally proposing to delete paragraphs (j) through (l), which deal with Performance Track, since the program is no longer in operation.[124] Paragraph (f) of § 262.17, which deals with the mixing of hazardous waste, is a new paragraph being proposed in this rulemaking.[125] EPA is also proposing to add subtitles and eliminate some cross-references to part 265 in order to make the regulations easier to navigate.

a. Addition of subtitles. EPA is proposing to add subtitles to § 262.17 to highlight to the reader the central concept addressed by each section or paragraph. Every subtitle is italicized after the regulatory citation. For example § 262.17(a)(1) addresses ''accumulation in containers.''

b. Incorporating 40 CFR part 265 subpart I into 40 CFR 262.17. EPA is proposing to incorporate the 40 CFR part 265 subpart I regulations, which are currently referenced at § 262.34(a)(1)(i), into the proposed § 262.17(a)(1). EPA also considered incorporating the text of other subparts of part 265 that contain technical standards for LQGs and that are currently referenced in § 262.34 into the new section § 262.17 (*i.e.,* part 265 subparts J, W, AA, BB, and CC), but ultimately decided not to incorporate these due to the length of these subparts.

Section 262.35 would also include the landfill ban for liquids that applies to SQGs and LQGs. EPA requests comment on the proposed changes.

c. Emergency planning and procedures regulations for LQGs in part 265 subpart M. EPA is proposing to remove the reference to part 265 subparts C and D for the preparedness, prevention, and emergency procedure regulations for LQGs and instead incorporate those regulations in part 262 with the other generator regulations. However, due to the length of these subparts, rather than copying the text of these subparts to § 262.17, EPA is proposing to copy these into a new subpart M in part 262. EPA believes that including these provisions in part 262, along with the rest of the generator regulations, will make the regulations easier to navigate. EPA requests comment on this proposed change.

d. *Other part 262 provisions for LQGs.* In addition, § 262.17(g) would contain the newly proposed standards for LQGs who accept and consolidate hazardous waste from CESQGs. Also, § 262.35 would include the landfill ban for liquids that applies to SQGs and LQGs.

Table 7—Crosswalk of Existing Citations to Proposed Citations for LQGs provides a summary of changes between the existing and proposed citations for LQGs.

TABLE 7—CROSSWALK OF EXISTING CITATIONS TO PROPOSED CITATIONS FOR LQGS

Regulation	Existing citation	Proposed citation	Comment
Definition of Large Quantity Generator	N/A	§ 260.10	
Accumulation Time Limit	§ 262.34(a)	§ 262.17(a)	
Accumulation in Containers	§ 262.34(a)(1)(i) references part 265 subparts I, AA, BB, and CC.	§ 262.17(a)(1) (§ 262.17(a)(1) also references part 265 subparts AA, BB, CC).	There is still a cross-reference to part 265 subparts AA, BB, and CC because of the length of these regulations.
Accumulation in Tanks	§ 262.34(a)(1)(ii) references part 265 subparts J, AA, BB, and CC.	§ 262.17(a)(2) references part 265 subparts J, AA, BB, CC.	There is still a reference to part 265 because of the length of these regulations.
Accumulation on Drip Pads	§ 262.34(a)(1)(iii) (§ 262.34(a)(1)(iii) also references part 265 subpart W).	§ 262.17(a)(3) (§ 262.17(a)(3) also references part 265 subpart W).	Recordkeeping provisions move to part 262.17 and the extensive technical standards remain in part 265.
Accumulation in Containment Buildings	§ 262.34(a)(1)(iv) (§ 262.34(a)(1)(iv) also references part 265 subpart DD).	§ 262.17(a)(4) (§ 262.17(a)(4) also references part 265 subpart DD).	Recordkeeping provisions move to part 262.17 and the extensive technical standards remain in part 265.
Marking and Labeling	§ 262.34(a)(2) and (3)	§ 262.17(a)(5)	

[124] For a detailed discussion of this proposed deletion please see section VIII.K of this preamble.

[125] For a detailed discussion of this proposed addition please see section VII.A.2 of this preamble.

TABLE 7—CROSSWALK OF EXISTING CITATIONS TO PROPOSED CITATIONS FOR LQGS—Continued

Regulation	Existing citation	Proposed citation	Comment
Preparedness, Prevention, and Emergency Procedures	§ 262.34(a)(4) references part 265 subparts C and D.	§ 262.17(a)(6) references part 262 subpart M.	Cross-references remain but to a subpart of the generator regulations.
Personnel Training	§ 262.34(a)(4)	§ 262.17(a)(7)	
Land Disposal Restrictions	§ 262.34(a)(4) references applicable parts of part 268.	§ 262.17(a)(6)(ii)	
Extension of Accumulation Times	§ 262.34(b)	§ 262.17(b)	
Accumulation of F006	§ 262.34(g) through (i)	§ 262.17(c) through (e)	
Accepting waste from CESQGs to consolidate before sending to TSDF.	N/A	§ 262.17(g)	Proposed new provision.
Rejected Loads	§ 262.34(m)	§ 262.17(h)	
Landfill Ban for Liquids	§ 258.28	§ 262.35	

EPA requests comment on the proposed reorganization to the hazardous waste generator regulations and, in particular, on whether the proposed changes would improve the user friendliness and utility of the regulations.

C. EPA Identification Number (40 CFR 262.12)

In the interest in keeping the generator regulations in a logical order, EPA is proposing to move existing § 262.12—EPA identification number—to § 262.18. Section 262.12 would then be reserved. EPA believes this will improve the flow of the hazardous waste generator regulations as it places the section addressing EPA identification number after § 262.13, which addresses how a generator determines its generator category. This proposed sequence is appropriate because a hazardous waste generator must first determine what generator category it belongs to in order to determine which regulations—including the requirement to obtain an EPA ID number—it must comply with. (For example, SQGs and LQGs must obtain an EPA identification number, but a CESQG does not).

EPA is requesting comment on these proposed changes.

XIV. Technical Corrections and Conforming Changes to 40 CFR Parts 260 through 265, 270, 273, and 279

The Agency is also proposing a number of technical corrections and conforming changes to the hazardous waste generator regulations. This proposed rule eliminates the regulatory text for discontinued programs, identifies areas where conforming changes are necessary, updates existing regulatory text to account for new programs, improves the readability of certain paragraphs, and corrects typographical errors. Specifically, the Agency is proposing the following changes, in order of the existing regulations:

(1) Revise § 260.3, which currently reads, ''As used in parts 260 through 265 and 268 of this chapter.'' This text fails to account for additional parts of the regulations that were promulgated after 1986, such as parts 266, 267, and 270 through 273. The Agency is proposing to revise this to read, ''As used in parts 260 through 273 of this chapter.''

(2) Modify the definitions of ''Treatability Study,'' ''Universal Waste Handler,'' ''Universal Waste Transporter'' in § 260.10 to only capitalize the first word (*e.g.,* ''Universal'') in order to match the formatting in the rest of this section.

(3) Remove the closed parenthesis after ''(*e.g.,*)'' from § 261.1(c)(6).

(4) Improve the readability of § 261.4(a)(7), which currently reads, ''Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in § 261.1(c) of this chapter.'' The Agency is proposing to revise the language to read ''Spent sulfuric acid used to produce virgin sulfuric acid provided it is not accumulated speculatively as defined in § 261.1(c) of this chapter.''

(5) Make conforming changes to citations that reference § 261.5 to reflect EPA's proposal to move these regulations. The citations where references to § 261.5 are to be revised include all the following: §§ 262.10(b), 262.10(l)(2), 262.201(b), 262.204(a), 262.210(b)(3), 262.210(d)(2), 262.211(e)(3), 262.213(a)(2), 262.213(a)(3), 262.213(b)(2), 262.216(b), 264.1(g)(1), 268.1(e)(1), 270.1(c)(2)(iii), and 279.10(b)(3). In § 261.33(e) and (f), EPA is proposing to altogether remove the references to §§ 261.5(e) and 261.5(a) and (g), respectively, because the quantity limits for hazardous wastes are contained in EPA's proposed definitions for very small quantity generator, small quantity generator, and large quantity generator.

(6) Replace the word ''waste'' with ''water'' in § 261.5(e)(2), which reads, ''A total of 100 kg of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water. . . .'' Prior to 1985, the word ''waste'' was ''water'' and the Agency is unable to determine why this change occurred. (In the proposed reorganization, this language is moved to § 260.10 and is contained in the definitions of large quantity generator, small quantity generator and very small quantity generator.)

(7) Revise § 261.420 to clarify that the requirement in § 261.411(c) that all employees be familiar with proper waste handling and emergency procedures relevant to their responsibilities applies to facilities that generate or accumulate more than 6,000 kg of hazardous materials as well as to facilities that generate or accumulate less than that amount.

(8) Remove Notes 1 and 2 from § 262.10. Note 1 states that the provisions of § 262.34 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of § 262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility. Note 2 states that a generator who treats, stores, or disposes of hazardous waste on site must comply with the applicable standards and permit requirements set forth in 40 CFR parts 264, 265, 266, 268, and 270. These notes are no longer necessary should EPA finalize the changes in this proposed rule, which include replacing § 262.34 with a new reorganization of the regulations that address Note 1and proposing regulations in § 262.10 that address Note 2.

(9) Remove the extra period in the last line of the paragraph at § 262.10(l).

(10) Make conforming changes to sections that reference § 262.34 to reflect EPA's proposal to move these regulations. The citations where references to § 262.34 are to be revised include the following: §§ 262.10(l)(1), 262.201(a), 262.201(a), 262.216(a), 264.1(g)(3), 264.71(c), 264.1030(b)(2), 264.1050(b)(2), 265.1(c)(7), 265.71(c), 265.1030(b)(2) and (b)(3), 268.7(a)(5) and 270.1(c)(2)(i).

(11) Make conforming change to remove and reserve § 262.40(c) because this section (regarding records for waste determinations) is proposed to move to § 262.11.

(12) Correct the statutory citation at § 262.43 that currently refers to sections 2002(a) and 3002(6) of the Act. The reference to 3002(6) should be to 3002(a)(6). Additionally, the word ''he'' is removed in order to be gender neutral.

(13) Remove references to Project XL programs that have been discontinued. These include the New York State Public Utilities Project XL program at subpart I of 40 CFR part 262 and the University Laboratories Project XL program at subpart J of 40 CFR part 262. We have also removed and reserved the reference at § 262.10(j) to the University Laboratories Project XL.

(14) Make two conforming changes to the definition of ''central accumulation area'' in § 262.200 in subpart K. We are proposing to move this definition from this location to § 260.10 with the following revisions. First, because of the reorganization of the regulations in 40 CFR part 262, we are proposing to change the references to the applicable regulations for the central accumulation areas that are used in the definition of central accumulation area in § 262.200. For LQGs, we are proposing that the reference to § 262.34(a) be changed to § 262.17 and for SQGs, we are proposing that the reference to § 262.34(d) through (f) be changed to § 262.16. Second, we are proposing to remove the reference to Performance Track in the definition of ''central accumulation area'' in § 262.200 of subpart K because the Performance Track program has been terminated (74 FR 22741; May 14, 2009). Both of these conforming changes are reflected in the proposed definition of ''central accumulation area'' being added in § 260.10.

(15) Make conforming changes to citations that use the term ''conditionally exempt small quantity generator'' to reflect EPA's proposed change to the term ''very small quantity generator.'' The citations where ''conditionally exempt small quantity generator'' is to be replaced with ''very small quantity generator'' include: §§ 262.200, 262.201(b), 262.202(b), 262.203(a), 262.203(b)(2), 262.204(a), 262.209(b), 262.210(d)(2), 262.213(a)(3), 268.1(e)(1), 270.1(c)(2)(iii), 273.8, 273.8(a)(2), 273.81(b), 279.10(b)(3).

(16) Improve the readability of § 264.170, which currently reads, ''The regulations in this subpart apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste. . . .'' The Agency is proposing to revise this language to read, ''The regulations in this subpart apply to owners and operators of all hazardous waste facilities that store hazardous waste in containers. . . .''

(17) Improve the readability of the first sentence in § 264.191(a), which currently reads, ''For each existing tank system. . . . the owner or operator must determine that the tank system is not leaking or is unfit for use.'' The Agency is proposing to revise this language to read, ''For each existing tank system . . . the owner or operator must determine that the tank system is not leaking or is fit for use.''

(18) Improve the readability of § 265.1(c)(7), which currently reads, ''A generator accumulating waste on-site in compliance with § 262.34 of this chapter, except to the extent the requirements are included in § 262.34 of this chapter.'' The Agency is proposing to revise the sentence to read, ''A generator accumulating waste on site except to the extent the requirements are included in §§ 262.16, and 262.17 of this chapter.''

(19) Correct the list of **Federal Register** notices in § 265.54 to be consistent with the list of references in § 264.54. The reference to 53 FR 37935, September 28, 1988, is missing from § 265.54.

(20) Add to § 265.111(c) a missing regulatory citation to § 265.445 applicable to drip pads. Section 265.111(c) would then read, ''Complies with the closure requirements of this subpart, including, but not limited to, the requirements of §§ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, 265.404, 265.445, and 265.1102.''

(21) Add to § 265.114 a missing regulatory citation to § 265.445 applicable to drip pads and § 265.1102 applicable to containment buildings. Section 265.114 would then read, ''During the partial and final closure periods, all contaminated equipment, structures and soil must be properly disposed of, or decontaminated unless specified otherwise in §§ 265.197, 265.228, 265.445, 265.258, 265.280, 265.310 or 265.1102. . . .''

(22) Make a conforming change to remove and reserve § 265.201 (Special requirements for generators of between 100 and 1,000 kg/mo that accumulate hazardous waste in tanks). EPA is proposing to move this section into proposed § 262.16.

(23) Add a missing reference to 40 CFR part 268 in § 270.1(a)(3), which currently reads, ''The RCRA permit program. . . . in 40 CFR parts 264, 266, and 267.'' Therefore, the Agency is revising this to read, ''The RCRA permit program . . . in 40 CFR parts 264, 266, 267, and 268.''

XV. Request for Comment on Use of Electronic Tools to Streamline Hazardous Waste Reporting and Recordkeeping Requirements

As part of this proposed rule, the Agency is also exploring the feasibility of using electronic tools to streamline hazardous waste reporting and recordkeeping requirements. Two examples previously discussed include requesting comment on an electronic hazardous waste determination decision tool and development of an electronic application containing information from the executive summaries of contingency plans that emergency responders can use in responding to an emergency.

Information technology can be an important step toward improving RCRA implementation. Many aspects of our lives can currently be managed electronically. We bank from home, send pictures from phones, and track packages across the country from our desks. Yet, much of the information reported to EPA and states by generators is still submitted on paper, which requires government staff or contractors to manually enter the data into federal and state data systems. Delays in data processing can cause important information to go unnoticed. In addition, errors introduced through manual data entry can require aggravating and time-consuming correction processes by both regulated entities and the government.

Use of electronic tools can provide the regulated community, regulators, and the public with more accurate, complete, and timely information on regulated activities, pollution, and compliance. Software that allows for self-correction by flagging potential errors, as is done by EPA's Toxics Release Inventory—Made Easy web tool or the Greenhouse Gas Reporting system, can even help prevent mistakes before they happen, saving both regulated entities and regulators time and money. Electronic reporting also creates greater transparency as greater information accessibility can inspire better compliance by facilities.

Electronic reporting, in this context, is not simply emailing files to the government. Rather, it would be a system that begins with an electronic ''smart'' form or web tool to guide the regulated entity thru recordkeeping and reporting processes, such as waste determinations. The system would also include data standards, identity proofing, and a government database to receive data. Error prevention and compliance assistance could be integrated into the reporting tool. For example, forms can be configured to self-populate with data from prior forms (*e.g.,* names and addresses), to question entries that appear erroneous (*e.g.,* entries an order of magnitude or more above or below data from prior years or above or below reasonable levels) and to prevent submission before required data fields are completed.

The Agency believes electronic tools have the potential to greatly assist generators in complying with the existing and proposed hazardous waste regulations. For example, EPA believes that electronic tools could help generators make more accurate hazardous waste determinations. As previously discussed, an app could be used as a decision support tool to help guide generators through the hazardous waste determination process for each waste stream they generate. This tool could walk generators through a series of question and answer steps, identify relevant sources in making the determination, electronically generate and store all of the associated data and records that generators may be required to maintain, and provide assistance on proper management of the identified wastes.

Other examples include using electronic tools to file notifications required under the rule, such as notifications for episodic generators, for LQGs that desire to take advantage of consolidating waste from CESQGs that are within the same company, and for generators that close a unit that accumulated hazardous waste. In this case, the electronic tools could be useful in submitting required reports, and in electronically generating, storing, and filing all reports.

Other areas of the RCRA regulations where electronic tools may assist with compliance include the following:

- Determining monthly generator category;
- Maintaining records of shipments;
- Maintaining contingency planning and emergency procedures recordkeeping and reporting requirements;
- Maintaining inventory logs for documenting accumulation time in tanks, drip pads, and containment buildings; and
- Maintaining personnel training documents and records.

EPA believes the use of electronic tools would help hazardous waste generators improve and maintain compliance with the RCRA regulations, thereby reducing violations and increasing environmental benefits. EPA also believes the costs of receiving and evaluating reports from generators could be greatly reduced for EPA and state/tribal agencies. For example, when the Toxics Release inventory switched from paper reporting to e-reporting, costs of managing the data went down by 99% and accuracy was increased.

EPA is not aware of any existing electronic tools that would specifically assist generators with meeting the RCRA regulatory requirements. However, EPA did identify a variety of state and academic internet-based hazardous waste determination tools and workbooks (as discussed in section VIII.B.8.).

EPA is considering a range of electronic reporting options. The Agency may explore developing certain tools for use by the regulated community or may invite third-party vendors to provide such tools. The latter option could be similar to the Internal Revenue Service (IRS) model for electronic tax preparation. The IRS model uses third-party software providers for tax data collection and transmission (*e.g.,* TurboTax, TaxACT, or others) from private citizens and businesses. Under this option, the Agency would not purchase services from any provider. All financial transactions would be between the providers and members of the regulated community. EPA would specify the required data for collection and the requirements necessary for exchanging data (*e.g.,* data delivery protocols, standards, guidelines, and procedures compliant with EPA's Cross-Media Electronic Reporting Regulation (CROMERR) (see 40 CFR part 3)).

EPA welcomes public comment on specific reports and data types that could be reported electronically if the Agency were to move forward with exploring electronic reporting, including what the quality assurance and quality control procedures should be with respect to data timeliness, accuracy, completeness, and consistency. EPA also asks for comment on which reports commenters think should be highest priority for electronic reporting. EPA solicits comment on the option of allowing software vendors to offer their clients federal electronic reporting services compliant with the final rule and on potential methods for determining whether third-party software vendors meet the minimum federal electronic data requirements. EPA would need to certify or approve the methods used by the software to authenticate, encrypt, and possibly send compliance monitoring and other data. EPA would also like to hear from authorized RCRA programs that have experience in implementing electronic reporting, especially their experience with phasing in implementation. EPA also requests comment on whether electronic tools should be provided by EPA and/or states and tribes.

XVI. Enforceability

Persons that generate hazardous waste must comply with all the applicable independent requirements of the RCRA hazardous waste regulations, unless they obtain a conditional exemption from those requirements, provided by § 262.14 (formerly § 261.5), or by § 262.15, 262.16, or 262.17 (formerly all contained in § 262.34), or by § 262.70. If a person violates independent requirements or fails conditions for exemption, EPA may bring an enforcement action under section 3008 of RCRA for violations of the independent requirements. Where a generator does not comply with conditions for an exemption and is therefore no longer exempt, the enforcement action will allege violations of those independent requirements from which the generator was attempting to remain exempt. States may choose to enforce against violations of state hazardous waste requirements under state authorities.

As with any violation, EPA and authorized states have enforcement mechanisms available that range in severity. In addition, EPA and authorized states have flexibility in applying these mechanisms to the various responsible parties as appropriate to the specific circumstances. Some of the enforcement mechanisms include sending a notice of violation, ordering compliance, ordering that the operations cease, or assessing penalties as appropriate. Nothing in this proposal affects any of these enforcement mechanisms EPA or the states may utilize nor the manner in which enforcement cases will be initiated or pursued.

XVII. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize states to administer the

RCRA Subtitle C hazardous waste program. Following authorization, the authorized state program operates in lieu of the federal regulations. EPA retains enforcement authority to enforce the authorized state Subtitle C program, although authorized states have primary enforcement authority. EPA also retains its authority under RCRA sections 3007, 3008, 3013, and 7003. The standards and requirements for state authorizations are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. EPA did not issue permits for any facilities in that state, since the state was now authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new requirements did not take effect in an authorized state until the state adopted the equivalent state requirements.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. While states must still adopt HSWA related provisions as state law to retain authorization, EPA implements the HSWA provisions in authorized states, including the issuance of any permits pertaining to HSWA requirements, until the state is granted authorization to do so.

Authorized states are required to modify their programs only when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements.[126] RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Effect on State Authorization of Proposed Rule

This notice proposes regulations that amend certain sections of the hazardous waste generator regulations in 40 CFR parts 260 through 265, 268, 270, 273, and 279. These regulations were promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, and 3010 of RCRA). This notice proposes changes to the RCRA Subtitle C program under non-HSWA authority.

Thus, the standards, if finalized, would be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their programs. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the federal program.

Several of the revisions to the proposed hazardous waste generator regulations are more stringent than those promulgated in various rules that went into effect when the RCRA hazardous waste Regulations were first initiated (*e.g.,* 1980–1986). These include the following: (1) requiring both SQGs and LQGs to document their non-hazardous waste determinations when they have generated a solid waste (section VIII.B of this preamble); (2) requiring SQGs to re-notify every two years if they have not done so otherwise through an alternative process (section VIII.C of this preamble); (3) requiring SQGs and LQGs to better define the contents and associated risks of hazardous wastes accumulated in tanks, containers, drip pads, and containment buildings, as well as when hazardous waste is accumulated in satellite accumulation areas (sections VII.E., VIII.F and VIII.I of this preamble); (4) requiring LQGs to notify EPA or their authorized state when they plan to close either a hazardous waste accumulation unit or their generator site (section VIII.G of this preamble); (5) requiring new LQGs to prepare an executive summary of their contingency plans to assist responders in an emergency (section VIII.H of this preamble); (6) requiring LQGs to submit a biennial report that identifies all of the hazardous wastes generated in the calendar year, not just for the months the facility was an LQG (sections VIII.L of this preamble); (7) requiring transfer facilities to identify the contents and associated risks of containers that have been consolidated with other hazardous wastes (section X of this preamble); and (8) promulgating prohibitions on storage of restricted wastes (section XII of this preamble). Therefore, states that have adopted the base RCRA program would be required to modify their hazardous waste programs to incorporate equivalent provisions if these standards are finalized.

On the other hand, three of the proposed revisions would be considered less stringent than the current hazardous waste regulations. These revisions include the following: (1) Allowing CESQGs to voluntarily send hazardous waste to LQGs under the control of the same person to facilitate the cost-effective management of hazardous wastes within the same company (section VII.C of this preamble); (2) allowing CESQGs and SQGs to voluntarily maintain their existing regulatory status if they have an episodic event that generates additional amounts of hazardous waste which would have resulted in them moving into a higher generator category for a short period of time, so long as they comply with specified conditions (section IX of this preamble); and (3) allowing LQGs to voluntarily apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary provision (section XI.B of this preamble). Thus, authorized states may, but would not be required to, adopt these changes.

This proposed rule also includes several revisions that are neither more nor less stringent, such as (1) mixing a non-hazardous waste with a hazardous waste (section VII.B of this preamble); (2) defining central accumulation area (section VI.C of this preamble); (3) prohibiting generators from sending hazardous liquids to landfills (section VIII.M of this preamble); (4) reorganizing the hazardous waste generator regulations to make them more user-friendly (section XIII of this preamble); (5) deleting the performance track regulations (section VIII.K of this preamble); (6) replacing the list of specific data elements with a requirement to complete and submit all data elements required in the biennial report form (section VIII.L of this preamble); and (7) technical corrections and conforming changes to various parts of the RCRA regulations (section XIV of this preamble). Thus, authorized states may, but would not be required to, adopt these changes.

[126] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes state programs.

XVIII. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' in that it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in EPA's Regulatory Impact Analysis (RIA) document titled ''Assessment of the Potential Costs, Benefits, and other Impacts of the Improvements to the Hazardous Waste Generator Regulatory Program, As Proposed.'' A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here.

Based on the impact estimates presented in the RIA, EPA does not expect that this action will be ''economically significant'' because the estimated annualized cost for compliance with the proposed changes to the hazardous waste generator regulatory program is significantly less than the $100 million annual effect threshold of Section 3(f)(1) of Executive Order 12866. The RIA estimates the affected universe is between 353,000 and 543,000 entities. Of this universe, between 293,000 and 469,000 CESQGs will only be affected if they choose to take advantage of two voluntary programs being proposed.

EPA estimates the future annualized cost to industry to comply with the requirements of this proposed action at between $6.2 and $17.4 million (at 7% discount rate). Similarly, the annualized net cost savings or benefits for facilities opting to take advantage of two voluntary programs in the rule (*e.g.,* consolidation of CESQG waste by large quantity generators under the same ownership, and generators who would not be required to change generator status as a result of an episodic event) is between $6.2 and $12.2 million (at 7% discount rate) resulting in a net annualized cost of between $0.1 million and $5.2 million.

In addition to estimating the cost for this proposed rule, the RIA also provides both quantitative and qualitative (*i.e.,* non-monetized) descriptions of future expected benefits for this action primarily consisting of improved industry environmental compliance.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2513.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

This proposed rule is necessary for EPA and authorized states to oversee the generation and management of hazardous waste. EPA is proposing the establishment of these information collection requirements under the authority of RCRA Subtitle C. There are several provisions to this rule that will require respondents to either submit information to EPA or authorized state, or maintain records at their facility. For example, generators will have to notify EPA or their authorized state they plan to take advantage of two voluntary provisions that will provide greater flexibility in how they manage hazardous waste (*i.e.,* CESQG consolidation of their hazardous waste by a LQG under the same person or company; and episodic generation of hazardous waste resulting in a temporary change in regulatory status).

Similarly, SQGs will have to re-notify EPA or their authorized state every other year that they have not changed their regulatory category to support effective inspections and program management activities. In an effort to improve program compliance, both SQGs and LQGs will be required to maintain records supporting the basis for their non-hazardous waste determinations (*i.e.,* a generator generated a solid waste but not a hazardous waste). Similarly, new LQGs will be required to develop and submit an executive summary of their emergency response plan to their Local Emergency Planning Committee to effectively assist emergency responders responding to an emergency.

EPA and state agencies will use the collected information to ensure that hazardous wastes are managed in a cost-effective manner that minimizes risks to human health and the environment. Local emergency response organizations will also use the collected information to prepare contingency plans to reduce risks to emergency responders and bystanders. EPA does not expect confidentiality to be an issue in generators either providing information to EPA or an authorized state or in maintaining the necessary records supporting a non-hazardous waste determination. The statutory authority to collect the proposed information is found at RCRA 3002 (42 U.S.C. 6922) and RCRA 3003 (42 U.S.C. 6923).

Respondents/Affected Entities: Private sector.

Respondent's Obligation to Respond: Mandatory per RCRA 3002 (42 U.S.C. 6922) and RCRA 3003 (42 U.S.C. 6923).

Estimated Number of Respondents: 96,375

Frequency of Response: On occasion.

Total Estimated Burden: 304,318 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total Estimated Cost: $16.8 million (per year), includes $3.9 million annualized capital or operation & 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 EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *oria_submissions@omb.eop.gov*, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than October 26, 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 the RFA. The small entities directly regulated by this proposed rule include entities that generate hazardous waste across various industries, including, but not limited to, printing, petroleum refining, chemical manufacturing, plastics and resin manufacturing, pharmaceutical manufacturing, paint and coating, iron and steel mills, metal and metal product manufacturing, electroplating, printed circuit board manufacturing, semiconductor manufacturing, motor

vehicle parts manufacturing, research and development, hazardous waste treatment and disposal, academic institutions, and hospitals. We have determined that between 25,550 and 33,800 small entities impacted will experience an impact of less than 1% of annual sales for all affected small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Many of the changes in this proposed rulemaking come from outreach efforts to generators of hazardous waste, including small entities, and are designed to make the generator regulations more accessible and user friendly. As part of the proposal, EPA is including several provisions that would provide increased flexibility for small entities in managing hazardous waste, such as the ability for hazardous waste generators to use the episodic generator provisions if they have a distinct event that would otherwise cause them to have to bump up to a higher generator category. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule does not contain an unfunded mandate of $100 million as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The RIA estimates that the state government share of future average annualized direct costs for the proposed rule requirements to range between $1.2 million and $2.3 million per year. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The rulemaking proposes clarifications and modifications to the hazardous waste generator regulations, which impacts only those entities that generate hazardous waste. Small governments would only be subject to the changes in the proposed rule if they generated hazardous waste subject to the RCRA hazardous waste requirements.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule simply proposes clarifications and modifications to the existing hazardous waste generator regulations. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with state officials in developing this action.

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

This action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Under the RCRA statute, the federal government implements hazardous waste regulations directly in Indian Country. Thus, the proposed changes to the hazardous waste regulations would not impose any direct costs on tribal governments.

The EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to permit them to have meaningful and timely input into its development. A summary of that consultation is provided in the docket for this action.

As required by section 7(a), the EPA's Tribal Consultation Official has certified that the requirements of the executive order have been met in a meaningful and timely manner. A copy of the certification is included in the docket for this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The Agency does not believe that this action presents risks to the public. In fact, there are several components to this proposed rule that modify the existing hazardous waste generator regulations to enhance environmental protection in the local community. Examples include (1) requiring LQGs and SQGs to document and maintain records of their waste determinations, including determinations that a solid waste is a non-hazardous waste; (2) requiring LQGs and SQGs to provide more detailed marking and labeling information for containers, tanks, drip pads, and containment buildings accumulating hazardous wastes; (3) requiring LQGs to notify EPA or an authorized state when they plan to close either a hazardous waste accumulation unit or their site; (4) requiring LQGs and SQGs to re-notify EPA or the authorized state on a periodic basis of their hazardous waste generator activities; and (5) improving emergency preparedness and response regulations on the part of SQGs and LQGs.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule does not involve the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

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

EPA has determined that this proposed rule increases the level of environmental protection for all affected populations and thus will not have disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. Specifically, there are several components to this proposed rule that modify the existing hazardous waste generator regulations to assist generators in understanding and facilitating improved compliance with the hazardous waste regulations. Examples include modifying regulations regarding mixing of non-hazardous waste with a hazardous waste by a

generator, or when a hazardous waste generator generates both acute and non-acute hazardous waste in the same calendar month. Additionally, EPA is proposing to reorganize the hazardous waste generator rules to make them more user-friendly and therefore assist generators in understanding their responsibilities in managing the hazardous waste they generate safely, which support better environmental protection.

Still other components of this proposed rule enhance environmental protection in the local community, and therefore foster improved environmental protection, including for minority populations and low-income populations. They include, for example, (1) requiring LQGs and SQGs to document and maintain records of their waste determinations, including determinations that a solid waste is a non-hazardous waste; (2) requiring LQGs and SQGs to provide more detailed marking and labeling information for containers, tanks, drip pads, and containment buildings accumulating hazardous wastes; (3) requiring LQGs to notify EPA or an authorized state when they plan to close either a hazardous waste unit or their site; (4) requiring LQGs and SQGs to re-notify EPA or the authorized state on a periodic basis of their hazardous waste generator activities; and (5) improving emergency preparedness and response regulations on the part of SQGs and LQGs.

Furthermore, EPA is also proposing to allow CESQGs to ship their hazardous waste to an LQG under the control of the same person. As described in section VII.C of the preamble, this may increase environmental protection in the local community because hazardous waste generated by CESQGs would be subject to more stringent requirements upon receipt by the LQG, including ultimate management by a RCRA permitted TSDF (as opposed to being managed possibly in a municipal solid waste landfill). Although this proposed change could result in an increase in traffic for certain communities, EPA believes the increase would not be significant given that CESQGs currently may send their hazardous waste to a number of destinations, including municipal and non-municipal solid waste management facilities.

Lastly, EPA is proposing alternative standards for CESQGs and SQGs that would allow these entities to maintain their generator category if generating hazardous waste from an episodic event. Although these generators would be allowed to temporarily manage a greater amount of hazardous waste than their normal generator category allows, EPA is proposing conditions under which the hazardous waste generated from an episodic event must be managed in order to maintain protection of human health and the environment. Therefore, EPA does not anticipate disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations from these proposed alternative standards.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 273

Environmental protection, Hazardous materials transportation, Hazardous waste.

40 CFR Part 279

Environmental protection, Petroleum, Recycling, Reporting and recordkeeping requirements.

Dated: August 31, 2015.

Gina McCarthy,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 260— HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

■ 2. Section 260.3 is amended by revising the introductory paragraph to read as follows:

§ 260.3 Use of number and gender.

As used in parts 260 through 273 of this chapter:

* * * * *

■ 3. Amend § 260.10 by:

■ a. Adding in alphabetical order the definitions of ''Acute hazardous waste'', ''Central accumulation area'', ''Large quantity generator'', ''Non-acute hazardous waste'';

■ b. Removing the definition for ''Performance Track member facility'';

■ c. Revising the definition of ''Small quantity generator'';

■ d. Revising the heading of the definition ''Treatability Study'' to read ''Treatability study'';

■ e. Revising the heading of the definition ''Universal Waste Handler'' to read ''Universal waste handler''; and

■ f. Revising the heading of the definition ''Universal Waste Transporter'' to read ''Universal waste transporter''; and

■ g. Adding in alphabetical order the definition of ''Very small quantity generator''.

The revisions and additions read as follows:

§ 260.10 Definitions.

* * * * *

Acute hazardous waste means hazardous wastes that meet the listing criteria in § 261.11(a)(2) and therefore are either listed in § 261.31 of this chapter with the assigned hazard code

of (H) or are listed in § 261.33(e) of this chapter.

* * * * *

Central accumulation area means any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either § 262.16 (for small quantity generators) or § 262.17 (for large quantity generators). A central accumulation area at an eligible academic entity that chooses to be subject to part 262 subpart K must also comply with § 262.211 when accumulating unwanted material and/or hazardous waste.

* * * * *

Large quantity generator is a generator who generates any of the following amounts in a calendar month:

(1) Greater than or equal to 1000 kilograms (2200 lbs) of non-acute hazardous waste;

(2) Greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter; or

(3) Greater than 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter.

* * * * *

Non-acute hazardous waste means all hazardous wastes that are not acute hazardous waste, as defined in this section.

* * * * *

Small quantity generator is a generator who generates the following amounts in a calendar month:

(1) Greater than 100 kilograms (220 lbs) but less than 1000 kilograms (2200 lbs) of non-acute hazardous waste;

(2) Less than or equal to 1 kilogram (2.2 lbs) of acute hazardous waste listed in §§ 261.31 or § 261.33(e) of this chapter; and

(3) Less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter.

* * * * *

Very small quantity generator is a generator who generates less than or equal to the following amounts in a calendar month:

(1) 100 kilograms (220 lbs) of non-acute hazardous waste; and

(2) 1 kilogram (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter; and

(3) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter.

* * * * *

■ 4. Section 260.11 is amended by revising the section heading and paragraph (d)(1) to read as follows:

§ 260.11 Incorporation by reference.

* * * * *

(d) * * *

(1) ''Flammable and Combustible Liquids Code'' (1977 or 1981), IBR approved for §§ 262.16, 264.198, 265.198, 267.202(b).

* * * * *

PART 261— IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

§ 261.1 [Amended]

■ 6. Section 261.1, paragraph (c)(6) is amended by removing ''(*e.g.,*)'' and inserting ''(*e.g.,*'' in its place.

■ 7. Section 261.4 is amended by revising paragraph (a)(7) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(7) Spent sulfuric acid used to produce virgin sulfuric acid provided it is not accumulated speculatively as defined in § 261.1(c) of this chapter.

* * * * *

§ 261.5 [Removed and reserved]

■ 8. Remove and reserve § 261.5.

■ 9. Section 261.6 is amended by adding paragraph (c)(2)(iv) to read as follows:

§ 261.6 Requirements for recyclable materials.

* * * * *

(c) * * *

(2) * * *

(iv) Section 265.75 of this chapter (biennial reporting requirements).

* * * * *

■ 10. Section 261.33 is amended by revising paragraphs (e) introductory text and (f) introductory text to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

* * * * *

(e) The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in paragraphs (a) through (d) of this section, are identified as acute hazardous wastes (H).

* * * * *

(f) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in paragraphs (a) through (d) of this section, are identified as toxic wastes (T).

* * * * *

■ 11. Section 261.420 is amended by adding paragraph (g) to read as follows:

§ 261.420 Contingency planning and emergency procedures for facilities generating or accumulating more than 6000 kg of hazardous secondary material.

* * * * *

(g) *Personnel training.* All employees must be thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 12. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

Subpart A—General

■ 13. Section 262.1 is added to read as follows:

§ 262.1 Terms used in this part.

As used in this part:

Independent requirement means a requirement of part 262 that states an event, action, or standard that must occur or be met; and that applies without relation to, or irrespective of, the purpose of obtaining a conditional exemption from a permit or having interim status under §§ 262.14, 262.15, 262.16, or 262.17.

Condition for exemption means any requirement in §§ 262.14, 262.15, 262.16, or 262.17, that states an event, action, or standard that must occur or be met in order to obtain a conditional exemption from any requirement in parts 124, 262 through 268, or 270, or from any requirement for notification under section 3010 of RCRA.

■ 14. Section 262.10 is amended by:

■ a. Revising paragraphs (a) and (b);

■ b. Removing and reserving paragraph (c);

■ c. Revising paragraph (g);

■ d. Removing and reserving paragraphs (j);

■ e. Revising paragraph (l); and

■ f. Removing Notes 1 and 2.

The revisions and additions read as follows:

§ 262.10 Purpose, scope, and applicability.

(a) The regulations in this part establish standards for generators of hazardous waste as defined by 40 CFR 260.10.

(1) A person who generates a hazardous waste as defined by 40 CFR part 261 is subject to all the applicable independent requirements in the subparts and sections listed below, unless the person is a very small quantity generator that meets the conditions for exemption in § 262.14.

(i) *Independent requirements of a small quantity generator.* (A) Section 262.11 Hazardous waste determination and recordkeeping;

(B) Section 262.13 Generator category determination;

(C) Section 262.18 EPA identification numbers and re-notification for large quantity generators and small quantity generators;

(D) Part 262 subpart B—The manifest;

(E) Part 262 subpart C—Pre-transport requirements;

(F) Section 262.40 Recordkeeping;

(G) Section 262.44 Special independent requirements for small quantity generators;

(H) Part 262 subpart E–subpart F—Imports and exports of hazardous waste;

(I) Part 262 subpart G—Farmers; and

(J) Part 262 subpart H—Transfrontier shipments of hazardous waste for recovery within the OECD.

(ii) *Independent requirements of a large quantity generator.* (A) Section 262.11 Hazardous waste determination and recordkeeping;

(B) Section 262.13 Generator category determination;

(C) Section 262.18 EPA identification numbers and re-notification for large quantity generators and small quantity generators;

(D) Part 262 subpart B—The manifest;

(E) Part 262 subpart C—Pre-transport requirements;

(F) Part 262 subpart D—Recordkeeping and reporting, except § 262.44;

(G) Part 262 subpart E-subpart F—Imports and exports of hazardous waste;

(H) Part 262 subpart G—Farmers; and

(I) Part 262 subpart H—Transfrontier shipments of hazardous waste for recovery within the OECD.

(2) A generator that accumulates hazardous waste on site is a facility that stores hazardous waste and is subject to the applicable requirements of parts 124, 263 through 270, and section 3010 of RCRA, unless it is one of the following:

(i) A very small quantity generator that meets the conditions for exemption in § 262.14;

(ii) A small quantity generator that meets the conditions for exemption in §§ 262.15 and 262.16; or

(iii) A large quantity generator that meets the conditions for exemption in §§ 262.15 and 262.17.

(3) A generator shall not transport, offer its waste for transport, or otherwise cause its waste to be sent to a facility that is not a designated facility, as defined in § 260.10, or not otherwise authorized to receive the generator's waste.

(b) *Determining generator category.* A generator must use 40 CFR 262.13 to determine which provisions of this part are applicable to the generator based on the quantity of hazardous waste generated per calendar month.

* * * * *

(g)(1) A generator's violation of an applicable requirement in 40 CFR part 124, 262 through 268, or 270, or of applicable notification requirements of section 3010 of RCRA, is subject to penalty and injunctive relief under section 3008 of RCRA.

(2) A generator's noncompliance with a condition for exemption in this part is not subject to penalty or injunctive relief under section 3008 of RCRA as a violation of a 40 CFR part 262 condition for exemption. Noncompliance with a condition for exemption in this part results in failure to obtain, or to maintain, such exemption. Failure to obtain or maintain the exemption results in a violation of one or more applicable independent requirements in 40 CFR part 124, 262 through 268, or 270, or of the notification requirements of section 3010 of RCRA. A generator's violation of an independent requirement is subject to penalty and injunctive relief under section 3008 of RCRA.

* * * * *

(l) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of subpart K of this part are not subject to (for purposes of this paragraph, the terms ''laboratory'' and ''eligible academic entity'' shall have the meaning as defined in § 262.200 of subpart K of this part):

(1) The independent requirements of § 262.11 or the regulations in § 262.15 for large quantity generators and small quantity generators, except as provided in subpart K, and

(2) The conditions of § 262.14, for very small quantity generators, except as provided in subpart K.

■ 15. Revise § 262.11 and its section heading to read as follows:

§ 262.11 Hazardous waste determination and recordkeeping.

A person who generates a solid waste, as defined in 40 CFR 261.2, must make an accurate determination of whether that waste is a hazardous waste using the following steps:

(a) A hazardous waste determination for each solid waste must be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste.

(b) A person must determine if the solid waste is excluded from regulation under 40 CFR 261.4.

(c) If the waste is not excluded under 40 CFR 261.4, the person must then use knowledge of the waste to determine if the waste meets any of the listing descriptions under subpart D of 40 CFR part 261. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed includes, but is not limited to, waste origin, composition, the process producing the waste, feedstock, and other relevant information. If the waste is listed, the person may file a delisting petition under 40 CFR 260.20 and 260.22 to demonstrate to the Administrator that the waste from this particular site or operation is not a hazardous waste.

(d) If the waste is not listed in subpart D of 40 CFR part 261 or if it is a listed waste, which must meet the land disposal restrictions under 40 CFR part 268, the person then must also determine whether the waste exhibits one or more hazardous characteristics as identified in subpart C of 40 CFR part 261 by following the procedures in either paragraph (d)(1) or (2) of this section.

(1) The person must test the waste according to the methods set forth in subpart C of 40 CFR part 261 or according to an equivalent method approved by the Administrator under 40 CFR 260.21 and in accordance with the following:

(i) Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at 40 CFR 260.10.

(ii) Where a test method is specified in the regulation, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

(2) The person must apply knowledge of the hazard characteristic of the waste in light of the materials or the processes

used. Acceptable knowledge may include process knowledge (*e.g.,* information about chemical feedstocks and other inputs to the production process); knowledge of products, by-products, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the processor or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents. A test other than a test method set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21, may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results.

(e) *Recordkeeping for small and large quantity generators.* A small or large quantity generator must maintain records supporting its solid and hazardous waste determinations, including records that identify a material as a solid waste, as defined by 40 CFR 261.2, and records identifying whether that solid waste is or is not also a hazardous waste, as defined by 40 CFR 261.3. Generators may wish to segregate any of their municipal solid waste from other solid and hazardous wastes to avoid potential co-mingling. Records must be maintained for at least three years from the date that the waste was last generated. These records must comprise the generator's knowledge of the waste and support the generator's determination, as described at 40 CFR 262.11(c) and (d). The records must include, but are not be limited to, the following types of information: The results of any tests, sampling, or waste analyses; records documenting the tests, sampling, and analytical methods used and demonstrating the validity and relevance of such tests; records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste; and records which explain the knowledge basis for the generator's determination, as described at 40 CFR 262.11(d)(2). The periods of record retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(f) If the waste is determined to be hazardous, all applicable EPA hazardous waste numbers (EPA hazardous waste codes) in subparts C and D of part 261 must be identified.

(g) If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 266, 267, 268, and 273 of this chapter for other possible exclusions or restrictions pertaining to management of the specific waste.

§ 262.12 [Removed and reserved]

■ 16. Remove and reserve § 262.12.

■ 17. Add §§ 262.13 through 262.18 to subpart A to read as follows:

* * * * *

Sec.

262.13 Generator category determination.
262.14 Conditions for exemption for a very small quantity generator.
262.15 Satellite accumulation area regulations for small and large quantity generators.
262.16 Conditions for exemption for a small quantity generator that accumulates hazardous waste.
262.17 Conditions for exemption for a large quantity generator that accumulates hazardous waste.
262.18 EPA identification numbers and re-notification for small quantity generators and large quantity generators.

§ 262.13 Generator category determination.

(a) *Monthly determination.* A generator's category is determined each month by the amount of hazardous waste it generates and may change from month to month. This section sets forth procedures to determine whether a generator is a very small quantity generator, a small quantity generator, or a large quantity generator for a particular month, as defined in § 260.10 of this chapter.

(b) *Generators of both acute and non-acute hazardous wastes.* A generator who generates both acute hazardous waste and non-acute hazardous waste in the same calendar month shall determine its generator category for that month by doing the following:

(1) Counting separately the total amount of acute hazardous waste and the total amount of non-acute hazardous waste generated in the calendar month;

(2) Subtracting from each total any amounts of waste exempt from counting as described in paragraphs (c) and (d) of this section;

(3) Determining separately the resulting generator categories for the quantities of acute and non-acute hazardous waste generated; and

(4) Comparing the resulting generator categories from paragraph (b)(3) of this section and applying the more stringent generator category to the accumulation and management of both non-acute hazardous waste and acute hazardous waste generated for that month.

TABLE 1 TO § 262.13—GENERATOR CATEGORIES BASED ON QUANTITY OF WASTE GENERATED IN A CALENDAR MONTH

#	Quantity of acute hazardous waste generated in a calendar month	Quantity of non-acute hazardous waste generated in a calendar month	Quantity of residues from a cleanup of acute hazardous waste generated in a calendar month	Generator category
1	> 1 kg	Any amount	Any amount	Large quantity generator.
2	Any amount	≥ 1,000 kg	Any amount	Large quantity generator.
3	Any amount	Any amount	> 100 kg	Large quantity generator.
4	≤ 1 kg	> 100 kg and < 1,000 kg	≤ 100 kg	Small quantity generator.
5	≤ 1 kg	≤ 100 kg	≤ 100 kg	Very small quantity generator.

(c) When making the monthly quantity-based determinations required by this part, the generator must include all hazardous waste that it generates, except hazardous waste that:

(1) Is exempt from regulation under 40 CFR 261.4(c) through (f), 261.6(a)(3), 261.7(a)(1), or 261.8;

(2) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in 40 CFR 260.10;

(3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under 40 CFR 261.6(c)(2);

(4) Is used oil managed under the requirements of 40 CFR 261.6(a)(4) and 40 CFR part 279;

(5) Is spent lead-acid batteries managed under the requirements of 40 CFR part 266 subpart G;

(6) Is universal waste managed under 40 CFR 261.9 and 40 CFR part 273;

(7) Is a hazardous waste that is an unused commercial chemical product (listed in 40 CFR part 261 subpart D or exhibiting one or more characteristics in 40 CFR part 261 subpart C) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to § 262.213. For purposes of this provision, the term eligible academic entity shall have the meaning as defined in § 262.200; or

(8) Is managed under an episodic event in compliance with the conditions of subpart L of this part.

(d) In determining the quantity of hazardous waste generated in a calendar month, a generator need not include:

(1) Hazardous waste when it is removed from on-site accumulation; or

(2) Hazardous waste generated by on-site treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was previously counted once; or

(3) Spent materials that are generated, reclaimed, and subsequently reused on site, so long as such spent materials have been previously counted once.

§ 262.14 Conditions for exemption for a very small quantity generator.

(a) Hazardous waste generated by a very small quantity generator is not subject to the independent requirements of this part, except the paragraphs of § 262.11 specified below or the requirements of parts 124, 264 through 268, and 270 of this chapter, and the notification requirements of section 3010 of RCRA. A very small quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with all the independent requirements of the above-mentioned parts and the notification requirements of section 3010, provided that it meets all the conditions for exemption listed in this section:

(1) In a calendar month the very small quantity generator generates less than or equal to the amounts specified in the definition of ''very small quantity generator'' in § 260.10 of this chapter;

(2) The very small quantity generator complies with § 262.11(a) through (d) of this chapter;

(3) *Accumulation conditions for exemption*—(i) *Acute hazardous waste.* If the very small quantity generator accumulates at any time greater than 1 kilogram (2.2 lbs) of acute hazardous waste or 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §§ 261.31 or 261.33(e) of this chapter, all quantities of that acute hazardous waste are subject to full hazardous waste regulation under parts 124, 262 through 268, and 270 of this chapter, and the notification requirements of section 3010 of RCRA. The 90-day accumulation time limit of § 262.17 begins on the date when the accumulated wastes exceed the above waste quantity limits;

(ii) *Non-acute hazardous waste.* If the very small quantity generator accumulates at any time 1,000 kilograms (2,200 lbs) or greater of non-acute hazardous waste, all quantities of that hazardous waste are subject to full hazardous waste regulation under parts 124, 262 through 268, and 270 of this chapter, and the notification requirements of section 3010 of RCRA. The 180-day and 270-day accumulation time limits of § 262.16 begin on the date when the accumulated wastes equal or exceed 1000 kilograms (2,200 lbs).

(4) A very small quantity generator that accumulates hazardous waste within the limits in paragraphs (a)(3)(i) and (ii) of this section must either treat or dispose of its hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to part 258 of this chapter;

(v) Permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit, is subject to the requirements in §§ 257.5 through 257.30 of this chapter;

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation;

(vii) For universal waste managed under part 273 of this chapter, a universal waste handler or destination facility subject to the requirements of part 273 of this chapter;

(viii) A large quantity generator under the control of the same person as the very small quantity generator, provided the following conditions are met:

(A) The very small quantity generator and the large quantity generator are under the control of the same person as defined in § 260.10 of this chapter. ''Control,'' for the purposes of this section, means the power to direct the policies of the generator site, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator sites on behalf of a different person as defined in § 260.10 of this chapter shall not be deemed to ''control'' such generator sites.

(B) The very small quantity generator marks its container(s) of hazardous waste with:

(*1*) The words ''Very Small Quantity Generator Hazardous Waste'';

(*2*) Other words that identify the contents of the containers (examples may include, but are not limited to, the name of the chemical(s), such as ''acetone'' or ''methylene dichloride'' or the type or class of chemical, such as ''organic solvents'' or ''halogenated organic solvents'' or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D);

(*3*) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; a hazard pictogram consistent with the United Nations' Globally Harmonized System; or any other marking or labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit); and

(*4*) The applicable EPA hazardous waste number(s) (hazardous waste codes) in part 261 subparts C and D.

(b) *Mixing hazardous waste with non-hazardous waste.* A very small quantity generator may mix listed or characteristic hazardous waste with non-hazardous waste and remain eligible for the conditional exemption applicable to a very small quantity generator provided that either paragraph (b)(1) or (2) of this section is met:

(1) The mixture does not exhibit any of the characteristics of hazardous waste

identified in subpart C of part 261 of this chapter; or

(2) If the mixture does exhibit one or more characteristics of a hazardous waste identified in subpart C of part 261 of this chapter, the mixture does not cause the generator to exceed the very small quantity generator calendar month quantity limits identified in the definition of very small quantity generator at § 260.10 of this chapter. If the mixture does exceed the quantity limit for a very small quantity generator, the very small quantity generator, to remain exempt from the permitting and interim status standards, must meet the conditions for exemption applicable to either a small quantity generator or large quantity generator according to the quantity of the hazardous waste it generated in a calendar month, including the resultant mixture and the total quantity the very small quantity generator accumulated on site.

(c) If a very small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR part 279. Any material produced from such a mixture by processing, blending, or other treatment is also regulated under 40 CFR part 279.

(d) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(e) A very small quantity generator experiencing an episodic event may accumulate hazardous waste in accordance with subpart L of this part in lieu of §§ 262.15, 262.16, and 262.17.

§ 262.15 Satellite accumulation area regulations for small and large quantity generators.

(a) A generator may accumulate as much as 55 gallons of non-acute hazardous waste and/or one quart or 1 kg (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with § 262.16(b) or § 262.17(a) provided the generator complies with the following conditions for exemption:

(1) If a container holding hazardous waste is not in good condition, or if it begins to leak, the generator must transfer the hazardous waste from this container to a container that is in good condition and does not leak, or transfer and manage the waste in a central accumulation area.

(2) The generator must use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(3) Special standards for incompatible wastes.

(i) Incompatible wastes, or incompatible wastes and materials, (see appendix V of part 265 for examples) must not be placed in the same container, unless § 265.17(b) of this chapter is complied with.

(ii) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see appendix V of part 265 for examples), unless § 265.17(b) of this chapter is complied with.

(iii) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(4) A container holding hazardous waste must be closed at all times during accumulation, except:

(i) When adding, removing, or consolidating waste, or

(ii) When venting of a container is necessary

(A) For the proper operation of equipment, or

(B) To prevent dangerous situations, such as build-up of extreme pressure.

(5) A generator must mark its container with the following:

(i) The words ''Hazardous Waste,'' and

(ii) Other words that identify the contents of the containers (examples may include, but are not limited to the name of the chemical(s), such as ''acetone'' or ''methylene dichloride''; or the type or class of chemical, such as ''organic solvents'' or ''halogenated organic solvents'' or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D); and

(iii) An indication of the hazards of the contents. (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; or a hazard pictogram consistent with the United Nations' Globally Harmonized System; or any other marking or labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit).

(6) A generator who accumulates either non-acute hazardous waste or acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter in excess of the amounts listed in paragraph (a) of this section at or near any point of generation must do the following:

(i) Remove the excess from the satellite accumulation area within three calendar days to either

(A) A central accumulation area;

(B) An on-site interim status or permitted treatment, storage, or disposal facility, or

(C) An off-site designated facility.

(ii) During the three-calendar-day period the generator must continue to comply with paragraphs (a)(1) through (5) of this section. The generator must mark the container(s) holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

§ 262.16 Conditions for exemption for a small quantity generator that accumulates hazardous waste.

A small quantity generator may accumulate hazardous waste on-site without a permit or interim status, and without complying with the independent requirements of parts 124, 264 through 268, and 270 of this chapter, provided that all the conditions for exemption listed in this section are met:

(a) *Generation.* The generator generates in a calendar month no more than the amounts specified in the definition of ''small quantity generator'' in § 260.10 of this chapter.

(b) *Accumulation.* The generator accumulates hazardous waste on site for no more than 180 days, unless in compliance with the conditions for exemption for longer accumulation in paragraphs (c) and (d) of this section. The following accumulation conditions also apply:

(1) *Accumulation limit.* The quantity of hazardous waste accumulated on site never exceeds 6,000 kilograms (13,200 pounds);

(2) *Accumulation in containers*—(i) *Condition of containers.* If a container holding hazardous waste is not in good condition, or if it begins to leak, the small quantity generator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the conditions for exemption of this section.

(ii) *Compatibility of waste with container.* The small quantity generator must use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

(iii) *Management of containers.* (A) A container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste.

(B) A container holding hazardous waste must not be opened, handled, or accumulated in a manner that may rupture the container or cause it to leak.

(iv) *Inspections.* At least weekly, the small quantity generator must inspect central accumulation areas. The small quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. See paragraph (a)(2)(i) of this section for remedial action required if deterioration or leaks are detected.

(v) *Special conditions for accumulation of incompatible wastes.* (A) Incompatible wastes, or incompatible wastes and materials, (see appendix V of part 265 for examples) must not be placed in the same container, unless § 265.17(b) of this chapter is complied with.

(B) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see appendix V of part 265 for examples), unless § 265.17(b) of this chapter is complied with.

(C) A container accumulating hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(3) *Accumulation in tanks.*

(i) [Reserved]

(ii) A small quantity generator of hazardous waste must comply with the following general operating conditions:

(A) Treatment or accumulation of hazardous waste in tanks must comply with § 265.17(b) of this chapter.

(B) Hazardous wastes or treatment reagents must not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(C) Uncovered tanks must be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a containment structure (*e.g.,* dike or trench), a drainage control system, or a diversion structure (*e.g.,* standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank.

(D) Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (*e.g.,* waste feed cutoff system or by-pass system to a stand-by tank).

(iii) Except as noted in paragraph (a)(3)(iv) of this section, a small quantity generator that accumulates hazardous waste in tanks must inspect, where present:

(A) Discharge control equipment (*e.g.,* waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

(B) Data gathered from monitoring equipment (*e.g.,* pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

(C) The level of waste in the tank at least once each operating day to ensure compliance with paragraph (a)(3)(ii)(C) of this section;

(D) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(E) The construction materials of, and the area immediately surrounding, discharge confinement structures (*e.g.,* dikes) at least weekly to detect erosion or obvious signs of leakage (*e.g.,* wet spots or dead vegetation). As required by § 265.15(c) of this chapter, the small quantity generator must remedy any deterioration or malfunction it finds.

(iv) A small quantity generator accumulating hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly, where applicable, the areas identified in paragraphs (a)(3)(iii)(A) through (E) of this section. Use of the alternate inspection schedule must be documented in the site's operating record. This documentation must include a description of the established workplace practices at the site.

(v) [Reserved.]

(vi) A small quantity generator accumulating hazardous waste in tanks must, upon closure of the site, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures. At closure, as throughout the operating period, unless the small quantity generator can demonstrate, in accordance with § 261.3(c) or (d) of this chapter, that any solid waste removed from its tank is not a hazardous waste, then it must manage such waste in accordance with all applicable provisions of parts 262, 263, and 265 of this chapter.

(vii) A small quantity generator must comply with the following special conditions for accumulation of ignitable or reactive waste:

(A) Ignitable or reactive waste must not be placed in a tank, unless:

(*1*) The waste is treated, rendered, or mixed before or immediately after placement in a tank so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under § 261.21 or 261.23 of this chapter and § 265.17(b) of this chapter is complied with; or

(*2*) The waste is accumulated or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(*3*) The tank is used solely for emergencies.

(B) A small quantity generator which treats or accumulates ignitable or reactive waste in covered tanks must comply with the buffer zone requirements for tanks contained in Tables 2–1 through 2–6 of the National Fire Protection Association's ''Flammable and Combustible Liquids Code,'' (1977 or 1981) (incorporated by reference, see § 260.11).

(C) A small quantity generator must comply with the following special conditions for incompatible wastes:

(*1*) Incompatible wastes, or incompatible wastes and materials, (see part 265 appendix V for examples) must not be placed in the same tank, unless § 265.17(b) of this chapter is complied with.

(*2*) Hazardous waste must not be placed in an unwashed tank that previously held an incompatible waste or material, unless § 265.17(b) of this chapter is complied with.

(4) *Accumulation of hazardous waste on drip pads.* A small quantity generator may accumulate hazardous waste on drip pads for 90 days or less without a permit or without having interim status provided that it complies with 40 CFR part 265 subpart W. The generator must maintain at the facility the following records by use of inventory logs, monitoring equipment, or any other effective means:

(i) A written description of procedures that will identify the date hazardous waste first entered the drip pad and ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(ii) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(5) *Accumulation of hazardous waste in containment buildings.* A small quantity generator may accumulate hazardous waste in containment buildings for 90 days or less without a permit or without having interim status provided that it complies with 40 CFR part 265 subpart DD. The generator must also maintain the following records by use of inventory logs, monitoring equipment records, or any other effective means:

(i) The professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101. This certification must be in the facility's operating record prior to operation of the unit; and

(ii) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the site showing that they are consistent with maintaining the 90 day limit, and documentation that the procedures are complied with; or

(iii) Documentation that the unit is emptied at least once every 90 days.

(6) *Labeling and marking of containers, tanks, drip pads, and containment buildings.* (i) A small quantity generator must mark its containers with the following:

(A) The words ''Hazardous Waste'';

(B) Other words that identify the contents of the containers (examples may include, but are not limited to, the name of the chemical(s), such as ''acetone'' or ''methylene dichloride''; or the type or class of chemical, such as ''organic solvents'' or ''halogenated organic solvents or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D);''

(C) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; a hazard pictogram consistent with the United Nations' Globally Harmonized System; or any other marking or labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit); and

(D) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) A small quantity generator accumulating hazardous waste in tanks, drip pads and containment buildings must do the following:

(A) Mark or label its waste accumulation units with the words ''Hazardous Wastes.'' In the case of hazardous wastes accumulated in drip pads and containment buildings, generators must label their drip pads and containment buildings with the words ''Hazardous Wastes'' in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site;

(B) Use inventory logs, monitoring equipment, or records to identify the contents of the tank, drip pad or containment building and its associated hazards;

(C) Use inventory logs, monitoring equipment or records to identify the date upon which each period of accumulation begins; and

(D) Keep inventory logs or records with the above information in close proximity to the tank, drip pad, or containment building.

(7) *Land disposal restrictions.* The generator complies with all the applicable requirements under 40 CFR part 268.

(8) *Preparedness and prevention*—(i) *Maintenance and operation of site.* A small quantity generator must maintain and operate its site to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

(ii) *Required equipment.* All areas where hazardous waste is either generated or accumulated must be equipped with the items in paragraphs (b)(8)(ii)(A) through (D) of this section (*unless* none of the hazards posed by waste handled at the site could require a particular kind of equipment specified below or the actual waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below). A small quantity generator may determine the most appropriate locations within its generator site to locate equipment necessary to prepare for and respond to emergencies.

(A) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to site personnel;

(B) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(C) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(D) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(iii) *Testing and maintenance of equipment.* All communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

(iv) *Access to communications or alarm system.* (A) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access (*e.g.,* direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, *unless* such a device is not required under paragraph (a)(8)(ii) of this section.

(B) In the event there is just one employee on the premises while the site is operating, the employee must have immediate access (*e.g.,* direct or unimpeded access) to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, *unless* such a device is not required under paragraph (a)(8)(ii) of this section.

(v) *Required aisle space.* The small quantity generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of site operation in an emergency, unless aisle space is not needed for any of these purposes.

(vi) *Arrangements with local authorities.* (A) The small quantity generator must make arrangements with the Local Emergency Planning Committee for the types and quantities of hazardous waste handled at the site, as well as the potential need for the

services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals. Should there be no Local Emergency Planning Committee, should it not respond, or should the Local Emergency Planning Committee determine that it is not the appropriate organization to make arrangements with, then the small quantity generator must make arrangements with the local fire department and other relevant emergency responders, (*e.g.,* police and hospitals).

(*1*) A small quantity generator that must make arrangements with its local fire department must determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(*2*) As part of this coordination, the small quantity generator shall make arrangements, as necessary, to familiarize the above organizations with the layout of the site, the properties of hazardous waste handled at the site and associated hazards, places where site personnel would normally be working, entrances to roads inside the site, and possible evacuation routes as well as the types of injuries or illnesses that could result from fires, explosions, or releases at the site.

(*3*) Where more than one police or fire department might respond to an emergency, the small quantity generator shall enter into agreements designating primary emergency authority to a specific fire or police department, and agreements with any others to provide support to the primary emergency authority.

(B) A small quantity generator shall maintain records documenting the arrangements with the Local Emergency Planning Committee, or if appropriate, with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include a certified letter or any other documentation that confirms such arrangements actively exist.

(9) *Emergency procedures.* The small quantity generator complies with the following conditions for those areas of the generator site where hazardous waste is generated and accumulated:

(i) At all times there must be at least one employee either on the premises or on call (*i.e.,* available to respond to an emergency by reaching the site within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (b)(9)(iv) of this section. This employee is the emergency coordinator.

(ii) The small quantity generator must post the following information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste:

(A) The name and emergency telephone number of the emergency coordinator;

(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(C) The telephone number of the fire department, unless the site has a direct alarm.

(iii) The small quantity generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal site operations and emergencies;

(iv) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(B) In the event of a spill, the small quantity generator is responsible for containing the flow of hazardous waste to the extent possible, and as soon as is practicable, cleaning up the hazardous waste and any contaminated materials or soil. Such containment and cleanup can be conducted either by the small quantity generator or by a contractor on behalf of the small quantity generator;

(C) In the event of a fire, explosion, or other release that could threaten human health outside the site or when the small quantity generator has knowledge that a spill has reached surface water, the small quantity generator must immediately notify the National Response Center (using their 24-hour toll free number 800/424–8802). The report must include the following information:

(*1*) The name, address, and U.S. EPA Identification Number of the small quantity generator;

(*2*) Date, time, and type of incident (*e.g.,* spill or fire);

(*3*) Quantity and type of hazardous waste involved in the incident;

(*4*) Extent of injuries, if any; and

(*5*) Estimated quantity and disposition of recovered materials, if any.

(c) *Mixing hazardous waste with non-hazardous waste.* A small quantity generator may mix its hazardous waste with non-hazardous waste and remain eligible for the conditional exemption applicable to a small quantity generator provided that either paragraph (c)(1) or (2) of this section is met.

(1) The mixture is not a hazardous waste according to the mixture rules in §§ 261.3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i); or

(2) If the mixture is a hazardous waste, the mixture does not cause the generator to exceed the small quantity generator quantity limits for a calendar month, as identified in the definition of small quantity generator at § 260.10 of this chapter. If the mixture does exceed the small quantity generator quantity limits, a small quantity generator, to remain exempt from the permitting and interim status standards, must meet the conditions for exemption applicable to a large quantity generator.

(d) *Transporting over 200 miles.* A small quantity generator who must transport its waste, or offer its waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on site for 270 days or less without a permit or without having interim status provided that the generator complies with the conditions of paragraph (a) of this section.

(e) *Accumulation time limit extension.* A small quantity generator who accumulates hazardous waste for more than 180 days (or for more than 270 days if it must transport its waste, or offer its waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, 267, 268, and 270 and the permit requirements of 40 CFR part 270 unless it has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by EPA if hazardous wastes must remain on site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(f) *Rejected load.* A small quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of § 264.72 or 265.72 of this chapter may accumulate the returned waste on site in accordance with paragraphs (a), (c), and (d) of this section. Upon receipt of the returned shipment, the generator must:

(i) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(ii) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(g) A small quantity generator experiencing an episodic event may accumulate hazardous waste in accordance with subpart L of this part in lieu of § 262.17.

§ 262.17 Conditions for exemption for a large quantity generator that accumulates hazardous waste.

A large quantity generator may accumulate hazardous waste on-site without a permit or interim status, and without complying with the independent requirements of parts 124, 264 through 268, and 270 of this chapter, provided that all of the conditions for exemption listed in this section are met:

(a) *Accumulation.* A large quantity generator accumulates hazardous waste on site for no more than 90 days, unless in compliance with the accumulation time limit extension or F006 accumulation conditions for exemption in § 262.17(b) through (e). The following accumulation conditions also apply:

(1) *Accumulation in containers.* If the hazardous waste is placed in containers, the large quantity generator must comply with the following:

(i) *Air emission standards.* The applicable requirements of subparts AA, BB, and CC of 40 CFR part 265;

(ii) *Condition of containers.* If a container holding hazardous waste is not in good condition, or if it begins to leak, the large quantity generator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the conditions for exemption of this section;

(iii) *Compatibility of waste with container.* The large quantity generator must use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired;

(iv) *Management of containers.* (A) A container holding hazardous waste must always be closed during accumulation, except when it is necessary to add or remove waste.

(B) A container holding hazardous waste must not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.

(v) *Inspections.* At least weekly, the large quantity generator must inspect central accumulation areas. The large quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. See paragraph (a)(1)(ii) of this section for remedial action required if deterioration or leaks are detected.

(vi) *Special conditions for accumulation of ignitable and reactive wastes.* (A) Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the site's property line unless a written waiver is obtained from the local fire department allowing hazardous waste accumulation to occur within this restricted area. Record of this approval must be maintained as long as ignitable or reactive hazardous waste is accumulated in this area.

(B) The large quantity generator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to the following: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (*e.g.,* from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the large quantity generator must confine smoking and open flame to specially designated locations. ''No Smoking'' signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(vii) *Special conditions for accumulation of incompatible wastes.* (A) Incompatible wastes, or incompatible wastes and materials, (see appendix V of part 265 for examples) must not be placed in the same container, unless § 265.17(b) of this chapter is complied with.

(B) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see appendix V of part 265 for examples), unless § 265.17(b) of this chapter is complied with.

(C) A container holding a hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(2) *Accumulation in tanks.* If the waste is placed in tanks, the large quantity generator must comply with the applicable requirements of subparts J, AA, BB, and CC of 40 CFR part 265 except § 265.197(c) of Closure and post-closure care and § 265.200—Waste analysis and trial tests.

(3) *Accumulation on drip pads.* If the waste is placed on drip pads, the large quantity generator must comply with subpart W of 40 CFR part 265 and maintain at the facility the following records by use of inventory logs, monitoring equipment records, or any other effective means:

(i) A written description of procedures that will identify the date hazardous waste first entered the drip pad and ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(ii) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

(4) *Accumulation in Containment Buildings.* (i) If the waste is placed in containment buildings, the large quantity generator must comply with subpart DD of 40 CFR part 265 and must place its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101 in the generator's files prior to operation of the unit.

(ii) The large quantity generator shall maintain the following records by use of inventory logs, monitoring equipment records, or any other effective means:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the site showing that they are consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every 90 days.

(5) *Labeling and marking of containers, tanks, drip pads, and containment buildings*—(i) *Containers.* A large quantity generator must mark its containers with the following:

(A) The words ''Hazardous Waste'';

(B) Other words that identify the contents of the containers (examples may include, but are not limited to the name of the chemical(s), such as ''acetone'' or ''methylene dichloride''; or the type or class of chemical, such as ''organic solvents'' or ''halogenated organic solvents or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D)'';

(C) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard

Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; a hazard pictogram consistent with the United Nations' Globally Harmonized System; or any other marking or labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit); and

(D) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) *Tanks, drip pads, and containment buildings.* A large quantity generator accumulating hazardous waste in tanks, drip pads, and containment buildings must do the following:

(A) Mark or label its waste accumulation units with the words ''Hazardous Waste.'' In the case of hazardous wastes accumulated in drip pads and containment buildings, generators must label their drip pads and containment buildings with the words ''Hazardous Waste'' in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, etc.

(B) Use inventory logs, monitoring equipment, or records to identify the contents of the tank, drip pad or containment building and its associated hazards.

(C) Use inventory logs, monitoring equipment or records to identify the date upon which each period of accumulation begins; and

(D) Keep inventory logs or records with the above information in close proximity to the tank, drip pad, or containment building.

(6) *Emergency procedures.* The large quantity generator complies with the standards in subpart M of this part, Preparedness, Prevention and Emergency Procedures for Large Quantity Generators.

(7) *Personnel training.* (i)(A) Site personnel must successfully complete a program of classroom instruction, online training, or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part. The large quantity generator must ensure that this program includes all the elements described in the document required under paragraph (a)(7)(iv) of this section.

(B) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches site personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

(C) At a minimum, the training program must be designed to ensure that site personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

(*1*) Procedures for using, inspecting, repairing, and replacing site emergency and monitoring equipment;

(*2*) Key parameters for automatic waste feed cut-off systems;

(*3*) Communications or alarm systems;

(*4*) Response to fires or explosions;

(*5*) Response to ground-water contamination incidents; and

(*6*) Shutdown of operations.

(D) For site employees that receive emergency response training pursuant to Occupational Safety and Health Administration regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the large quantity generator is not required to provide separate emergency response training pursuant to this section, provided that the overall site training meets all the conditions of exemption in this section.

(ii) Site personnel must successfully complete the program required in paragraph (a)(7)(i) of this section within six months after the effective date of these regulations or six months after the date of their employment or assignment to the site, or to a new position at the site, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training standards of paragraph (a)(7)(i) of this section.

(iii) Site personnel must take part in an annual review of the initial training required in paragraph (a)(7)(i) of this section.

(iv) The large quantity generator must maintain the following documents and records at the site:

(A) The job title for each position at the site related to hazardous waste management, and the name of the employee filling each job;

(B) A written job description for each position listed under paragraph (a)(7)(iv)(A) of this section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of site personnel assigned to each position;

(C) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (a)(7)(iv)(A) of this section;

(D) Records that document that the training or job experience, required under paragraphs (a)(7)(i), (ii), and (iii) of this section, has been given to, and completed by, site personnel.

(v) Training records on current personnel must be kept until closure of the site. Training records on former employees must be kept for at least three years from the date the employee last worked at the site. Personnel training records may accompany personnel transferred within the same company.

(8) *Closure.* A large quantity generator accumulating hazardous wastes in containers, tanks, drip pads, and containment buildings, prior to closing a unit that accumulates hazardous waste at the site or prior to closing the site must meet the following conditions:

(i) *Notification.* (A) Notify EPA no later than 30 days prior to closing a unit that accumulates hazardous waste at the site or prior to closing the site.

(B) Notify EPA within 90 days after closure of a unit that accumulates hazardous waste at the site or prior to closing the site that it has either clean closed (*e.g.,* complied with the applicable closure performance standards of § 262.17(a)(8)(ii)) or, if it cannot clean close, notify as a landfill under § 265.310 of this chapter.

(ii) *Closure performance standards.* (A) At closure, the generator must close the waste accumulation unit or site in a manner that:

(1) Minimizes the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, the post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere,

(2) Properly disposes of or decontaminates all contaminated equipment, structures and soil and any remaining hazardous waste residues from waste accumulation units including containment system components (pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment contaminated with waste. Any hazardous waste residues remaining in the unit(s) being closed must be removed from the unit(s). Any leakage must also be decontaminated or removed and managed as a hazardous waste unless § 261.3(d) of this chapter applies.

(3) Any hazardous waste generated in the process of closing either the

generator's site or unit(s) accumulating hazardous waste must be managed in accordance with all applicable standards of parts 260 through 270 of this chapter, including removing any hazardous waste contained in these units within 90 days of generating it and managing these wastes in a RCRA Subtitle C hazardous waste permitted treatment, storage and disposal facility or interim status facility.

(4) If the generator demonstrates that any contaminated soils and wastes cannot be practicably removed or decontaminated as required in paragraph (a)(8)(ii)(A)(*2*) of this section, then the waste accumulation unit is considered to be a landfill and the generator must close the waste accumulation unit and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 265.310 of this chapter). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator must meet all of the requirements for landfills specified in subparts G and H of part 265 of this chapter.

(9) *Land disposal restrictions.* The large quantity generator complies with all applicable requirements under 40 CFR part 268.

(b) *Accumulation time limit extension.* A large quantity generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, 267, and 268, and the permit requirements of 40 CFR part 270 unless it has been granted an extension to the 90-day period. Such extension may be granted by EPA if hazardous wastes must remain on site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(c) *Accumulation of F006.* A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, may accumulate F006 waste on site for more than 90 days, but not more than 180 days without a permit or without having interim status provided that it complies with all of the following conditions:

(1) The large quantity generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering F006 or otherwise released to the environment prior to its recycling;

(2) The F006 waste is legitimately recycled through metals recovery;

(3) No more than 20,000 kilograms of F006 waste is accumulated on site at any one time; and

(4) The F006 waste is managed in accordance with the following:

(i)(A) If the F006 waste is placed in containers, the large quantity generator must comply with the applicable conditions for exemption in § 262.17(a)(1); and/or

(B) If the F006 is placed in tanks, the large quantity generator must comply with the applicable conditions for exemption of § 262.17(a)(2); and/or

(C) If the F006 is placed in containment buildings, the large quantity generator must comply with subpart DD of 40 CFR part 265, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101 in the site's files prior to operation of the unit. The large quantity generator must maintain the following records:

(*1*) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the site showing that they are consistent with the 180-day limit, and documentation that the large quantity generator is complying with the procedures; or

(*2*) Documentation that the unit is emptied at least once every 180 days.

(ii) The large quantity generator is exempt from all the requirements in subparts G and H of 40 CFR part 265, except for those referenced in § 262.17(a)(8).

(iii) The date upon which each period of accumulation begins is clearly marked and must be clearly visible for inspection on each container;

(iv) While being accumulated on site, each container and tank is labeled or marked clearly with:

(A) The words ''Hazardous Waste'';

(B) Other words that identify the contents of the container or tank; and

(C) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; a hazard pictogram consistent with the United Nations' Globally Harmonized System; or any other marking or labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit); and

(v) The large quantity generator complies with the requirements in §§ 262.17(a)(6) and (7).

(d) *F006 transported over 200 miles.* A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on site for more than 90 days, but not more than 270 days without a permit or without having interim status if the large quantity generator complies with all of the conditions for exemption of paragraphs (c)(1) through (4) of this section.

(e) *F006 accumulation time extension.* A large quantity generator accumulating F006 in accordance with paragraphs (c) and (d) of this section who accumulates F006 waste on site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on site is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, and 267, and the permit requirements of 40 CFR part 270 unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by EPA if F006 waste must remain on site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(f) *Mixing hazardous waste with non-hazardous waste.* Mixtures of hazardous waste with non-hazardous waste are subject to the mixture rule in §§ 261.3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i).

(g) *Consolidation of hazardous waste received from very small quantity generators.* Large quantity generators may receive hazardous waste from very

small quantity generators under control of the same person (as defined in § 260.10), provided that they comply with the following conditions. ''Control,'' for the purposes of this section, means the power to direct the policies of the generator site, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator sites on behalf of a different person shall not be deemed to ''control'' such generator sites.

(1) The large quantity generator notifies EPA thirty (30) days prior to receiving the first shipment from a very small quantity generator(s) using EPA form 8700–12; and

(i) Identifies on the form the name(s) and site address(es) for the very small quantity generator(s) as well as the name and business telephone number for a contact person for the very small quantity generator(s); and

(ii) Submits an updated Site ID form (EPA form 8700–12) within 30 days after a change in the name, site address, or contact information for the very small quantity generator.

(2) The large quantity generator maintains records of shipments for three years from the date the hazardous waste was received from the very small quantity generator. These records must identify the name, site address, and contact information for the very small quantity generator and include a description of the hazardous waste received, including the quantity, all applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in subparts C and D of part 261 for the hazardous waste, and the date the waste was received.

(3) The large quantity generator manages all hazardous waste received from a very small quantity generator in compliance with the independent requirements in § 262.10(a)(1)(ii) and conditions for exemption in § 262.17 applicable to a large quantity generator. For purposes of the labeling and marking regulations in § 262.17(a)(5), the large quantity generator must label the container or unit with the date accumulation started (*i.e.,* the date the hazardous waste was received from the very small quantity generator). If the large quantity generator is consolidating incoming hazardous waste from a very small quantity generator with either its own hazardous waste or with hazardous waste from other very small quantity generators, the large quantity generator must label each container or unit with the earliest date any hazardous waste in the container was accumulated on site.

(h) *Rejected load.* A large quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of § 264.72 or 265.72 of this chapter may accumulate the returned waste on site in accordance with paragraphs (a) and (b) of this section. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

§ 262.18 EPA identification numbers and re-notification for small quantity generators and large quantity generators.

(a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator.

(b) A generator who has not received an EPA identification number may obtain one by applying to the Administrator using EPA form 8700–12. Upon receiving the request the Administrator will assign an EPA identification number to the generator.

(c) A generator must not offer its hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(d) *Re-notification.* (i) A small quantity generator must notify EPA by February 1 of each even-numbered year thereafter using EPA Form 8700–12.

(ii) A large quantity generator must notify EPA by March 1 of each even-numbered year thereafter using EPA Form 8700–12. A large quantity generator may submit this re-notification as part of its biennial report required under § 262.41.

■ 18. Revise the heading for subpart B to read as follows:

Subpart B—Manifest Requirements Applicable to Small and Large Quantity Generators

■ 19. Revise the heading for subpart C to read as follows:

Subpart C—Pre-Transport Requirements Applicable to Small and Large Quantity Generators

■ 20. Amend § 262.32 by adding paragraph (c) to read as follows:

§ 262.32 Marking.

* * * * *

(c) Before transporting or offering hazardous waste for transportation off site, a generator must mark each container with the applicable EPA hazardous waste numbers (EPA hazardous waste codes) in subparts C and D of part 261 of this chapter.

§ 262.34 [Removed and reserved]

■ 21. Remove and reserve § 262.34.

■ 22. Add § 262.35 to subpart C read as follows:

§ 262.35 Liquids in landfills prohibition.

The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

■ 23. Revise the heading for subpart D to read as follows:

Subpart D—Recordkeeping and Reporting Applicable to Small and Large Quantity Generators

§ 262.40 [Amended]

■ 24. Amend § 262.40 by removing and reserving paragraph (c).

■ 25. Section 262.41 and its section heading are revised to read as follows:

§ 262.41 Biennial report for large quantity generators.

(a) A generator who is a large quantity generator for at least one month of the reporting year must complete and submit EPA form 8700–13 to the Regional Administrator by March 1 of each even numbered year for all hazardous wastes generated during the previous calendar year. This requirement also applies to generators who treat, store, or dispose of hazardous waste on site in accordance with the provisions of 40 CFR parts 264, 265, 266, 267, and 270 and to large quantity generators that receive hazardous waste from very small quantity generators pursuant to § 262.17(g).

(b) Exports of hazardous waste to foreign countries are not required to be reported on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR 262.56 for hazardous waste exporters.

■ 26. Section 262.43 is revised to read as follows:

§ 262.43 Additional reporting.

The Administrator, as deemed necessary under sections 2002(a) and 3002(a)(6) of the Act, may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 40 CFR part 261.

■ 27. Section 262.44 is amended by revising the introductory paragraph and section heading to read as follows:

§ 262.44 Recordkeeping for small quantity generators.

A small quantity generator is subject only to the following independent requirements in this subpart:

* * * * *

Subparts I and J [Removed and Reserved]

■ 28. Remove and reserve subparts I and J.

Subpart K—Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities

■ 29. Section 262.200 is amended by removing the definition of ''Central accumulation area'' and revising the definition of ''Trained professional'' to read as follows:

§ 262.200 Definitions for this subpart.

* * * * *

Trained professional means a person who has completed the applicable RCRA training requirements of § 262.17 for large quantity generators, or is knowledgeable about normal operations and emergencies in accordance with § 262.16 for small quantity generators and very small quantity generators. A trained professional may be an employee of the eligible academic entity or may be a contractor or vendor who meets the requisite training requirements.

* * * * *

■ 30. Section 262.201 is revised to read as follows:

§ 262.201 Applicability of this subpart.

(a) *Large quantity generators and small quantity generators.* This subpart provides alternative requirements to the requirements in §§ 262.11 and 262.15 for the hazardous waste determination and accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to this subpart, provided that they complete the notification requirements of § 262.203.

(b) *Very small quantity generators.* This subpart provides alternative requirements to the conditional exemption in § 262.14 for the accumulation of hazardous waste in laboratories owned by eligible academic entities that choose to be subject to this subpart, provided that they complete the notification requirements of § 262.203.

■ 31. Section 262.202 is revised to read as follows:

§ 262.202 This subpart is optional.

(a) *Large quantity generators and small quantity generators.* Eligible academic entities have the option of complying with this subpart with respect to its laboratories, as an alternative to complying with the requirements of §§ 262.11 and 262.15.

(b) *Very small quantity generators.* Eligible academic entities have the option of complying with this subpart with respect to laboratories, as an alternative to complying with the conditional exemption of § 262.14.

■ 32. Section 262.203 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 262.203 How an eligible academic entity indicates it will be subject to the requirements of this subpart.

(a) An eligible academic entity must notify the appropriate EPA Regional Administrator in writing, using the RCRA Subtitle C Site Identification Form (EPA Form 8700–12), that it is electing to be subject to the requirements of this subpart for all the laboratories owned by the eligible academic entity under the same EPA Identification Number. An eligible academic entity that is a very small quantity generator and does not have an EPA Identification Number must notify that it is electing to be subject to the requirements of this subpart for all the laboratories owned by the eligible academic entity that are on site, as defined by § 260.10. An eligible academic entity must submit a separate notification (Site Identification Form) for each EPA Identification Number (or site, for very small quantity generators) that is electing to be subject to the requirements of this subpart, and must submit the Site Identification Form before it begins operating under this subpart.

(b) * * *

(2) Site EPA Identification Number (except for very small quantity generators).

* * * * *

■ 33. Section 262.204 is amended by revising paragraph (a) to read as follows:

§ 262.204 How an eligible academic entity indicates it will withdraw from the requirements of this subpart.

(a) An eligible academic entity must notify the appropriate EPA Regional Administrator in writing, using the RCRA Subtitle C Site Identification Form (EPA Form 8700–12), that it is electing to no longer be subject to the requirements of this subpart for all the laboratories owned by the eligible academic entity under the same EPA Identification Number and that it will comply with the requirements of §§ 262.11 and 262.15 for small quantity generators and large quantity generators. An eligible academic entity that is a very small quantity generator and does not have an EPA Identification Number must notify that it is withdrawing from the requirements of this subpart for all the laboratories owned by the eligible academic entity that are on site and that it will comply with the conditional exemption in § 262.14. An eligible academic entity must submit a separate notification (Site Identification Form) for each EPA Identification Number (or site, for very small quantity generators) that is withdrawing from the requirements of this subpart and must submit the Site Identification Form before it begins operating under the standards in §§ 262.11 and 262.15 for small quantity generators and large quantity generators or § 262.14 for very small quantity generators.

* * * * *

§ 262.206 [Amended]

■ 34. Amend § 262.206 in paragraph (b)(3)(iii) by removing the period at the end of the sentence and inserting ':'' in its place.

■ 35. Section 262.207 is amended by revising paragraph (d)(2) to read as follows:

§ 262.207 Training.

* * * * *

(d) * * *

(2) Make the hazardous waste determination, pursuant to § 262.11(a) through (d), for unwanted material.

■ 36. Section 262.208 is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 262.208 Removing containers of unwanted material from the laboratory.

(a) * * *

(1) Remove all containers of unwanted material from each laboratory on a regular interval, not to exceed 12 months; or

(2) Remove containers of unwanted material from each laboratory within 12 months of each container's accumulation start date.

* * * * *

■ 37. Section 262.209 is amended by revising paragraph (b) to read as follows:

§ 262.209 Where and when to make the hazardous waste determination and where to send containers of unwanted material upon removal from the laboratory.

* * * * *

(b) *Very small quantity generators.* An eligible academic entity must ensure that a trained professional makes a hazardous waste determination,

pursuant to § 262.11(a) through (d), for unwanted material in the laboratory before the unwanted material is removed from the laboratory, in accordance with § 262.210.

■ 38. Section 262.210 is amended by revising paragraphs (a), (b)(3), and (d)(2) to read as follows:

§ 262.210 Making the hazardous waste determination in the laboratory before the unwanted material is removed from the laboratory.

* * * * *

(a) A trained professional must make the hazardous waste determination, pursuant to § 262.11(a) through (d), before the unwanted material is removed from the laboratory.

(b) * * *

(3) Count the hazardous waste toward the eligible academic entity's generator category, pursuant to § 262.13, in the calendar month that the hazardous waste determination was made.

* * * * *

(d) * * *

(2) Very small quantity generators must ensure it is taken directly from the laboratory(ies) to any of the types of facilities listed in § 262.14.

* * * * *

■ 39. Section 262.211 is amended by revising paragraphs (c), (d), and (e)(3) to read as follows:

§ 262.211 Making the hazardous waste determination at an on-site central accumulation area.

* * * * *

(c) The unwanted material becomes subject to the generator accumulation regulations of § 262.16 for small quantity generators or § 262.17 for large quantity generators as soon as it arrives in the central accumulation area, except for the ''hazardous waste'' labeling conditions of § 262.16(b)(6) and § 262.17(a)(5).

(d) A trained professional must determine, pursuant to § 262.11(a) through (d), if the unwanted material is a hazardous waste within 4 calendar days of the unwanted materials' arrival at the on-site central accumulation area.

(e) * * *

(3) Count the hazardous waste toward the eligible academic entity's generator category, pursuant to § 262.13 in the calendar month that the hazardous waste determination was made, and

* * * * *

■ 40. Section 262.212 is amended by revising paragraph (d) to read as follows:

§ 262.212 Making the hazardous waste determination at an on-site interim status or permitted treatment, storage, or disposal facility.

* * * * *

(d) A trained professional must determine, pursuant to § 262.11(a) through (d), if the unwanted material is a hazardous waste within 4 calendar days of the unwanted materials' arrival at an on-site interim status or permitted treatment, storage, or disposal facility.

* * * * *

■ 41. Section 262.213 is amended by revising paragraphs (a)(2) and (3) and (b)(2) to read as follows:

§ 262.213 Laboratory clean-outs.

(a) * * *

(2) For the purposes of on-site accumulation, an eligible academic entity is not required to count a hazardous waste that is an unused commercial chemical product (listed in 40 CFR part 261, subpart D or exhibiting one or more characteristics in 40 CFR part 261, subpart C) generated solely during the laboratory clean-out toward its hazardous waste generator category, pursuant to § 262.13. An unwanted material that is generated prior to the beginning of the laboratory clean-out and is still in the laboratory at the time the laboratory clean-out commences must be counted toward hazardous waste generator category, pursuant to § 262.13, if it is determined to be hazardous waste; and

(3) For the purposes of off-site management, an eligible academic entity must count all its hazardous waste, regardless of whether the hazardous waste was counted toward generator category under paragraph (a)(2) of this section, and if it generates more than 1 kg/month of acute hazardous waste or more than 100 kg/month of non-acute hazardous waste (*i.e.,* the very small quantity generator limits as defined in § 260.10), the hazardous waste is subject to all applicable hazardous waste regulations when it is transported off site; and

* * * * *

(b) * * *

(2) The requirement to count all hazardous waste, including unused hazardous waste, generated during the laboratory clean-out toward its hazardous waste generator category, pursuant to § 262.13.

■ 42. Section 262.214 is amended by revising paragraph (b)(5) to read as follows:

§ 262.214 Laboratory management plan.

* * * * *

(b) * * *

(5) Describe its intended best practices for making hazardous waste determinations, including specifying the duties of the individuals involved in the process (see the required standards at § 262.11(a) through (d) and §§ 262.209 through 262.212).

* * * * *

■ 43. Section 262.216 is amended by revising paragraphs (a) and (b) to read as follows:

§ 262.216 Non-laboratory hazardous waste generated at an eligible academic entity.

* * * * *

(a) Remains subject to the generator requirements of §§ 262.11 and 262.15 for large quantity generators and small quantity generators (if the hazardous waste is managed in a satellite accumulation area), and all other applicable generator requirements of 40 CFR part 262, with respect to that hazardous waste; or

(b) Remains subject to the conditional exemption of § 262.14 for very small quantity generators, with respect to that hazardous waste.

■ 44. Subpart L is added to read as follows:

Subpart L—Alternative Standards for Episodic Generation

Sec.
262.230 Applicability.
262.231 Definition of an episodic event.
262.232 Conditions for a generator managing hazardous waste from an episodic event.
262.233 Petition to manage one additional episodic event per calendar year.
262.234 Petition for a 30-day extension to an episodic event.

Subpart L—Alternative Standards for Episodic Generation

§ 262.230 Applicability.

This subpart is applicable to very small quantity generators and small quantity generators as defined in § 260.10.

§ 262.231 Definition of an episodic event.

An episodic event is an activity or activities, either planned or unplanned, that does not normally occur during generator operations, resulting in an increase in the generation of hazardous wastes that exceeds the calendar month quantity limits for the generator's usual category.

§ 262.232 Conditions for a generator managing hazardous waste from an episodic event.

(a) *Very small quantity generator.* A very small quantity generator may maintain its existing generator category during an episodic event provided that

the generator complies with the following conditions:

(1) The very small quantity generator is limited to one episodic event per calendar year unless a petition is granted under § 262.233;

(2) The very small quantity generator must notify EPA no later than thirty (30) calendar days prior to initiating a planned episodic event using EPA form 8700–12. In the event of an unplanned episodic event, the generator must notify EPA within 24 hours of the unplanned event or as soon as possible via phone or email and subsequently submit EPA form 8700–12. The generator shall include the start date of the episodic event, the reason(s) for the event, types and estimated quantities of hazardous waste expected to be generated as a result of the episodic event, and shall identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to an emergency;

(3) The very small quantity generator must have an EPA identification number or obtain an EPA identification number using EPA form 8700–12;

(4) *Accumulation.* A very small quantity generator is prohibited from accumulating hazardous waste generated from an episodic event on drip pads and in containment buildings. When accumulating hazardous waste in containers and tanks the following conditions apply:

(i) *Containers.* A very small quantity generator accumulating in containers must mark its containers with the following:

(A) The words ''Episodic Hazardous Waste;''

(B) Other words that identify the contents of the containers (examples may include, but are not limited to the name of the chemical(s), such as ''acetone'' or ''methylene dichloride''; or the type or class of chemical, such as ''organic solvents'' or ''halogenated organic solvents'' or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D);

(C) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; or a hazard pictogram consistent with the United Nations' Globally Harmonized System; or any other marking or labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit); and

(D) The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) *Tanks.* A very small quantity generator accumulating episodic hazardous waste in tanks must do the following:

(A) Mark or label the tank with the words ''Episodic Hazardous Waste;''

(B) Use inventory logs, monitoring equipment, or records to identify the contents of the tank and its associated hazards;

(C) Use inventory logs, monitoring equipment or records to identify the date upon which each episodic event begins; and

(D) Keep inventory logs or records with the above information in close proximity to the tank.

(iii) Hazardous waste must be managed in a manner that minimizes the possibility of a fire, explosion, or release of hazardous waste or hazardous waste constituents to the air, soil, or water;

(A) Containers must be in good condition and compatible with the hazardous waste being accumulated therein. Containers must be kept closed except to add or remove waste.

(B) Tanks must be in good condition and compatible with the hazardous waste accumulated therein. Tanks must have procedures in place to prevent the overflow (*e.g.,* be equipped with a means to stop inflow with systems such as a waste feed cutoff system or bypass system to a standby tank when hazardous waste is continuously fed into the tank). Tanks must be inspected at least once each operating day to ensure all applicable discharge control equipment, such as waste feed cutoff systems, bypass systems, and drainage systems are in good working order and to ensure the tank is operated according to its design by reviewing the data gathered from monitoring equipment such as pressure and temperature gauges from the inspection.

(5) The very small quantity generator must comply with the hazardous waste manifest provisions of 40 CFR part 262 subpart B when it sends its episodic event hazardous waste off site to a RCRA-designated facility.

(6) The very small quantity generator has up to forty-five (45) calendar days from the start of the episodic event to manifest and send its hazardous waste generated from the episodic event to a RCRA-designated facility unless an extension is granted pursuant to § 262.233.

(7) Very small quantity generators must maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv) A description of how the hazardous waste was managed as well as the name of the RCRA designated facility that received the hazardous waste;

(v) Name(s) of hazardous waste transporters;

(vi) An approval letter from EPA if the generator petitioned to conduct one additional episodic event per calendar year; and

(vii) An approval letter from EPA if the generator petitioned for an additional thirty (30) calendar day extension.

(b) *Small quantity generators.* A small quantity generator may maintain its existing generator category during an episodic event provided that the generator complies with the following conditions:

(1) The small generator is limited to one episodic event per calendar year unless a petition is granted under § 262.233;

(2) The small quantity generator must notify EPA no later than thirty (30) calendar days prior to initiating a planned episodic event using EPA form 8700–12. In the event of an unplanned episodic event, the small quantity generator must notify EPA within 24 hours of the unplanned event or as soon as possible via phone or email and subsequently submit EPA form 8700–12. The small quantity generator shall include the start date of the episodic event and the reason(s) for the event, types and estimated quantities of hazardous wastes expected to be generated as a result of the episodic event, and identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to emergency;.

(3) The small quantity generator must have an EPA identification number or obtain an EPA identification number using EPA form 8700–12.

(4) *Accumulation by small quantity generators.* A small quantity generator is prohibited from accumulating

hazardous wastes generated from an episodic event waste on drip pads and in containment buildings. When accumulating hazardous waste generated from an episodic event in containers and tanks, the following conditions apply:

(i) *Containers.* A small quantity generator accumulating episodic hazardous waste in containers that meet the standards at part 265 subpart I of this chapter, except §§ 265.176 and 265.178 of this chapter, must mark its containers with the following:

(A) The words ''Episodic Hazardous Waste'';

(B) Other words that identify the contents of the containers (examples may include, but are not limited to the name of the chemical(s), such as ''acetone'' or ''methylene dichloride''; or the type or class of chemical, such as ''organic solvents'' or halogenated organic solvents'' or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D);

(C) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; or a hazard pictogram consistent with the United Nations' Globally Harmonized System; or any other marking or labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit); and

(D) The date upon which the episodic event began, clearly visible for inspection on each container.

(ii) *Tanks.* A small quantity generator accumulating episodic hazardous waste in tanks that meet the standards at § 265.201 in subpart J must do the following:

(A) Mark or label its tank with the words ''Episodic Hazardous Waste;''

(B) Use inventory logs, monitoring equipment, or records to identify the contents of the tank and its associated hazards;

(C) Use inventory logs, monitoring equipment or records to identify the date upon which each period of accumulation begins and ends; and

(D) Keep inventory logs or records with the above information immediately accessible.

(iii) Comply with the applicable conditions listed in § 262.16.

(5) The small quantity generator must treat hazardous waste generated from an episodic event on site or manifest and ship such hazardous waste off site to a RCRA-designated facility within forty-five (45) calendar days from the start of the episodic event, unless an extension is granted pursuant to § 262.233.

(6) The small quantity generator must maintain the following records for three (3) years from the end date of the episodic event:

(i) Beginning and end dates of the episodic event;

(ii) A description of the episodic event;

(iii) A description of the types and quantities of hazardous wastes generated during the event;

(iv) A description of how the hazardous waste was managed as well as the name of the RCRA designated facility that received the hazardous waste;

(v) Name(s) of hazardous waste transporters;

(vi) An approval letter from EPA if the generator petitioned to conduct one additional episodic event per calendar year; and

(vii) An approval letter from EPA if the generator petitioned for an additional thirty (30) calendar day extension.

§ 262.233 Petition to manage one additional episodic event per calendar year.

(a) A very small quantity generator or a small quantity generator may petition EPA for one additional episodic event per calendar year without it impacting its generator category. The petition must include the following:

(1) The reason(s) why an additional episodic event is needed and the nature of the episodic event;

(2) The estimated amount of hazardous waste to be managed from the event;

(3) How the hazardous waste is to be managed;

(4) The estimated length of time needed to complete management of the hazardous waste generated from the episodic event—not to exceed 45 days; and

(5) Information regarding the previous episodic event managed by the generator, including the nature of the event and whether it was a planned or unplanned event.

(b) The petition must be made via fax, email, or letter.

(c) The generator cannot manage the hazardous waste generated from an additional episodic event under subpart L until written approval by EPA, including email, has been received.

(d) The generator must retain written approval in its records for three years from the date the episodic event ended.

§ 262.234 Petition for a 30-day extension to an episodic event.

(a) The very small quantity generator or a small quantity generator may petition EPA for a thirty (30) calendar day extension to complete the management of hazardous waste generated by an episodic event. The petition must include the following:

(1) The nature of the episodic event;

(2) The estimated amount of additional hazardous waste to be managed from the episodic event if the extension is granted; and

(3) The generator's rationale for needing an extension of an additional 30 days beyond the 45-day limit to complete management of the hazardous waste generated from the episodic event.

(b) The generator must petition EPA via fax, email, or letter within fifteen (15) calendar days of the event ending.

(c) The generator cannot go beyond the 45-day limit unless written approval from EPA has been received.

(d) The generator must retain written approval in its records for three years from the date the episodic event ended.

■ 45. Subpart M is added to read as follows:

Subpart M—Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators

Sec.

262.250 Applicability.
262.251 Maintenance and operation of facility.
262.252 Required equipment.
262.253 Testing and maintenance of equipment.
262.254 Access to communications or alarm system.
262.255 Required aisle space.
262.256 Arrangements with local authorities.
262.260 Purpose and implementation of contingency plan.
262.261 Content of contingency plan.
262.262 Copies of contingency plan.
262.263 Amendment of contingency plan.
262.264 Emergency coordinator.
262.265 Emergency procedures.

Subpart M—Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators

§ 262.250 Applicability.

The regulations of this subpart apply to those areas of a large quantity generator where hazardous waste is generated or accumulated on site in

accordance with the conditions in § 262.17.

§ 262.251 Maintenance and operation of facility.

A large quantity generator must maintain and operate its site to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

§ 262.252 Required equipment.

All areas where hazardous waste is being either generated or accumulated must be equipped with the items in paragraphs (a) through (d) of this section (unless none of the hazards posed by waste handled at the site could require a particular kind of equipment specified below or the actual waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below). A large quantity generator may determine the most appropriate locations within its generator site to locate equipment necessary to prepare for and respond to emergencies:

(a) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to site personnel;

(b) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(c) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

§ 262.253 Testing and maintenance of equipment.

All communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

§ 262.254 Access to communications or alarm system.

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access (*e.g.,* direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, *unless* such a device is not required under § 265.252 of this chapter.

(b) In the event there is just one employee on the premises while the site is operating, the employee must have immediate access (*e.g.,* direct or unimpeded access) to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, *unless* such a device is not required under § 265.252 of this chapter.

§ 262.255 Required aisle space.

The large quantity generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of site operation in an emergency, unless aisle space is not needed for any of these purposes.

§ 262.256 Arrangements with local authorities.

(a) The large quantity generator must make arrangements with the Local Emergency Planning Committee for the types and quantities of hazardous waste handled at the site, as well as the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals. Should there be no Local Emergency Planning Committee, should it not respond, or should the Local Emergency Planning Committee determine that it is not the appropriate organization to make arrangements with, then the large quantity generator must make arrangements with the local fire department and other relevant emergency responders (*e.g.,* police and hospitals).

(1) A large quantity generator that must make arrangements with its local fire department must determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(2) As part of this coordination, the large quantity generator shall make arrangements, as necessary, to familiarize the above organizations with the layout of the site, the properties of the hazardous waste handled at the site and associated hazards, places where personnel would normally be working, entrances to roads inside the site, and possible evacuation routes as well as the types of injuries or illnesses which could result from fires, explosions, or releases at the site.

(3) Where more than one police or fire department might respond to an emergency, the large quantity generator shall enter into agreements designating primary emergency authority to a specific fire or police department, and agreements with any others to provide support to the primary emergency authority.

(b) The large quantity generator shall maintain records documenting the arrangements with the Local Emergency Planning Committee, or if appropriate, with the local fire department as well as any other organization necessary to respond to an emergency. This documentation must include a certified letter or any other documentation that confirms such arrangements actively exist.

§ 262.260 Purpose and implementation of contingency plan.

(a) A large quantity generator must have a contingency plan for the site. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(b) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

§ 262.261 Content of contingency plan.

(a) The contingency plan must describe the actions site personnel must take to comply with §§ 262.260 and 262.265 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the site.

(b) If the generator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or some other emergency or contingency plan, it need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the standards of this part. The generator may develop one contingency plan that meets all regulatory standards. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance (''One Plan'').

(c) The plan must describe arrangements agreed to with the Local Emergency Planning Committee. Should there be no Local Emergency Planning Committee, should it not respond, or should the Local Emergency Planning Committee determine that it is not the appropriate organization to make arrangements with, then the plan must describe arrangements agreed to by local fire departments and other relevant emergency responders (*e.g.,* police and hospitals) to coordinate emergency services, pursuant to § 262.256.

(d) The plan must list names and emergency telephone numbers of all persons qualified to act as emergency coordinator (see § 262.264), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. In situations where the generator site has an emergency coordinator continuously on duty because it operates 24 hours per day, every day of the year, the plan may list the staffed position (*e.g.,* operations manager, shift coordinator, shift operations supervisor) as well as an emergency telephone number that can be guaranteed to be answered at all times.

(e) The plan must include a list of all emergency equipment at the site (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan must include an evacuation plan for generator personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

§ 262.262 Copies of contingency plan.

A copy of the contingency plan and all revisions to the plan must be maintained at the large quantity generator's site and—

(a) The large quantity generator must submit a copy of the contingency plan to the Local Emergency Planning Committee. Should there be no Local Emergency Planning Committee, should it not respond, or should the Local Emergency Planning Committee determine that it is not the appropriate organization to make arrangements with, the large quantity generator must submit the copy to the local emergency responders.

(b) A generator that first becomes subject to these provisions after [date 6 months after the date of publication of the final rule in the **Federal Register**] must submit an executive summary of the contingency plan to the Local Emergency Planning Committee. Should there be no Local Emergency Planning Committee, should it not respond, or should the Local Emergency Planning Committee determine that it is not the appropriate organization to make arrangements with, the generator must submit the copy to the local emergency responders. The executive summary must include the following elements:

(1) The types/names of hazardous wastes in layman's terms and the associated hazard associated with each waste present at any one time (*e.g.,* toxic paint wastes, spent ignitable solvent, corrosive acid);

(2) The estimated maximum amount of each hazardous waste that may be present at any one time;

(3) The identification of any hazardous wastes where exposure would require unique or special treatment by medical or hospital staff;

(4) A map of the site showing where hazardous wastes are generated and accumulated and routes for accessing these wastes;

(5) A street map of the site in relation to surrounding businesses, schools and residential areas to understand how best to get to the facility and also evacuate citizens and workers;

(6) The locations of water supply (*e.g.,* fire hydrant and its flow rate);

(7) The identification of on-site notification systems (*e.g.,* a fire alarm that rings off site, smoke alarms); and

(8) The name of the emergency coordinator and 7/24-hour emergency telephone number.

§ 262.263 Amendment of contingency plan.

The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

(a) Applicable regulations are revised;

(b) The plan fails in an emergency;

(c) The generator site changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(d) The list of emergency coordinators changes; or

(e) The list of emergency equipment changes.

§ 262.264 Emergency coordinator.

At all times, there must be at least one employee either on the generator's premises or on call (*i.e.,* available to respond to an emergency by reaching the site within a short period of time) with the responsibility for coordinating all emergency response measures and implementing the necessary emergency procedures outlined in § 262.265. This emergency coordinator must be thoroughly familiar with all aspects of the generator's contingency plan, all operations and activities at the site, the location and characteristics of waste handled, the location of all records within the site, and the site's layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

§ 262.265 Emergency procedures.

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

(1) Activate internal site alarms or communication systems, where applicable, to notify all site personnel; and

(2) Notify appropriate state or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of the site records or manifests and, if necessary, by chemical analysis.

(c) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (*e.g.,* the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).

(d) If the emergency coordinator determines that the site has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, the emergency coordinator must report the findings as follows:

(1) If the assessment indicates that evacuation of local areas may be

advisable, the emergency coordinator must immediately notify appropriate local authorities. The emergency coordinator must be available to help appropriate officials decide whether local areas should be evacuated; and

(2) The emergency coordinator must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 800/424–8802). The report must include:

(i) Name and telephone number of reporter;

(ii) Name and address of the generator;

(iii) Time and type of incident (*e.g.,* release, fire);

(iv) Name and quantity of material(s) involved, to the extent known;

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the site.

(e) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the generator's site. These measures must include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

(f) If the generator's site stops operations in response to a fire, explosion or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(g) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the generator can demonstrate, in accordance with § 261.3(c) or (d) of this chapter, that the recovered material is not a hazardous waste, then it is a newly generated hazardous waste that must be managed in accordance with all the applicable independent requirements and conditions for exemption in parts 262, 263, and 265 of this chapter.

(h) The emergency coordinator must ensure that, in the affected area(s) of the site:

(1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(i) The generator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the generator must submit a written report on the incident to the Regional Administrator. The report must include:

(1) Name, address, and telephone number of the generator;

(2) Date, time, and type of incident (*e.g.,* fire, explosion);

(3) Name and quantity of material(s) involved;

(4) The extent of injuries, if any;

(5) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(6) Estimated quantity and disposition of recovered material that resulted from the incident.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

■ 46. The authority citation for part 263 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

■ 47. Section 263.12 is revised to read as follows:

§ 263.12 Transfer facility requirements.

(a) A transporter who stores manifested shipments of hazardous waste in containers meeting the independent requirements of § 262.30 of this chapter at a transfer facility for a period of ten days or less is not subject to regulation under parts 264, 265, 267, 268, and 270 of this chapter with respect to the storage of those wastes.

(b) The transporter must hold hazardous wastes that are stored at transfer facilities in containers marked with the following information:

(1) The words ''Hazardous Waste;''

(2) The applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in subparts C and D of part 261 of this chapter;

(3) Other words that identify the contents of the containers (examples may include, but are not limited to the name of the chemical(s), such as ''acetone'' or ''methylene dichloride''; or the type or class of chemical, such as ''organic solvents'' or ''halogenated organic solvents'' or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D); and

(4) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; a hazard pictogram consistent with the United Nations' Globally Harmonized System; or any other marking and labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit).

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 48. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

■ 49. Section 264.1 is amended by revising paragraphs (g)(1) and (3) to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(1) The owner or operator of a facility permitted, licensed, or registered by a state to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under this part by § 262.14 of this chapter;

* * * * *

(3) A generator accumulating waste on site in compliance with § 262.14, 262.15, 262.16, or 262.17 of this chapter.

* * * * *

■ 50. Section 264.15 is amended by revising paragraph (b)(4) and removing the comment to paragraph (b)(4) and paragraph (b)(5).

The revision reads as follows:

§ 264.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas

subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089, where applicable. Part 270 of this chapter requires the inspection schedule to be submitted with part B of the permit application. EPA will evaluate the schedule along with the rest of the application to ensure that it adequately protects human health and the environment. As part of this review, EPA may modify or amend the schedule as may be necessary.

* * * * *

■ 51. Section 264.71 is amended by revising paragraph (c) and removing the comment following paragraph (c).

The revision reads as follows:

§ 264.71 Use of manifest system.

* * * * *

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of part 262 of this chapter. The provisions of §§ 262.15, 262.16, and 262.17 of this chapter are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of §§ 262.15, 262.16, and 262.17 of this chapter only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

* * * * *

■ 52. Section 264.75 is revised to read as follows:

§ 264.75 Biennial report.

The owner or operator must complete and submit EPA form 8700–13 to the Regional Administrator by March 1 of each even numbered year for facility activities during the previous calendar year.

■ 53. Section 264.170 is revised to read as follows:

§ 264.170 Applicability.

The regulations in this subpart apply to owners and operators of all hazardous waste facilities that store hazardous waste in containers, except as § 264.1 provides otherwise.

■ 54. Section 264.174 is revised to read as follows:

§ 264.174 Inspections.

At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers and the containment system cause by corrosion or other factors. See §§ 264.15(c) and 264.171 for remedial action required if deterioration or leaks are detected.

■ 55. Section 264.191 is amended by revising paragraph (a) to read as follows:

§ 264.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 264.193, the owner or operator must determine that the tank system is not leaking or is fit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with § 270.11(d) of this chapter, that attests to the tank system's integrity by January 12, 1988.

* * * * *

§ 264.195 [Amended]

■ 56. Section 264.195 is amended by removing and reserving paragraph (e).

■ 57. Section 264.1030 is amended by revising paragraph (b)(2) to read as follows:

§ 264.1030 Applicability.

* * * * *

(b) * * *

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 CFR 262.17 (*i.e.,* a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270; or

* * * * *

■ 58. Section 264.1050 is amended by revising paragraph (b)(3) to read as follows:

§ 264.1050 Applicability.

* * * * *

(b) * * *

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.17 (*i.e.,* a ''90-day'' tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.

* * * * *

■ 59. Section 264.1101 is amended by revising paragraph (c)(4) to read as follows:

§ 264.1101 Design and operating standards.

* * * * *

(c) * * *

(4) Inspect and record in the facility operating record, at least once every seven days, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 60. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937.

■ 61. Section 265.1 is amended by revising paragraphs (c)(5) and (7) to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(5) The owner or operator of a facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under this part by § 262.14 of this chapter;

* * * * *

(7) A generator accumulating waste on site in compliance with §§ 262.15, 262.16, and 262.17 of this chapter, except to the extent the provisions are included in § 262.15, 262.16, or 262.17 of this chapter;

* * * * *

■ 62. Section 265.15 is amended by revising paragraph (b)(4) and removing paragraph (b)(5).

The revision reads as follows:

§ 265.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052,

265.1053, 265.1058, and 265.1084 through 265.1090, where applicable.

* * * * *

■ 63. Section 265.71 is amended by revising paragraph (c) to read as follows:

§ 265.71 Use of manifest system.

* * * * *

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of part 262 of this chapter. The provisions of §§ 262.15, 262.16, and 262.17 of this chapter are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of §§ 262.15, 262.16, and 262.17 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

* * * * *

■ 64. Section 265.75 is revised to read as follows:

§ 265.75 Biennial report.

The owner or operator must complete and submit EPA form 8700–13 to the Regional Administrator by March 1 of each even numbered year for facility activities during the previous calendar year.

■ 65. Section 265.111 is amended by revising paragraph (c) to read as follows:

§ 265.111 Closure performance standard.

* * * * *

(c) Complies with the closure requirements of this subpart, including, but not limited to, the requirements of §§ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, 265.404, 265.445, and 265.1102.

■ 66. Section 265.114 is revised to read as follows:

§ 265.114 Disposal or decontamination of equipment, structures and soils.

During the partial and final closure periods, all contaminated equipment, structures and soil must be properly disposed of, or decontaminated unless specified otherwise in § 265.197, 265.228, 265.445, 265.258, 265.280, 265.310, or 265.1102. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of part 262 of this chapter.

■ 67. Section 265.174 is revised to read as follows:

§ 265.174 Inspections.

At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. See § 265.171 for remedial action required if deterioration or leaks are detected.

§ 265.195 [Amended]

■ 68. Section 265.195 is amended by removing and reserving paragraph (d).

§ 265.201 [Removed and reserved]

■ 69. Remove and reserve § 265.201.

■ 70. Section 265.1030 is amended by revising paragraphs (b)(2) and (3) and removing the Note to (b)(3).

The revisions read as follows:

§ 265.1030 Applicability.

* * * * *

(b) * * *

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 CFR 262.17 (*i.e.,* a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270, or

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.17 (*i.e.,* a ''90-day'' tank or container) and is not a recycling unit under the requirements of 40 CFR 261.6.

* * * * *

■ 71. Section 265.1101 is amended by revising paragraph (c)(4) to read as follows:

§ 265.1101 Design and operating standards.

* * * * *

(c) * * *

(4) Inspect and record in the facility's operating record at least once every seven days data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

■ 72. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

■ 73. Section 268.1 is amended by revising paragraph (e)(1) to read as follows:

§ 268.1 Purpose, scope, and applicability.

* * * * *

(e) * * *

(1) Waste generated by very small quantity generators, as defined in § 260.10 of this chapter;

* * * * *

■ 74. Section 268.7 is amended by revising paragraph (a)(5) introductory paragraph to read as follows:

§ 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.

(a) * * *

(5) If a generator is managing and treating prohibited waste or contaminated soil in tanks, containers, or containment buildings regulated under 40 CFR 262.15, 262.16, and 262.17 to meet applicable LDR treatment standards found at § 268.40, the generator must develop and follow a written waste analysis plan which describes the procedures they will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of Table 1 to § 268.45, however, are not subject to these waste analysis requirements.) The plan must be kept on site in the generator's records, and the following requirements must be met:

* * * * *

■ 75. Section 268.50 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 268.50 Prohibitions on storage of restricted waste.

(a) * * *

(2) * * *

(i) Each container is clearly marked with:

(A) The words ''Hazardous Waste;''

(B) The applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in subparts C and D of part 261 of this chapter;

(C) Other words that identify the contents of the containers (examples may include, but are not limited to the name of the chemical(s), such as ''acetone'' or ''methylene dichloride''; or the type or class of chemical, such as ''organic solvents'' or ''halogenated organic solvents'' or, as applicable, the proper shipping name and technical name markings used to comply with Department of Transportation requirements at 49 CFR part 172 subpart D); and

(D) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); a hazard class label consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling); a label consistent with the Occupational Safety

and Health Administration Hazard Communication Standard at 29 CFR 1920.1200; a chemical hazard label consistent with the National Fire Protection Association code 704; a hazard pictogram consistent with the United Nations' Globally Harmonized System; or any other marking and labeling commonly used nationwide in commerce that identifies the nature of the hazards associated with the contents of the waste accumulation unit); and

(E) The date each period of accumulation begins.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

■ 76. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

■ 77. Section 270.1 is amended by revising paragraphs (a)(3), (c)(2) introductory text, (c)(2)(i), and (c)(2)(iii) to read as follows:

§ 270.1 Purpose and scope of these regulations.

(a) * * *

(3) *Technical regulations.* The RCRA permit program has separate additional regulations that contain technical requirements. These separate regulations are used by permit issuing authorities to determine what requirements must be placed in permits if they are issued. These separate regulations are located in 40 CFR parts 264, 266, 267, and 268.

* * * * *

(c) * * *

(2) *Specific exclusions and exemptions.* The following persons are among those who are not required to obtain a RCRA permit:

(i) Generators who accumulate hazardous waste on site in compliance with all of the conditions for exemption provided in 40 CFR 262.14, 262.15, 262.16, and 262.17.

* * * * *

(iii) Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulations under this part by 40 CFR 261.4.

* * * * *

§ 270.42 [Amended]

■ 78. Section 270.42 is amended by removing and reserving paragraph (l) and the entries under O.1. in the table of appendix I to § 270.42.

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

■ 79. The authority citation for part 273 continues to read as follows:

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

■ 80. Section 273.8 is amended by revising the section heading and paragraph (a)(2) to read as follows:

§ 273.8 Applicability—household and very small quantity generator waste.

(a) * * *

(2) Very small quantity generator wastes that are exempt under § 262.14 of this chapter and are also of the same type as the universal wastes defined at § 273.9.

* * * * *

■ 81. Section 273.81 is amended by revising paragraph (b) to read as follows:

§ 273.81 Factors for petitions to include other wastes under 40 CFR part 273.

* * * * *

(b) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, very small quantity generators, small businesses, government organizations, as well as large industrial facilities);

* * * * *

PART 279—STANDARDS FOR MANAGEMENT OF USED OIL

■ 82. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974) ; and sections 101(37) and 144(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

■ 83. Section 279.10 is amended by revising paragraph (b)(3) to read as follows:

§ 279.10 Applicability.

* * * * *

(b) * * *

(3) *Very small quantity generator hazardous waste.* Mixtures of used oil and very small quantity generator hazardous waste regulated under § 262.14 of this chapter are subject to regulation as used oil under this part.

* * * * *

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Part III

Environmental Protection Agency

40 CFR Parts 261, 262, 266, *et al.*

Management Standards for Hazardous Waste Pharmaceuticals; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 262, 266, 268, and 273

[EPA–HQ–RCRA–2007–0932; FRL–9924–08–OSWER]

RIN 2050–AG39

Management Standards for Hazardous Waste Pharmaceuticals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Some pharmaceuticals are regulated as hazardous waste under the Resource Conservation and Recovery Act (RCRA) when discarded. Healthcare facilities that generate hazardous waste pharmaceuticals as well as associated facilities have reported difficulties complying with the Subtitle C hazardous waste regulations for a number of reasons. First, healthcare workers, whose primary focus is to provide care for patients, are not knowledgeable about the RCRA hazardous waste regulations, but are often involved in the implementation of the regulations. Second, a healthcare facility can have thousands of items in its formulary, making it difficult to ascertain which ones are hazardous wastes when disposed. Third, some active pharmaceutical ingredients are listed as acute hazardous wastes, which are regulated in small amounts. To facilitate compliance and to respond to these concerns, the U.S. Environmental Protection Agency (EPA or the Agency) is proposing to revise the regulations to improve the management and disposal of hazardous waste pharmaceuticals and tailor them to address the specific issues that hospitals, pharmacies and other healthcare-related facilities face. The revisions are also intended to clarify the regulation of the reverse distribution mechanism used by healthcare facilities for the management of unused and/or expired pharmaceuticals.

DATES: Comments must be received on or before November 24, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2007–0932, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kristin Fitzgerald, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: 703–308–8286; email address: *fitzgerald.kristin@epa.gov* or Josh Smeraldi, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: 703–308–0441; email address: *smeraldi.josh@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Does this action apply to me?

This is a proposed rule. If finalized, this rule would apply to healthcare facilities, pharmaceutical reverse distributors, and owners or operators of treatment, storage, and disposal facilities engaged in the management of hazardous waste pharmaceuticals. The list of NAICS codes for the potentially affected entities, other than RCRA treatment, storage and disposal facilities (TSDFs), are presented in Table 1. More detailed information on the potentially affected entities is presented in Section V.A and Section V.B.1 of this preamble.

TABLE 1—NAICS CODES OF ENTITIES POTENTIALLY AFFECTED BY THIS FINAL RULE—HEALTHCARE FACILITIES AND PHARMACEUTICAL REVERSE DISTRIBUTORS

NAICS codes	Description of NAICS code
44611	Pharmacies.
54194	Veterinary Clinics.
6211	Physicians' Offices.
6212	Dentists' Offices.
6213	Other Health Practitioners (*e.g.,* chiropractors).
6214	Outpatient Care Centers.
6219	Other Ambulatory Health Care Services.
622	Hospitals.
6231	Nursing Care Facilities (*e.g.,* assisted living facilities, nursing homes, U.S. veterans domiciliary centers).
623311	Continuing Care Retirement Communities (*e.g.,* assisted living facilities with on-site nursing facilities).
Subset of 92219	Medical Examiners and Coroners' Offices.
Various NAICS	Pharmaceutical Reverse Distributors.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially impacted by this action. This table lists examples of the types of entities of which EPA is aware that could potentially be affected by this action. Other types of entities not listed could also be affected. To determine whether your entity, company, business, organization, etc. is affected by this action, you should examine the applicability criteria in this rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document.

Preamble Outline

I. Statutory Authority
II. List of Abbreviations and Acronyms
III. Summary of the Proposed Rule
IV. Background

A. What is the history of hazardous waste pharmaceutical management under RCRA?
B. What are the rationale and goals for this proposed rule?
C. What was the 2008 pharmaceutical universal waste proposal?
D. EPA's Office of Inspector General Report
V. Detailed Discussion of the Proposed Rule
A. What terms are defined in this proposed rule?
B. What is the scope of this proposed rule?
C. What are the proposed standards for healthcare facilities that manage non-creditable hazardous waste pharmaceuticals?
D. How does this proposed rule address healthcare facilities that accumulate potentially creditable hazardous waste pharmaceuticals prior to shipment to pharmaceutical reverse distributors?
E. What are the proposed novel prohibitions, exemptions and other unique management requirements for hazardous waste pharmaceuticals?
F. What are the proposed standards for shipping hazardous waste pharmaceuticals?
G. What are the proposed standards for pharmaceutical reverse distributors?
VI. Implementation and Enforcement
A. Healthcare Facilities
B. Pharmaceutical Reverse Distributors
C. Healthcare Facilities and Pharmaceutical Reverse Distributors Managing Non-Pharmaceutical Hazardous Waste in Accordance With 40 CFR Part 262 or Part 273
D. State Enforcement Activities and Interpretations
VII. Request for Comment on EPA's Efforts To Identify Additional Pharmaceuticals as Hazardous Wastes
VIII. Request for Comment on EPA's Efforts To Amend the Acute Hazardous Waste Listing for Nicotine and Salts (Hazardous Waste No. P075)
A. Background
B. Basis for Original Listing
C. Rationale for EPA's Efforts To Amend the P075 Listing
D. Two Possible Approaches for Amending the P075 Listing
E. Request for Comments
IX. State Authorization
A. Applicability of Rules in Authorized States
B. Effect on State Authorization
C. Effect on State Authorization in States That Have Added Pharmaceuticals to the Universal Waste Program
X. Adding and Reserving Part 266, Subpart O
XI. Summary of the Regulatory Impact Analysis
XII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Small Business Analysis
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA)
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Statutory Authority

These regulations are proposed under the authority of §§ 2002, 3001, 3002, and 3004 of the Solid Waste Disposal Act (SWDA) of 1970, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924.

II. List of Abbreviations and Acronyms

AARP American Association of Retired Persons
AEA Atomic Energy Act
API Active Pharmaceutical Ingredient
BDAT Best Demonstrated Available Technology
CERCLA Comprehensive Environmental Response, Compensation and Liability Act
CESQG Conditionally Exempt Small Quantity Generator
CFR Code of Federal Regulations
CSA Controlled Substances Act
CWA Clean Water Act
DEA Drug Enforcement Administration
DHHS Department of Health and Human Services
DOE Department of Energy
DOT Department of Transportation
EPA Environmental Protection Agency
EO Executive Order
FDA U.S. Food and Drug Administration
FR Federal Register
HIPAA Health Insurance Portability and Accountability Act
HSWA Hazardous and Solid Waste Amendments
LQG Large Quantity Generator
LQUWH Large Quantity Universal Waste Handler
LTCF Long-term Care Facility
LTCP Long-term Care Pharmacy
MSWLF Municipal Solid Waste Landfill
NIOSH National Institute for Occupational Safety and Health
NPRM Notice of Proposed Rulemaking
NRC Nuclear Regulatory Commission
OIG Office of Inspector General
OMB Office of Management and Budget
ONDCP Office of National Drug Control Policy
OSHA U.S. Department of Labor's Occupational Safety and Health Administration
OSWER Office of Solid Waste and Emergency Response
OSWI Other Solid Waste Incinerators
OTC Over-the-counter
POTW Publicly Owned Treatment Works
RCRA Resource Conservation and Recovery Act
RQ Reportable Quantity
SQG Small Quantity Generator
SQUWH Small Quantity Universal Waste Handler
SWDA Solid Waste Disposal Act
TC Toxicity Characteristic
TCLP Toxicity Characteristic Leaching Procedure
TSDF Treatment, Storage and Disposal Facility

III. Summary of the Proposed Rule

EPA is proposing to add a subpart P under 40 CFR part 266. Part 266 is entitled, ''Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.'' This new subpart P is a tailored, sector-specific regulatory framework for managing hazardous waste pharmaceuticals at healthcare facilities and pharmaceutical reverse distributors. If finalized, healthcare facilities that are currently small quantity generators (SQGs) or large quantity generators (LQGs) and all pharmaceutical reverse distributors, regardless of their RCRA generator category, will be required to manage their hazardous waste pharmaceuticals under subpart P of 40 CFR part 266, instead of 40 CFR part 262. That is, the proposed standards are not an optional alternative to managing hazardous waste pharmaceuticals under 40 CFR part 262; they are mandatory standards.

Briefly, healthcare facilities will have different management standards for their non-creditable and creditable hazardous waste pharmaceuticals. Non-creditable hazardous waste pharmaceuticals (*i.e.,* those that are not expected to be eligible to receive manufacturer's credit) will be managed on-site similar to how they would have been under a previous proposal for managing these wastes: The 2008 Universal Waste proposal for pharmaceutical waste (73 FR 73520; December 2, 2008). When shipped off-site, they must be transported as hazardous wastes, including the use of the hazardous waste manifest, and sent to a RCRA interim status or permitted facility. On the other hand, healthcare facilities will continue to be allowed to send potentially creditable hazardous waste pharmaceuticals to pharmaceutical reverse distributors for processing manufacturers' credit. In response to comments received on the Universal Waste proposal, EPA is proposing standards to ensure the safe and secure delivery of the creditable

hazardous waste pharmaceuticals to pharmaceutical reverse distributors.

EPA is also proposing standards for the accumulation of the creditable hazardous waste pharmaceuticals at pharmaceutical reverse distributors. Like healthcare facilities, pharmaceutical reverse distributors will not be regulated under 40 CFR part 262 as hazardous waste generators, nor will they be regulated under 40 CFR parts 264, 265 and 270 as treatment, storage, and disposal facilities (TSDFs). Rather, the proposal establishes a new category of hazardous waste entity, called pharmaceutical reverse distributors. The proposed standards for pharmaceutical reverse distributors are, in many respects, similar to the LQGs standards, with supplementary standards added to respond to commenters' concerns.

For both healthcare facilities and reverse distributors, EPA is proposing to prohibit facilities from disposing of hazardous waste pharmaceuticals down the toilet or drain (*i.e*, flushed or sewered). Further, EPA proposes that hazardous waste pharmaceuticals managed under subpart P will not be counted toward calculating the site's generator category. Additionally, EPA is proposing a conditional exemption for hazardous waste pharmaceuticals that are also DEA controlled substances. Finally, EPA is proposing management standards for hazardous waste pharmaceutical residues remaining in containers.

IV. Background

A. What is the history of hazardous waste pharmaceutical management under RCRA?

1. What Is the Resource Conservation and Recovery Act?

The Resource Conservation and Recovery Act governs the management and disposal of hazardous wastes.[1] Under Subtitle C of RCRA, EPA has established a comprehensive set of regulations for hazardous waste management, generation, transportation, treatment, storage, and disposal. EPA can authorize an individual state hazardous waste program to operate in lieu of the federal program provided the authorized state's program is at least as stringent as, and consistent with, the federal program.[2] However, EPA maintains oversight of the authorized state's hazardous waste program and the authority to take independent enforcement actions. RCRA regulates pharmaceutical wastes that meet a listing of hazardous waste or exhibit one or more characteristics of hazardous waste. Accordingly, hospitals, pharmacies, reverse distributors and other healthcare-related establishments that generate hazardous wastes, including hazardous waste pharmaceuticals, are required to manage and dispose of their hazardous wastes in accordance with applicable federal, state, and/or local environmental regulations.

2. What are the current standards for generators of hazardous waste?

Currently, there are no RCRA Subtitle C regulations that focus specifically on the management of hazardous wastes from hospitals, pharmacies, reverse distributors and other healthcare-related facilities. Rather, healthcare facilities are currently required to comply with the same RCRA hazardous waste regulations as many other industries that generate hazardous waste. While the RCRA Subtitle C program has requirements for all aspects of hazardous waste management, including those generating (referred to as ''generators'' by RCRA), transporting, storing, treating, and disposing of hazardous wastes, it is the generator requirements found under 40 CFR part 262 that will typically be most pertinent to healthcare-related facilities.

Under the federal RCRA regulations, the standards for hazardous waste generators are divided into three categories—LQGs, SQGs, and Conditionally Exempt Small Quantity Generators (CESQGs) depending upon the total amount of hazardous waste a facility generates per calendar month. It is the facility's generator category that determines the applicable RCRA hazardous waste management requirements with which the generator must comply.[3]

A generator that generates a solid waste[4] is required by § 262.11 to determine whether such waste meets the definition of RCRA hazardous waste.[5] If the waste meets the RCRA definition of a hazardous waste, then the generator must manage the waste in accordance with the regulations that apply to its hazardous waste generator category (see § 261.5 and 40 CFR part 262 for the generator regulations). In particular:

- Facilities qualify as LQGs if in a calendar month they generate 1,000 kg or more of hazardous waste or more than 1 kg of acute hazardous waste (*i.e.,* P-listed waste), or more than 100 kg of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in §§ 261.31 or 261.33(e). Federal regulations for LQGs include, but are not limited to the following: Obtaining an EPA Identification number; a 90-day limit for accumulating hazardous waste on-site (with relevant standards for the accumulation of hazardous waste) without having to obtain a RCRA permit or comply with the interim status standards, provided that they comply with the conditions for exemption set forth in § 262.34(a) such as management and labeling standards specific to the type of accumulation unit (*e.g.,* container, tank); RCRA training of personnel; contingency planning; manifesting and recordkeeping and reporting (biennial report).

- Facilities qualify as SQGs if in a calendar month they generate more than 100 kg but less than 1,000 kg of hazardous waste. SQGs are subject to fewer requirements than LQGs and are given additional flexibility. For example, SQGs have a longer on-site accumulation time limit (180 or 270 days vs. 90 days for LQGs), with fewer standards for the accumulation of hazardous waste, without having to obtain a RCRA permit or comply with the interim status standards, provided that they comply with the conditions set forth in § 262.34(d) (which have fewer personnel training and contingency planning obligations than in the conditions for exemption for LQGs); and do not need to complete a biennial report (BR).

- Facilities qualify as CESQGs if in a calendar month they generate less than or equal to 100 kg of hazardous waste, and less than or equal to 1 kg of acutely hazardous waste (*i.e.,* P-listed), and less than or equal to 100 kg of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in

[1] RCRA also governs the disposal of non-hazardous solid wastes; however, state and/or local environmental regulatory agencies predominantly administer the regulations pertaining to the management of non-hazardous wastes.

[2] For more information on RCRA State Authorization, see: *http://www.epa.gov/osw/laws-regs/state/index.htm.*

[3] For more information on hazardous waste generators, please see: *http://www.epa.gov/waste/hazard/generation/index.htm.*

[4] See 40 CFR 261.2 for the definition of solid waste.

[5] The waste determination process includes determining if the waste is specifically excluded or exempted from the RCRA hazardous waste regulations. If not, then the entity must determine if the waste is listed by EPA under the F-, K-, P- or U-lists of hazardous wastes (§§ 261.31–33). If the waste is not listed, then it must be determined if the waste exhibits a characteristic of a hazardous waste: Ignitability, corrosivity, reactivity, or toxicity (§§ 261.21–24).

§§ 261.31, or 261.33(e).[6] CESQGs are subject to very few of the RCRA Subtitle C hazardous waste regulations, provided that they comply with the conditions set forth in § 261.5(f)(3) and (g)(3).

Finally, under the household hazardous waste exemption in § 261.4(b)(1), hazardous wastes generated by households are not subject to the RCRA hazardous waste regulations. This exemption from the Subtitle C requirements extends to any household wastes collected during community-oriented take-back programs or events, as long as these collected household hazardous wastes are managed separately from regulated hazardous wastes.[7] However, while collected household hazardous wastes are not regulated under the federal standards, more stringent state standards may apply.

3. Are pharmaceuticals considered hazardous wastes under RCRA?

A portion of the pharmaceuticals currently on the market meets RCRA's definition of hazardous waste when discarded. As previously explained, it is the responsibility of the generator of a solid waste to determine if the waste is hazardous; this includes solid wastes that are pharmaceuticals. If the pharmaceutical waste meets RCRA's definition of hazardous waste, then the generator must manage it in accordance with all applicable federal, state, and/or local environmental regulations. A pharmaceutical is considered a hazardous waste under RCRA in one of two ways. First, a discarded pharmaceutical can be a listed hazardous waste if it is a commercial chemical product[8] that is listed under RCRA's P- or U-list, and the pharmaceutical has not been used for its intended purpose (§ 261.33 (e) and (f), respectively).[9] A few examples of pharmaceuticals that are considered P-listed wastes when discarded are arsenic trioxide (P012), smoking cessation products with nicotine as the sole active ingredient (P075), and pharmaceuticals with greater than 0.3% warfarin (and salts) as the sole active ingredient, such as Coumadin (P001). Some examples of pharmaceuticals that are considered U-listed wastes are: Cyclophosphamide (U058), mitomycin C (U010), streptozotocin (U206) and warfarin and salts (≤0.3%) as the sole active ingredient (U248).

Second, if the discarded pharmaceutical is not on the P- or U-list, then the pharmaceutical may be a hazardous waste if it exhibits one or more of the hazardous waste characteristics. Under the federal requirements (§ 261.21–24), a waste is a characteristic hazardous waste if it is ignitable (D001), corrosive (D002), reactive (D003) or toxic (D004–D043).[10] A number of pharmaceuticals are prepared in alcohol, which may cause the waste to be hazardous due to ignitability (D001), even if the active pharmaceutical ingredient itself is not considered hazardous waste. The Regulatory Impact Analysis for this proposed rule includes a list of pharmaceuticals that, to our knowledge, are hazardous waste when disposed, although this list should not be considered exhaustive (see the docket for this proposed rule EPA–HQ–RCRA–2007–0932).

Since the hazardous waste rules were initially promulgated, EPA has issued several clarifications regarding the regulatory status of certain commercial chemical products on the P- and U-lists, and these clarifications have affected the regulatory status of some active pharmaceutical ingredients.[11] For example, EPA recently clarified that phentermine hydrochloride and other phentermine salts are not included within the scope of the P046 (phentermine) listing.[12] Similarly, EPA has also clarified that epinephrine salts are not included in the epinephrine listing (P042).[13] In addition, medicinal nitroglycerin typically is not considered P081 since the medicinal form of this compound generally does not exhibit the characteristic of reactivity for which nitroglycerin was originally listed.[14] Furthermore, in a 1998 memo, EPA clarified that the U034 listing includes both anhydrous chloral and chloral hydrate.[15] And in a 2010 memo, EPA stated that unused nicotine patches, gums and lozenges are finished dosage forms of nicotine and therefore are regulated as P075 when discarded.[16]

Finally, EPA has developed a ''Hazardous Waste Pharmaceuticals Wiki'' as a platform to facilitate the sharing of expertise among the healthcare industry and other stakeholders in order to help make accurate hazardous waste determinations for waste pharmaceuticals and increase compliance with the hazardous waste regulations. The Hazardous Waste Pharmaceuticals Wiki will also help users find guidance documents, state-specific information, and manufacturers' information. The Hazardous Waste Pharmaceuticals Wiki can be viewed at: *http://hwpharms.wikispaces.com*. EPA encourages healthcare stakeholders to use the Wiki to share information regarding federal hazardous waste

[6] EPA recommends that facilities that qualify as CESQGs under the federal regulations contact their state and/or local environmental regulatory agencies, as authorized states can be more stringent than the federal regulations. As a result, not all authorized states recognize the CESQG category or they may have more stringent regulatory requirements for CESQGs.

[7] For clarification on household hazardous waste collection issues, please see the November 1, 1988 memo from Win Porter to the Regional Waste Management Division Directors (RCRA Online # 11377) at: *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/2FD51915214EF63C8525670F006BDC88/$file/11377.pdf*.

[8] Commercial chemical product refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed and all formulations in which the chemical is the sole active ingredient (§ 261.33(d)).

[9] The P- and U-lists deem as hazardous certain commercial chemical products when they are discarded or intended to be discarded. These listings consist of commercial chemical products having the generic names listed, off-specification species, container residues, and spill residues. Chemicals on the P-list are identified as acute hazardous wastes and are regulated at lower amounts than those on the U-list.

[10] The toxicity characteristic (TC) indicates that the waste is likely to leach concentrations of contaminants that may be harmful, and TC waste is identified using the Toxicity Characteristic Leaching Procedure (see § 261.24). Examples of TC constituents that may be present in pharmaceuticals include, but are not limited to: Arsenic, barium, cadmium, selenium, silver, chloroform, lindane and m-cresol.

[11] In addition, in December 2008, the Agency proposed to regulate hazardous waste pharmaceuticals under the Universal Waste rule. However, based on the comments received, the Agency decided not to finalize that proposal and to proceed with a sector-based approach. (See section IV.C. of the preamble for further discussion of the Universal Waste proposal.)

[12] Memo from Devlin to RCRA Division Directors, February 17, 2012 (RCRA Online #14831) *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/A5C07D01188ECA59852579EA0067CDB1/$file/14831.pdf*.

[13] Memo December 1, 1994 (RCRA Online #13718) *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/1C1DEB3648A62A868525670F006BCCD2/$file/13718.pdf*.

[14] Memo from Dellinger to Smith, March 18, 2003 (RCRA Online #14654) *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/7ACFEC572DE8897F85256D1600748BCB/$file/14654.pdf*.

[15] Memo from Brandes to Knauss, April 6, 1998 (RCRA Online #14175) *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/7417D2556AD322FA852568E300468198/$file/14175.pdf*.

[16] Memo from Dellinger to Smith, August 23, 2010 (RCRA Online #14817) *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/209444BADDA4ECDC852577ED00624E8F/$file/14817.pdf*.

pharmaceuticals, as well as state-only hazardous waste pharmaceuticals.[17]

B. What are the rationale and goals for this proposed rule?

1. Sector-Based Approach

The impetus behind this proposal is to address the various concerns raised by stakeholders regarding the difficulty in implementing the Subtitle C hazardous waste regulations for the management of hazardous waste pharmaceuticals generated at healthcare facilities. EPA has met with various stakeholders to learn about compliance challenges, and it has received input from stakeholders through more formal mechanisms. For instance, when EPA solicited stakeholder input in response to Executive Order 13563 (Improving Regulation and Regulatory Review), retailers submitted comments detailing compliance challenges with hazardous waste pharmaceuticals in their stores.[18] Further, EPA's Office of Inspector General (OIG) published a report citing the need to clarify how hazardous waste pharmaceuticals are regulated (for more information on both of these reports, see the next section). These two reports and input from healthcare (and associated) facilities identified a number of ways in which a healthcare facility differs from a manufacturing facility when it comes to applying the RCRA Subtitle C program for generating and managing hazardous waste.

First, in the healthcare setting, many hazardous waste pharmaceuticals are generated unpredictably and in relatively small quantities by a number of different employees across the facility. This situation differs from a manufacturing facility where fewer employees in a few locations generate comparatively much larger volumes of a smaller range of hazardous wastes.

Second, under the current hazardous waste regulatory scheme, healthcare workers, whose primary focus is to provide care for patients, are typically responsible for making hazardous waste determinations since they are at the point of generation (*e.g.,* a patient's bedside). Yet, healthcare workers, such as nurses and doctors, do not typically have the expertise to make hazardous waste determinations.

Third, a healthcare facility can have thousands of items in its formulary at any one time and these may vary over time. In addition, pharmaceutical wastes come in many different forms, such as pills, patches, lozenges, gums, creams, and liquids, and are delivered by a variety of devices, such as nebulizers, intravenous (IV) tubing, syringes, etc. The combination of having thousands of different pharmaceutical products and little expertise in hazardous waste regulations makes it difficult for healthcare workers to make appropriate hazardous waste determinations when pharmaceuticals are disposed. This situation differs from manufacturing, where fewer, more predictable waste streams are generated.

Fourth, several of the hazardous waste pharmaceuticals that are generated by healthcare facilities are P-listed acute hazardous wastes (see § 261.33(e)), which are regulated at much smaller amounts. If a facility generates more than 1 kg of acute hazardous waste per calendar month or accumulates that amount at any time, it is regulated as an LQG. In addition to the pharmaceuticals, residues within pharmaceutical containers that contained P-listed commercial chemical products must be managed as acute hazardous waste even if the pharmaceutical was fully dispensed,[19] unless the container is RCRA-empty (*e.g.,* by triple-rinsing the container). Triple rinsing can be impractical with certain medical devices, such as syringes and paper cups, so healthcare facilities often end up managing these containers as hazardous waste, which can result in the facilities being subject to the most stringently regulated generator category (*i.e.,* LQG).[20]

To facilitate compliance among healthcare facilities and to respond to these concerns, EPA is proposing a new set of sector-specific regulations to improve the management and disposal of hazardous waste pharmaceuticals at healthcare facilities. This proposed rule also intends to clarify the regulatory status of a major practice used by healthcare facilities for management of unused and/or expired pharmaceuticals, known as reverse distribution (see Sections V.D.1 and V.G).

In addition to improving compliance and responding to stakeholder concerns, the Agency has two additional goals for this proposal. The first is to reduce the amount of pharmaceuticals that are disposed of ''down the drain.'' This is presently an allowable and common disposal practice among healthcare facilities (as long as the pharmaceutical waste is not ignitable (see the Clean Water Act regulations of 40 CFR 403.5(b)(1)) and provided certain conditions are met (see the Clean Water Act regulations of 40 CFR 403.12(p)). Studies have found that many healthcare facilities, particularly long term-care facilities, are using drain disposal as a routine disposal method for pharmaceutical wastes. Although pharmaceuticals are also entering the environment through excretion, reducing sewer disposal is one mechanism to help reduce the environmental loading of pharmaceuticals into our Nation's waters. For more information about sewer disposal and pharmaceuticals in water, see Section V.E.1.

The second goal is to address the overlap between EPA's RCRA hazardous waste regulations and the controlled substances regulations of the Drug Enforcement Administration (DEA). Stakeholders have indicated that hazardous waste pharmaceuticals that are also controlled substances are stringently regulated and expensive to dispose of in accordance with both sets of requirements when sent for incineration. In addition, stakeholders have indicated that those regulated hazardous waste pharmaceuticals that are also controlled substances are most likely to be sewer disposed to avoid the costs of compliant incineration. EPA plans to address this overlap in this proposed rule, as this is an unnecessary burden for healthcare facilities and revised requirements will help to reduce sewer disposal.

2. Executive Order 13563 for the Retrospective Review of Existing Regulations

On January 18, 2011, President Obama issued Executive Order 13563, which directed all federal agencies to perform periodic retrospective reviews of existing regulations to determine whether any should be modified,

[17] Anyone may view the Wiki. Those in the healthcare community who wish to contribute content or edit the Wiki can register by sending an email request to *HWPharmsWiki@epa.gov*.

[18] Executive Order 13563 was signed by President Obama on January 18, 2011 and published in the **Federal Register** on January 21, 2011 (76 FR 3821). In response to the Executive Order, EPA solicited comments on ''Improving EPA Regulations,'' in a **Federal Register** notice published on February 23, 2011 (76 FR 9988). See docket number EPA–HQ–OA–2011–0160 for public comments related to waste.

[19] P-listed hazardous waste residues in containers are themselves considered P-listed hazardous wastes (*see* § 261.33(c)), unless the container is considered ''RCRA empty'' either by undergoing triple-rinsing with an appropriate solvent; or cleaning with a method that has been proven in scientific literature or tests conducted by the generator to achieve equivalent removal (*see* § 261.7(b)(3)).

[20] On November 4, 2011, ORCR issued a memo to the Regional RCRA Division Directors highlighting three acceptable approaches, beyond triple-rinsing containers, that healthcare facilities can employ when managing P-listed container residues. Please see: Memo from Suzanne Rudzinski to RCRA Division Directors (RCRA Online #14827) *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/57B21F2FE33735128525795F00610F0F/$file/14827.pdf*.

streamlined, expanded, or repealed.[21] EPA made its preliminary plan available for public review and comment during the spring of 2011 and released the final version of the plan in August 2011.[22] During the public comment process, EPA received requests to clarify and make more effective the hazardous waste regulations as they pertain to discarded retail products, including pharmaceutical wastes. In response to this specific issue, EPA agreed to review data and information currently in its possession as part of the development for a rulemaking to address pharmaceutical waste management issues.[23] This Notice of Proposed Rulemaking provides notice that EPA has completed its review and has satisfied this part of its obligation for retail hazardous waste pharmaceutical management issues.

3. Retail Notice of Data Availability

EPA published a Notice of Data Availability (NODA) for the Retail Sector on February 14, 2014 (79 FR 8926), in which the Agency requested, among other things, comment on a series of topics related to retail operations in order to better understand the issues retail stores/establishments face in complying with RCRA regulations. Many retail commenters mentioned that because nicotine is an acute hazardous waste (P075), they are considered LQGs when they discard more than 1 kg per month of unused nicotine-containing products (*e.g.*, e-cigarettes and smoking cessation products such as gums, patches and lozenges). Retailers discard these products mainly because they are either expired or they are returned by customers and the retailer does not restock them due to safety concerns. In comments to the NODA, retailers urged the EPA to provide them some regulatory relief with regard to nicotine-containing products. See Section VIII of this preamble for a discussion of EPA's potential future efforts to amend the acute hazardous waste listing for nicotine and salts (P075).

[21] For a copy of Executive Order 13563, please see: *http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf.*

[22] US EPA. Improving Our Regulations: Final Plan for Periodic Retrospective Reviews of Existing Regulations. *http://www.epa.gov/regdarrt/retrospective/documents/eparetroreviewplan-aug2011.pdf.*

[23] See page 45, item 2.2.17 of EPA's ''Improving Our Regulations: Final Plan for Periodic Retrospective Reviews of Existing Regulations'' at *http://www.epa.gov/regdarrt/retrospective/documents/eparetroreviewplan-aug2011.pdf.*

C. What was the 2008 Pharmaceutical Universal Waste proposal?

1. The 2008 Proposal To Add Hazardous Waste Pharmaceuticals to the Federal Universal Waste Program

On December 2, 2008, EPA proposed to add hazardous waste pharmaceuticals to the existing federal universal waste program, which would have provided a streamlined approach to facilitate the proper management and disposal of hazardous waste pharmaceuticals generated at pharmacies, hospitals, reverse distributors, and other healthcare-related facilities. Specifically, under the universal waste program, handlers and transporters who generate or manage items designated as a universal waste[24] are subject to the management standards under part 273, rather than the full RCRA subtitle C hazardous waste regulations. Universal waste handlers include universal waste generators and collection facilities. The regulations distinguish between ''large quantity handlers of universal waste'' (or those who handle more than 5,000 kilograms of total universal waste at any one time) and ''small quantity handlers of universal waste'' (or those who handle 5,000 kilograms or less of universal waste at any one time).[25] The streamlined requirements for all types of universal waste include modified requirements for storage, labeling and marking, preparing the waste for shipment off-site, employee training, response to releases and notification.

Transporters of universal waste are also subject to less stringent requirements than the full RCRA subtitle C hazardous waste transportation regulations. However, the primary difference between the universal waste transportation requirements and full RCRA subtitle C requirements is that no hazardous waste manifest is required for the transport of universal waste.

Destination facilities under the universal waste program are those facilities that treat, store, dispose of, or recycle universal wastes. Universal waste destination facilities are subject to all currently applicable requirements for hazardous waste treatment, storage, and disposal facilities (TSDFs), including the requirement to obtain a RCRA permit for such activities. (See 73 FR 73520, December 2, 2008, for a more detailed discussion of the proposed universal waste program for pharmaceutical wastes.)

[24] The current federal universal wastes include hazardous waste batteries, certain hazardous waste pesticides, mercury-containing equipment, and hazardous waste lamps.

[25] The 5,000 kilogram accumulation criterion applies to the quantity of all universal wastes accumulated.

2. What were the public comments to the 2008 Pharmaceutical Universal Waste proposal?

EPA received approximately 100 public comments on the 2008 proposal to add hazardous waste pharmaceuticals to the universal waste program.[26] Generally, public commenters supported the Agency's desire to address the issue of hazardous waste pharmaceutical management. However, although there were several aspects of the proposal that were well supported (*e.g.,* training requirements, accumulation times, and hazardous waste pharmaceuticals not being counted towards the generator category), public commenters expressed concern over the lack of notification and tracking requirements for small quantity handlers of universal waste and the reduced notification and tracking requirements for large quantity handlers. As a result, commenters, including state environmental regulatory agencies, expressed concern that they would not be informed of hazardous waste pharmaceutical generation, management, and transportation in their regulatory jurisdictions. Furthermore, public commenters expressed concern that because the universal waste program does not require a hazardous waste manifest or another tracking mechanism, the hazardous waste pharmaceuticals could be vulnerable to diversion. Public commenters argued that hazardous waste pharmaceuticals are different from the other federal universal wastes (batteries, mercury-containing equipment, lamps, and pesticides) in that the pharmaceuticals, as well as their containers, still retain considerable value upon disposal and can be easily diverted for illicit purposes. Therefore, tracking requirements beyond the requirements included in the current universal waste program were considered necessary by the majority of the public commenters.

In addition to the public comments about the strengths and weaknesses of using the universal waste program to address the disposal of hazardous waste pharmaceuticals, EPA received other comments expressing concern with the proposal, including the following: The point of generation of hazardous waste pharmaceuticals as it pertains to reverse distribution; the management of

[26] *See* docket EPA–HQ–RCRA–2007–0932 at *www.regulations.gov* for public comments: *http://www.regulations.gov/#!docketDetail;D=EPA-HQ-RCRA-2007-0932;dct=FR%252BPR%252BN%252BO%252BSR.*

containers that contain hazardous waste pharmaceutical residues; the variability in the land disposal restriction (LDR) treatment standards for hazardous waste pharmaceuticals; the overlap of EPA and DEA regulations for the management of hazardous waste pharmaceuticals that are also controlled substances; and the lack of activity to add pharmaceutical wastes to the hazardous waste listings. The Agency provides additional discussion on these specific comments within this preamble.

3. Why is EPA not finalizing the 2008 Pharmaceutical Universal Waste proposal?

Based on the adverse comments received on the 2008 Pharmaceutical Universal Waste proposal regarding the lack of notification and tracking requirements for small quantity universal waste handlers, the reduced notification and tracking requirements for large quantity universal waste handlers, as well as the other issues raised in public comments, the Agency has decided to not finalize the proposal to add hazardous waste pharmaceuticals to the Universal Waste program. In fact, EPA has concluded that the universal waste program is not appropriate for managing hazardous waste pharmaceuticals because, among other things, we are unable to adequately address the notification and tracking concerns raised by the public comments within the Universal Waste program.

Under the Universal Waste regulations, there are eight factors to consider when determining whether it is appropriate to add a new hazardous waste or category of hazardous waste to the Universal Waste program (§ 273.81). A hazardous waste does not need to meet every factor in order to be added to the Universal Waste program. Rather, the Agency's decision is ''based on the weight of evidence showing that regulation under part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program'' (§ 273.80(c)).

The Agency has concluded based on the comments received that the weight of evidence does not show that regulation under the Universal Waste program is appropriate for hazardous waste pharmaceuticals. Specifically, we find the Universal Waste program to be lacking with regard to the factor in § 273.81(e), which states that the risk posed by the waste being considered for universal waste be relatively low compared to other hazardous wastes and that the management standards would be protective of human health and the environment during accumulation and transport. Although we continue to believe that potentially creditable pharmaceuticals en route to reverse distributors pose a low risk for leaks and other releases to the environment, commenters urged us to consider the unique risk posed by the accumulation and transport of hazardous waste pharmaceuticals: the risk of diversion. Although it is rare that a hazardous waste is so valuable that it is sought for abuse or sale on the black market, EPA believes that the diversion of hazardous waste pharmaceuticals for illicit use is a risk to human health.

The Universal Waste program does not include sufficient tracking requirements to address the potential for diversion. Under part 273, tracking is not required for shipments by small quantity handlers of universal waste; certain tracking of shipments is required only for large quantity handlers of universal waste and destination facilities. More importantly, these basic tracking requirements consist only of recordkeeping of shipments sent and received and no tracking is required to ensure delivery. Commenters noted that these tracking requirements are not sufficient given the high value of many of the unused pharmaceuticals en route to reverse distribution and the potential for diversion.

Accordingly, the Agency is proposing to amend § 273.80 to state that hazardous waste pharmaceuticals may not be added as a category of hazardous waste for management under the Universal Waste program. See Section IX State Authorization of the preamble for a discussion on the effect on the two states that have adopted pharmaceuticals under the Universal Waste program (Michigan and Florida).

By proposing a new set of management standards outside the confines of the Universal Waste program, it allows us greater flexibility in addressing the tracking of such shipments, as well as additional pharmaceutical waste management issues raised by stakeholders, such as drain disposal, container residues, pharmaceutical reverse distribution, and the overlap with DEA regulation. This new action will address the original stakeholder concerns that resulted in the 2008 Pharmaceutical Universal Waste proposal, as well as the comments received on that proposal.

To reiterate, EPA is not adding hazardous waste pharmaceuticals to the federal Universal Waste program. Rather, we are proposing sector-specific regulations for the management of hazardous waste pharmaceuticals by healthcare facilities and pharmaceutical reverse distributors. If finalized, these regulations will be codified in 40 CFR part 266, separate from both the generator regulations (40 CFR part 262) and the Universal Waste program (40 CFR part 273). This new proposed rulemaking will pertain to those waste pharmaceuticals that meet the current definition of a RCRA hazardous waste *and* are generated by healthcare-related facilities and managed by pharmaceutical reverse distributors, as defined by this proposal. Finally, as this current proposal is a direct result of the comments received on the December 2, 2008, Pharmaceutical Universal Waste proposal, the Agency considers the 2008 Pharmaceutical Universal Waste proposal obsolete. Therefore, EPA is withdrawing the Universal Waste proposal for pharmaceutical waste, and does not seek comment on any provisions of the 2008 Pharmaceutical Universal Waste proposal or the current Universal Waste program. The Agency will only be accepting comments from the public on the provisions of this new proposed rulemaking.

D. EPA's Office of Inspector General Report

On May 25, 2012, the EPA's Office of Inspector General (OIG) issued the report, ''EPA Inaction in Identifying Hazardous Waste Pharmaceuticals May Result in Unsafe Disposal'' (Report No. 12–P–0508).[27] The OIG reviewed EPA's process for identifying and listing pharmaceuticals as hazardous wastes. Because of this review, the OIG provided the following recommendations to the Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER):

(1) Identify and review existing pharmaceuticals to determine whether they qualify for regulation as hazardous waste.

(2) Establish a process to review new pharmaceuticals to determine whether they qualify for regulation as hazardous waste.

(3) Develop a nationally consistent outreach and compliance assistance plan to help states address challenges that healthcare facilities, and others as needed, have in complying with RCRA regulations for managing HWPs [hazardous waste pharmaceuticals] (Report No. 12–P–0508).

As detailed in OSWER's response to OIG, this proposal fulfills our obligation

[27] For a copy of the report, please see: *http://www.epa.gov/oig/reports/2012/20120525-12-P-0508.pdf* or see the docket for this proposed rule: EPA–HQ–RCRA–2007–0932.

for addressing the third recommendation.[28] EPA does not address the OIG's first two recommendations as part of this proposed rulemaking; however, in Section VII of this preamble, we solicit comment on our ongoing efforts to identify additional pharmaceuticals as hazardous wastes.

V. Detailed Discussion of the Proposed Rule

EPA is proposing an entirely new set of regulations (40 CFR part 266, subpart P) for managing hazardous waste pharmaceuticals at both healthcare facilities and pharmaceutical reverse distributors. This section discusses in detail the major features of the proposal. The Agency also presents other options that it is considering or were considered in developing the proposed rule. EPA welcomes comments on all aspects of this proposed rule, and on options under consideration. Throughout this section, EPA requests comments on specific options and on specific issues, but comments are welcome on all provisions of this proposal.

A. What terms are defined in this proposed rule?

All the definitions that appear in this proposal are for the purposes of 40 CFR part 266, subpart P only. Therefore, the definitions are relevant only to healthcare facilities and pharmaceutical reverse distributors that are subject to these proposed standards. For the purposes of this regulation, the Agency is proposing and soliciting public comment on the following terms and their definitions presented below: ''evaluated hazardous waste pharmaceutical,'' ''hazardous waste pharmaceutical,'' ''healthcare facility,'' ''household waste pharmaceutical,'' ''long-term care facility,'' ''non-creditable hazardous waste pharmaceutical,'' ''non-hazardous waste pharmaceutical,'' ''non-pharmaceutical hazardous waste,'' ''pharmaceutical,'' ''pharmaceutical reverse distributor,'' and ''potentially creditable hazardous waste pharmaceutical.'' Although the proposed definitions appear in alphabetical order in the regulations, we have chosen to discuss the proposed definitions in a different order in the preamble.

1. What is the proposed definition of ''pharmaceutical''?

This proposed rule defines ''pharmaceutical'' as any chemical or biological product that is intended for use in the diagnosis, cure, mitigation, care, treatment, or prevention of disease or injury of a human or other animal; or any chemical or biological product that is intended to affect the structure or function of the body of a human or other animal. This definition includes, but is not limited to: dietary supplements as defined by the Federal Food, Drug and Cosmetic Act (FD&C Act), prescription drugs, over-the-counter drugs, residues of pharmaceuticals remaining in containers, personal protective equipment contaminated with residues of pharmaceuticals, and clean-up material from the spills of pharmaceuticals.

This proposed definition of ''pharmaceutical'' is intended to include all dose forms, including, but not limited to tablets, capsules, medicinal gums or lozenges, medicinal liquids, ointments and lotions, intravenous (IV) or other compounded solutions, chemotherapy pharmaceuticals, vaccines, allergenics, medicinal shampoos, antiseptics, and any delivery device, including medicinal dermal patches, with the primary purpose to deliver or dispense the pharmaceutical. As a rule of thumb, if an over-the-counter product is required by the FDA to include ''Drug Facts'' on the label, it would be considered a pharmaceutical for the purposes of this rule. EPA asks for comment to identify additional types or forms of pharmaceuticals that are not adequately captured by the definition.

EPA previously proposed to define the term ''pharmaceutical'' in the December 2008 Pharmaceutical Universal Waste proposal to mean ''any chemical product, vaccine or allergenic (including any product with the primary purpose to dispense or deliver a chemical product, vaccine or allergenic), not containing a radioactive component, that is intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or injury in man or other animals; or any chemical product, vaccine, or allergenic (including any product with the primary purpose to dispense or deliver a chemical product, vaccine, or allergenic), not containing a radioactive component, that is intended to affect the structure or function of the body in man or other animals. This definition includes products such as transdermal patches, and oral delivery devices such as gums or lozenges. This definition does not include sharps or other infectious or biohazard waste, dental amalgams, medical devices not used for delivery or dispensing purposes, equipment, contaminated personal protective equipment or contaminated cleaning materials.'' This definition was adapted from FD&C Act's definition for ''drug'' 21 U.S.C. 321(g).

Based on the comments received in response to the Pharmaceutical Universal Waste proposal, the Agency is continuing to rely primarily on the FD&C Act's definition for ''drug'' for the definition of pharmaceutical in this proposal and has preserved most of the definition proposed in the previous proposal. However, EPA is proposing to expand on its previous proposed definition of pharmaceutical based on stakeholder input. In particular, stakeholders requested that the Agency take a broad view in delineating what items are included in the definition of pharmaceutical so that the proposed standards apply broadly. Stakeholders indicated a preference for managing more items under the new standards than trying to determine how to apply the existing RCRA framework to pharmaceutical related items. Thus, the proposed definition of pharmaceutical no longer excludes pharmaceuticals with a radioactive component and includes items not specifically recognized by the U.S. Food and Drug Administration (FDA) as drugs, such as dietary supplements and pharmaceutical residues in containers (including delivery devices), personal protective equipment contaminated with residues of pharmaceuticals, and clean-up material from spills of pharmaceuticals.

EPA's decision to include dietary supplements under this rulemaking's proposed definition of hazardous waste pharmaceutical reflects our interest in promoting a management scheme for all types of pharmaceuticals, and is based upon our understanding that dietary supplements are commonly found in various healthcare settings because they are recommended or prescribed by healthcare providers to patients.[29] Further, retail pharmacies routinely sell vitamins and other medicinal minerals and supplements.

When EPA uses the term ''dietary supplements'' in our proposed definition of ''pharmaceutical,'' EPA is referencing the definition for dietary supplement used by the FD&C Act, as amended by the Dietary Supplement Health and Education Act of 1994 (21 U.S.C. 321(ff)).[30] EPA understands that

[28] For a copy of OSWER's full response to OIG, please see: *http://www.epa.gov/oig/reports/2012/12-P-0508_Agency%20Response.pdf.*

[29] Including dietary supplements under the definition of pharmaceutical for this regulation does not supersede the requirements of the Dietary Supplement Health and Education Act of 1994, the Federal Food, Drug and Cosmetic Act, or FDA regulations.

[30] The substance of the definition is: a product (other than tobacco) intended to supplement the

Continued

the FDA does not recognize dietary ingredients or dietary supplements under its definition of ''drug,'' but rather categorizes such items under the general umbrella of foods and therefore, does not review them before being marketed.[31] [32] For the purposes of this proposed rule, however, EPA recognizes that healthcare facilities may benefit from managing dietary supplements along with other drugs under the regulatory scheme being proposed, and thus, is including it in the proposed definition of pharmaceutical. Although dietary supplements would be considered pharmaceuticals under this proposed definition, only the dietary supplements that meet the definition of hazardous waste (*e.g.,* exhibits the toxicity characteristic for metal content) would be regulated under part 266, subpart P as hazardous waste pharmaceuticals (see the definition of ''hazardous waste pharmaceutical''). We seek public comment on the Agency's decision to recognize dietary supplements as pharmaceuticals under this regulation.

The Agency also is clarifying that its proposed definition includes any items containing pharmaceutical residuals, such as dispensing bottles, IV bags and tubing, vials, unit dose packages, and delivery devices, such as syringes and patches. In addition, EPA is proposing that items contaminated with or containing residual pharmaceuticals, such as personal protective equipment containing trace amounts of pharmaceuticals or related spill clean-up materials (including loose tablets accumulated during pharmacy floor sweepings) also meet this proposed definition of pharmaceutical. However, this proposed definitions does *not* include sharps (*e.g.,* needles from IV bags or syringes). Used sharps, such as needles or syringes with needles, are not included under the proposed rule because sharps are considered medical wastes, presently regulated at the state and local level. In addition, sharps pose both an unreasonable physical danger and biohazard danger so have not been included in the definition of pharmaceutical under this proposed rule. OSHA's Technical Manual incorporates a recommendation from the American Society of Hospital Pharmacists that ''all syringes and needles used in the course of preparation be placed in ''sharps'' containers for disposal without being crushed, clipped or capped.'' [33] Further, as discussed in Section V.E.3.c of this preamble, EPA is proposing to conditionally exclude the residues of hazardous waste pharmaceuticals remaining in fully dispensed syringes from RCRA regulation. However, EPA is concerned about the possibility that some syringes may be disposed of in sharps containers that may contain significant amounts of undispensed pharmaceutical. EPA seeks comment on the prevalence of this situation.

The Agency solicits public comment on the proposed definition of ''pharmaceutical'' in its entirety, and particularly on EPA's decision to incorporate dietary supplements and items containing pharmaceutical residuals as part of the definition of pharmaceutical.

2. What is the proposed definition of a ''hazardous waste pharmaceutical''?

This proposed rule defines ''hazardous waste pharmaceutical'' as a pharmaceutical that is a solid waste, as defined in § 261.2, and is listed in part 261, subpart D, or exhibits one or more characteristics identified in part 261, subpart C. See Section IV.A.3. of this preamble for a discussion of pharmaceuticals that may be listed or characteristic hazardous wastes.[34]

The Agency is proposing to define the term ''hazardous waste pharmaceutical'' in order to clarify its intent that only pharmaceuticals (as defined in this proposal) that meet the definition of hazardous waste when disposed or discarded need to be managed under these proposed management standards. This means that any pharmaceutical waste that meets the definition of hazardous waste is a hazardous waste pharmaceutical for the purposes of this rule. For example, the prescription pharmaceutical warfarin (brand name Coumadin) is a listed hazardous waste and when discarded meets the definition of a hazardous waste pharmaceutical. EPA requests public comment on the proposed definition for ''hazardous waste pharmaceutical.'' The Agency also solicits information on whether any dietary supplements currently on the market meet or potentially could meet RCRA's definition of a hazardous waste.

3. What is the proposed definition of a ''potentially creditable hazardous waste pharmaceutical''?

In order to distinguish hazardous waste pharmaceuticals that are transported to RCRA treatment, storage and disposal facilities (TSDFs) from those hazardous waste pharmaceuticals being returned by a healthcare facility to a pharmaceutical reverse distributor for a determination or verification of manufacturer's credit, the Agency is proposing a definition for ''potentially creditable hazardous waste pharmaceutical.''

The proposed rule defines ''potentially creditable hazardous waste pharmaceutical'' to mean a hazardous waste pharmaceutical that has the potential to receive manufacturer's credit and is

(1) unused or un-administered; and

(2) unexpired or less than one year past expiration date.

The term does not include ''evaluated hazardous waste pharmaceuticals,'' residues of pharmaceuticals remaining in containers, contaminated personal protective equipment, and clean-up material from the spills of pharmaceuticals.

Whether a pharmaceutical is eligible for manufacturer's credit is determined solely by the manufacturer's return policy. Based on comments received for the 2008 Universal Waste proposed rule and through discussions with various stakeholders, the Agency understands that the return policies of manufacturers change regularly. As a result, pharmacies are not always aware if a particular pharmaceutical will be creditable at the time that it is pulled from the shelves. However, the Agency also understands that there are instances where it is well known that a pharmaceutical will not be creditable. Examples of these instances include the following: if the pharmaceutical has been removed from the original container and re-packaged for dispensing purposes; if an attempt was made to administer a pharmaceutical, but the patient refused to take it; if the hazardous waste pharmaceutical was generated during patient care; if the pharmacy receives a return of a dispensed pharmaceutical for which

diet that bears or contains one or more of the following dietary ingredients: (A) a vitamin; (B) a mineral; (C) an herb or other botanical; (D) an amino acid; (E) a dietary substance for use by man to supplement the diet by increasing the total dietary intake; or (F) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in clause (A), (B), (C), (D), or (E); For the complete definition for dietary supplement, please see: *http://www.gpo.gov/fdsys/pkg/USCODE-2013-title21/pdf/USCODE-2013-title21-chap9-subchapII-sec321.pdf.*

[31] For more information regarding dietary supplements, please see: *http://www.fda.gov/Food/DietarySupplements/default.htm.*

[32] It is the responsibility of the manufacturers to ensure their dietary supplements are safe and that all claims on labels are true and accurate. Nevertheless, FDA has the authority to take action against any unsafe dietary supplements, as well as to take action against any products with false and misleading claims.

[33] See Section VI, Chapter 2 of OSHA's Technical Manual (paragraph V.C.1.b.) *https://www.osha.gov/dts/osta/otm/otm_vi/otm_vi_2.html.*

[34] For additional information about RCRA hazardous waste listings and characteristics, see: *http://www.epa.gov/osw/hazard/wastetypes/index.htm.*

they had already received compensation by a third-party payer; or if the pharmaceutical is more than one year past its expiration date. In these instances, as well as others, the healthcare facility knows that it will not receive manufacturer's credit. It is the Agency's intent for the proposed definition of potentially creditable hazardous waste pharmaceuticals to allow the return of hazardous waste pharmaceuticals to reverse distributors for the determination of credit. It is not the Agency's intent, however, for reverse distributors to serve in the capacity as TSDFs when it is well known that the manufacturer will not give credit for those hazardous waste pharmaceuticals.

Also, based on communication with stakeholders and the public comments received on the 2008 Universal Pharmaceutical Waste proposal, EPA understands that pharmaceutical manufacturers' policies often allow for credit to be received on the return of 'partials.' Partials is a term used in the industry to refer to opened containers that have had some contents removed. Under the proposed definition, the Agency would consider partials to be potentially creditable hazardous waste pharmaceuticals.

The Agency is soliciting comment on the proposed definition of ''potentially creditable hazardous waste pharmaceutical'' and whether the definition is broad enough to encompass the various types of hazardous waste pharmaceuticals that are shipped to reverse distributors for manufacturer's credit, while also ensuring that non-creditable hazardous waste pharmaceuticals are not inappropriately shipped to reverse distributors solely for waste management purposes. Finally, the Agency is seeking comment on additional situations where it is well known that a returned pharmaceutical will or will not receive manufacturer's credit.

4. What is the proposed definition of ''non-creditable hazardous waste pharmaceutical''?

As discussed previously, there are instances when it is well known that credit will not be received for certain hazardous waste pharmaceuticals. In order to distinguish hazardous waste pharmaceuticals that have the potential for credit from those that have no expectation of receiving credit, the Agency is proposing to define the term ''non-creditable hazardous waste pharmaceutical.'' The proposed definition of a ''non-creditable hazardous waste pharmaceutical'' is a hazardous waste pharmaceutical that is not expected to be eligible for manufacturer's credit. Examples include, but are not limited to: if the pharmaceutical has been removed from the original container and re-packaged for dispensing purposes; if an attempt was made to administer a pharmaceutical, but the patient refused to take it; if the hazardous waste pharmaceutical was generated during patient care; if the pharmacy receives a return of a dispensed pharmaceutical for which they had already received compensation by a third-party payer (*e.g.* health insurance company); or if the pharmaceutical is more than one year past its expiration date. EPA requests comment on the proposed definition and seeks additional examples of hazardous waste pharmaceuticals that have no expectation of receiving manufacturer's credit.

5. What is the proposed definition of ''evaluated hazardous waste pharmaceutical''?

After potentially creditable hazardous waste pharmaceuticals arrive at a pharmaceutical reverse distributor, they are evaluated to determine whether they are eligible for manufacturer's credit, or whether they need to be transferred to another pharmaceutical reverse distributor for additional verification of manufacturer's credit. Hazardous waste pharmaceuticals that need to be transferred to another pharmaceutical reverse distributor for additional verification of manufacturer's credit will continue to be considered potentially creditable hazardous waste pharmaceuticals. EPA is proposing that hazardous waste pharmaceuticals for which manufacturer's credit has been issued (and no further verification of credit is required), as well as those that have been deemed non-creditable, be referred to as ''evaluated hazardous waste pharmaceuticals.'' EPA is proposing to define ''evaluated hazardous waste pharmaceutical'' as a hazardous waste pharmaceutical that was a potentially creditable hazardous waste pharmaceutical but has been evaluated by a pharmaceutical reverse distributor to establish whether it is eligible for manufacturer's credit and will not be sent to another pharmaceutical reverse distributor for further evaluation or verification. It is important to define this term since the proposed management and shipping standards for potentially creditable hazardous waste pharmaceuticals differ from the proposed management and shipping standards for evaluated hazardous waste pharmaceuticals. For a discussion of the proposed management and shipping standards for potentially creditable hazardous waste pharmaceuticals, see Section V.F.2. For a discussion of the proposed management and shipping standards for evaluated hazardous waste pharmaceuticals, see Section V.F.1.b.

6. What is the proposed definition of ''household waste pharmaceutical''?

We are proposing to define the term ''household waste pharmaceutical'' as a solid waste, as defined in § 261.2, that also meets the definition of pharmaceutical, as defined in this proposed rule, but is not a hazardous waste because it is exempt from RCRA Subtitle C regulation by the household waste exclusion in § 261.4(b)(1). We are proposing this term to distinguish this type of waste pharmaceutical from the hazardous waste pharmaceuticals that are proposed to be regulated under this new subpart. This proposed rule does not apply to pharmaceutical waste that is exempt due to the household waste exclusion.

7. What is the proposed definition of ''non-hazardous waste pharmaceutical''?

We are proposing to define the term ''non-hazardous waste pharmaceutical.'' While hazardous waste pharmaceuticals are proposed to be regulated under this new subpart, non-hazardous waste pharmaceuticals will not be regulated under this new subpart, nor the RCRA subtitle C hazardous waste regulations. The Agency is proposing to include this definition since we believe it important to delineate what is and is not regulated under this new subpart. We propose to define the term ''non-hazardous waste pharmaceutical'' to mean a pharmaceutical that is a solid waste, as defined in § 261.2, but that is not a listed hazardous waste and does not exhibit any characteristics of hazardous waste (*i.e.,* ignitable, corrosive, reactive, toxic).

8. What is the proposed definition of ''non-pharmaceutical hazardous waste''?

Like the previous definition, we are proposing a definition for non-pharmaceutical hazardous waste to help us delineate what is and what is not regulated under this new subpart. We are proposing to define the term ''non-pharmaceutical hazardous waste'' as a solid waste, as defined in § 261.2, that is either a listed hazardous waste or exhibits one or more characteristics of hazardous waste, but does not meet the definition of a pharmaceutical, as proposed under this new subpart. The management of non-pharmaceutical hazardous wastes is not regulated under this subpart; rather generators of non-

pharmaceutical hazardous wastes, including healthcare facilities and reverse distributors, remain subject to the existing Subtitle C hazardous waste regulations for the management of those hazardous wastes. Examples of non-pharmaceutical hazardous wastes that healthcare facilities may generate include cleaning solutions, solvents, and laboratory wastes. Some hazardous wastes exist in pharmaceutical form and non-pharmaceutical form. For example, warfarin, nicotine, and lindane were all originally listed as hazardous waste because they were pesticides, not medicines. If these products are not intended for human or animal use, they would be considered non-pharmaceutical hazardous wastes and remain subject to the existing RCRA hazardous waste regulations, not part 266, subpart P.

9. What is the proposed definition of a ''healthcare facility''?

These proposed regulations differ from those in the Pharmaceutical Universal Waste proposal in that they apply based not only on the type of hazardous waste generated, but also on the sector generating the waste. Accordingly, EPA is proposing a definition for ''healthcare facility'' so that it is clear to whom these proposed regulations apply. This proposed definition is adapted from the definition of ''health care'' that the Department of Health and Human Services (DHHS) promulgated as a result of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (45 CFR part 160.103).[35] Thus, for the purposes of these proposed regulations, EPA is proposing that ''healthcare facility'' means any person that (1) provides preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, and counseling, service, assessment or procedure with respect to the physical or mental condition, or functional status, of a human or animal or that affects the structure or function of the human or animal body; or (2) sells or dispenses over-the-counter or prescription pharmaceuticals. This definition includes, but is not limited to, hospitals, psychiatric hospitals, ambulatory surgical centers, health clinics, physicians' offices, optical and dental providers, chiropractors, long-term care facilities, ambulance services, coroners and medical examiners, pharmacies, long-term care pharmacies, mail-order pharmacies, retailers of over-the-counter medications; and veterinary clinics and hospitals. Thus, these proposed regulations will be applicable to any healthcare facility for human or animal which generates hazardous waste pharmaceuticals on its premises.

EPA proposes to include coroners in the definition of a healthcare facility despite the fact that the services coroners provide occur after life. Coroners will often inventory, and then dispose of, any pharmaceuticals that may be found at the scene of a death. A common method of disposal is sewering. In order to reduce the sewer disposal practices of coroners, and to provide the same management options that are available to other healthcare facilities, EPA has decided to include ''coroners'' within the definition of healthcare facility, although the Agency solicits comment on including coroners within the definition of healthcare facility.[36]

Under the proposed definition, healthcare facilities include locations that sell pharmaceuticals over the internet, through the mail, or through other distribution mechanisms. A pharmacy does not necessarily have to have a ''brick and mortar'' or ''store front'' presence to be considered a healthcare facility for the purposes of this proposed rule. The proposed definition of a ''healthcare facility'' also applies to entities that engage in drug compounding. In general, compounding is a practice in which a licensed pharmacist, a licensed physician, or, in the case of an outsourcing facility, a person under the supervision of a licensed pharmacist, combines, mixes, or alters ingredients of a drug to create a medication tailored to the needs of an individual patient. The proposed definition of ''healthcare facility'' applies to state-licensed pharmacies, Federal facilities, and licensed physicians that compound drugs in accordance with section 503A of the FD&C Act, and to outsourcing facilities that compound drugs in accordance with section 503B of the FD&C Act. The Agency is soliciting comment on the proposed definition of ''healthcare facility,'' including whether it is appropriate to consider these compounders as healthcare facilities within the scope of this proposed rule.

The proposed definition of ''healthcare facility'' does not apply to pharmaceutical manufacturers and their representatives, wholesalers, or any other entity that is involved in the manufacturing, processing or wholesale distribution of over-the-counter or prescription pharmaceuticals, unless they meet the definition of a ''reverse distributor'' as discussed in this section and in Section V.G. The purpose for these sector-based regulations is to address the various issues that healthcare facilities and reverse distributors face when managing hazardous waste pharmaceuticals. As noted previously, the Agency does not anticipate that manufacturing facilities, which predictably generate a known range of hazardous wastes, face the same issues as healthcare facilities.

10. What is the proposed definition of a ''long-term care facility''?

The term ''long-term care facility'' does not have a standardized, industry definition. EPA is, therefore, proposing the following definition for ''long-term care facility'' (LTCF): a licensed entity that provides assistance with activities of daily living, including managing and administering pharmaceuticals to one or more individuals at the facility. This definition includes, but is not limited to, assisted living, hospices, nursing homes, skilled nursing facilities, and the assisted living and skilled nursing care portions of continuing care retirement communities. Not included within the scope of this definition are group homes, independent living communities, and the independent living portions of continuing care retirement communities.

The included facilities are licensed care facilities that are more similar to hospitals than to standard residences. Although group homes may be licensed care facilities, they are typically very small (under 10 beds). Independent living communities are not licensed care facilities, but rather are residences made up of individual units such as townhomes or apartments. Finally, private residences with visiting nurses are not considered long-term care facilities. EPA requests public comment on the proposed definition of long-term care facility, and the inclusion of assisted living facilities, skilled nursing facilities and other LTCFs that administer their residents' pharmaceuticals as an integral part of their services within the definition of ''healthcare facility.''

The DEA's definition of ''long term care facility'' is ''a nursing home, retirement care, mental care or other facility or institution which provides extended health care to resident patients'' (21 CFR 1300.01). EPA's definition is more descriptive, and includes a list—which is not

[35] 45 CFR part 160 *http://aspe.hhs.gov/admnsimp/final/pvctxt01.htm.*

[36] For more information on the disposal process, please see: Ruhoy, I.S. and Daughton, C.G. ''Types and Quantities of Leftover Drugs Entering the Environment via Disposal to Sewage—Revealed by Coroner Records,'' *Sci. Total Environ.,* 2007, 388(1–3):137–148. *http://www.epa.gov/nerlesd1/bios/daughton/SOTE2007.pdf.*

exhaustive—of examples of long-term care facilities. We feel this a more flexible way to define the universe. Although the definitions differ, they are not necessarily incompatible.

11. What is the proposed definition of a ''pharmaceutical reverse distributor''?

As more fully discussed in Section V.G.1 of this preamble, pharmaceutical manufacturers often offer credit to healthcare facilities on the return of unused and/or expired pharmaceuticals.[37] Stakeholders have informed the Agency that manufacturers issue credit for a variety of reasons. For example, it is a marketing incentive tool that helps ensure against illicit diversion [38] or improper disposal, and it allows manufacturers to collect data on the returned items, which then can be used to help plan for future pharmaceutical production. Reverse distributors are contracted by both pharmaceutical manufacturers and healthcare facilities to facilitate the crediting process.

Some of the pharmaceuticals returned for credit will meet RCRA's definition of a hazardous waste. Due to the fact that the vast majority of pharmaceuticals that are returned for manufacturer's credit are disposed of once credit eligibility is determined, EPA is proposing new standards for shipment of potentially creditable hazardous waste pharmaceuticals (see Section V.F.2.) and the management of potentially creditable hazardous waste pharmaceuticals by reverse distributors (see Section V.G). Thus, EPA is proposing to define pharmaceutical reverse distributor to clearly delineate which types of facilities are subject to this proposed rule. In keeping with how the term is commonly used in the healthcare sector, EPA is proposing to define a ''pharmaceutical reverse distributor'' as any person that receives and accumulates potentially creditable hazardous waste pharmaceuticals for the purpose of facilitating or verifying manufacturer's credit. Any person, including forward distributors and pharmaceutical manufacturers, that processes pharmaceuticals for the facilitation or verification of manufacturer's credit is considered a pharmaceutical reverse distributor.

The Agency also needs to clarify the difference between what is defined as a pharmaceutical reverse distributor for the purpose of these proposed regulations and how DEA regulations define ''reverse distribute.'' The recently amended DEA regulatory definition of ''reverse distribute'' is to ''acquire controlled substances from another registrant or law enforcement for the purposes of: (1) Return to the registered manufacturer or another registrant authorized by the manufacturer to accept returns on the manufacturer's behalf; or (2) Destruction (21 CFR 1300.01).[39]

Under DEA's definition, a reverse distributor does not necessarily process pharmaceuticals for the purpose of determining manufacturer's credit; rather, their main function under DEA's definition is to destroy the controlled substances. Under EPA's proposed definition, however, a pharmaceutical reverse distributor is defined more broadly as a facility that can accept potentially creditable pharmaceuticals for the purposes of determining manufacturer's credit. These potentially creditable pharmaceuticals may or may not be identified as controlled substances by DEA.[40] Therefore, a DEA-registered reverse distributor may or may not meet EPA's definition of a pharmaceutical reverse distributor and vice versa. For example, a pharmaceutical reverse distributor that accepts controlled substances (that are also hazardous wastes) for the sole purpose of destruction (*e.g.,* incineration) would be regulated as a DEA-registered reverse distributor and as a RCRA TSDF, and not as a pharmaceutical reverse distributor under the RCRA hazardous waste regulations. Conversely, a pharmaceutical reverse distributor that processes pharmaceuticals for manufacturer's credit, but is not a DEA registrant and therefore, cannot accept controlled substances, would meet the RCRA pharmaceutical reverse distributor definition, but not DEA's reverse distributor definition. However, EPA has heard from stakeholders that many, if not all, entities that facilitate manufacturer's credit are also DEA-registered reverse distributors. Therefore, such pharmaceutical reverse distributors would meet both EPA's proposed definition of pharmaceutical reverse distributor, as well as the DEA's definition of reverse distributor. Lastly, we would note that EPA's definition for reverse distribution does not alter or supersede the requirements of the Controlled Substances Act and DEA regulations.

In addition, the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) has defined the closely related term, ''reverse logistics,'' in a recent proposed rulemaking.[41] The EPA has been coordinating with the PHMSA to ensure that our rules are compatible, even if the definitions differ. It is important to note that, when finalized, the PHMSA rule will not supersede EPA's RCRA Subtitle C regulations for when something is considered a solid or hazardous waste or how a hazardous waste must be managed.

The Agency solicits public comment on its proposed definition of a ''pharmaceutical reverse distributor.'' Specifically, EPA asks for comment on whether the definition of ''pharmaceutical reverse distributor'' captures the universe of facilities acting as reverse distributors for pharmaceuticals. In addition, the Agency asks for comment regarding the intersection of DEA and EPA's definitions.

B. What is the scope of this proposed rule?

1. What facilities are subject to this rulemaking?

a. Healthcare facilities. The Agency is proposing that healthcare facilities that are currently considered either SQGs or LQGs will be required to manage all hazardous waste pharmaceuticals generated at their facilities in accordance with the standards proposed in this document. In other words, these management standards will apply to any healthcare facility that generates (or accumulates) more than 100 kg of hazardous waste per calendar month *or* more than 1 kg of acute hazardous waste per calendar month (*e.g.,* P-listed hazardous waste) *or* more than 100 kg of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in §§ 261.31, or 261.33(e) per calendar month. All healthcare facilities

[37] As noted in the definition of ''potentially creditable hazardous waste pharmaceutical,'' credit is provided for those pharmaceuticals that are less than one year past the expiration date.

[38] Through the return of pharmaceuticals by a pharmacy for manufacturer's credit, manufacturers are able to maintain control of the pharmaceutical up to the point of its disposal, thereby, decreasing the risk of diversion of the pharmaceutical.

[39] On September 9, 2014, DEA finalized new definitions for ''reverse distribute'' and ''reverse distributor.'' Please see 79 FR 53520. The term ''reverse distributor'' is defined as ''a person registered with the Administration [DEA] as a reverse distributor.''

[40] In order for a reverse distributor to be able to accept controlled substances, the reverse distributor must be a DEA registrant. See 21 CFR part 1308 for a complete list of controlled substances.

[41] 79 FR 46748; August 11, 2014. The PHMSA's proposed definition of reverse logistics ''is the process of moving goods from their final destination for the purpose of capturing value, recall, replacement, proper disposal, or similar reason.''

that meet these applicability criteria will be subject to the same set of standards for the management of their hazardous waste pharmaceuticals. That is, subpart P is not optional for healthcare facilities that generate above the CESQG monthly quantity limits (see Section V.B.1.c. of the preamble for a discussion of what regulations apply to CESQGs). EPA is proposing to make subpart P mandatory to promote national consistency, a goal championed by stakeholder comments as well as EPA. In addition, having one set of standards applicable to pharmaceutical waste will be less confusing to the regulated community, which should lead to better compliance. The stringency of the subpart P management standards for hazardous waste pharmaceuticals do not change if a healthcare facility generates more hazardous waste pharmaceuticals from one month to another. The generator categories—that is, LQG, SQG, and CESQG—under the part 262 RCRA requirements will only be relevant for the healthcare facilities' non-pharmaceutical hazardous waste because non-pharmaceutical hazardous waste remain subject to the 40 CFR part 262 generator regulations (see Section VI. *Implementation and Enforcement* for further discussion).

b. Long-term care facilities subject to this rule. Long-term care facilities are included within the proposed definition of healthcare facility. Further, EPA is proposing to change its policy regarding the management of hazardous waste and hazardous waste pharmaceuticals generated on the premises of long-term care facilities. Under current federal RCRA interpretation (see 73 FR 73525, December 2, 2008), hazardous wastes (including pharmaceuticals) generated on the premises of a long-term care facility can fall under two categories: (1) RCRA Subtitle C hazardous waste or (2) household hazardous waste that is exempt from RCRA Subtitle C regulation. As explained in the preamble to the proposal to add pharmaceuticals to the Universal Waste program, ''the [long-term care] facility itself may generate hazardous wastes as a result of its central management of pharmaceuticals in its pharmacy or pharmacy-like area. These hazardous pharmaceutical wastes would be subject to the RCRA hazardous waste generator regulations since the pharmaceuticals are under the control of the facility, and thus, the resulting wastes are generated by that facility. However, patients and residents in long-term care facilities may generate hazardous wastes. Those pharmaceuticals that are under the control of the patient or resident of the long-term care facility, when discarded, would be subject to RCRA's household hazardous waste exclusion (§ 261.4(b)(1)). Hazardous pharmaceutical wastes generated by the resident are excluded from regulation because they are considered to be derived from a household'' (see December 2, 2008; 73 FR 73525).

The Agency is now providing notice that it intends to revise this interpretation. Specifically, hazardous waste (including pharmaceuticals) generated at long-term care facilities will no longer be considered exempt as household hazardous waste. It will be regulated as hazardous waste, subject to the appropriate RCRA Subtitle C management standards, including the standards being proposed. The Agency is revising its interpretation with regard to hazardous wastes generated at long-term care facilities based on a reevaluation of how such facilities operate. Specifically, in order for hazardous waste to qualify for the household hazardous waste exemption of § 261.4(b)(1), it must meet two criteria: (1) The hazardous waste must be generated by individuals on the premises of a household, and (2) the hazardous waste must be composed primarily of materials found in the wastes generated by consumers in their homes.[42] EPA now believes that hazardous waste generated at long-term care facilities, even when those pharmaceuticals are under the control of the patient or resident, does not meet either criterion for the household hazardous waste exemption.

First, a long-term care facility is more akin to a hospital than it is a typical residence and EPA does not consider hospitals to be households. Long-term care facilities are licensed, residential care settings that offer their residents a wide range of services, many of which are centered on administering medications and providing healthcare by various professional healthcare providers, such as medical technicians, nurse's aides, nurses, and doctors. Other services provided involve assistance in performing activities of daily living, such as bathing, and eating. A 2012 American Association of Retired Person (AARP) Public Policy Institute report indicates that there is an average of 24 beds per licensed residential care facilities (excluding nursing homes).[43] Based on another report prepared as a collaborative project of the American Association of Homes and Services for the Aging (AAHSA), American Seniors Housing Association (ASHA), Assisted Living Federation of America (ALFA), National Center for Assisted Living (NCAL) and National Investment Center for the Seniors Housing and Care Industry (NIC), there is an average of 54 units (*e.g.,* rooms) for all types of assisted living/dementia care properties.[44] Unlike other multiple dwellings, approximately 81 percent of these facilities store medications in a central location and 89 percent administer medications to their residents.[45] Given that long-term care facilities are licensed settings for the care of their residents and routinely provide healthcare services, we believe that long-term care facilities more closely resemble hospitals than typical residences.

Second, the hazardous wastes generated by long-term care facilities do not meet the second criteria for the waste to be considered household hazardous waste. This is primarily due to the quantity of pharmaceutical wastes that are often generated on the premises of long-term care facilities when compared to a typical residence. For example, the Colorado Department of Public Health and Environment estimates that a 100-bed nursing home might expect to generate approximately 120 to 336 pounds of pharmaceutical waste per year.[46] In addition, long-term care facilities, such as assisted living facilities and nursing homes, generate a greater variety of hazardous waste pharmaceuticals and a greater quantity of hazardous waste than a typical household generates. The AARP Public Policy Institute report indicates that ''residents take an average of seven or eight different prescriptions and two OTC [over-the-counter] medications daily.'' This number is larger than what we would expect a typical household to generate. This distinction about volume of waste is analogous to the distinction that EPA has made in the past about contractor or do-it-yourself waste from

[42] See November 13, 1984; 49 FR 44978.

[43] AARP Public Policy Institute, INSIGHT on the Issues 58, Assisted Living and Residential Care in the States in 2010, April 2012. *http://www.aarp.org/content/dam/aarp/research/public_policy_institute/ltc/2012/residential-care-insight-on-the-issues-july-2012-AARP-ppi-ltc.pdf* or see the docket for this proposed rulemaking (EPA–HQ–RCRA–2007–0932).

[44] 2009 Overview of Assisted Living; a collaborative research project of AAHSA, ASHA, ALFA, NCAL & NIC.

[45] Ibid.

[46] Net weight (without packaging) of types of pharmaceuticals wastes, including those that are RCRA hazardous, non-RCRA hazardous, DEA controlled, prescription and over-the-counter. Memo from Lillian Gonzalez, Colorado Department of Public Health and Environment to Kristin Fitzgerald, EPA; January 9, 2013, see the docket for this proposed rulemaking (EPA–HQ–RCRA–2007–0932).

households: waste from ''routine residential maintenance'' is exempt as household hazardous waste, while waste from ''building construction, renovation, demolition'' is not exempt.[47] Therefore, EPA is providing notice that if this rule is finalized, long-term care facilities may no longer use the household hazardous waste exemption. If this rule is finalized, long-term care facilities would need to manage their hazardous waste pharmaceuticals in accordance with the healthcare facility specific management standards in this proposal and their non-pharmaceutical hazardous wastes in accordance with the applicable RCRA hazardous waste generator requirements in § 261.5 (for CESQGs) or part 262 (for SQGS and LQGs). However, even though long-term care facilities will no longer be considered eligible to use the household hazardous waste exemption, our data show that only 28% of long-term care facilities generate hazardous waste pharmaceuticals, and of those, 85% are small enough to be considered CESQGs of hazardous waste (regulated under § 261.5) and therefore not subject to part 266, subpart P (except the sewer ban).[48] The Agency seeks comment on whether this proposed change to consider long-term care facilities to be healthcare facilities instead of households is appropriate. We also seeking comment on the extent to which long-term care facilities will pass the cost of compliance onto its customers. Until this rule is finalized, the current interpretation from the Universal Waste preamble will stand regarding hazardous waste from long-term care facilities.

c. Conditionally exempt small quantity generators (CESQGs). As discussed in the Background Section (Section IV.A.2), CESQGs are subject to a limited set of federal RCRA Subtitle C hazardous waste regulations, provided that they comply with the conditions set forth in § 261.5.[49] This proposed rulemaking will preserve this current regulatory structure for the most part; therefore, healthcare facilities that generate hazardous waste pharmaceuticals and qualify as CESQGs, will maintain their conditional exemption under § 261.5 and will not be subject to *most* aspects of this proposal. However, as part of this rulemaking, EPA is proposing a ban on sewer disposal of hazardous waste pharmaceuticals by all healthcare facilities and reverse distributors. EPA is proposing that the sewer ban would apply to all healthcare facilities, including CESQG healthcare facilities. Please see Section V.E.1 of this preamble for a more detailed discussion on this proposed sewer prohibition. EPA asks for comment on whether the proposed healthcare facility standards, in addition to the sewer ban, should apply to CESQG healthcare facilities.

EPA is proposing one additional change for CESQGs in order to allow them to continue to send their potentially creditable hazardous waste pharmaceuticals to a pharmaceutical reverse distributor. Currently, under § 261.5, CESQGs are limited in where they may send their hazardous waste for treatment and disposal (see § 261.5(f)(3)(i)-(vii) for acute hazardous waste and § 261.5(g)(3)(i)-(vii) for hazardous waste). However, in § 266.504(a) we are proposing to allow CESQGs to send their potentially creditable hazardous waste pharmaceuticals to a pharmaceutical reverse distributor. Without this change, CESQGs would be required to send all their hazardous waste pharmaceuticals, including those that are potentially creditable, to one of the types of facilities in § 261.5, which does not include a pharmaceutical reverse distributor. Although we are proposing to make this change within part 266, subpart P, we request comment on whether stakeholders would prefer this change to be made within § 261.5 instead. CESQGs will still be required to send their non-pharmaceutical hazardous waste and their non-creditable hazardous waste pharmaceuticals to one of the types of facilities listed in § 261.5.

In addition, it has been suggested that EPA seek comment on providing a rebuttable presumption that LTCFs with fewer than 10-beds are assumed to be CESQGs and thus would not be required to count the amount of hazardous waste generated each month. Under this presumption, they would be subject to all the requirements for CESQGs as described elsewhere in this proposal, including the requirement not to sewer hazardous waste pharmaceuticals. Therefore, EPA asks for comment on this rebuttable presumption and specifically whether the 10-bed cut off is appropriate or whether there are other criteria EPA should take into account. Further, EPA asks for commenters to submit data to support a 10-bed cut off to show that LTCFs with fewer than 10-beds are generally CESQGs. Alternatively, if comments wish to support a different cut-off for the rebuttable assumption, EPA also asks that the commenters submit information/data to support their suggested cut-off.

d. Pharmaceutical reverse distributors. EPA is proposing that pharmaceutical reverse distributors, including pharmaceutical manufacturers, which accumulate potentially creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals are subject to this rule. Pharmaceutical reverse distributors are only subject to this proposed rule for the *accumulation* of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals; if a reverse distributor also treats and/or disposes of hazardous waste pharmaceuticals, it is subject to the applicable RCRA Subtitle C TSDF regulations, including the requirement to have a permit or interim status. Stakeholders have indicated a strong preference for EPA to clarify how pharmaceutical reverse distributors are regulated under RCRA, as states have applied varied hazardous waste regulatory approaches to pharmaceutical reverse distributors. EPA is proposing specific standards in 40 CFR part 266, subpart P for pharmaceutical reverse distributors (as defined in this proposed rule) that incorporate various generator standards, as well as some TSDF standards. See Section V.G for more information.

2. To what facilities does this rule not apply?

a. Pharmaceutical manufacturers. EPA does not intend for these proposed regulations to apply to hazardous waste pharmaceuticals that are generated by pharmaceutical manufacturers or wholesalers. Pharmaceutical manufacturers and wholesalers do not face the same challenges that healthcare facilities experience when managing hazardous waste pharmaceuticals and potentially creditable hazardous waste pharmaceuticals in accordance with the federal RCRA subtitle C requirements (for an explanation of the challenges healthcare facilities face, see discussion in section IV.B.1 of the preamble). These entities (*i.e.,* manufacturers and wholesalers) generate hazardous waste pharmaceuticals that are more predictable and the staff have the

[47] Memo from Petruska to McNally, February 28, 1995; RCRA Online #11897 that discusses the distinction about what renovation waste is household hazardous waste and what is not.

[48] See the docket for this rulemaking for data about long-term care facilities which was developed using data in the economic analysis: EPA–HQ–RCRA–2007–0932.

[49] Not all authorized states recognize the CESQG category and may have more stringent regulatory requirements for CESQGs. Therefore, as noted previously, EPA recommends that facilities that qualify as CESQGs under the federal regulations contact their state and/or local environmental regulatory agencies to determine whether more stringent regulatory requirements apply to CESQGs in their state.

necessary expertise to determine which pharmaceutical waste is hazardous waste. However, as mentioned previously, when any facility, including a pharmaceutical manufacturer, meets the definition found in this proposal for a ''pharmaceutical reverse distributor,'' it would be subject to the proposed regulations for pharmaceutical reverse distributors with respect to those operations.

b. Households. The Agency would like to emphasize that the regulatory requirements in this proposed rule do not apply to households or to household pharmaceutical collection and take-back events and programs. (For information regarding collection programs, see Section V.E.2.) Pharmaceuticals that are unwanted by consumers (households) are not regulated as hazardous waste and are generally considered municipal solid wastes. While a small percentage of these household waste pharmaceuticals meet the definition of hazardous waste under RCRA, the federal RCRA hazardous waste regulations include an exclusion for all hazardous wastes generated by households (see the ''household hazardous waste'' exclusion at § 261.4(b)(1)). Thus household waste pharmaceuticals—like other household hazardous wastes—are not subject to the federal RCRA hazardous waste regulations.

''EPA excluded household wastes because the legislative history of RCRA indicated an intent to exclude such wastes, though *not* because they necessarily pose no hazard.'' [50] Some household products, including pharmaceuticals, contain ignitable, corrosive, reactive, or toxic ingredients. As a result, for household hazardous waste collected at a take-back event or program, the Agency has historically recommended that communities operating the collection programs manage the collected household hazardous wastes as hazardous waste, even though it is not required by RCRA.[51] Furthermore, the Agency has recently recommended that collected household waste pharmaceuticals be incinerated—preferably at a permitted hazardous waste incinerator, but when that is not feasible, at a large or small municipal waste combustor.[52] The Agency believes that this practice is already common among collection programs since one goal of many collection programs is to divert pharmaceuticals from municipal landfills. Nevertheless, the Agency is proposing to make this recommendation a requirement for collected household waste pharmaceuticals in § 266.506.[53] The Agency seeks comment on changing this recommendation to a requirement for pharmaceutical collection programs.

The Agency recommends that, whenever possible, households utilize pharmaceutical collection and take-back events as the disposal option for their unwanted pharmaceuticals. For consumers without access to a pharmaceutical take-back event, FDA provides information on the disposal of unused pharmaceuticals and step-by-step guidance for disposing of pharmaceuticals in the household trash. For more information on the safe disposal of household pharmaceuticals, please see: *http://www.fda.gov/Drugs/ResourcesForYou/Consumers/BuyingUsingMedicineSafely/EnsuringSafeUseofMedicine/SafeDisposalofMedicines/ucm186187.htm.*

3. Which hazardous wastes are addressed by this proposed rule?

a. Hazardous waste pharmaceuticals. If finalized, these regulations will only pertain to those pharmaceutical wastes that are RCRA hazardous wastes generated by healthcare facilities or managed by pharmaceutical reverse distributors. Under this rulemaking, EPA is not proposing to add additional pharmaceuticals to the hazardous waste listings or to expand the hazardous waste characteristics to include additional pharmaceuticals. See Section VII of the preamble, *Request for Comment on EPA's Efforts to Identify Additional Pharmaceuticals as Hazardous Waste,* for a discussion of possible future actions by EPA to regulate additional pharmaceuticals as hazardous waste.

b. How does this proposal affect hazardous waste pharmaceuticals that are also regulated by other federal or state regulations? The management, transportation, treatment, storage and disposal of hazardous waste pharmaceuticals are regulated under RCRA Subtitle C. However, hazardous waste pharmaceuticals may also be subject to a number of other statutes and implementing regulations administered by state or other federal agencies. Examples include pharmaceuticals that are subject to the Controlled Substances Act and DEA regulations; infectious pharmaceutical wastes that are subject to state and local medical waste regulations; and pharmaceuticals with a radioactive component that are subject to the Atomic Energy Act (AEA). These potentially overlapping requirements make the appropriate management of pharmaceutical wastes a complex matter. The following discusses the impact of this proposed rule on various dually regulated hazardous waste pharmaceuticals.

i. *Hazardous waste pharmaceuticals that are also controlled substances.* Under current regulations, any healthcare facility generating or managing a RCRA hazardous waste pharmaceutical that is also a controlled substance listed in Schedule II–V [54] must comply with the RCRA hazardous waste requirements, as well as the requirements of the Controlled Substances Act and DEA regulations. Recently revised DEA regulations to implement the Secure and Responsible Drug Disposal Act of 2010 require that controlled substances be destroyed so that they are ''non-retrievable.'' [55] In the preamble to both the proposed and final rules, DEA has stated that flushing alone will not meet DEA's new non-retrievable standard.[56] Stakeholders have told EPA that it is expensive and difficult to incinerate controlled substances that are also hazardous wastes under both DEA and EPA regulatory schemes. As a result, healthcare facilities with hazardous waste pharmaceuticals that are also controlled substances have often sewered on-site in order to avoid the expense of complying with dual regulation that would apply if they were incinerated. Due to difficulties associated with managing these hazardous waste pharmaceuticals that are also controlled substances, the Agency is proposing to conditionally exempt from RCRA regulatory requirements those pharmaceuticals that are both a RCRA hazardous waste and a DEA controlled substance, provided the hazardous waste pharmaceuticals that are also DEA controlled substances are combusted at a permitted or interim

[50] See 49 FR 44978; November 13, 1984.

[51] See memo November 1, 1988, from Porter to Regions (RCRA Online #11377). *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/2FD51915214EF63C8525670F006BDC88/$file/11377.pdf.*

[52] See memo September 26, 2012, Rudzinski to the Regional RCRA Division Directors (RCRA Online# 14833). *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/FCB11DD6F61D4B1685257AFE005EB5CE/$file/14833.pdf.*

[53] Since pharmaceutical collection programs typically co-mingle DEA controlled substances with non-controlled substances, this requirement is included in a section of the regulations that pertains to controlled substances.

[54] *See* 21 CFR 1308 for a complete list of controlled substances.

[55] Final rule: September 9, 2014; 79 FR 53520.

[56] Proposed rule: December 21, 2012; 77 FR 75784, see page 75803; and final rule: September 9, 2014; 79 FR 53520, see page 53548).

status hazardous waste incinerator, or a permitted municipal solid waste incinerator. A more detailed discussion of this exemption is found in Section V.E.2 of this proposal, *Conditional Exemption for Hazardous Waste Pharmaceuticals that are also Controlled Substances.*

ii. *Hazardous waste pharmaceuticals that are also medical wastes.* There are instances when a hazardous waste pharmaceutical will also exhibit a biological hazard. The healthcare industry often refers to pharmaceutical wastes that are both RCRA hazardous and a biological hazard as ''dual wastes,'' and such wastes must be managed in accordance with RCRA and state and/or local medical waste regulations. As a result, the healthcare facility must send these dual wastes to a hazardous waste treatment, storage and disposal facility that is also permitted to accept medical wastes. Some examples of dual wastes include un-administered syringes containing hazardous waste pharmaceuticals (*e.g.,* physostigmine) or IV bags containing residues of a hazardous waste pharmaceutical that are attached to the tubing and needles used to administer the pharmaceutical. The RCRA hazardous waste pharmaceutical portion of these ''dual'' wastes are included within these proposed management standards so that healthcare facilities can obtain the benefits of this proposal, while ensuring the hazardous waste portion of the waste is managed appropriately and ultimately delivered to RCRA-permitted TSDFs. In addition, healthcare facilities must still manage the biological hazard in accordance with state and/or local medical waste requirements. EPA notes that autoclaving is not an acceptable method of treating hazardous wastes that are also medical waste. In addition, as discussed in Section V.E.3.c of this preamble, EPA is proposing to conditionally exclude the residues of hazardous waste pharmaceuticals remaining in fully dispensed syringes from RCRA regulation.

iii. *Hazardous waste pharmaceuticals that contain a radioactive component.* Hazardous waste pharmaceuticals that also contain a radioactive component subject to the Atomic Energy Act of 1954 (AEA) (*i.e.,* ''mixed waste'') are regulated by multiple agencies. The hazardous waste component is regulated under EPA or the authorized state RCRA programs, while either the Nuclear Regulatory Commission (NRC) or the Department of Energy (DOE) regulates the radioactive component of the waste under the AEA.[57] Healthcare facilities would be able to use this rule (if finalized) to comply with the hazardous waste component for hazardous waste pharmaceuticals. Although we do not believe that anything in this proposal is inconsistent with the AEA, § 1006(a) of RCRA states that if the RCRA requirements are inconsistent with the AEA requirements, then the RCRA requirements do not apply. Therefore, if a healthcare facility that manages hazardous waste pharmaceuticals encounters specific RCRA requirements that are inconsistent with specific AEA requirements, only the AEA requirements would apply.

As is discussed in the Joint NRC/EPA Guidance on Testing Requirements for Mixed Radioactive and Hazardous Waste (62 FR 62079, 62085; November 20, 1997), an inconsistency occurs when compliance with one statute or set of regulations would necessarily cause non-compliance with the other statute or set of regulations. Relief from the regulatory inconsistency would be provided by the AEA requirement overriding the specific RCRA requirement. It is important to note, however, that the determination of an inconsistency would relieve the healthcare facility only from compliance with the specific RCRA requirement(s) that is deemed inconsistent with the AEA requirement(s); it would still be required to comply with all of the other hazardous waste pharmaceutical management standards.

4. Management of Wastes Generated at Healthcare Facilities That Are Not Included in the Scope of this Proposed Rule

Wastes that are not included in the scope of this proposed rule include non-hazardous wastes or non-pharmaceutical hazardous wastes. Pharmaceutical wastes that are not listed or characteristic hazardous wastes under RCRA Subtitle C may nonetheless pose some risks to public health and the environment. These wastes are discussed further below.

a. How should non-hazardous waste pharmaceutical be disposed? A large portion of the pharmaceutical wastes generated at healthcare facilities will not meet the definition of a RCRA hazardous waste under RCRA Subtitle C. This proposal, therefore, does not require that healthcare facilities manage these waste pharmaceuticals under the RCRA subtitle C hazardous waste regulations, including this proposed rule. However, a healthcare facility may choose to manage its solid and hazardous waste pharmaceuticals together (as hazardous waste pharmaceuticals) under these new proposed regulations. Because all healthcare facilities operating under this subpart are regulated in the same way regardless of quantity of pharmaceutical hazardous waste generated, managing non-hazardous waste pharmaceuticals as hazardous waste under this subpart would not affect the facility's hazardous waste generator category. While not regulated by the federal RCRA hazardous waste requirements, non-hazardous waste pharmaceuticals are still considered solid wastes under the federal regulations and must be managed in accordance with applicable federal, state and/or local regulatory requirements.

If a healthcare facility decides to segregate its hazardous and non-hazardous pharmaceuticals, EPA recommends that healthcare facilities follow the best management practices (BMPs) outlined in the ''Managing Pharmaceutical Waste: A 10-Step Blueprint for Healthcare Facilities in the United States'' (Practice Greenhealth, Revised August 2008)[58] for the management, treatment, storage and disposal of non-hazardous waste pharmaceuticals. The following summarizes the recommended BMPs found in the Blueprint for various categories of pharmaceutical wastes, including those wastes that possess hazardous waste-like qualities yet are not regulated as hazardous waste under RCRA Subtitle C.

i. *Recommended BMPs for healthcare facilities managing non-hazardous waste pharmaceuticals possessing hazardous waste-like qualities.* Currently, most pharmaceuticals are not regulated as RCRA hazardous wastes when discarded by healthcare facilities. These ''non-RCRA-hazardous'' pharmaceuticals can be divided into two categories: those that possess hazardous waste-like qualities and those that do not. As outlined in the Blueprint, there are pharmaceuticals that possess hazardous waste-like qualities, but for various reasons, are not regulated by the RCRA Subtitle C hazardous waste regulations. The Agency supports the Blueprint's

[57] The NRC regulates radioactive wastes generated by commercial or non-DOE facilities, whereas DOE regulates radioactive wastes generated by DOE facilities.

[58] Published in 2006, the development of the original *Blueprint* was funded by the Office of Solid Waste and Emergency Response and managed by EPA Region 1. The 2008 revision of the *Blueprint* was funded by the Healthcare Environmental Resource Center. *http://practicegreenhealth.org/sites/default/files/upload-files/pharmwasteblueprint.pdf*

recommendation of hazardous waste incineration as the BMP for healthcare facilities and pharmaceutical reverse distributors discarding pharmaceuticals that may possess hazardous waste-like qualities, but are not regulated as RCRA hazardous waste. This recommendation would apply to pharmaceuticals with more than one active ingredient listed on the P- or U-lists,[59] chemotherapeutic agents characterized as bulk wastes,[60] pharmaceuticals which meet the NIOSH Hazardous Drug Criteria,[61] pharmaceuticals listed in Appendix VI of the OSHA Technical Manual,[62] pharmaceuticals with LD50s ≤50 mg/kg, pharmaceuticals that are carcinogenic or endocrine disrupting compounds, and vitamin/mineral preparations containing heavy metals.

ii. *Recommended best management practices for other non-hazardous pharmaceutical wastes (*i.e., *those not possessing hazardous waste like-qualities).* As far as other non-hazardous waste pharmaceuticals (*i.e.,* those not possessing hazardous waste-like qualities), disposing of non-hazardous waste pharmaceuticals at healthcare facilities via drain disposal is strongly discouraged and not recommended by EPA. Therefore, EPA endorses the Blueprint's recommendation of municipal solid waste or medical waste incineration for any non-hazardous waste pharmaceuticals, even when they do not possess hazardous waste-like qualities. The potential risk remains for active pharmaceutical ingredients (APIs) to be released into the environment if municipal solid waste landfills or medical waste autoclaves are used for the purposes of pharmaceutical waste treatment and disposal. For example, autoclaves are designed to kill pathogens and do not achieve the temperatures required to destroy most APIs during the autoclaving process. As a result, there is the potential for wastewater containing APIs to be generated and discharged into the sewer. In addition, some limited studies have shown APIs present in landfill leachate collected in municipal solid waste landfill leachate systems.[63] [64] Typically, the collected landfill leachate is subsequently sent to wastewater treatment plants for treatment, but their treatment technologies are not designed to remove all APIs from the wastewater (See Section V.E.1 for more information regarding sewering and APIs).

b. Non-pharmaceutical hazardous wastes. These proposed regulations will only pertain to hazardous waste pharmaceuticals. Therefore, other types of hazardous wastes generated at healthcare facilities that do not meet the definition of a hazardous waste pharmaceutical cannot be managed in accordance with these proposed regulations. For example, hazardous wastes generated in hospital laboratories or during cleaning and maintenance of the facility are not considered hazardous waste pharmaceuticals and are not included within the scope of this proposal. The generation of non-pharmaceutical hazardous wastes is often more routine and does not trigger the same concerns that healthcare facilities experience when managing hazardous waste pharmaceuticals.

After a healthcare facility determines it is subject to this proposed rule and manages its hazardous waste pharmaceuticals under part 266, subpart P, it is no longer required to count the hazardous waste pharmaceuticals that it generates towards its generator category. As a result, the healthcare facility may experience a change in RCRA generator category for its non-pharmaceutical hazardous waste. For example, a healthcare facility may shift from being an LQG to a SQG or even CESQG by not counting its hazardous waste pharmaceuticals toward its generator category, especially when acute hazardous waste pharmaceuticals such as warfarin (brand name: Coumadin) no longer need to be counted. A shift in generator category, should it occur, would allow a healthcare facility to manage its non-pharmaceutical hazardous waste, such as hazardous waste from laboratories, according to the reduced generator requirements. It is important to note that only when a healthcare facility is managing its hazardous waste pharmaceuticals under the new proposed subpart does it have the benefit of not counting them towards its generator category (see Section VI. *Implementation and Enforcement* for further discussion).

C. What are the proposed standards for healthcare facilities that manage non-creditable hazardous waste pharmaceuticals?

This section discusses the proposed management standards for healthcare facilities (except CESQGs) that manage non-creditable hazardous waste pharmaceuticals, which include the following:

(1) Notification requirements for healthcare facilities managing non-creditable hazardous waste pharmaceuticals;

(2) personnel training requirements for healthcare facilities managing non-creditable hazardous waste pharmaceuticals;

(3) making a hazardous waste determination for non-creditable hazardous waste pharmaceuticals;

(4) elimination of central accumulation area and satellite accumulation area requirements for healthcare facilities managing non-creditable hazardous waste pharmaceuticals;

(5) container standards for healthcare facilities managing non-creditable hazardous waste pharmaceuticals;

(6) labeling standards on containers for healthcare facilities managing non-creditable hazardous waste pharmaceuticals;

(7) accumulation time limits for healthcare facilities managing non-creditable hazardous waste pharmaceuticals;

(8) land disposal restrictions for non-creditable hazardous waste pharmaceuticals;

(9) procedures for shipping non-creditable hazardous waste pharmaceuticals off-site from healthcare facilities;

(10) procedures for managing rejected shipments of non-creditable hazardous waste pharmaceuticals from healthcare facilities;

(11) reporting requirements for healthcare facilities managing non-creditable hazardous waste pharmaceuticals;

(12) recordkeeping requirements for healthcare facilities managing non-creditable hazardous waste pharmaceuticals;

(13) procedures for responses to releases by healthcare facilities managing non-creditable hazardous waste pharmaceuticals;

[59] As noted in the comment after § 261.33(d), the phrase ''commercial chemical product'' includes formulations in which the P- or U-listed chemical is the sole active ingredient. Therefore, formulations with more than one active ingredient do not meet the specifications of the P- and U-listings even if one, two or all of the active ingredients are listed on the P- and/or U-lists.

[60] The descriptions ''bulk'' and ''trace'' when applied to chemotherapeutic wastes are industry terms and are not defined by the federal RCRA regulations.

[61] *NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings 2012. http://www.cdc.gov/niosh/docs/2012-150/.*

[62] *OSHA Technical Manual, Section VI: Chapter 2, Appendix VI: 2–1. http://www.osha.gov/dts/osta/otm/otm_vi/otm_vi_2.html.*

[63] Barnes, K.K., Christenson, S.C., Kolpin, D.W., Focazio, M.J., Furlong, E.T., Zaugg, S.D., Meyer, M.T. and Barber, L.B. (2004), Pharmaceuticals and Other Organic Waste Water Contaminants Within a Leachate Plume Downgradient of a Municipal Landfill. Groundwater Monitoring & Remediation, 24: 119–126.

[64] Buszka, P.M., Yeskis, D.J., Kolpin, D.W., Furlong, E.T., Zaugg, S.D., and Meyer, M.T. (June 2009), Waste-Indicator and Pharmaceutical Compounds in Landfill-Leachate-Affected Ground Water near Elkhart, Indiana, 2000–2002. Bulletin of Environmental Contamination and Toxicology, V82.6:635–659.

(14) special requirements for long-term care facilities managing non-creditable hazardous waste pharmaceuticals;

(15) conditions for healthcare facilities that accept hazardous waste pharmaceuticals from off-site CESQGs; and

(16) a prohibition of sewering hazardous waste pharmaceuticals for all healthcare facilities; (see section V.E.1. of the preamble, *Sewer Disposal Prohibition*).

The proposed management standards discussed in this section only apply to hazardous waste pharmaceuticals that are non-creditable hazardous waste pharmaceuticals (*i.e.,* they are destined for a RCRA permitted or interim status TSDF). They do not apply to those hazardous waste pharmaceuticals that meet the definition of a ''potentially creditable hazardous waste pharmaceutical.'' Please refer to Section V.D for the proposed healthcare facility management standards for potentially creditable hazardous waste pharmaceuticals that are transported to reverse distributors for the processing of manufacturer's credit.

1. Notification Requirements for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals

In order to address commenters' concerns from the 2008 Pharmaceutical Universal Waste proposal that regulatory agencies are unaware of hazardous waste pharmaceutical management activities, EPA is proposing to require that a healthcare facility that does not qualify as a CESQG to submit a one-time notification as a ''healthcare facility'' to the appropriate EPA Regional Administrator. Healthcare facilities subject to 40 CFR part 266, subpart P will have to submit notification even if the healthcare facility has previously obtained an EPA identification number. The required notification will enable EPA and state regulatory agencies to identify the universe of healthcare facilities managing hazardous waste pharmaceuticals subject to the 40 CFR part 266, subpart P requirements. In addition, having this information allows EPA and state environmental regulatory agencies to track healthcare facilities for enforcement and inspection purposes, ensuring the hazardous waste pharmaceuticals are managed in accordance with the regulations.

At any point a healthcare facility's hazardous waste pharmaceutical generation may change due to waste minimization efforts or other reasons, causing the facility to legitimately decrease its total monthly hazardous waste generation enough to qualify as a CESQG. In this case, if the healthcare facility plans to withdraw from the 40 CFR part 266, subpart P requirements due to qualifying as a CESQG, it will be required to re-notify EPA of its choice to withdraw.

Alternatively, if a healthcare facility determines that it is a CESQG,[65] but does not want to keep track of the amount of hazardous waste generated and whether it is above or below the CESQG threshold limit, it can choose to operate under this proposed rule. By choosing to operate under this proposed rule, the CESQG healthcare facility must comply with *all* of the requirements and must submit the one-time notification that it is operating under 40 CFR part 266, subpart P. Healthcare facilities that are not CESQGs, however, are required to operate under 40 CFR part 266, subpart P for the management of their hazardous waste pharmaceuticals.

The Agency is proposing that this notification occur via the RCRA Subtitle C Site Identification Form (EPA Form 8700–12; or Site Identification Form).[66] EPA believes that notification via the Site Identification Form is the preferred approach for notification purposes for several reasons. First, both state environmental regulatory agencies and hazardous waste generators are familiar with the form, as it is the form currently used by hazardous waste generators to notify regulators of their RCRA Subtitle C activities. Second, as stated previously, the use of the Site Identification Form will allow for EPA and state regulatory agencies to monitor the healthcare facilities utilizing the new regulatory requirements. Lastly, public comments received on previous EPA actions (*e.g.,* Academic Laboratories Rulemaking (73 FR 72912; December 1, 2008)) have indicated that notification via the Site Identification Form is the notification approach typically preferred by the regulated community. We are proposing that healthcare facilities can submit their notification as part of the Biennial Report, if the healthcare facility will be required to submit a Biennial Report due to its non-pharmaceutical hazardous waste. Otherwise, healthcare facilities are required to notify within 60 days of this new subpart becoming effective, or within 60 days of becoming subject to this new subpart.

If this notification requirement is finalized, the Site Identification Form will be modified by EPA in a separate action.[67] Specifically, the Agency intends to amend the Site Identification Form by adding a section to the form for a healthcare facility to indicate the type of entity it is (*e.g.,* a hospital, a doctor's office, a veterinary clinic, a pharmacy, an assisted living facility, etc.) and to indicate that it generates hazardous waste pharmaceuticals. The healthcare facility will no longer be required to identify on the Site Identification Form the specific types of hazardous waste pharmaceuticals it generates. The Agency also intends to add a checkbox to the section in order to allow a healthcare facility to indicate that its generator category is changing to a CESQG and it is no longer managing its hazardous waste pharmaceuticals according to 40 CFR part 266, subpart P.

The Agency does not anticipate that this proposed notification requirement will place any undue economic burden upon healthcare facilities or the environmental regulatory agencies that process these notifications (see the Regulatory Impact Analysis for the proposed rule in the rulemaking docket EPA–HQ–RCRA–2007–0932). In fact, under these proposed regulations, healthcare facilities would no longer need to count the hazardous waste pharmaceuticals managed under 40 CFR part 266, subpart P towards a healthcare facility's generator category. As a result, EPA anticipates that many healthcare facilities will change their generator category to either a SQG or CESQG for their other, non-pharmaceutical hazardous wastes. So while the notification requirement ensures that the environmental regulatory agencies are informed of all hazardous waste pharmaceutical management activities subject to the 40 CFR part 266, subpart P requirements in their jurisdictions, the fact that some healthcare facilities will no longer qualify as LQGs will reduce the number of healthcare facilities in the LQG universe. Because LQGs are inspected more frequently than SQGs or CESQGs, EPA expects this could result in an overall decrease in burden for both

[65] A generator is a CESQG if it generates less than or equal to 100 kg of hazardous waste per calendar month, and less than or equal to 1 kg of acute hazardous waste per calendar month and <100 kg of any residue or contaminated soil, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e) per calendar month, provided it does not accumulate on-site at any time >1 kg of acute hazardous waste or >1000 kg of hazardous waste.

[66] For information on the current Site Identification Form, please *see: http://www.epa.gov/wastes/inforesources/data/form8700/8700-12.pdf.*

[67] The Information Collection Request (ICR) for the Site Identification Form (87000–12) is updated every three years and must be approved by the Office of Management and Budget (OMB). These updates and OMB approvals are published in the **Federal Register** and are subject to public comment.

the healthcare facilities and the environmental regulatory agencies.

The Agency is soliciting comment on the notification requirement for healthcare facilities, the method of notification via the Site Identification Form, and whether this notification requirement will result in any undue burden to either healthcare facilities or state environmental regulatory agencies.

2. Personnel Training Requirements for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals

Under the current RCRA Subtitle C regulations, an LQG healthcare facility must provide RCRA training to its healthcare workers involved in the generation and/or management of hazardous waste. Under § 262.34(a)(4), LQGs are required to comply with the personnel training requirements for interim status TSDFs (which are found in § 265.16). These personnel training requirements include either classroom instruction or on-the-job training in RCRA and state that the facility must maintain training documents and records for each trained staff person. On the other hand, under current regulation, healthcare facilities that are SQGs must meet a performance-based standard when training their healthcare workers. This entails ensuring ''that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies'' (§ 262.34(d)(5)(iii)). For comparative purposes, healthcare facilities that are considered CESQGs do not have any personnel training requirements under the current federal regulations. Similarly, generators, including healthcare facilities, are not required to provide RCRA training to personnel that only work in satellite accumulation areas regulated under § 262.34(c). However, healthcare personnel that are involved in the generation of pharmaceutical waste must be familiar enough with the pharmaceuticals with which they are working to know when they have generated a hazardous waste so that it will be managed in accordance with the RCRA regulations.

EPA believes that the LQG RCRA training requirement is excessive for healthcare workers who sporadically generate hazardous waste pharmaceuticals at healthcare facilities, but believe it is necessary to have some familiarity with the dangers that hazardous waste pharmaceuticals can pose. Therefore, the Agency is proposing healthcare facility-specific personnel training requirements that are akin to the training requirements for SQGs and small quantity universal waste handlers. Specifically, healthcare facilities managing their hazardous waste pharmaceuticals in accordance with the proposed healthcare facility standards must inform all employees that handle or have responsibility for generating and/or managing hazardous waste pharmaceuticals of the proper handling and emergency procedures appropriate to their responsibilities during normal facility operations and emergencies. This training information can be disseminated through verbal communication or through distribution of pamphlets or other documentation. However, a healthcare facility that is an LQG due to its non-pharmaceutical hazardous wastes may choose to continue to use its existing training program as an LQG so as not to have different training programs and that would be acceptable, as well.

The Agency solicits comments on the personnel training requirements proposed in this document for healthcare facilities managing hazardous waste pharmaceuticals. Specifically, the Agency is seeking comment regarding the appropriateness of these personnel training requirements and if these requirements will be sufficient for communicating key procedures to healthcare workers that generate and/or manage hazardous waste pharmaceuticals.

EPA is seeking comment on whether documentation of training is necessary in order to verify compliance with the training requirement. Based on the comments received, we may include a requirement in the final rule for documenting and retaining records of healthcare personnel training. Finally, the Agency wants to reiterate that these proposed personnel training requirements only apply to staff generating and/or managing hazardous waste pharmaceuticals. The training requirements of 40 CFR part 262 will continue to apply to staff generating and/or managing other types of hazardous wastes at the healthcare facility.

3. Making a Hazardous Waste Determination for Non-Creditable Hazardous Waste Pharmaceuticals

Similar to the current RCRA Subtitle C generator requirements, healthcare facilities will still be required to make a hazardous waste determination on pharmaceutical wastes prior to managing them under the proposed cradle-to-grave standards. Therefore, when a healthcare facility generates a solid waste pharmaceutical, the healthcare facility must determine if the pharmaceutical waste is listed in 40 CFR part 261, subpart D and if it exhibits one or more of the four characteristics of hazardous waste identified in 40 CFR part 261, subpart C. However, unlike the existing generator requirements, the healthcare facility does not need to identify the specific waste codes applying to the pharmaceutical wastes. If the pharmaceutical waste is determined to be a hazardous waste, then the healthcare facility must manage the hazardous waste pharmaceuticals in accordance with these proposed requirements instead of 40 CFR part 262. Pharmaceutical wastes not meeting the definition of a hazardous waste (*i.e.,* non-hazardous waste pharmaceuticals) must be managed in compliance with applicable federal, state and local regulations.

EPA understands that healthcare facilities utilize various approaches when making hazardous waste determinations. For example, healthcare facilities may hire contractors to review their formularies and identify those pharmaceuticals that are hazardous wastes when discarded. These facilities may then identify hazardous waste pharmaceuticals at the pharmacy level, marking these pharmaceuticals with a special label so that healthcare personnel know how to properly dispose of the pharmaceutical when it becomes a waste. Other healthcare facilities may instruct personnel to dispose of all pharmaceutical wastes into one RCRA hazardous waste collection container. These facilities may then choose to manage all of the contents of the container as hazardous waste or they may choose to sort the hazardous waste portion from the non-hazardous waste pharmaceutical portion in the central accumulation area. Due to the various ways that healthcare facilities make the hazardous waste determination, the Agency is not proposing that a specific approach be utilized when making the determination, only that the facility performs the waste determination. However, healthcare facilities may choose to manage all of their pharmaceutical wastes as hazardous, and thus, if a healthcare facility chooses this approach, they would not need to make individual hazardous waste determinations, but would have made a generic decision that all of their waste pharmaceuticals are hazardous and manage them as hazardous waste pharmaceuticals in accordance with the proposed requirements in 40 CFR part 266, subpart P.

4. No Central Accumulation Area and Satellite Accumulation Area Requirements for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals

Hazardous waste pharmaceuticals are generated at numerous locations across a healthcare facility. Under the current RCRA Subtitle C requirements, each location at the healthcare facility with a RCRA hazardous waste receptacle for the disposal of hazardous waste pharmaceuticals is considered a satellite accumulation area and is subject to volume accumulation limits and other requirements.[68] Of particular concern regarding the satellite accumulation requirements for healthcare facilities is the one quart accumulation limit for acute hazardous wastes (*i.e.,* P-listed wastes). Under the December 2008 Pharmaceutical Universal Waste proposal, no accumulation areas, central or satellite, were proposed to be established for hazardous waste pharmaceuticals. This proposed approach was consistent with the current federal universal waste program, since facilities are not required to designate a special centralized area for the accumulation of universal wastes nor are they required to have satellite accumulation areas for universal wastes. Nevertheless, EPA understands that facilities that handle universal wastes will often accumulate their universal wastes within their 90- or 180-day hazardous waste accumulation areas.

For the reasons articulated in the Pharmaceutical Universal Waste proposal, the Agency has decided that a healthcare facility accumulating hazardous waste pharmaceuticals will not be subject to the satellite accumulation area regulations or the central accumulation area regulations (also sometimes called less than 90- or 180-day areas), but rather to the proposed accumulation time limits and container standards.

A healthcare facility may choose to accumulate hazardous waste pharmaceuticals within its 90- or 180-day central accumulation area if it has one established for its other hazardous wastes as long as it maintains compliance with the proposed accumulation time limit and container requirements of 40 CFR part 266, subpart P. The Agency notes that even if the hazardous waste pharmaceuticals are accumulated in a 90- or 180-day central accumulation area, these hazardous waste pharmaceuticals are not subject to the 90- or 180-day requirements. EPA solicits public comment on its decision to not require hazardous waste pharmaceutical-specific central and satellite accumulation area requirements.

5. Container Standards for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals

The container standards discussed in this section apply to those containers used by healthcare facilities to accumulate, store and transport non-creditable hazardous waste pharmaceuticals.[69] First, we would note that due to the relatively small quantities of hazardous waste pharmaceuticals that are typically accumulated and stored at a healthcare facility, the Agency understands that other types of waste management units, such as tanks, are not used for the management of waste pharmaceuticals. Therefore, we are only proposing standards for containers. However, the Agency solicits comment as to whether other types of waste management units are also used by healthcare facilities to accumulate and store hazardous waste pharmaceuticals and whether EPA should establish technical standards for other types of waste management units.

The Agency is proposing to require that healthcare facilities pack hazardous waste pharmaceuticals into containers that are structurally sound and that are compatible with the hazardous waste pharmaceuticals that will be contained within them. EPA intends this requirement to mean that containers used for holding hazardous waste pharmaceuticals must be in good condition, with no severe rusting, apparent structural defects, or deterioration. Containers also must not have any evidence of leakage, spillage or damage that could result in the release of waste under reasonably foreseeable circumstances. Furthermore, the Agency is proposing to require that incompatible wastes not be placed in the same container, unless the co-mingling of incompatible hazardous wastes is conducted in such a way that it does not have the potential to (1) generate extreme heat or pressure, fire or explosion, or violent reaction; (2) produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health; (3) produce uncontrollable flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions; (4) damage the structural integrity of the facility or container containing the hazardous waste pharmaceuticals; or (5) through other like means threaten human health or environment. For example, the majority of a healthcare facility's non-creditable hazardous waste pharmaceuticals are likely organic in nature, and thus, compatible with each other and can be accumulated together, especially since they will most likely be incinerated once they are transported to a TSDF. However, some non-creditable hazardous waste pharmaceuticals, such as metal bearing wastes not containing sufficient organics, are prohibited from being incinerated (*e.g.,* P012, arsenic trioxide). The hazardous waste pharmaceuticals that cannot be incinerated must be accumulated separately from organic wastes destined for incineration.

The Agency believes that these technical standards, like similar technical standards that EPA has promulgated in § 265.17 for interim status TSDFs, would ensure that hazardous waste pharmaceuticals are properly managed and would not be released into the environment, while at the same time providing flexibility to the healthcare facility in selecting those containers that are most appropriate for their situation.

In addition to the proposed container standards, the Agency is also proposing that accumulation containers for hazardous waste pharmaceuticals be secured in a manner that prevents unauthorized access to the contents in order to prevent the pilfering of hazardous waste pharmaceuticals or inadvertent exposures to them. As we have noted previously, hazardous waste pharmaceuticals still retain considerable value and can easily be diverted for illicit purposes. To ensure this does not occur, we believe it is important to propose a requirement that would prevent the unauthorized access to the contents of these containers. EPA intends this requirement to be performance-based and does not intend to propose prescriptive regulatory requirements for this standard. The Agency believes that healthcare facilities can choose to utilize containers that have built-in mechanisms to prevent access to their contents or can choose to store containers in locked storage lockers, closets or rooms where the public does not have access to the containers or their contents.

[68] See § 262.34(c) for the satellite accumulation requirements. For additional information on satellite accumulation areas, please see the memorandum from Robert Springer to the EPA Regional RCRA Directors, ''Frequently Asked Questions about Satellite Accumulation Areas'' (RCRA Online #14703) *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/0AC9E15424B2897D8525770600609793/$file/14703.pdf.*

[69] The container standards proposed do not apply to the various packaging, blister packs, bottles, vials, IV bags, etc., in which pharmaceuticals are stored prior to being dispensed or administered.

The Agency is seeking comment on the appropriateness of the proposed container management standards. In addition, the EPA is soliciting comment on the proposed requirement for ensuring that the hazardous waste pharmaceuticals contained in collection containers remain secure.

6. Labeling Standards on Containers for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals

During the period of accumulation and storage, the Agency is proposing that containers of hazardous waste pharmaceuticals be marked with the words ''Hazardous Waste Pharmaceuticals.'' The Agency is not proposing to require that the hazardous waste numbers (often referred to as hazardous waste codes) of the container's contents be listed on the label. The personnel at healthcare facilities that typically generate the hazardous waste pharmaceuticals will be healthcare workers (*e.g.,* nurses). Healthcare workers are not usually intimately familiar with RCRA and its regulations and are primarily focused on patients and their health. In addition, while a healthcare facility may have an environmental compliance manager or environmental consultant that is knowledgeable about RCRA and its regulations and can make hazardous waste determinations, this individual cannot be present to assign a hazardous waste code and label the collection receptacle each time a pharmaceutical waste is generated. For these reasons, EPA does not believe it is necessary to require individual waste codes on the hazardous waste pharmaceutical collection container at the healthcare facility. The Agency is soliciting comment on the appropriateness of the proposed general labeling requirement. The Agency also requests comment on security concerns regarding having the word ''pharmaceutical'' marked on the containers.

7. Accumulation Time Limits for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals

Several hazardous waste pharmaceuticals are P-listed, acute hazardous wastes (*e.g.,* nicotine, warfarin, etc.). Under current regulations, if a generator generates more than 1 kg of acute hazardous waste per calendar month or accumulates more than1 kg of acute hazardous waste at any time, the generator is regulated as an LQG. Due to this low generation/accumulation threshold associated with P-listed wastes, healthcare facilities are often LQGs. However, while healthcare facilities can generate enough P-listed waste to become LQGs, they often do not generate sufficient amounts of hazardous waste pharmaceuticals within the allowed accumulation period of 90 days to make off-site shipments using a hazardous waste transporter cost-effective.

Under the 2008 Pharmaceutical Universal Waste proposal, universal waste handlers would have had one year for accumulation of its hazardous waste pharmaceuticals in order to facilitate proper treatment and disposal. Commenters on the 2008 Universal Waste proposed rule indicated support for the one-year accumulation time limit. Thus, the Agency is proposing to allow healthcare facilities to accumulate hazardous waste pharmaceuticals for up to one year, without having interim status or a RCRA permit. As with Universal Waste, one year is an appropriate timeframe because it strikes a balance between allowing healthcare facilities enough time to accumulate amounts of hazardous waste pharmaceuticals to make it economically viable for transporting their hazardous waste pharmaceuticals off-site while ensuring that the hazardous wastes are not accumulated beyond the one year storage limit under the land disposal restrictions programs (see § 268.50).[70]

Healthcare facilities will have various approaches to demonstrate the length of time that hazardous waste pharmaceuticals are accumulated on-site. For example, a healthcare facility can choose to mark the container label with the date that accumulation first began, maintain an inventory system that identifies dates when the hazardous waste pharmaceuticals were first accumulated, identify in the central accumulation area[71] the earliest date that a hazardous waste pharmaceutical became a waste, or any other method that clearly demonstrates the length of time that the hazardous waste pharmaceutical has been accumulated from the date it became a hazardous waste. The Agency assumes that any accumulation for up to one year is for the purpose of facilitating proper treatment and disposal. EPA proposes to require that any healthcare facility needing a longer accumulation time for any unforeseen circumstances beyond the control of the healthcare facility (*e.g.,* a recall or litigation) request an extension from the appropriate EPA Regional Administrator. This request must be sent in writing (electronic or paper) explaining the need for the extension, the approximate amount of hazardous waste pharmaceuticals accumulated beyond the one year, and the amount of extra time requested. An extension period will be granted at the discretion of the Regional Administrator on a case-by-case basis.

Finally, the Agency reiterates that the one-year accumulation time limit only applies to a healthcare facility's non-creditable hazardous waste pharmaceuticals and does not apply to any other types of hazardous waste generated on-site or to potentially creditable hazardous waste pharmaceuticals. EPA solicits comment on the proposed accumulation time limit of one year in order to allow healthcare facilities to generate enough non-creditable hazardous waste pharmaceuticals for cost-effective shipment, and solicits comment on the proposed mechanism to request a time extension.

8. Land Disposal Restrictions for Non-Creditable Hazardous Waste Pharmaceuticals

Similar to the current RCRA Subtitle C generator requirements, healthcare facilities must comply with the land disposal restrictions (LDR) prior to land disposal of the hazardous waste pharmaceuticals they generate. Since healthcare facilities are generators, even though they are not subject to the 40 CFR part 262 requirements for the management of hazardous waste pharmaceuticals, they must comply with the land disposal restrictions found at 40 CFR part 268. The land disposal restrictions are in place to ensure that toxic constituents present in hazardous waste are properly treated to reduce their mobility or toxicity before hazardous waste is placed into or onto the land (*i.e.,* land disposed). With limited exceptions, hazardous waste must be treated by a RCRA permitted or interim status TSDF. Again, EPA notes that autoclaving is not an acceptable method of treating hazardous waste.

In general, generators of hazardous waste assign the appropriate hazardous waste numbers codes to allow TSDFs to determine the specific treatment standard(s) for each prohibited waste. The Agency is proposing that healthcare facilities generating non-creditable hazardous waste pharmaceuticals do not have to assign hazardous waste codes to these wastes, but rather label them as ''hazardous waste pharmaceuticals''. They do, however, need to be aware that

[70] See the preamble to the Universal Waste final rule: May 11, 1995; 60 FR 25492 (page 25526).

[71] While the proposed rules do not require healthcare facilities to comply with the central accumulation requirements under 262.34, a healthcare facility may have a central accumulation area for the other hazardous wastes that it generates.

while most of the hazardous waste pharmaceuticals are likely organic in nature and will be incinerated, some of their hazardous waste pharmaceuticals may not be suitable for incineration and therefore must be segregated from the organic wastes. The pharmaceutical hazardous wastes not suitable for incineration include characteristic metal wastes prohibited from being combusted because of the dilution prohibition of § 268.3(c), as well as the listed wastes U151 (mercury), U205 (selenium sulfide), and P012 (arsenic trioxide), unless they contain greater than 1% total organic carbon. In order to comply with the LDRs, healthcare facilities will need to segregate these wastes from the organic pharmaceutical hazardous wastes so that they can be properly treated by the TSDF. The Agency seeks comment on whether it is necessary to incorporate into the regulations a requirement to segregate these wastes and whether additional labeling requirements are necessary to identify the hazardous waste pharmaceuticals that are not suitable for incineration.

Tables 2 through 4 list the hazardous waste pharmaceuticals with their hazardous waste codes and their LDR treatment standards.

Table 2: Waste Codes of Characteristic Hazardous Waste Pharmaceuticals

Waste Code	Description	Non-Wastewater Treatment Standard
D001	Ignitable	
	Ignitable All D001, except high TOC D001 261.21(a)(1)	DEACT and UTS or RORGS or CMBST
	Ignitable High TOC D001 based on 261.21(a)(1)	RORGS or CMBST or POLYM
D002	Corrosivity	DEACT and UTS
D004 *	Arsenic	5.0 mg/L TCLP and UTS
D005 *	Barium	21 mg/L TCLP and UTS
D006 *	Cadmium	0.11 mg/L TCLP and UTS
D007 *	Chromium	0.60 mg/L TCLP and UTS
D008 *	Lead	0.75 mg/L TCLP and UTS
D009*	Mercury	
	Mercury ≥260 mg/kg total Hg (high mercury organics)	IMERC or RMERC
	Mercury < 260 mg/kg total Hg & are not residues from RMERC (low mercury)	**0.025 mg/L TCLP and UTS**
D010 *	Selenium	5.7 mg/L TCLP and UTS
D011 *	Silver	0.14 mg/L TCLP and UTS
D013	**Lindane**	
	Lindane alpha-BHC	**0.066 mg/kg and UTS**
	Lindane beta-BHC	**0.066 mg/kg and UTS**
	Lindane delta-BHC	**0.066 mg/kg and UTS**
	Lindane gamma-BHC	**0.066 mg/kg and UTS**
D022	**Chloroform**	**6.0 mg/kg and UTS**

Waste Code	Description	Non-Wastewater Treatment Standard
D024	**m-Cresol**	**5.6 mg/kg and UTS**

*Waste code may not be treated by combustion unless the waste meets one of the criteria in § 268.3(c) (e.g., has >1% total organic carbon)
BOLD indicates that the waste is an organic waste with a concentration-based treatment standard
UTS = Universal Treatment Standards in § 268.48

Table 3: P-listed Hazardous Waste Pharmaceuticals

Waste Code	Description	Non-Wastewater Treatment Standard
P001	Warfarin (concentration > 0.3%)	CMBST
P012 *	Arsenic trioxide	5.0 mg/L TCLP
P042	Epinephrine	CMBST
P046	Phentermine	CMBST
P075	Nicotine	CMBST
P081	Nitroglycerin	CMBST
P188	Physostigmine salicylate	1.4 mg/kg or CMBST
P204	Physostigmine	1.4 mg/kg or CMBST

*Waste code may not be treated by combustion unless the waste meets one of the criteria in § 268.3(c) (e.g., has >1% total organic carbon)

Table 4: U-listed Hazardous Waste Pharmaceuticals

Waste Code	Description	Non-Wastewater Treatment Standard
U010	Mitomycin	CMBST
U015	Azaserine	CMBST
U034	Chloral hydrate	CMBST
U035	Chlorambucil	CMBST
U044	**Chloroform**	**6.0 mg/kg**
U058	Cyclophosphamide	CMBST
U059	Daunomycin	CMBST
U075	**Dichlorodifluoromethane**	**7.2 mg/kg**

Waste Code	Description	Non-Wastewater Treatment Standard
U089	Diethylstilbestrol	CMBST
U121	**Trichloromonofluoromethane**	**30 mg/kg**
U122	Formaldehyde	CMBST
U129	**Lindane**	
	Lindane alpha-BHC	**0.066 mg/kg**
	Lindane beta-BHC	**0.066 mg/kg**
	Lindane delta-BHC	**0.066 mg/kg**
	Lindane gamma-BHC	**0.066 mg/kg**
U132	Hexachlorophene	CMBST
U150	Melphalan	CMBST
U151*	Mercury	
	Mercury ≥260 mg/kg total Hg (high mercury organics)	IMERC or RMERC
	Mercury < 260 mg/kg total Hg & are not residues from RMERC (low mercury)	**0.025 mg/L TCLP and UTS**
U182	Paraldehyde	CMBST
U187	**Phenacetin**	**16 mg/kg**
U188	**Phenol**	**6.2 mg/kg**
U200	Reserpine	CMBST
U201	Resorcinol	CMBST
U205 *	Selenium sulfide	5.7 mg/L TCLP
U206	Streptozotocin	CMBST
U237	Uracil mustard	CMBST
U248	Warfarin (Concentration ≤ 0.3%)	CMBST

*Waste code may not be treated by combustion unless the waste meets one of the criteria in § 268.3(c) (e.g., has >1% total organic carbon)

BOLD indicates that the waste is an organic waste with a concentration-based treatment standard

UTS = Universal Treatment Standards in § 268.48

The organic hazardous waste pharmaceuticals (other than arsenic trioxide) may all be incinerated at RCRA permitted or interim status hazardous waste combustors. As noted in Tables 2–4, most of the organic wastes have a specified treatment standard of combustion (CMBST). The remaining seven organics (lindane, chloroform, m-cresol, dichlorodifluoro methane, trichloromonofluoromethane, phenacetin and phenol) have numerical treatment standards, such that no particular treatment technology is specified or required in order to achieve the numerical treatment standards. While these wastes may be incinerated, the incinerator residue (ash) must be analyzed for these seven organic constituents to demonstrate compliance with the LDR treatment standards before that ash can be disposed.

As mentioned earlier, because this proposed rule does not require that healthcare facilities label their waste with the hazardous waste codes, the TSDF must always analyze the incinerator ash for these seven constituents—lindane, chloroform, m-cresol, dichlorodifluoro methane, trichloromonofluoromethane, phenacetin, and phenol—according to their waste analysis plan, as they could possibly be present in any shipment of organic hazardous waste pharmaceuticals.

a. Alternative treatment standards considered. In their comments to the 2008 Universal Waste proposal, Environmental Technology Council (ETC) suggested revising the treatment standards for the organic hazardous waste pharmaceuticals that have numerical treatment standards to the specified treatment standard of

combustion.[72] Specifying combustion would relieve the TSDFs from demonstrating compliance with the numerical treatment standards. EPA explored the feasibility of making combustion an alternative treatment standard for the seven organic hazardous waste pharmaceuticals that currently have numeric treatment standards. In fact, EPA notes that the numerical treatment standards were developed based on levels achieved through combustion. However, in order to allow maximum flexibility, EPA has indicated a preference for numerical treatment standards over specifying treatment standards whenever possible. Furthermore, it is not clear that pharmaceuticals would be the sole source of the seven organic constituents in question. Therefore, even if we proposed an alternative treatment standard of combustion for the seven organic pharmaceuticals, hazardous waste incinerators would still be required to test their ash for these constituents to demonstrate compliance with numeric treatment standards if they received the organics from another, non-pharmaceutical source.

b. Incineration of mercury-containing hazardous waste pharmaceuticals. It is rare, but some pharmaceuticals contain mercury (*e.g.,* thimerosal, a mercury-containing preservative). When discarded, a mercury-containing pharmaceutical would be a D009 hazardous waste if the leachate generated by the toxicity characteristic leaching procedure (TCLP), or if the pharmaceutical itself (when the waste contains < 0.5% filterable solids), contains ≥ 0.2 mg/L mercury (see § 261.24).[73] As indicated in Table 2, a D009 hazardous waste with mercury content ≥ 260 mg/kg of total mercury and that also contains organics, must be treated by IMERC (incineration) or RMERC (mercury retorting). However, hazardous waste pharmaceuticals that are D009 are expected to have mercury content <260 mg/kg, in which case the treatment standards are numeric and treatment by RMERC or IMERC is not required. With numeric treatment standards, the generator has flexibility regarding which hazardous waste treatment method to use to meet the treatment standard. As explained previously, incineration of mercury-bearing hazardous waste with >1% total organic carbon is not considered impermissible dilution (see § 268.3(c)) and therefore is an allowable form of treatment.

Emissions from combustion units that burn hazardous waste[74] are regulated under RCRA and the Clean Air Act (CAA). The implementing regulations under these statutory authorities include emission limits for new and existing combustion units for mercury, semi-volatile metals (cadmium and lead), low volatility metals (arsenic, beryllium, and chromium), particulate matter, chlorinated dioxins and furans, other toxic organic compounds, hydrogen chloride and chlorine. The regulations also (1) specify when and how combustion sources must comply with the emission standards and operating requirements, (2) prescribe detailed monitoring requirements to show continuous compliance with the emission standards, and (3) prescribe performance testing requirements to demonstrate compliance with the emission standards (see 40 CFR part 63, subpart EEE).

To ensure continuous compliance with the emission limits, hazardous waste combustors are required to establish limits on (1) the feedrate of metals (including mercury), chlorine, and (for some types of hazardous waste combustors) ash; (2) combustor operating parameters such as minimum combustion chamber temperature; and (3) operating parameters of the air pollution control device. For mercury, continuous compliance requirements would generally include a limit on the total feedrate of mercury in all feedstreams to the combustion unit, limits on the operation of a wet scrubber (depending on the species of mercury in the combustion gases, wet scrubbers can be efficient at removing mercury), and operating limits on the activated carbon injection or carbon bed system, if such systems are used.

In addition, RCRA directs permitting authorities to impose additional terms and conditions on a site-specific basis as may be necessary to protect human health and the environment (see § 270.32(b)). Thus, if the mercury emission limits specified previously are not protective in an individual instance, the permit writer will establish permit limits that are protective.

Nevertheless, EPA is aware that some stakeholders are concerned about the risks associated with incinerating mercury-bearing hazardous wastes and we encourage healthcare facilities and pharmaceutical reverse distributors to consider the use of treatment technologies other than incineration for meeting the numeric treatment standards for mercury-bearing hazardous waste pharmaceuticals. Thimerosal-containing pharmaceuticals are expected to be non-wastewaters as defined by § 268.2, because they have more than 1% total organic carbon. For low mercury non-wastewaters, the numeric treatment standard can be achieved by stabilization/solidification, either with or without subsequent encapsulation.[75]

9. Shipments of Non-Creditable Hazardous Waste Pharmaceuticals Off-site From Healthcare Facilities

The Agency is proposing to maintain the current RCRA Subtitle C tracking requirement by requiring that a hazardous waste manifest be prepared for each off-site shipment of non-creditable hazardous waste pharmaceuticals from healthcare facilities. Accordingly, each off-site shipment of hazardous waste pharmaceuticals must be transported to an interim status or permitted TSDF via a hazardous waste transporter. However, the Agency is proposing that for hazardous waste pharmaceuticals shipped by healthcare facilities, the RCRA hazardous waste codes do not need to be listed on the manifest. This is intended to accommodate the fact that healthcare providers generating the hazardous waste pharmaceuticals are generally unfamiliar with RCRA and are focused on providing healthcare to patients. One function of the hazardous waste codes is to determine the appropriate hazardous waste treatment standards under the land disposal restrictions (part 268). However, virtually all hazardous waste pharmaceuticals sent for off-site treatment are sent to hazardous waste incinerators, even when the treatment standard does not require incineration. The fact that EPA is proposing to not require hazardous waste codes for shipping hazardous waste pharmaceuticals is not intended to alter or impact any Department of Transportation (DOT) requirements for the shipment of these hazardous wastes. For a more detailed discussion of these proposed requirements, as well as the basis for these requirements, please see Section V.F.1 of this document.

[72] See comment number 0125 in the docket for this rulemaking. EPA–HQ–RCRA–2007–0932.

[73] The Agency is not aware of any hazardous waste pharmaceuticals that would be considered U151 because mercury would have to be the sole active ingredient.

[74] Combustors that burn hazardous waste include the following types of combustion units: Incinerators, cement kilns, lightweight aggregate kilns, industrial boilers and process heaters, and hydrochloric acid production furnaces.

[75] EPA is not aware of any testing done to demonstrate the effectiveness of this treatment method specifically for thimerosal-containing hazardous wastes, so vendors performing such treatment may need to do treatability studies to identify optimal use of stabilization/solidification treatment technologies.

10. Rejected Shipment From Healthcare Facilities of Non-creditable Hazardous Waste Pharmaceuticals

In rare circumstances, a healthcare facility may send its non-creditable hazardous waste pharmaceuticals to a designated facility that is unable to manage the hazardous waste. For such situations, we are proposing that healthcare facilities follow the same procedures listed in 40 CFR part 262 (see § 262.23(f)). Specifically, if a designated facility is unable to accept the hazardous waste pharmaceuticals, and it returns the hazardous waste pharmaceuticals to the healthcare facility, the healthcare facility must sign the manifest that was used to return the shipment, provide the transporter a copy of the manifest, send a copy of the manifest within thirty days to the designated facility that returned the shipment and retain a copy of the manifest for three years from the date of delivery of the returned shipment. EPA believes that it is appropriate to continue current practices for rejected shipments that are part of the generator regulations of 40 CFR part 262 because rejected shipments are relatively rare and the procedures currently used for rejected shipments is relatively straightforward. In addition, healthcare facilities should be familiar with these procedures already.

11. Reporting Requirements for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals

The Agency is proposing that healthcare facilities managing non-creditable hazardous waste pharmaceuticals have reporting requirements similar to SQGs s regulated under 40 CFR part 262—that is, the exception reporting requirement under § 262.44(b) and the additional reporting requirement under § 262.44(c). In addition, we are proposing that healthcare facilities that are LQGs would no longer be required to include their hazardous waste pharmaceuticals on their biennial report (BR). Each of these reporting requirements for healthcare facilities is discussed below.

First, as part of the current RCRA Subtitle C generator requirements, healthcare facilities that are LQGs must submit a BR to the Regional Administrator by March 1st of every even numbered year (see § 262.41). Among other requirements, the BR must include a description (EPA hazardous waste number and DOT hazard class) and quantity of each hazardous waste shipped off-site to a TSDF during each odd numbered year. If a healthcare facility is an LQG due to its non-pharmaceutical hazardous waste, it will continue to be required to submit a BR. However, it need not include its hazardous waste pharmaceuticals in its BR. As discussed previously, the Agency is no longer requiring healthcare facilities to count hazardous waste pharmaceuticals when determining their generator category. Instead, all healthcare facilities, with the exception of CESQGs, will be subject to this proposed rule. The Agency has determined that it does not need the information to be included in the BR because this proposed rule will bring a consistent approach to managing pharmaceutical hazardous wastes. Nevertheless, the Agency is soliciting public comment on whether the Agency should require healthcare facilities—that is, all healthcare facilities subject to the 40 CFR part 266, subpart P requirements—to submit a BR, and if so, the type of information that should be included.

Second, the Agency is proposing that healthcare facilities follow the same reporting procedures for exception reporting that generators operating under the 40 CFR part 262 must follow. We are proposing to incorporate the generator exception reporting procedures in this new subpart. Specifically, if a healthcare facility does not receive a copy of the hazardous waste manifest from the designated facility within 60 days, the healthcare facility must submit to the EPA Regional Administrator a copy of the manifest with a statement that the healthcare facility did not receive confirmation of the hazardous waste pharmaceuticals' delivery along with an explanation of the efforts taken to locate the hazardous waste pharmaceuticals and the results of those efforts. Likewise, if a shipment of hazardous waste pharmaceuticals from a healthcare facility is rejected by the designated facility and it is shipped to an alternate facility and if the healthcare facility does not receive a signed copy of the hazardous waste manifest from the alternate facility within 60 days, it must submit to the EPA Regional Administrator a copy of the hazardous waste manifest with a statement that the healthcare facility did not receive confirmation of the hazardous waste pharmaceuticals' delivery along with an explanation of the efforts taken to locate the hazardous waste pharmaceuticals and the results of those efforts. Again, the Agency believes it is advantageous to use established procedures that should be familiar to healthcare facilities, especially given that rejected shipments are relatively rare.

Finally, the Agency proposes that the Administrator may require healthcare facilities to furnish additional reports concerning the quantities and disposition of hazardous waste pharmaceuticals. This is already the case for generators operating under the 40 CFR part 262 requirements. As with 40 CFR part 262, it is a codification of statutory authority under §§ 2002(a) and 3002(a)(6) that provides the Agency some flexibility in what reports may be required. The Agency solicits public comment on the proposed reporting requirements for healthcare facilities managing their hazardous waste pharmaceuticals in accordance with the standards proposed in this document.

12. Recordkeeping Requirements for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals

The Agency is proposing that healthcare facilities managing non-creditable hazardous waste pharmaceuticals maintain records similar to the records that must be kept by generators regulated under 40 CFR part 262 (see § 262.40). Specifically, healthcare facilities must keep a signed copy of each hazardous waste manifest as a record for three years from the date that the non-creditable hazardous waste pharmaceutical was accepted by the initial hazardous waste transporter. If the healthcare facility is required to file an exception report because it does not receive a signed copy of the manifest from the designated facility within 60 days of the date that the hazardous waste pharmaceutical was accepted by the initial transporter, then the healthcare facility must keep a copy of the each exception report for a period of at least three years from the due date of the report.[76] In addition, EPA is proposing that a healthcare facility must keep records of any test results, waste analyses or other determinations made on hazardous waste pharmaceuticals regarding which pharmaceuticals are hazardous wastes for three years from the date of the test, analysis, or other determination.

[76] § 262.40 requires that generators keep a copy of each BR for a period of at least three years from the due date of the report. However, since we are not requiring a healthcare facility to include its hazardous waste pharmaceuticals on its a BR, the Agency is also not including in subpart P a requirement that a BR be kept at the healthcare facility. If healthcare facility must submit a BR due to its non-pharmaceutical hazardous waste, the § 262.40 recordkeeping requirements will apply (see the discussion under Reporting Requirement for Healthcare Facilities Managing Non-creditable Hazardous Waste Pharmaceuticals for the Agency's basis of not requiring healthcare facilities to include hazardous waste pharmaceuticals on the BR.

The Agency is also proposing that any of the retention periods be extended during the course of enforcement actions against any activity associated with hazardous waste pharmaceutical management or as requested by the Administrator to ensure that the appropriate records are available and can be reviewed as part of any enforcement action. The Agency solicits public comment on the proposed recordkeeping requirements for healthcare facilities managing their non-creditable hazardous waste pharmaceuticals in accordance with the standards proposed in this document.

13. Response to Releases by Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals

For hazardous waste pharmaceuticals generated and managed by healthcare facilities under the proposed standards, the Agency is proposing basic release responses, including the requirement that healthcare facilities immediately contain all releases of, and other residues from, hazardous waste pharmaceuticals. In addition, this proposal would require healthcare facilities to determine whether any material, residue, or debris resulting from the release is or contains a hazardous waste pharmaceutical and, if so, to manage it under the management standards for hazardous waste pharmaceuticals proposed in this document. These proposed release response procedures are the same as those under the Universal Waste program (see § 273.17 for small quantity universal waste handlers, and § 273.37 for large quantity universal waste handlers). Commenters to the 1993 proposed rule that established the Universal Waste program overwhelmingly supported the release response measures (60 FR 25528; May 11, 1995). Thus, we believe it is appropriate to include it again in this proposal.

Any releases of hazardous waste pharmaceuticals not cleaned up immediately would generally constitute illegal disposal, which may result in further action by EPA or an authorized state under RCRA. In addition, hazardous wastes under RCRA are included in the definition of hazardous substances for purposes of the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA) (*see* CERCLA Section 101(14) [77]). Thus, any releases into the environment of hazardous substances above the reportable quantity (RQ) thresholds must be reported under CERCLA (*see* CERCLA Section 103). That is, since hazardous waste pharmaceuticals are hazardous wastes and, hazardous substances under CERCLA, reporting for hazardous waste pharmaceutical releases is required when RQs are exceeded (*see* 40 CFR 302.4 for a list of RQs and hazardous substances). Such reports provide notification to the Agency (through the National Response Center) concerning releases into the environment and help inform whether EPA should take action, if necessary, under either RCRA or CERCLA.

The Agency solicits comment regarding the proposed standard for the response to releases of hazardous waste pharmaceuticals at healthcare facilities.

14. Long-Term Care Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals

Long-term care facilities differ in one respect from other types of healthcare facilities subject to these proposed standards. Unlike hospitals, who own the pharmaceuticals they dispense to patients, many of the hazardous waste pharmaceuticals generated at long-term care facilities belong to the residents of the facility. That is, the pharmaceuticals are dispensed under the patient's name. However, as previously discussed in this preamble, EPA is proposing to no longer allow hazardous waste pharmaceuticals generated at long-term care facilities (as defined under this proposed regulation) to be eligible for the household hazardous waste exemption. As a result, long-term care facilities must manage all hazardous waste pharmaceuticals generated on-site, regardless of ownership, in accordance with these same proposed management standards for healthcare facilities. EPA understands that while long-term care facilities often maintain each individual's pharmaceuticals in a centralized location, such as a pharmaceutical cart, there are instances where some individuals may keep and self-administer their own pharmaceuticals. EPA is proposing that the long-term care facilities collect and manage all hazardous waste pharmaceuticals generated at their facilities in accordance with these proposed requirements. This requirement means that in addition to the hazardous waste pharmaceuticals kept in the centralized location, long-term care facilities will need to collect all other hazardous waste pharmaceuticals from individuals that self-administer these pharmaceuticals and manage them in accordance with these proposed standards, which, among other things, prohibits the sewering of hazardous waste pharmaceuticals. The Agency solicits comment on the extent to which long-term care facilities keep an inventory of the pharmaceuticals that individuals self-administer, as this would facilitate the collection of the hazardous waste pharmaceuticals for proper disposal.

Although long-term care facilities would not be required under this rule to collect non-hazardous waste pharmaceuticals, or hazardous waste pharmaceuticals from the independent living portion of a continuing care facility, EPA recommends that long-term care facilities collect all waste pharmaceuticals to ensure proper management, avoid flushing, and minimize the potential for accidental poisonings, misuse or abuse. As discussed later in this preamble, DEA regulations govern the management of controlled substances (see Section V.E.2.a of the preamble for a discussion of DEA's 2014 final rule for the disposal of controlled substances and the implications of that rule and this proposed rule for long-term care facilities.[78]) Also discussed later in more detail, EPA is proposing to exempt from RCRA those hazardous waste pharmaceuticals that are also controlled substances, provided they are combusted at a permitted or interim status hazardous waste incinerator or permitted municipal solid waste incinerator and managed in compliance with applicable DEA regulations (see Section V.E.2 of the preamble for a detailed discussion of the exemption).

The Agency solicits comment regarding this requirement, and specifically requests comment on the various approaches that long-term care facilities use, or could use in collecting hazardous waste pharmaceuticals from individuals that self-administer their pharmaceuticals.

15. Healthcare Facilities That Accept Hazardous Waste Pharmaceuticals From Off-Site Conditionally Exempt Small Quantity Generators (CESQGs) [79]

Typically, hazardous waste pharmaceuticals from healthcare facilities are transported either to a reverse distributor, if it is potentially creditable,[80] or to a permitted or interim

[77] *http://www.epw.senate.gov/cercla.pdf.*

[78] DEA's final rule for disposal of controlled substances: 79 FR 53520; September 9, 2104.

[79] Unlike other sub-sections of Section V.C., which discusses the proposed standards for healthcare facilities managing non-creditable hazardous waste pharmaceuticals, this sub-section addresses both non-creditable and creditable hazardous waste pharmaceuticals.

[80] Potentially creditable hazardous waste pharmaceuticals include pharmaceuticals that are: (1) Unused or un-administered, (2) unexpired or

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status hazardous waste TSDF. However, stakeholders have informed EPA that in some cases, hazardous waste pharmaceuticals are transported to another healthcare facility. We are aware of at least two situations in which this is occurring. First, patients at long-term care facilities who receive their pharmaceuticals from an off-site long-term care pharmacy sometimes return their unused pharmaceuticals to the long-term care pharmacy.[81] Upon return, the long-term care pharmacy sorts through the returned pharmaceuticals to determine whether they will be disposed or restocked for reuse. Due to many factors, such as Medicare regulations and the cost of the pharmaceutical as compared to the cost of repackaging and restocking, only a small fraction of the returned pharmaceuticals are restocked for potential reuse. One long-term care pharmacy estimated that approximately 10 percent of the pharmaceuticals it sends to long-term care facilities come back as returns.[82] Some portion of the returns would be considered hazardous waste pharmaceuticals when discarded.[83] In the second situation, the Army has established off-post health clinics to provide easier access to healthcare for military personnel, including veterans. The pharmacies at the off-post clinics receive their pharmaceutical products via couriers that deliver the pharmaceuticals from the on-post, main pharmacy. The off-post pharmacies also return their unused pharmaceuticals to the on-post, main pharmacy via courier.

EPA data indicates that the majority of long-term care facilities are CESQGs[84] and the Army has informed EPA that their off-post clinics are generally CESQGs, as well.[85] The existing CESQG regulations do not allow a generator to send its hazardous waste off-site to another hazardous waste generator, unless the receiving generator is also one of the seven types of facilities listed in § 261.5(f)(3) for acute hazardous waste or § 261.5(g)(3) for hazardous waste, including municipal and non-municipal non-hazardous solid waste landfills. The Agency does not think that disposal in landfills is the best option for hazardous waste pharmaceuticals. Limited studies have shown active pharmaceutical ingredients are present in landfill leachate that is collected in municipal solid waste landfill leachate collection systems.[86] [87] Landfill leachate is then typically transported to a wastewater treatment plant for treatment; however, active pharmaceutical ingredients can pass through the treatment system and into our Nation's waters.

EPA thinks it would be preferable to allow healthcare facilities that are CESQGs to send their hazardous waste pharmaceuticals to another healthcare facility rather than send it to a municipal or non-municipal non-hazardous solid waste landfill. Therefore, EPA is proposing to allow healthcare facilities that are CESQGs operating under this subpart to send their hazardous waste pharmaceuticals to an off-site healthcare facility, without a hazardous waste manifest, provided four conditions are met. First, the receiving healthcare facility must be contracted to supply pharmaceutical products to the CESQG long-term care facility, or the CESQG healthcare facility and the receiving healthcare facility must both be under the control[88] of the same person, as defined by § 260.10 (*e.g.,* the Army). Second, the receiving healthcare facility must be managing its hazardous waste pharmaceuticals in accordance with the regulations of this proposed rule.[89] Third, the hazardous waste pharmaceuticals from the CEQSG must be managed by the receiving healthcare facility as hazardous waste pharmaceuticals in accordance with the regulations of this proposed rule once it arrives at the receiving healthcare facility. Fourth, the receiving healthcare facility must keep and maintain records of the hazardous waste pharmaceuticals received from the off-site CESQG healthcare facilities for three years from receipt of shipment. These conditions should ensure the proper management of the hazardous waste pharmaceuticals, in that once they are received by the healthcare facility, they are subject to the same management standards EPA is proposing for hazardous waste pharmaceuticals managed by healthcare facilities, while at the same time would not impose an undue burden on healthcare facilities that are CESQGs, especially since these healthcare facilities always have the option of sending their hazardous waste pharmaceuticals to a municipal or non-municipal solid waste landfill.

The Agency solicits comment on this new provision under this subpart, including whether any additional conditions should be imposed. In recommending any additional conditions, the Agency requests that commenters provide their rationale for the additional condition(s), as well as why such additional condition(s) would not pose an undue burden on healthcare facilities that are CESQGs. In addition, the Agency solicits comment on whether it might be appropriate to allow facilities, other than those meeting the proposed definition of a healthcare facility, to accept hazardous waste pharmaceuticals from an off-site CESQG (*e.g.,* a military medical logistics facility).

D. How does this proposed rule address healthcare facilities that accumulate potentially creditable hazardous waste pharmaceuticals prior to shipment to pharmaceutical reverse distributors?

1. Potentially Creditable Hazardous Waste Pharmaceuticals Are Not Products

One difference between this proposal and the 2008 Pharmaceutical Universal Waste proposal is the proposed interpretation of how RCRA applies to pharmaceuticals that are returned to reverse distributors to obtain manufacturers' credit. Two previous agency policy memos set out EPA's existing understanding of the status of these ''creditable'' pharmaceuticals. The

less than one year past the expiration date; or (3) in unopened or opened packaging or containers.

[81] DEA controlled substances can be returned to a long-term care pharmacy only if they are subject to a recall (see 21 CFR 1317.85(a)).

[82] See notes from 11–15–12 site visit to Omnicare, Inc. in the docket for this proposed rule (EPA–HQ–RCRA–2007–0932).

[83] Due to the DEA regulations, a DEA registered long term care pharmacy may not accept returns of a controlled substances. DEA regulations define ''reverse distribute'' and reverse distributor'' in 21 CFR 1300.01. A pharmacy is not authorized to accept returns of controlled substances from patients or reverse distribute (see 21 CFR 1301.13(e)(1)(iv)).

[84] Under these proposed requirements, hazardous waste pharmaceuticals will not count towards a facility's generator category. Therefore, EPA expects that long-term care facilities will remain CESQGs, even though the Agency is proposing that all hazardous waste pharmaceuticals generated on the premises must be managed in accordance with these proposed requirements.

[85] See notes from 11–28–12 meeting with U.S. Army Institute of Public Health in the docket for this proposed rule (EPA–HQ–RCRA–2007–0932).

[86] Barnes, K. K., Christenson, S. C., Kolpin, D. W., Focazio, M. J., Furlong, E. T., Zaugg, S. D., Meyer, M. T. and Barber, L. B. (2004), Pharmaceuticals and Other Organic Waste Water Contaminants Within a Leachate Plume Downgradient of a Municipal Landfill. Groundwater Monitoring & Remediation, 24: 119–126.

[87] Buszka, P.M., Yeskis, D.J., Kolpin, D.W., Furlong, E.T., Zaugg, S.D., and Meyer, M.T. (June 2009), Waste-Indicator and Pharmaceutical Compounds in Landfill-Leachate-Affected Ground Water near Elkhart, Indiana, 2000–2002. Bulletin of Environmental Contamination and Toxicology, V82.6:635–659.

[88] For purposes of this provision, ''control'' means the power to direct the policies of the healthcare facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person shall not be deemed to control such healthcare facility.

[89] This condition is only applicable if the receiving healthcare facility is also a CESQG, since healthcare facilities that are SQGs and LQGs must comply with the requirements proposed in 40 CFR part 266 subpart P.

first, a letter to Merck Sharp & Dohme in 1981, explained that pharmaceuticals sent for credit may be reclaimed and are not wastes since the decision to discard a particular material does not occur until after the product has been returned to the manufacturing plant.[90] The second, a letter to BFI Pharmaceutical Services, Inc. in 1991 states, ''to the extent that the materials involved are unused commercial chemical products with a reasonable expectation of being recycled in some way when returned, the materials are not considered as wastes until a determination has been made to discard them.'' [91] In addition to these letters, EPA's 2008 Pharmaceutical Universal Waste proposal stated, ''Because unused or expired pharmaceuticals are returned (via the reverse distributor) for possible manufacturer's credit, they still have potential value to the pharmacy or hospital and are thus not considered wastes.'' [92]

In this action, we are proposing to modify EPA's position regarding the waste status of creditable pharmaceuticals. Because we understand that many participants in this sector have relied on the interpretations in the two letters and the 2008 Pharmaceutical Universal Waste preamble, we are providing notice of a change in EPA's position and providing an opportunity for public comment. Until this rule is final and effective, however, EPA's previous interpretations will continue to be in effect.

In terms of the concept that returned pharmaceuticals have value and are not waste, EPA confirms the general rule under RCRA that materials that are discarded are solid wastes, regardless of the economics of the system in which those discarded materials are handled. Therefore, the fact that a material may have monetary value (*e.g.,* through a manufacturer's credit) does not determine whether that material is a solid waste. Rather, the ''decision point'' on whether a pharmaceutical is a solid waste is when it has been discarded, or the decision has been made to discard the material. That is, a discarded pharmaceutical may retain value in the reverse distribution system, but still be considered a solid waste. Additionally, the economic value of hazardous waste can be one important consideration in determining whether a hazardous waste is legitimately recycled (see, for example, the discussion of *Useful Economic Information* in the 2008 Definition of Solid Waste final rule, 73 FR 84706–07, October 30, 2008) and therefore excluded from being a solid waste. The definition of legitimate recycling is codified at 40 CFR 260.43 and is discussed in the 2015 Definition of Solid Waste final rule (80 FR 1694, January 13, 2015).

Commenters to the 2008 Pharmaceutical Universal Waste proposal, the 2014 Retail Notice of Data Availability (NODA), stakeholders, and pharmaceutical reverse distributors themselves have informed EPA that pharmaceuticals transported to reverse distributors to receive credit are rarely, if ever, repurposed, recycled, or reused. One commenter wrote, ''. . . EPA's belief that reverse distributors first arrange to transport and receive the drugs, and then determine whether the drugs are useful products or wastes, is pure fiction.'' [93] Another commenter wrote, ''. . . the vast majority of the returned pharmaceuticals are to be collected for disposal or destruction once credit has been given.'' [94] A third commenter wrote, ''. . . drugs sent through reverse distribution are not reused or recycled due to economic and safety reasons.'' [95] Regulations pertaining to the repurposing of pharmaceuticals vary by state, as they are established by each state's Board of Pharmacy. However, stakeholders have overwhelmingly declared that state Boards of Pharmacy only allow pharmaceuticals to be repurposed under very narrow circumstances—that is, when a specific set of conditions are followed to ensure the viability and integrity of the pharmaceutical. The set of conditions vary by state; however, states have some restrictions in common when it comes to repurposing drugs. According to the National Conference of State Legislatures (NCSL), ''Virtually all [state] laws include some restrictions designed to assure purity, safety and freshness of the products. Unless otherwise noted, all programs require:

- All donated drugs must not be expired and must have a verified future expiration date.
- Controlled substances, defined by the federal Drug Enforcement Administration (DEA) usually be excluded and prohibited.
- A state-licensed pharmacist or pharmacy to be part of the verification and distribution process.
- Each patient who is to receive a drug must have a valid prescription form in his/her own name.'' [96]

Thus, in most, if not all cases, pharmaceuticals that are transported back to a reverse distributor for credit are discarded by the reverse distributor.[97] For that reason, the decision to send a pharmaceutical to a reverse distributor is essentially a decision to discard the pharmaceutical.

Therefore, EPA is proposing to reinterpret its position such that the decision to send a pharmaceutical to a reverse distributor is the point at which a decision has been made to discard the pharmaceutical. As a result, once the decision is made to send a hazardous waste pharmaceutical to a reverse distributor, it is a solid waste at the healthcare facility. In this document, EPA is proposing to define the term ''potentially creditable hazardous waste pharmaceutical.'' A portion of the potentially creditable pharmaceuticals at healthcare facilities that are transported to reverse distributors will likely meet the definition of hazardous waste. Of the set of pharmaceuticals that are hazardous wastes, only ''potentially creditable'' hazardous waste pharmaceuticals may be transported to a reverse distributor for manufacturer's credit (see definition Section V.A.3).

The Agency notes that the management standards discussed below pertain only to potentially creditable hazardous waste pharmaceuticals that are managed via reverse distribution and do not apply to the reverse distribution or reverse logistics systems that may exist for other consumer products. In addition to the standards discussed in this section, EPA is proposing standards for shipping potentially creditable hazardous waste pharmaceuticals to pharmaceutical reverse distributors as well as associated recordkeeping (see Section V.F.2. of the preamble).

2. Hazardous Waste Determination for Potentially Creditable Hazardous Waste Pharmaceuticals

As with non-creditable hazardous waste pharmaceuticals discussed

[90] Alan Corson to Steven Wittner on May 13, 1981 (RCRA Online #11012) *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/B630CD51DC85EDC58525670F006BCE84/$file/11012.pdf.*

[91] Sylvia Lowrance to Mark J. Schulz on May 16, 1991 (RCRA Online #11606) *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/A3A7A7A8F297438B8525670F006BE5D8/$file/11606.pdf.*

[92] 73 FR 73525; December 2, 2008.

[93] Comment EPA–HQ–RCRA–2007–0932–0125.

[94] Comment EPA–HQ–RCRA–2007–0932–0068.

[95] Comment EPA–HQ–RCRA–2012–0426–0025.

[96] Content is copied from *http://www.ncsl.org/research/health/state-prescription-drug-return-reuse-and-recycling.aspx* (accessed May 13, 2015).

[97] Any facility, including a pharmaceutical manufacturer engaged in processing pharmaceutical hazardous waste for facilitation or verification of manufacturer's credit would be considered a pharmaceutical reverse distributor under the proposed rule with respect to those operations, and would be subject to the proposed regulations for pharmaceutical reverse distributors.

previously, a healthcare facility must determine which potentially creditable pharmaceuticals are listed or characteristic hazardous wastes, in order to determine which potentially creditable pharmaceuticals are subject to regulation under this subpart. Potentially creditable hazardous waste pharmaceuticals must be managed under this subpart, while pharmaceuticals that do not meet the definition of hazardous waste but are potentially creditable, do not have to be managed under this subpart. However, a healthcare facility may choose to manage all of its potentially creditable pharmaceuticals (both hazardous and non-hazardous) as potentially creditable hazardous waste pharmaceuticals while accumulating on-site and when shipping off-site. If a healthcare facility chooses this approach, it would not need to make individual hazardous waste determinations, but would have made a generic decision that all of their potentially creditable waste pharmaceuticals are hazardous and manage them as potentially creditable hazardous waste pharmaceuticals in accordance with the proposed requirements in 40 CFR part 266, subpart P.

3. Accumulation Time, Container Management, and Labeling for Potentially Creditable Hazardous Waste Pharmaceuticals at Healthcare Facilities

Typically, EPA requires specific management standards for containers that hold hazardous waste. However, potentially creditable hazardous waste pharmaceuticals appear to pose lower environmental risk of release than patient care hazardous waste pharmaceuticals or traditional industrial hazardous waste. The risk of release is lower for several reasons. First, potentially creditable hazardous waste pharmaceuticals that are prepared for shipment to a reverse distributor are usually in their original containers as well as outer packaging, providing two layers of protection from leaks or spills.[98] Second, potentially creditable hazardous waste pharmaceuticals are typically generated in the pharmacy area of a healthcare facility where there is restricted access, creating a layer of security for these pharmaceuticals. Third, EPA has been informed that it is common practice at healthcare facilities for potentially creditable pharmaceuticals that are destined for a reverse distributor to be taken from the shelves of the pharmacy periodically and promptly boxed for off-site shipment. EPA anticipates that this relatively quick timing is largely driven by the economic value of the manufacturer's credit for the returned pharmaceuticals. Therefore, because of the lower risk these pharmaceuticals pose, EPA is not proposing specific management standards for healthcare facilities that accumulate containers of potentially creditable hazardous waste pharmaceuticals. For the same reasons, we also are not proposing a limit on how long healthcare facilities may accumulate containers of potentially creditable hazardous waste pharmaceuticals. EPA requests comment on the assumption that healthcare facilities promptly remove potentially creditable hazardous waste pharmaceuticals from pharmacy shelves and send them to reverse distributors. EPA asks for comment on whether the expectation of credit provides sufficient incentive to ensure that the hazardous waste pharmaceuticals will be managed appropriately or whether it is necessary to establish management standards and/or a maximum time limit for the accumulation of potentially creditable hazardous waste pharmaceuticals prior to off-site shipment.

In the 2008 Pharmaceutical Universal Waste proposal, EPA specifically solicited comment on whether stakeholders have knowledge of problems with mixing incompatible pharmaceuticals during accumulation. In response, one commenter indicated that there were no issues encountered with the compatibility of pharmaceuticals during storage.[99] Since then, a 2011 article by Charlotte Smith states, ''oxidizers, acids, and bases also are incompatible, but they occur infrequently as finished dosage forms.'' [100] It is important to note that the accumulation of some potentially creditable hazardous waste pharmaceuticals, such as liquids and aerosols, may pose more of a risk than solid pills due to possible spillage or leakage. However, EPA believes that the small quantities in which the liquid and aerosol potentially creditable hazardous waste pharmaceuticals are generated, along with the DOT packaging requirements (49 CFR parts 173, 178, and 180), would likely obviate these risks. In addition, to further mitigate the potential for spillage or leakages, as a best management practice, EPA encourages healthcare facilities to place the original containers and packaging containing liquids and aerosols pharmaceuticals in separate individual containers, such as a sealed storage bag before placing them in the container that will be shipped.

EPA also is proposing not to require specific labeling standards for containers holding potentially creditable hazardous waste pharmaceuticals, while they accumulate on-site. EPA does not want to deter the practice of co-mingling potentially creditable hazardous waste pharmaceuticals with potentially creditable non-hazardous waste pharmaceuticals since both are typically transported to a reverse distributor together.

In addition, due to concerns regarding diversion of pharmaceuticals, EPA believes that it is safer not to call attention to the fact that these containers hold pharmaceuticals. Unlike floor waste or patient care pharmaceutical waste, or most hazardous waste, the hazardous waste pharmaceuticals returned to a reverse distributor often have high street value that makes them susceptible to diversion. Thus, EPA is not proposing to require a label for potentially creditable hazardous waste pharmaceuticals during accumulation at a healthcare facility. The Agency seeks comment on its proposal not to require specific accumulation, container management or labeling standards for potentially creditable hazardous waste pharmaceuticals that will be transported to a reverse distributor, including no specific labeling standards for containers holding potentially creditable hazardous waste pharmaceuticals on-site prior to shipment off-site.

E. What are the proposed novel prohibitions, exemptions and other unique management requirements for hazardous waste pharmaceuticals?

1. Sewer Disposal Prohibition

a. Regulatory background on the domestic sewage exclusion. Under RCRA and the Subtitle C hazardous wastes regulations, if a material is not a solid waste, then it cannot be considered a hazardous waste. Under § 261.4(a)(1)(ii) of the RCRA regulations, ''Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment'' is not a solid waste for purposes of Subtitle C regulation. This exclusion was finalized by EPA on May 19, 1980, based on the reasoning that ''Mixed waste streams that pass through sewer systems to publicly-owned treatment works (POTW's) will be subject to controls under the Clean

[98] See 73 FR 73529; December 2, 2008.

[99] Commenter #EPA–HQ–RCRA–2007–0932–0091.

[100] Charlotte Smith, RPH, MS; Managing Pharmaceutical Waste: A New Implementation Blueprint; Pharmacy Practice News, Special Edition, 2011.

Water Act. The Agency's construction grants program provides financial assistance for the proper treatment of these wastes. In addition, the Agency's pretreatment program provides a basis for EPA and the local communities to ensure that users of sewer and treatment systems do not dump wastes in the system that will present environmental problems'' (45 FR 33097).

In 1984, Congress enacted the Hazardous and Solid Waste Amendments (HSWA) to the Solid Waste Disposal Act (SWDA), as amended by RCRA. HSWA included a new Section 3018, entitled Domestic Sewage. This section directed EPA to do two things with respect to the 261.4(a)(1)(ii) exclusion for mixtures of domestic sewage and other wastes: (1) Submit a Report to Congress (RTC) that describes the types, size and number of generators which dispose of such wastes in this manner, the types and quantities of wastes disposed of in this manner, and identify significant generators, wastes and waste constituents not regulated under existing Federal law or regulated in a manner sufficient to protect human health and the environment; and (2) based on the report, revise the existing regulations that are necessary to ''ensure that substances . . . which pass through a sewer system to a publicly owned treatment works are adequately controlled to protect human health and the environment.''

EPA submitted its Report to Congress on February 7, 1986 (Domestic Sewage Study). Subsequent to the Report to Congress, EPA issued an advance notice of proposed rulemaking (ANPR) on August 22, 1986 (51 FR 30166); a response to comments on the ANPR on June 22, 1987 (52 FR 23477); a notice of proposed rulemaking (NPR) on November 23, 1988 (53 FR 47632); and a final rule on July 24, 1990 (55 FR 30082). That final rule prohibits the discharge of pollutants which create a fire or explosion hazard in the POTW, which includes, but is not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Celsius using the test methods specified in 40 CFR 261.21'' (55 FR 30087). Although the exclusion for mixtures of domestic sewage and other wastes is found under the RCRA regulations in § 261.4(a)(1)(ii), the sewer ban of liquid ignitable hazardous wastes (*i.e.,* with the hazardous waste code D001) was established under 40 CFR 403.5(b)(1), which is under the Clean Water Act (CWA) regulations. The Agency seeks comment on whether it would be helpful to incorporate in 40 CFR 261.4(a)(1)(ii), a cross-reference to the CWA regulations prohibiting the sewering of liquid ignitable hazardous wastes.

b. Prevalence of flushing in lieu of hazardous waste management. In the preamble to the July 1990 final rule, EPA stated its intent ''to carefully review the effect of this rule and promulgate in the future any additional regulations that experience reveals are necessary to improve control over hazardous waste and other industrial user discharges to POTWs'' (55 FR 30084). Since then, studies have found that many healthcare facilities, particularly long term-care facilities, use drain disposal as a routine disposal method for pharmaceutical wastes in lieu of collection and shipment off-site for management. For example,

- A 2008 study of 59 long-term care facilities showed that 46 percent of the long-term care facilities dispose of their pharmaceuticals by dumping them down the drain.[101]
- A 2003 King County, Washington survey of healthcare facilities showed that the vast majority of liquids, and nearly half of the pills, were disposed of down the drain.[102]
- In a study by The Albany Medical Center, funded by an EPA Pollution Prevention Grant, the author states, ''up to now, toilet wasting has been the common practice for drug wasting by patient care staff.'' [103]
- In a detailed study about the waste management practices within the healthcare industry, EPA's Office of Water also found that sewering of waste pharmaceuticals was common practice.[104]
- EPA staff from the Office of Research and Development (ORD) have published numerous articles on the subject of active pharmaceutical ingredients (APIs) in the environment. One such paper states that ''unit-packaged pills are probably not frequently disposed via toilets, whereas liquids are probably routinely poured down drains,'' although the authors acknowledge that ''gaining an understanding of the types and quantities of APIs introduced directly and purposefully to the environment by the disposal of unwanted, leftover drugs has been more problematic because of a dearth of comprehensive or reliable data.'' [105]

c. Inadequacy of POTW treatment to remove pharmaceuticals. Under the Clean Water Act (CWA), EPA establishes national regulations (called effluent limitations guidelines and pretreatment standards) to reduce discharges of pollutants from industries to surface waters and POTWs. However, there are currently no national effluent limitations or pretreatment standards that apply to discharges of pharmaceuticals by healthcare facilities to POTWs. Furthermore, traditional wastewater treatment operations implemented in the 1970s and 1980s at POTWs are designed to remove conventional pollutants, such as suspended solids and biodegradable organic compounds. They are not designed to remove pharmaceuticals that are present in discharges from medical and veterinary facilities. While some POTWs may have implemented advanced treatment technologies at their facilities, these technologies are also not designed to remove pharmaceuticals. EPA released a study in 2009 in which over 100 chemicals (including some pharmaceuticals) were analyzed in the influent and effluent at nine POTWs.[106] Although it was a limited study and difficult to generalize the results to all POTWs, it does indicate that the capabilities of treatment technologies currently employed by POTWs does not include treatment to remove APIs.[107] In addition, as stated in the Health Services Industry study, ''synthetic compounds, such as pharmaceuticals, are often manufactured to be resistant to metabolic transformation. As a result, some pharmaceutical compounds that are present in the influent to POTWs may pass through treatment systems at conventional POTWs and discharge to receiving waters.'' [108]

d. Adverse impacts to human health and the environment due to pharmaceuticals in the environment.

[101] Kansas State University. January 31, 2008. Nancy J. Larson. *Pharmaceutical Waste Outreach Project.*

[102] King County Pharmaceutical Waste Survey Final Report. King County, Washington. April 2003.

[103] The Albany Medical Center, October 29, 2009, Russell F. Mankes, Progress Report on the Source Reduction Demonstration Project, EPA Grant #X9–97256506–0.

[104] Health Services Industry Study: Management and Disposal of Unused Pharmaceuticals (Interim Technical Report) August 2008; EPA–821–R–08–013.

[105] Ruhoy and Daughton; Beyond the medicine cabinet: An analysis of where and why medications accumulate; Environment International 34(2008) 1157–1169.

[106] EPA, Occurrence of Contaminants of Emerging Concern in Wastewater from Nine Publicly Owned Treatment Works, August 2009; EPA–821–R–09–009.

[107] Eggen RI, Hollender J, Joss A, Schärer M, Stamm C, ''Reducing the Discharge of Micropollutants in the Aquatic Environment: The Benefits of Upgrading Wastewater Treatment Plant.'' Environmental Science and Technology 2014, 48(14) 7683–7689.

[108] Health Services Industry Study: Management and Disposal of Unused Pharmaceuticals (Interim Technical Report) August 2008; EPA–821–R–08–013.

The pharmaceuticals entering the environment, through flushing or other means, are having a negative effect on aquatic ecosystems and on fish and animal populations. The Regulatory Impact Analysis for this proposed rulemaking summarizes the scientific literature with regard to ecological effects (see the Regulatory Impact Analysis in the docket for this proposed rule EPA–HQ–RCRA–2007–0932). The scientific research with regard to human health effects due to pharmaceuticals in the environment is still ongoing. Nevertheless, the important features and risks of the problem can be summarized as follows: [109]

(1) Pharmaceuticals are intrinsically bioactive compounds; therefore, they are potentially able to impact living systems.

(2) There is a continuous and worldwide increase in their use and, thus, on their subsequent input into the environment.

(3) Many of the hundreds of frequently prescribed pharmaceuticals are known for targeted effects and adverse off-target side effects, a problem that can be exacerbated by interactive effects during therapy involving co-administration.

e. Banning sewering of hazardous waste pharmaceuticals. Given the demonstrated negative ecological effects and the potential for negative human health effects, EPA is proposing to impose a sewer ban on all hazardous waste pharmaceuticals managed by healthcare facilities and pharmaceutical reverse distributors that are subject to this proposed rule—that is, they are prohibited from disposing of pharmaceuticals that are listed hazardous waste and/or exhibit one or more of the four hazardous waste characteristics (*i.e.,* ignitability, corrosivity, reactivity, or toxicity) by putting them down a drain (*e.g.,* sink, toilet, or floor drain).

In addition, while healthcare facilities that are CESQGs are generally not subject to this proposed rule, EPA is proposing that the sewer ban of hazardous waste pharmaceuticals also apply to healthcare facilities that are CESQGs. The vast majority of healthcare facilities are CESQGs (84 percent). Some particular types of healthcare facilities have an even larger proportion of CESQGs: Over 94 percent of dental offices are CESQGs, and 94 percent of continuing care retirement communities are CESQGs (see the Regulatory Impact Analysis in the docket for this proposed rule EPA–HQ–RCRA–2007–0932.

EPA is concerned that these smaller healthcare facilities are more likely to dispose of their hazardous waste pharmaceuticals via the sewer. EPA estimates that there are more than 145,000 healthcare facilities that are CESQGs. Given this large number, the combined impact of sewer disposal by healthcare facilities that are CESQGs has an even greater potential to provide a substantial impact on the environment, as well as human health.

EPA solicits comment on EPA's proposal to ban the sewer disposal of hazardous waste pharmaceuticals at all healthcare facilities, including healthcare facilities that are CESQGs that generate such wastes. As part of its solicitation of comments, the Agency especially requests comment on the risk-risk tradeoffs inherent in prohibiting sewer disposal, which extends the life cycle of pharmaceutical waste, resulting in additional opportunities for diversion and increasing the possibility of inadvertent exposures for certain workers (and possibly even patients or visitors) as a tradeoff for a reduction in aquatic risks. EPA also solicits comment on whether the ban on sewer disposal should be limited to those healthcare facilities that are currently LQGs and SQGs, and not extended to CESQGs.

Under 40 CFR 403.12(p) of the CWA regulations, industrial users that discharge a substance to a POTW that, if otherwise disposed of, would be a hazardous waste, must notify in writing the POTW, the EPA Regional Waste Management Division Director and State hazardous waste authorities. POTWs should be made aware that under this proposal, if made final, the notifications they receive from healthcare facilities will no longer include hazardous waste pharmaceuticals since the healthcare facilities will be prohibited from sewering their hazardous waste pharmaceuticals.

We note that EPA's proposed ban on sewering hazardous waste pharmaceuticals is consistent with other federal and state actions. For example, the Drug Enforcement Administration (DEA) has finalized new regulations to implement the Secure and Responsible Drug Disposal Act of 2010 (September 9, 2014; 79 FR 53520). DEA's new regulations require a ''non-retrievable'' method of destruction of controlled substances. The preambles to DEA's proposed and final rules state that flushing does not meet the non-retrievable standard for destruction.[110] According to the preamble of the DEA final rule, DEA received 20 comments supporting their position against flushing controlled substances.[111] The comments supporting the prohibition against sewering came from states, regional and local hazardous waste management programs, recycling associations, non-governmental organizations (NGOs), trade associations and environmental organizations. Many of these commenters noted that wastewater treatment systems do not eliminate many of the drugs that are flushed into the sewers and requested that DEA clearly state in the regulatory language, not just preamble, that sewering is not allowable as a means of destruction.

In addition, three states and the District of Columbia have taken action to limit the sewering of pharmaceuticals and a third has introduced a bill. In 2009, Illinois passed the Safe Pharmaceutical Disposal Act, which prohibits healthcare facilities from flushing any unused medication into public sewers or septic systems.[112] In 2012, New Jersey passed a similar law that prohibits healthcare facilities from discharging prescription medications into public sewers or septic systems.[113] In 2002, California banned the use of lindane in pharmaceuticals after it found that lindane was adversely impacting wastewater quality. The authors of the paper ''Outcomes of the California Ban on Pharmaceutical Lindane: Clinical and Ecologic Impacts state that ''This is the first time that a pharmaceutical has been outlawed to protect water quality.'' [114] After researching and documenting environmental benefits of the ban, the authors conclude, ''This ban serves as a model for governing bodies considering limits on the use of lindane or other pharmaceuticals.'' And the District of Columbia has promulgated municipal regulations, effective January 1, 2011, that prohibits healthcare facilities from flushing pharmaceutical products.[115] The Connecticut legislature has also considered a bill to ban the discharge of medication into public or private waste water collection systems or septic

[109] A. Ginebreda et al, Environmental risk assessment of pharmaceuticals in rivers: Relationships between hazard indexes and aquatic macroinvertebrate diversity indexes in the Llobregat River (NE Sapin). Environ Int. (2009), doi:10.1016/j.envint.2009.10.003.

[110] Proposed rule: December 21, 2012; 77 FR 75784 (see page 75803) and Final rule: September 9, 2014; 79 FR 53520 (see page 53548).

[111] September 9, 2014; 79 FR 53520 (see page 53548).

[112] Illinois Public Act 096–0221.

[113] Nicknamed Bateman's Law, after Senator Christopher ''Kip'' Bateman (R-Somerset) that sponsored the legislation.

[114] Humphreys, *et al.* Environmental Health Perspectives. 2008 March; 116(3) 297–302.

[115] Title 22–B Chapter 5 Safe Disposal of Unused Pharmaceuticals in Health Care Facilities.

systems, although it has not yet become law.[116]

Finally, we would note that although the sewer ban is limited to pharmaceuticals that are RCRA hazardous wastes, EPA strongly recommends as a best management practice to not sewer any waste pharmaceutical (*i.e.,* hazardous or non-hazardous), except when sewering is specifically directed by FDA guidance (as noted on pharmaceutical packaging).[117]

For household pharmaceutical waste, we refer the public to the guidelines developed by the U.S. Office of National Drug Control Policy (ONDCP), the FDA, and EPA for the disposal of unwanted household pharmaceuticals. In summary, these guidelines are as follows:

(1) Use a drug take-back event or program, when available;

(2) Dispose in household trash, after mixing the unwanted medicines with an undesirable substance such as kitty litter or coffee grounds and placing in a sealed container; and

(3) Only if the drug label specifically instructs you to, flush the unwanted medicine down the toilet.[118]

2. Conditional Exemption for Hazardous Waste Pharmaceuticals That Are Also Controlled Substances

When a pharmaceutical that is discarded is both a hazardous waste and a controlled substance, its management and disposal is regulated under both the RCRA Subtitle C hazardous waste regulations, which is under EPA's or the authorized state's purview, and the Controlled Substances Act (CSA) and its implementing regulations, which is under DEA's purview. EPA understands that only a handful of pharmaceuticals are in common usage that are both hazardous waste and controlled substances and therefore subject to dual regulation by both EPA and the DEA. These are identified in Table 5:

Table 5: Pharmaceuticals Still Used in Healthcare that Are DEA Controlled Substances & RCRA Hazardous Wastes

Name of Drug	Other Name(s)	Medical Uses	RCRA HW Code	DEA CS Schedule	Comment
Chloral; chloral hydrate	Acetaldehyde, trichloro-; Aquachloral, Noctec, Somnote, Supprettes	Sedative	U034 toxic	IV	Used in hospital pediatric units; common ingredient in vet anesthetics
Fentanyl sublingual spray	Subsys	Analgesic	D001 ignitable	II	Ignitable due to alcohol content
Phenobarbital	Bellergal-S, Donnatal, Luminal,	Anticonvulsant	D001 ignitable	IV	Ignitable due to alcohol content
Testosterone gels	Androgel, Fortesta, Testim	Hormone	D001 ignitable	III	Ignitable due to gel base
Valium injectable	Diazepam	Anti-anxiety	D001 ignitable	IV	Ignitable due to alcohol content

Chloral hydrate, U034, is the only dually regulated hazardous waste/controlled substance that is a listed hazardous waste. It is listed for toxicity (note that EPA's U034 listing includes chloral hydrate, see memo dated April 6, 1998; Brandes to Knauss, RCRA Online #14175). On the other hand, the remaining four dually regulated hazardous wastes/controlled substances in common use are considered hazardous because they exhibit the characteristic of ignitibility (D001). However, the active ingredient is not ignitable, but these particular forms of the pharmaceuticals are ignitable because they are prepared in ignitable solutions, such as alcohol.

EPA is aware of three additional hazardous waste pharmaceuticals that are DEA controlled substances, but it is our understanding that they are no longer in common usage, although there may be legacy supplies remaining in healthcare facilities. See Table 6.

[116] State of Connecticut General Assembly, January Session 2013, Raised Bill No. 6439. An Act Concerning the Disposal and Collection of Unused Medication.

[117] *http://www.fda.gov/downloads/Drugs/ResourcesForYou/Consumers/BuyingUsingMedicineSafely/EnsuringSafeUseofMedicine/SafeDisposalofMedicines/UCM337803.pdf.*

[118] *http://www.fda.gov/downloads/Drugs/ResourcesForYou/Consumers/BuyingUsingMedicineSafely/EnsuringSafeUseofMedicine/SafeDisposalofMedicines/UCM337803.pdf.*

Table 6: DEA Controlled Substances & RCRA Hazardous Wastes Pharmaceuticals that Are Not in Common Use

Name of Drug	Other Name(s)	Medical Uses	RCRA HW Code	DEA CS Schedule	Comment
Paraldehyde	1,3,5-Trioxane, 2,4,6-trimethyl-; Paral	Anticonvulsant	U182 toxic	IV	No longer in common use
Paregoric	camphorated tincture of opium	Analgesic, expectorant, antidiarrheal	D001 ignitable	III	No longer in common use
Opium Tincture	Laudanam	Analgesic, antidiarrheal	D001 ignitable	II	No longer in common use

Similarly, as noted in Table 7, phentermine is a controlled substance, but the medical form is a phentermine salt, and the salts are no longer considered to be within the scope of the P046 listing (see memo dated February 17, 2012; from Devlin to RCRA Division Directors, RCRA Online #14831).

Table 7: Pharmaceuticals that are DEA Controlled Substances & RCRA Hazardous Wastes Salt(s) No Longer Considered Hazardous Waste

Name of Drug	Other Name(s)	Medical Uses	RCRA HW Code	DEA CS Schedule	Comment
Phentermine	alpha, alpha-Dimethylphenethyl amine; Benzeneethanamine, alpha,alpha-dimethyl-; Adipex-P, Atti Plex P, Fastin, Ionamin, Kraftobese, Panshape M, Obe-Nix, Pentercot, Phentride, Pro-Fast, Raphtre, Supramine, Tara-8, Termene, Termine, Zantryl	Appetite suppressant	P046 Acutely toxic	IV	If in salt form, it does not meet the P046 listing and medical dosage forms are salts

EPA requests comment on whether these are, indeed, the only pharmaceuticals in common usage that are regulated both as DEA controlled substances, and when discarded, RCRA hazardous waste.

Common practices that healthcare facilities have used in the past in order to comply with the DEA regulations for destroying controlled substances include sewering and incineration. However, DEA's new regulation requires that controlled substances must be destroyed, such that they are ''non-retrievable.'' As discussed previously, the preambles for DEA's proposed and final rules state that flushing will not meet their new non-retrievable standard, a position which EPA fully supports. However, EPA is concerned that flushing will continue to be used by healthcare facilities for eliminating their controlled substances. In part, this concern is due to a 2009 EPA report which concluded, ''controlled substances are the pharmaceuticals most commonly poured down the drain, especially the partially-used IVs containing controlled substances.'' [119] In addition, stakeholders have informed EPA that it is expensive and difficult to manage controlled substances that are also hazardous wastes under both DEA and EPA regulatory schemes and therefore the unintended consequence is that they are often sewered on-site in order to avoid the expense of complying with dual regulation en route to incineration.

[119] Pathways for Environmental Releases of Unused Pharmaceuticals, October 12, 2009, Memo from ERG to EPA, EPA–HQ–OW–2008–0517–0518.

EPA wants to eliminate the flushing of pharmaceuticals in order to reduce potential environmental contamination. Sewering hazardous wastes that are ignitable (D001) is already banned and EPA is now proposing to eliminate the sewering of all other hazardous waste pharmaceuticals.[120] To eliminate duplicative regulation and thereby further reduce the incidence of flushing, EPA is proposing to conditionally exempt from RCRA Subtitle C regulation those hazardous wastes that are also DEA controlled substances. Specifically, EPA is proposing that hazardous wastes that are also controlled substances will be exempt from all RCRA Subtitle C requirements, including 40 CFR part 266, subpart P, provided they meet two conditions: (1) They are combusted at a permitted large or small municipal waste combustor or a permitted or interim status hazardous waste combustor (incinerator or cement kiln), and (2) they are managed and disposed of in compliance with all applicable DEA regulations for controlled substances.

The first condition is to ensure that the controlled substances are destroyed in an environmentally protective manner by a high-temperature combustor, such as a large or small municipal waste combustor or a permitted or interim status hazardous waste combustor (incinerator or cement kiln). The majority of the hazardous wastes that are also controlled substances are hazardous because they exhibit the characteristic of ignitability. The best demonstrated available technology (BDAT) developed for ignitable hazardous waste under the LDRs includes combustion (see § 268.40). In addition, although chloral hydrate (U034) is listed because of its toxicity, its BDAT is also combustion. Therefore, in an effort to eliminate the sewering of these dually regulated hazardous wastes/controlled substances, and because combustion of these pharmaceuticals is a suitable technology for destruction, EPA is proposing to allow the few hazardous wastes pharmaceuticals that are also controlled substances to be combusted at municipal solid waste combustors, although as noted previously, a hazardous waste incinerator (permitted or interim status) would also be allowed.

We realize that DEA may allow a technology other than combustion to be used to destroy controlled substances. However, if the RCRA hazardous waste pharmaceuticals that are DEA controlled substances are exempt from RCRA, the other destruction technologies may lack environmental controls and permits. Therefore, combustion of the hazardous wastes/controlled substances, which requires permitting, operating and monitoring standards, is a condition of the exemption. EPA requests comment on whether there are additional technologies that would be appropriate to include for the destruction of hazardous waste pharmaceuticals that are also controlled substances. Under this proposal, if DEA allows a technology other than incineration for the destruction of controlled substances, it would be allowed only for DEA controlled substances, but not for those that are also RCRA hazardous wastes.

The second condition is to ensure that dually regulated hazardous wastes/controlled substances are managed under another rigorous regulatory program since they will not be managed in accordance with the RCRA Subtitle C regulations. Although developed for different reasons, both EPA's hazardous waste and DEA's controlled substance regulatory programs are designed to track the regulated material from cradle to grave. DEA regulations have requirements similar to EPA's hazardous waste manifest. In particular, in order to ship a schedule II controlled substance, a DEA registrant must submit a DEA Form 222 to the supplier of the schedule II controlled substance. The DEA Form 222 is a numerically controlled form issued by the DEA to authorized registrants, containing certain pre-printed information. The supplier must indicate on the DEA Form 222, the quantity of packages shipped and the date the packages were shipped. Like a hazardous waste manifest, a copy of Form 222 must accompany the shipment and it must be kept by both the supplier and purchaser for at least two years (copies of manifests must be kept for three years). Suppliers and distributors may utilize the electronic version of the DEA Form 222, which requires the same information and retention period. Similarly, DEA Schedule III, IV and V controlled substances must be accompanied by an invoice, which also must include a detailed inventory of the contents shipped. A copy of the invoice must also be retained by the supplier and purchaser of the controlled substances for a period of two years. EPA believes that the DEA tracking and shipping requirements are sufficient to act in lieu of the RCRA hazardous waste manifest and hazardous waste transporter requirements. EPA requests comment on this assessment.

DEA has previously stated that controlled substance ''pharmaceutical wastage'' may be disposed of in accordance with applicable federal, state, and local laws, regulations, and healthcare facility policies, to include sewering or putting down the drain.[121] The term ''pharmaceutical wastage'' refers to leftover, unadministered pharmaceuticals (''*e.g.,* some of the substance remains in a vial, tube, transdermal patch, or syringe after administration but cannot or may not be further utilized'' [122]). EPA is proposing that the few hazardous waste pharmaceuticals that are also controlled substances would be exempt from RCRA, but only on the condition that they are incinerated at a permitted hazardous waste or municipal solid waste incinerator and managed in accordance with DEA regulations. As a result, if pharmaceutical wastage is both hazardous waste and controlled substance it would not be allowed to be sewered; it would have to be incinerated. Prior to incineration, the pharmaceutical wastage would be exempt from RCRA and could be collected in a container at the healthcare facility. As an alternative, we request comment on whether to allow the sewering of the pharmaceutical wastage for the five hazardous wastes that are also controlled substances. We are concerned, however, that this alternative approach will lead to the sewering of all pharmaceutical wastage as healthcare providers are unlikely to keep track of which hazardous waste pharmaceuticals are allowed to be sewered and which are not. We request comment on these approaches for pharmaceutical wastage and request data on the impact on healthcare facilities of not allowing pharmaceutical wastage to be sewered.

a. Long-term care facilities and the DEA final rule. As discussed previously, EPA is proposing that hazardous waste from long-term care facilities will no longer be considered exempt as household hazardous waste. Instead it will need to be managed as regulated hazardous waste. This interpretation will apply to all the hazardous waste generated by a long-term care facility, not just its hazardous waste pharmaceuticals, although the Agency expects that much of the hazardous waste generated by long-term care facilities consists of hazardous waste pharmaceuticals. However, there are

[120] See 40 CFR 403.5 for specific pretreatment prohibitions.

[121] See DEA letter to registrants re: clarifying disposal of pharmaceutical wastage dated Oct 17, 2014; *http://www.deadiversion.usdoj.gov/drug_disposal/dear_practitioner_pharm_waste_101714.pdf.*

[122] Ibid.

two exceptions. First, hazardous waste pharmaceuticals that are also controlled substances will not be subject to RCRA, provided they meet two conditions: (1) They are combusted at a permitted large or small municipal waste combustor or a permitted or interim status hazardous waste combustor (incinerator or cement kiln), and (2) they are managed and disposed of in compliance with all applicable DEA regulations for controlled substances. Second, as discussed previously, EPA estimates that only 28% of long-term care facilities generate hazardous waste pharmaceuticals and of those, 85% generate small enough quantities of hazardous waste that they will qualify as CESQGs and will be subject to the reduced regulatory requirements of 40 CFR 261.5, and only the sewer ban provision of this new subpart.[123]

DEA's new regulations to implement the Secure and Responsible Drug Disposal Act of 2010 are expected to help alleviate the problem that long-term care facilities face when discarding controlled substances. DEA's new regulations allow retail pharmacies and hospital/clinics with an on-site pharmacy that are DEA registrants to modify their registrations and become ''collectors'' to place collection receptacles at long-term care facilities (or at the retail pharmacy or hospital/clinic with an on-site pharmacy) for the collection of controlled substances from ultimate users (*i.e.,* consumers).

Under the new DEA regulations, long-term care facilities have three options, two of which are new, for managing their patients' controlled substances. First, if a DEA registered retail pharmacy or hospital/clinic with an on-site pharmacy places a collection container at a long-term care facility, the staff from the long-term care facility may place the patients' controlled substances in the collection receptacles. Second, although long-term care facilities will not be able to conduct collection events for their patients' controlled substances for mail-back programs, they will be allowed to assist patients who choose to use a mail-back program for their own controlled substances, on an individual-by-individual basis. And third, law enforcement will continue to be allowed to pick up patients' controlled substances for disposal. With these changes to DEA's regulation, long-term care facilities can now dispose of patients' controlled substances in a more environmentally protective way. Because we are proposing that hazardous waste pharmaceuticals that are also controlled substances are conditionally exempt from RCRA, these wastestreams may also be managed in any of these three ways allowed by DEA, provided the waste is managed to meet the conditions of the RCRA conditional exemption.

The new DEA regulations do not mandate the placement of collection receptacles or patient participation in mail-back programs or take-back events. However, if long-term care facilities are prohibited from disposing of pharmaceuticals down the toilet or drain under RCRA (and as a method of destruction under DEA regulations), then the only way for patients at long-term care facilities to lawfully dispose of DEA controlled substances that are also RCRA hazardous wastes would be through participation in one of DEA's collection methods. Long-term care facilities are allowed to place patients' hazardous waste pharmaceuticals that are controlled substances in the DEA collection receptacles; the other hazardous waste pharmaceuticals generated by long-term care facilities must be managed under the proposed RCRA management standards for healthcare facilities. However, we note that if the long-term care facility is a CESQG, we are proposing as an acceptable method of disposal of the long-term care facility's hazardous waste pharmaceuticals would be to place them in a DEA collection receptacle, even if they are not controlled substances (see § 266.504(b)). DEA already allows controlled substances to be co-mingled with non-controlled substances. Therefore, EPA believes it is consistent to allow CESQG hazardous waste pharmaceuticals that are not controlled substances to be placed in DEA collection receptacles with controlled substances. EPA believes that management of CESQGs' hazardous wastes as DEA controlled substances is preferable to management as municipal solid waste because it provides greater protection to patients, visitors and workers at long-term care facilities to have the hazardous waste pharmaceuticals in DEA collection receptacles rather than in the regular trash. See Table 8 for a summary of the intersection of RCRA and DEA regulations for the disposal of hazardous waste pharmaceuticals at long-term care facilities:

TABLE 8—RCRA & DEA REGULATIONS AT LONG-TERM CARE FACILITIES

Types of pharmaceutical waste at long-term care facilities	Regulatory requirements	
	RCRA	DEA Authorized collection methods allowed for *patients'* pharmaceuticals
Hazardous Waste Pharmaceuticals that are also Controlled Substances.	Conditionally exempt from RCRA	Yes.
Hazardous Waste Pharmaceuticals that are not Controlled Substances.		
if LTCF is a CESQG	261.5 and sewer ban	Yes.
if LTCF is not a CESQG	Part 266, subpart P	No.

b. Household hazardous waste collected in DEA authorized collection receptacles. In response to questions that EPA has received since the DEA rule was published, we are taking this opportunity to clarify the current RCRA regulatory status of the pharmaceuticals collected in DEA authorized collection receptacles. DEA's regulations allow the co-mingling of controlled substances and non-controlled substances in its collection receptacles. In some instances, the pharmaceuticals that are collected by retail pharmacies and law enforcement in DEA authorized collection receptacles may contain pharmaceuticals that are RCRA hazardous waste. However, as household wastes, these hazardous waste pharmaceuticals would be excluded from regulation by

[123] See the docket for this rulemaking for data about long-term care facilities which was developed using data in the economic analysis: EPA–HQ–RCRA–2007–0932.

§ 261.4(b)(1) because the exclusion applies even when the household hazardous wastes are collected. It is important to note that in order to maintain the exclusion, a retail pharmacy (or other DEA authorized collector pharmacy) can use the DEA authorized collection receptacle to collect waste generated only at households and brought to the store for collection. The hazardous waste generated by the retail pharmacy and store, including hazardous waste pharmaceuticals, are not excluded household wastes under RCRA and may not be placed in the DEA authorized receptacle.[124] Furthermore, states generally regulate non-hazardous waste and they may have licensing or permitting requirements for the collection of solid waste. Because EPA would like to see the use of DEA authorized collection receptacles become widespread, we encourage states to streamline any requirements that may create a barrier to the use of the collection receptacles.

Under this proposal, pharmaceuticals collected in DEA authorized collection receptacles will continue to be excluded from regulation as household hazardous waste, with some conditions. The Agency has a long-standing recommendation that household hazardous waste collection programs manage the collected waste as hazardous waste. We strongly believe that if a program goes to the expense of collecting the waste, including waste pharmaceuticals, it should manage the waste as hazardous waste, rather than manage it as municipal solid waste, which the household could do absent the collection program. However, the current household waste exemption does not *require* an entity that hosts a household hazardous waste collection event to manage the collected waste as hazardous waste. Typically, the parties conducting household hazardous waste collection events have been government entities—municipalities and counties. It is relatively new that retail pharmacies and others are becoming interested in performing this function. To encourage this practice, while at the same time ensuring that collection programs are managing the collected waste properly, we are proposing that pharmaceuticals that are household hazardous waste (*i.e.,* ''household waste pharmaceuticals'') and are collected in DEA authorized collection receptacles where they may be co-mingled[125] with controlled substances continue to be excluded from RCRA regulation, provided they are:

(1) Combusted at a municipal solid waste or hazardous waste combustor, and

(2) managed in accordance with all applicable DEA regulations (see § 266.506(a)(2)).The Agency solicits comments on all these provisions.

On a separate, but related matter, EPA has received a number of inquiries about the exemption in the Clean Air Act regulations for Other Solid Waste Incinerator (OSWI) ''units that combust contraband or prohibited goods'' (see the exemption at 40 CFR 60.2887(p) for new OSWIs and 40 CFR 60.2993(p) for existing OSWIs). As indicated in a previous guidance memo, EPA does not consider pharmaceuticals, voluntarily collected from ultimate users in a take-back program, to be contraband or prohibited goods.[126] Likewise, EPA will not consider pharmaceuticals that are voluntarily dropped off at collection receptacles to be contraband or prohibited goods. Therefore, the OSWI exemption does not apply and law enforcement may not destroy voluntarily collected pharmaceuticals in the same way that it is allowed to destroy contraband or prohibited goods.

3. Management of Residues in Pharmaceutical Containers

a. Regulatory background. Over the years, EPA has received numerous inquiries regarding the regulatory status of various types of containers that once held pharmaceuticals that are considered hazardous waste when discarded because of the hazardous waste residue in the containers. Stakeholders have been particularly concerned about containers that once held pharmaceuticals that are on the ''P-list'' of acutely hazardous commercial chemical products in § 261.33(e) because a generator becomes an LQG if it generates more than 1 kg of acute hazardous waste per calendar month or accumulates more than 1 kg of acute hazardous waste at any time.[127] The current regulatory status of acute and non-acute commercial chemical product residues remaining in a container are specifically addressed in § 261.33:

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded . . .

(c) Any *residue* remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, unless the container is *empty* as defined in § 261.7(b). [emphasis added]

According to § 261.7(b)(1), there are two ways a container that held a non-acute hazardous waste can be considered ''empty'':

A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, *e.g.,* pouring, pumping, aspirating, *and*

(ii) No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner, *or*

(iii)

(A) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size; or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

Therefore, if the container that held the non-acute hazardous waste pharmaceutical does not have its contents removed by a commonly employed practice *and* either has one inch or less of residue remaining or has 3 percent or less by weight of the total capacity of the container remaining,[128] then the container is *not* considered ''RCRA empty,'' even though the pharmaceutical may have been fully dispensed. If the container is not ''RCRA empty,'' then the residues are regulated as hazardous waste (since the residues are within the container, the container must be managed as hazardous waste, as well, even if it is not itself hazardous waste). On the other hand, if the contents of the container have been removed by a commonly employed

[124] DEA regulations also prohibits retail pharmacy stock/inventory from being placed in the collection receptacle or mail-back envelopes (see 21 CFR 1317.05(a)).

[125] DEA does not prohibit co-mingling of controlled substances with non-controlled substances provided they are all then managed as controlled substances.

[126] Rudzinski to RCRA Division Directors, September 26, 2012, RCRA Online #14833 *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/fcb11dd6f61d4b1685257afe005eb5ce!OpenDocument.*

[127] Additionally, acute hazardous wastes are included on the F-list of § 261.31; however none of those acute hazardous wastes are pharmaceuticals.

[128] We are assuming that containers that hold pharmaceuticals are in containers less than 119 gallons in size.

practice *and* either have one inch or less of residue remaining, or 3 percent or less of weight of the total capacity of the container remaining, then the container is considered ''RCRA empty,'' and may be managed as non-hazardous waste.

Likewise, according to § 261.7(b)(3), there are three ways that a container that held an acute hazardous waste can be considered ''empty'':

A container or an inner liner removed from a container that has held an acute hazardous waste listed in §§ 261.31 or 261.33(e) is ''empty'' if:

(i) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

Therefore, if the container that held the P-listed pharmaceutical is not triple rinsed, or cleaned by another method that has been demonstrated to achieve equivalent removal, or had the inner liner removed, the container is not considered ''RCRA empty,'' even though the pharmaceutical may have been fully dispensed. If the container is not ''RCRA empty,'' then the residues are regulated as acute hazardous waste.

In November 2011, EPA issued guidance about containers that once held P-listed pharmaceuticals [129] that provides three possible regulatory approaches for generators:

(1) Count only the weight of the residue toward generator category

(2) Demonstrate an equivalent removal method to render containers RCRA empty

(3) In the case of warfarin, show that the concentration in the residue is below the P-listed concentration.

This guidance was intended as a short-term solution that worked within the confines of the existing RCRA hazardous waste regulations and EPA indicated at the time that a more comprehensive solution would require notice and public comment that occurs during a rulemaking. We are proposing to amend the regulations that pertain to containers that once held pharmaceuticals that are RCRA hazardous wastes. We are proposing different regulatory solutions for different types of containers found in healthcare settings. Specifically, we address the following three types of containers: (1) Unit-dose containers (*e.g.,* packets, cups, wrappers, blister packs, and delivery devices) and dispensing bottles and vials; (2) dispensed syringes; and (3) other containers, including delivery devices. If finalized, these new regulations for pharmaceutical containers would replace the November 2011 guidance; however, in the meantime, the guidance remains in effect.

b. Unit-dose containers. First, with regard to unit-dose containers and dispensing bottles and vials up to 1 liter or 1000 pills, we are proposing a conditional exemption from the empty container regulations of § 261.7 for containers from which the pharmaceuticals have been fully dispensed. Specifically, we are proposing that the removal of the pharmaceuticals from the unit-dose containers, and dispensing bottles and vials (up to 1 liter or 1000 pills), is equivalent to rendering the container ''RCRA empty.'' Therefore, for containers that once held non-acute hazardous wastes, it will not be necessary to measure the remaining contents, and for containers that once held acute hazardous wastes, it will not be necessary to triple-rinse the containers or demonstrate an equivalent removal method. Rather, if the contents of the container have been fully dispensed by removing all pharmaceuticals that can be removed using the practices commonly employed to remove materials from that type of container, the residues (and therefore the container) may be disposed of as non-hazardous waste.

We are proposing this conditional exemption for two reasons. First, we want to eliminate the sewering of pharmaceuticals. We are particularly concerned that in a healthcare setting, when containers are triple rinsed, the rinsate will be poured down the drain which is not a good environmental practice. We think it is important that the residues be managed in a more controlled manner—such as municipal solid waste management—rather than poured down the drain. Second, although the ''empty container'' regulations of § 261.7 apply to all sizes of containers, they were developed with larger, industrial-sized containers in mind. For the most part, the containers that hold pharmaceuticals range in size from a few milliliters (*e.g.,* packaging for nicotine gum, paper cups used to dispense pharmaceuticals to in-patients) to a liter (*e.g.,* bottles that hold bulk quantities of pills). In rare circumstances, containers with pharmaceuticals are as large as two or three liters (*e.g.,* powders that are reconstituted with water). This differs significantly from the 55-gallon drums that are typically used in other sectors that generate hazardous waste. Consequently, the amount of residues in the containers was anticipated to be much more substantial than is the case for containers typically used for pharmaceuticals.

EPA has received data from three stakeholders demonstrating that there is very little residue remaining in fully dispensed containers of pharmaceuticals. In addition, EPA's ORD conducted similar research. The results from each of the four sources are summarized below; the full results are included in the docket for this proposed rulemaking (EPA–HQ–RCRA–2007–0932).

i. *Consulting Firm.* One stakeholder, with a hazardous medical materials consulting firm, provided some laboratory testing. They had the residues from single-unit dose packaging of four different P-listed pharmaceuticals tested using gas chromatography/mass spectrometry (GC/MS) and high performance liquid chromatography/ultraviolet detector (HPLC/UV). The amount of active pharmaceutical ingredient in the residues remaining in containers was quantified and the results from containers that had been triple rinsed were compared with containers that had not been triple rinsed. For the containers that were triple rinsed, the active ingredient in the residues was non-detect in all cases. For the containers that were not triple rinsed, the highest level detected was 35.8 μg (or 0.0358 mg). The laboratory results submitted to EPA are summarized in Table 9; the full laboratory results are included in the docket for this rulemaking (EPA–HQ–RCRA–2007–0932).

[129] Rudzinski to RCRA Division Directors, November 11, 2011, RCRA Online #14827 *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/57B21F2FE33735128525795F00610F0F/$file/14827.pdf.*

Table 9: Active Pharmaceutical Ingredient in Residues in Single-Unit Dose Packaging

Drug (packaging type)	HW Code	Active pharmaceutical ingredient in Triple-Rinsed Packaging (μg)	Active pharmaceutical ingredient in Non-Triple-Rinsed Packaging (μg)	Reporting Limit (μg)
Nicotine gum* (blister pack)	P075	ND	ND	0.00005
Nicotine patch* (single use packet)	P075	ND	35.8	0.00005
Warfarin** (blister pack)	P001	ND	6.4	5.0
Physostigmine** (ampoule)	P204	ND	ND	100

*Method EPA 8720B
**HPLC/UV
ND = non-detect

ii. *Large Retailer.* The second stakeholder that submitted data to EPA was a large retailer. Their data provide the weight of active pharmaceutical ingredient residues remaining in bulk containers (*i.e.,* 100-count) of various dosage strengths of warfarin. The residues were quantified using HPLC–UV/Vis (high performance liquid chromatography/ultraviolet/visible light detector). The data are summarized in Table 10; the full results submitted to EPA are included in the docket for this proposed rulemaking (EPA–HQ–RCRA–2007–0932).

Table 10: Warfarin Residues in 100-Count Dispensing Bottles

Warfarin Dose	Number of Bottles Tested	Total Warfarin Residue in all Containers (mg)	Average Warfarin Residue/Bottle (mg)
Low (1 - 3 mg)	17	2.638	0.155
Medium (5 - 7.5 mg)	18	12.820	0.712
High (10 mg)	18	21.530	1.196

The results from each of the first two stakeholders reflect only the weight of the active pharmaceutical ingredient, not the full weight of the hazardous waste residues. Since it is the Agency's position that it is the full weight of the hazardous waste residues and not just the weight of the active pharmaceutical ingredients that must be counted in determining generator status, we have used the results to calculate the weight of the total residues. In the retailer's case, they have informed EPA that a typical pill with a 10 mg dose of Coumadin (brand name of warfarin) weighs 200 mg. The active ingredient represents 10 mg, or 5% of the weight of the pill, while 190 mg, or 95% of the weight of the pill, consists of ingredients other than the active ingredient. As indicated in Table 10, the average weight of warfarin residue remaining in a fully dispensed bottle of the high dose of warfarin (10 mg) is 1.196 mg. If we assume that the residue in the container has the same proportions of ingredients (*i.e.,* 5% of the residue is warfarin and 95% of the residue are other ingredients), then there would be an average of 23.92 mg of total hazardous waste residue remaining in a 100-count bottle of 10 mg pills of warfarin. The amount of hazardous waste residue remaining in a 100-count bottle of pills is very small compared with the residue that would remain in a 55-gallon drum, which is what the regulations for container residues envisaged.

iii. *Riverside County.* The third stakeholder that provided data to EPA was the Riverside County Department of Environmental Health, Hazardous Materials Management Branch. The county received a grant from the California Certified Unified Program Agency (CUPA) Forum Board to conduct a study of residues remaining in pharmaceutical containers. Researchers at the University of California, Riverside (UCR) conducted the study and provided their results in a report to Riverside County entitled, *Residue Analysis of P-Listed Pharmaceutical Containers for Warfarin and Nicotine.* The results are summarized below, but UCR's full results are in the docket for this proposed rulemaking (EPA–HQ–RCRA–2007–0932).[130]

The intent of the study was to investigate the third regulatory approach suggested in the November 2011 memo discussed previously. That

[130] See Exhibit 2 of the CUPA Forum Board Trust Fund Grant Report submitted by the Riverside County Department of Environmental Health at the conclusion of the grant.

is, the study investigated whether the concentration of warfarin in the residues of warfarin pill bottles was greater than 0.3% and therefore met the listing criteria for P001 or whether the residues were at or below 0.3% and therefore met the listing criteria for U248. Although nicotine is not a concentration-based P-listing, packaging from nicotine-containing products were also investigated to determine total remaining residues.

The researchers collected a total of 59 samples containers, including 44 sample containers that had held warfarin pills but had been fully dispensed and another 15 sample containers from nicotine-containing products. The samples included warfarin and nicotine from several manufacturers, in a range of dose strengths and in various container types. The residues were solvent-extracted and then dried by rotary evaporation to determine the total weight of residues. Subsequently, the residues were re-dissolved in methanol and analyzed using HPLC to determine the concentration of the active pharmaceutical within the residues.

The majority of warfarin containers were plastic bottles, but some containers were blister packs and three samples were 30-pill blister packs, sometimes referred to as a ''bingo card.'' The results indicate that the concentration of the active pharmaceutical ingredient warfarin in the residues in plastic bottles was usually over the 0.3% concentration. However, the concentration of warfarin in the residues on blister packs, including the 30-pack blister pack, was consistently below 0.3%. Overall, in the majority of cases, the warfarin within the residues was present at a high enough concentration to be considered P001 (33 of 44 samples, 75 percent of the samples).

However, the results also confirm the results from the first two stakeholders. That is, the total weight of residues remaining in the containers after they were emptied of the warfarin pills is negligible. For the plastic bottles, the total weight of residue ranged from 4.3–82.3 mg. For the single-dose blister packs, the total weight of residue ranged from 3.5–7.6 mg. And for the 30-pack blister pack, the total weight ranged from 134.8–273 mg. Taking the smallest amount of residue of 3.5 mg, it would take close to 300,000 containers per month to exceed the 1 kg threshold to be an LQG. Even on the conservative side, taking the largest amount of residue of 273 mg, it would take close to 4000 containers per month to exceed the 1 kg threshold to be an LQG.

The results for nicotine residues were similar. For containers of gum and patches, the weight of total residues ranged from 9–111.2 mg, although the two containers of liquid nicotine solution contained more residues—1301 and 1616 mg. Although nicotine is not a concentration-based listing, it is worth noting that the active pharmaceutical ingredient of nicotine in the residues was below the quantifiable limit of 1.5 μg/ml in 8 of the 15 samples and for the other 7 samples, the concentration of nicotine ranged from 0.01–0.09%.

iv. *EPA's Office of Research and Development.* Finally, EPA's ORD conducted an analysis to evaluate whether simply removing a drug from the container is equivalent to triple rinsing the container. ORD's results are summarized in Table 11, but the Final Project Report containing the full results is in the docket for this proposed rulemaking (EPA–HQ–RCRA–2007–0932). ORD analyzed three different P-listed pharmaceuticals: Warfarin, nicotine and physostigmine salicylate. Table 11 lists the 18 different combinations of active pharmaceutical ingredients, form, dosage strengths and packaging combinations that ORD analyzed.

TABLE 11—PHARMACEUTICAL COMBINATIONS TESTED BY EPA'S ORD

Active pharmaceutical ingredient	Manufacturer/Brand name	Form	Dosage	Packaging type
Warfarin	Taro Pharmaceutical Industries, Ltd.	Tablet	1 mg	Plastic bottle.
		Tablet	5 mg	Plastic bottle.
		Tablet	10 mg	Plastic bottle.
		Tablet	2 mg	Single-dose blister pack.
	Upsher-Smith/Jantoven	Tablet	1 mg	Single-dose blister pack
		Tablet	10 mg	Single-dose blister pack.
Nicotine	GlaxoSmithKline/Nicorette	Gum	2 mg	Single-dose blister pack.
		Gum	4 mg	Single-dose blister pack.
	Rugby Laboratories	Gum	2 mg	Single-dose blister pack.
		Gum	4 mg	Single-dose blister pack.
	GlaxoSmithKline/Nicorette	Lozenge	2 mg	Plastic vial
		Lozenge	4 mg	Plastic vial.
	Rugby Laboratories	Patch	7 mg	Peel-off plastic.
	Habitrol	Patch	14 mg	Peel-off plastic.
	Rugby Laboratories	Patch	21 mg	Peel-off plastic.
	Pfizer/Nicotrol	Spray	10 mg/ml	Glass vial.
		Inhaler	10 mg	Plastic container.
Physostigmine Salicylate.	Akron Inc.	Liquid	1 mg/ml	Glass ampoule.

All combinations in Table 11 were analyzed in triplicate using the following three-step approach:

(1) After removing the tablets, gum, lozenges, etc from the containers, the amount of total residuals remaining in the container was determined using a sensitive balance to weigh the container before and after triple rinsing,

(2) The ''maximum possible weight of residual drug/total residual/container'' was calculated for each compound and packaging combination. This calculated result was used to infer a theoretical upper limit for the amount of active pharmaceutical compound in the total residue remaining in the container, and

(3) Thermal gravimetric analysis (TGA) was used to qualitatively evaluate the presence of active pharmaceutical ingredient in the residuals removed from the containers before and after triple-rinsing.

With respect to the weight of the remaining residuals in the containers, ORD's results are similar to the results

from the first three sources. That is, the weight of the total residuals remaining in the packaging of P-listed pharmaceuticals is minimal. For single-dose blister packs, lozenge vials and the peel-off plastic from nicotine patches the weight of the residuals was negligible and within the range of error of the balance, but all results were below 0.0002 grams. For plastic containers that held tablets, the weight of residuals were higher, but still very low, ranging from 0.0152–0.0157 grams. For containers that held liquids, the weight of residuals was the highest, but still very low, ranging from 0.0472 grams for glass vials of nicotine spray, to 0.0651 grams for glass ampoules that held liquid physostigmine salicylate. The residuals in the nicotine inhaler were not experimentally determined; rather, the manufacturer (Pfizer) states on the packaging that the 10 mg cartridge delivers a 4 mg dose, so the residuals are assumed to be 6 mg (or 0.006 grams).[131]

Unlike the quantitative results from the HPLC analyses from outside stakeholders, the results from the TGA are qualitative only. That is, the TGA was only intended to evaluate the presence of the API and compare the results from containers that had been triple rinsed with those that had not been triple rinsed. Using TGA, the API was not detected in the residuals, with one exception: The liquid nasal spray (note that TGA was not used on the nicotine inhaler residuals). In most cases, the TGA detected other, unspecified ingredients in the residuals, but not the active pharmaceutical ingredient on the P-list. The total weight of the residues was well under a gram and the active pharmaceutical ingredient is a small proportion of the total weight of the tablet, gum, etc. As a result, with the exception of the nicotine nasal spray, the TGA was not sensitive enough to detect the presence of the active pharmaceutical ingredient, regardless of whether the container had been triple rinsed or not.

EPA is aware that there are certain limitations with the data from the four sources. For instance, in the case of the consulting firm, no replicate samples were tested. In the case of the retailer, only warfarin residues were tested. However, given the size of the containers involved and the nominal quantities of residues involved, the Agency is proposing to allow the residues in single-unit dose containers/packaging and dispensing bottles, vials and ampules that once held pharmaceuticals to be managed as non-hazardous waste pharmaceuticals provided the pharmaceutical product has been fully dispensed (*e.g.,* all pills have been removed). EPA is soliciting comment on whether these studies are representative of the spectrum of formulations and containers that might be encountered.

Finally, we note that the Agency is concerned about the potential for diversion of the pharmaceutical containers that may occur when the pharmaceutical residues and containers are discarded in the municipal waste stream. In such instances, we are concerned that the containers could be diverted from the municipal waste stream and used for illicit purposes, such as packaging counterfeit pharmaceuticals. Therefore, EPA is proposing that ''RCRA empty'' pharmaceutical containers that are original pharmaceutical packages (and therefore are susceptible to diversion) should be destroyed prior to placing them in the trash. These types of containers would include dispensing bottles, vials or ampules typically used in pharmacies, but would not include paper or plastic cups, or blister packs used for dispensing singles doses to patients. The means of destruction could include crushing or shredding the container. We do not believe that simply defacing the label would be sufficient to avoid diversion, since labels could be replaced if the container is intact.

We request comment on these proposed provisions, including whether it is necessary to limit the size of the dispensing bottle to which this provision would apply. In our observation, EPA has rarely seen pharmaceutical dispensing bottles that are larger than 1000-count, which are approximately 1 liter in size. EPA requests comment on whether larger containers are used for dispensing pharmaceuticals and, if so, which pharmaceuticals they are used for and what RCRA hazardous waste codes apply. We also seek comment as to whether ''RCRA empty'' pharmaceutical containers that are the original pharmaceutical packages should be destroyed prior to placing them in the trash.

c. Dispensed syringes. With regard to dispensed syringes, EPA is proposing a conditional exemption for syringes that have been used to administer pharmaceuticals that are listed or characteristic hazardous waste when discarded. The residues remaining in a dispensed syringe would not be regulated as hazardous waste provided the syringe has been used to administer a pharmaceutical to a patient and the syringe is placed in a sharps container (if appropriate) and is managed in accordance with all applicable state and federal medical waste regulations. This would apply to syringes used to administer pharmaceuticals that are P- or U-listed, or exhibit a hazardous waste characteristic.

EPA issued guidance regarding the regulatory status of residues in syringes in December 1994 [132] and April 2008.[133] In the December 1994 RCRA/Superfund Hotline Q&A about whether epinephrine in a discarded syringe would be P042, EPA stated, ''Drug residues often remain in a dispensing instrument after the instrument is used to administer medication. EPA considers such residues remaining in a dispensing instrument to have been used for their intended purpose. The epinephrine remaining in the syringe, therefore, is not a commercial chemical product and not a P042 hazardous waste. The epinephrine could be a RCRA hazardous waste, however, if it exhibits a characteristic of hazardous waste.'' [134]

In the April 2008 memo, EPA clarified that the 1994 interpretation extends to other P- and U-listed pharmaceuticals that have been used to administer the pharmaceutical by syringe. This proposed conditional exemption for syringes, in large part, would maintain the existing interpretation. The primary difference is that under the proposed conditional exemption, healthcare facilities would not be required to determine if the residues in the syringes meet a listing description or exhibit a hazardous waste characteristic.

[131] Optimizing drug dose is a major factor in improving the sustainability of healthcare. The prescriber needs to be cognizant that prescribed treatments can have unanticipated, collateral impacts that reach far beyond the healthcare setting. See: Daughton and Ruhoy, *Lower-dose prescribing: Minimizing ''side effects'' of pharmaceuticals on society and the environment;* Sci Total Environ, 443(2013), pp. 324–336, which presents a critical examination of the multi-faceted potential role of drug dose in reducing the ambient levels of APIs in the environment and in reducing the incidence of drug wastage, which ultimately necessitates disposal of leftovers. (*http://sciencedirect.com/science/article/pii/S0048967120139 27#*)

[132] December 1994, RCRA Online #13718 *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/1C1DEB3648A62A868525670F006BCCD2/$file/13718.pdf.*

[133] Memo from Dellinger to Chilcott, April 14, 2008, RCRA Online #14788 *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/6A5DEDF2FBA24FE68525744B0045B4AF/$file/14788.pdf.*

[134] Note that since this Q&A was issued, EPA issued guidance indicating that epinephrine salts are not included in the scope of the P042 listing and therefore, most, if not all, medical applications of epinephrine are not P042 (October 15, 2007; RCRA Online #14778)

EPA believes this conditional exemption is important to minimize the potential for exposures to healthcare workers, which can happen if they are accidentally stuck with a needle. Typically, sharps containers are more readily available to a medical practitioner than a hazardous waste container. Therefore, the used syringe will be discarded more quickly into a sharps container and there will be less opportunity for accidental sticks to occur en route to disposing the sharp.

However, we also note that syringes in sharps containers are typically autoclaved prior to disposal. EPA is concerned that the residues remaining in the syringes could be aerosolized during autoclaving and inadvertently expose workers to the aerosolized hazardous waste residues, posing risks (via pulmonary exposure) to those present during venting of the autoclave. Research suggests that autoclaving may even increase the toxicity of certain drugs.[135] EPA seeks comment on the extent of risks associated with autoclaving hazardous waste residues leftover in syringes and whether it is necessary to place a limit on the volume of residue or the volume of the syringe to which this conditional exemption would apply or whether any other conditions would be appropriate. For instance, stakeholders have informed us that they will squirt the residues remaining in a syringe onto a gauze pad prior to placing the syringe in the sharps container. Then, if the residues on the gauze pad are hazardous waste, the gauze pad is managed as hazardous waste, while allowing the syringe to be fully dispensed before placing it in the sharps container. In EPA's view, this method of managing excess residues is preferred over another practice that is commonly used: The disposal of excess residues down the drain.

d. Other containers, including delivery devices. With regard to other containers, including delivery devices, EPA is proposing that the residues remaining in unused or used containers (such as IV bags and tubing, inhalers, aerosols, nebulizers, tubes of ointment, gels, or creams) would be regulated as hazardous waste if the residues are a P- or U-listed hazardous waste or exhibit a hazardous waste characteristic. In some cases, such as with IV bags, the volume of hazardous waste is much larger than with residues contained in syringes or unit-dose containers. Stakeholders have stated that it is common practice for the leftover contents of IV bags and tubing to be emptied into a sink, which is a practice we are striving to eliminate. It is extremely difficult to determine how much residue remains in tubes of ointment, gel or cream. In the case of aerosols, it would be inadvisable to remove the contents of the container. Since hazardous waste pharmaceuticals managed under this proposed rule would not be counted towards a facility's generator category, managing these residues and containers as hazardous waste under proposed 40 CFR part 266, subpart P should not pose the same burden that generators currently face with keeping track of the monthly amount of residues in containers that are not ''RCRA empty.'' Further, comments on the 2008 Pharmaceutical Universal Waste proposal indicated that stakeholders prefer clear distinctions in regulating the hazardous waste from healthcare facilities and this proposed standard for container residues responds to that comment. EPA seeks comment on whether these proposed provisions address stakeholder concerns, while protecting human health and the environment.

F. What are the proposed standards for shipping hazardous waste pharmaceuticals?

1. Shipping Standards for Non-Creditable Hazardous Waste Pharmaceuticals and Evaluated Hazardous Waste Pharmaceuticals to Treatment, Storage, and Disposal Facilities

a. Shipping Standards for Non-Creditable Hazardous Waste Pharmaceuticals From Healthcare Facilities to TSDFs

Typically, hazardous waste pharmaceuticals generated in a healthcare facility fall into two categories: (1) Non-creditable (*e.g.,* patient care) hazardous waste pharmaceuticals and (2) potentially creditable hazardous waste pharmaceuticals. This section discusses the proposed requirements for shipping of non-creditable, patient care/floor hazardous waste pharmaceuticals. For information regarding the shipment of potentially creditable hazardous waste pharmaceuticals from healthcare facilities and pharmaceutical reverse distributors, see Section V.F.2 of the preamble.

Generally, patient care/floor hazardous waste pharmaceuticals differ from potentially creditable hazardous waste pharmaceuticals in that they have been partially administered and often are not in their original packaging. In addition, patient care/floor hazardous waste pharmaceuticals cannot receive manufacturer's credit and therefore may not be shipped to a reverse distributor. EPA is proposing that patient care/floor hazardous waste pharmaceuticals generated at healthcare facilities, when shipped off-site, must be shipped to a designated facility (*i.e.,* an interim status or permitted hazardous waste TSDF), as currently required (unless the healthcare facility has interim status or a RCRA permit to store or treat hazardous waste). Specifically, EPA proposes that non-creditable hazardous waste pharmaceuticals must continue to comply with the existing pre-transport requirements for packaging, labeling and marking, and that the non-creditable hazardous waste pharmaceuticals must continue to be shipped using a hazardous waste transporter and tracked with a hazardous waste manifest. However, to avoid unnecessarily burdening the healthcare facility staff, who are unfamiliar with RCRA, EPA proposes that the hazardous waste numbers (often called hazardous waste codes) are not required to be entered into the hazardous waste manifest for non-creditable hazardous waste pharmaceuticals. In lieu of hazardous waste codes, EPA is proposing that the words, ''hazardous waste pharmaceuticals'' must be entered in the ''special handling and additional information'' box on the manifest (box # 14). All existing RCRA recordkeeping requirements regarding hazardous waste manifesting continue to apply, (see Section V.C.12), as well as all applicable DOT shipping requirements. EPA requests comment on this proposed approach for manifesting non-creditable hazardous waste pharmaceuticals from a healthcare facility.

b. Shipping Standards for Evaluated Hazardous Waste Pharmaceuticals From Pharmaceutical Reverse Distributors to TSDFs

For pharmaceutical reverse distributors, once potentially creditable hazardous waste pharmaceuticals have been deemed non-creditable or credit has been issued and they do not require any additional verification of credit, EPA is proposing that the hazardous waste pharmaceuticals be referred to as ''evaluated hazardous waste pharmaceuticals.'' As with shipping non-creditable hazardous waste pharmaceuticals, when evaluated hazardous waste pharmaceuticals are shipped off-site, EPA is proposing that they must be shipped in accordance

[135] Daughton CG, *Drugs and the Environment: Stewardship & Sustainability,* National Exposure Research Laboratory, Environmental Sciences Division, U.S. EPA, Las Vegas, NV; NERL–LV–ES 10/081, EPA/600/R–10/106; September 2010 (*http://www.epa.gov/nerlesd1/bios/daughton/APM200-2010.pdf.*)

with the existing pre-transport requirements for packaging, labeling and marking, and that evaluated hazardous waste pharmaceuticals must be shipped via a hazardous waste transporter using a hazardous waste manifest to a designated facility. This continues current practices under existing regulations for this type of hazardous waste pharmaceutical and does not represent an increase in burden. EPA believes that use of a hazardous waste manifest and a hazardous waste transporter are appropriate at this point for two reasons. First, once credit for the hazardous waste pharmaceuticals has been issued and verified, the potential for mismanagement is greater. This is because the pharmaceuticals have lost their value and will cost the reverse distributor money to dispose. Second, TSDFs are accustomed to receiving hazardous waste via a hazardous waste transporter with a hazardous waste manifest and it would place administrative and compliance burdens on the receiving TSDF to accept shipments of hazardous waste with alternative tracking.

EPA is proposing that the pharmaceutical reverse distributor list the appropriate hazardous waste codes on the manifest (even though the healthcare facility is not required to provide such information to the reverse distributor). Hazardous waste pharmaceuticals received by pharmaceutical reverse distributors are in their original packaging with their label, so the information to determine the appropriate hazardous waste codes should be readily available. Also, reverse distributors are currently required to include hazardous waste codes on the manifest and it is expected that they have the necessary expertise in the management of these hazardous wastes that healthcare workers lack. As described in Section V.G.3 (pharmaceutical reverse distributor management standards), reverse distributors must keep copies of hazardous waste manifests for three years from the date of shipment.

EPA requests comment regarding the proposed manifest and transportation requirements for non-creditable hazardous waste pharmaceuticals from healthcare facilities and evaluated hazardous waste pharmaceuticals from pharmaceutical reverse distributors.

c. Importing/Exporting Non-Creditable or Evaluated Hazardous Waste Pharmaceuticals

Under the existing regulations, a healthcare facility or pharmaceutical reverse distributor may not import hazardous waste pharmaceuticals unless it has a RCRA permit or interim status that allows it to accept hazardous waste from off-site and complies with the requirements for importing hazardous waste in 40 CFR part 262, subpart F. This proposal does not change the regulations as they apply to the import of non-creditable or evaluated hazardous waste pharmaceuticals. Likewise, under existing regulations, a healthcare facility or pharmaceutical reverse distributor may not export (non-creditable or evaluated) hazardous waste pharmaceuticals unless it complies with requirements for exporting hazardous waste in 40 CFR part 262, subpart E. This proposal also does not change the regulations as they apply to the export of (non-creditable or evaluated) hazardous waste pharmaceuticals.[136]

EPA requests comment on the likelihood that non-creditable hazardous waste pharmaceuticals that are shipped from a healthcare facility to a domestic TSDF, would then be exported to a TSDF in a foreign country. In addition, EPA does not anticipate that hazardous waste pharmaceuticals would be destined for transboundary shipments for purposes of recovery operations and therefore potentially subject to 40 CFR part 262, subpart H; however, we also request comment on whether this is the case.

2. Shipping Standards for Potentially Creditable Hazardous Waste Pharmaceuticals

This section discusses the proposed requirements for shipping potentially creditable hazardous waste pharmaceuticals from healthcare facilities to pharmaceutical reverse distributors and between pharmaceutical reverse distributors. The return of potentially creditable pharmaceuticals (hazardous and non-hazardous) to reverse distributors can involve multiple shipping steps before the pharmaceuticals are transported for ultimate treatment and disposal. In comments on the 2008 Pharmaceutical Universal Waste proposal and in response to EPA's request for information,[137] pharmaceutical reverse distributors explained various scenarios that require extra shipping steps. For example, a healthcare facility typically sends pharmaceuticals to the reverse distributor with which it has a contract. However, some manufacturers will only provide manufacturer's credit after the pharmaceuticals have been returned to the reverse distributor with which the manufacturer has a contract. Thus, if the reverse distributor with which the healthcare facility has a contract differs from the reverse distributor with which the manufacturer has a contract, then the healthcare facility's reverse distributor must send the pharmaceuticals on to the manufacturer's reverse distributor for the manufacturer's credit to be given to the healthcare facility. In some cases, a pharmaceutical manufacturer may require the reverse distributor to ship the returned pharmaceuticals to the manufacturer so that the manufacturer itself can verify pharmaceutical amounts and credits. The estimate of the amount of pharmaceuticals transported from reverse distributors to manufacturers for verification varies. Based on our request for information, reverse distributors have indicated that the percent of potentially creditable pharmaceuticals transported to manufacturers ranged from an estimated 25 percent to 93 percent, depending on the contractual agreement between the reverse distributor and the manufacturer. Both of the scenarios described previously happen routinely and are part of the business of returning pharmaceuticals to reverse distributors (including manufacturers) for manufacturer's credit.

As explained in Section V.D.1, EPA is proposing that pharmaceuticals transported to pharmaceutical reverse distributors for credit are solid wastes, some of which will also be considered hazardous wastes. Under the current RCRA Subtitle C regulations, hazardous waste, including hazardous waste pharmaceuticals must be manifested to a permitted or interim status TSDF and shipped using a hazardous waste transporter to ensure the cradle-to-grave system of RCRA is maintained. However, compared to other hazardous wastes, EPA believes that the risk of environmental release posed by most potentially creditable hazardous wastes pharmaceuticals during accumulation and transport are relatively low. The risk is low because of the form and packaging of most potentially creditable hazardous waste pharmaceuticals, which is typically in small, individually packaged doses (such as with many tablets and capsules) or small vials.

[136] The Controlled Substances Import and Export Act prohibits controlled substances from being imported or exported unless permitted by DEA, even when the controlled substances are wastes. See 21 U.S.C. 952 and 953.

[137] EPA sent nine pharmaceutical reverse distributors a letter asking for more information about their business practices in an effort to more fully understand reverse distribution of pharmaceuticals. The seven responses representing the views of eight reverse distributors can be found in the docket of this proposed rulemaking (EPA–HQ–RCRA–2007–0932).

These small volumes of individually wrapped or packaged pharmaceuticals, when aggregated in a larger container, are unlikely to spill or be released into the environment since they are essentially double-packed when transported to a reverse distributor.[138] Potentially creditable hazardous waste pharmaceuticals that are in liquid and aerosol forms may pose more of a risk during accumulation and transport due to possible spillage or leakage, but the small quantities in which they are generated, along with the DOT packaging requirements of 49 CFR parts 173, 178, and 180, would likely mitigate this risk (see EPA's recommendation regarding liquids and aerosols in Section V.D.2.). Further, the 2008 Pharmaceutical Universal Waste proposal specifically sought comment regarding the risks of transportation of hazardous waste pharmaceuticals and no commenters identified environmental risks.

Due to the low risk of release to the environment described previously, EPA is proposing to allow potentially creditable hazardous waste pharmaceuticals to be shipped *without* a hazardous waste manifest and *without* the use of hazardous waste transporters. However, this exemption from manifesting and use of hazardous wastes transporters only applies if the healthcare facility is sending potentially creditable hazardous waste pharmaceuticals to a pharmaceutical reverse distributor, or if a pharmaceutical reverse distributor is sending potentially creditable hazardous waste pharmaceuticals to another pharmaceutical reverse distributor. Further, DOT shipping requirements continue to apply to shipments of potentially creditable hazardous waste pharmaceuticals.

In lieu of requiring a hazardous waste manifest and the use of hazardous waste transporters, EPA is proposing an alternate type of tracking for potentially creditable hazardous waste pharmaceuticals—with two requirements. First, for each shipment, healthcare facilities and pharmaceutical reverse distributors must provide in writing (via letter or electronic communication), advance notice of the shipment to the pharmaceutical reverse distributor. Second, for each shipment, the receiving pharmaceutical reverse distributors must provide confirmation to the healthcare facility or pharmaceutical reverse distributor that initiated the shipment that the shipment of potentially creditable hazardous waste pharmaceuticals has arrived. One way to comply with this requirement would be for the receiving reverse distributor to require the healthcare facility or pharmaceutical reverse distributor that initiates the shipment of potentially creditable hazardous waste pharmaceuticals to utilize some form of ''delivery confirmation'' mechanism that is provided by the shipper that confirms that a shipment to a reverse distributor has reached its destination and is under the custody and control of the recipient (*e.g.* delivery confirmation tracking with return receipt). This ''delivery confirmation'' notice can be paper-based or electronic. As part of the delivery confirmation system, a signature (paper or electronic) or other confirmation from a representative of the receiving pharmaceutical reverse distributor would be required. The signature by the pharmaceutical reverse distributor would provide assurance that the shipment was received by the reverse distributor. Without the signature or other confirmation of a representative of the pharmaceutical reverse distributor, it is possible for the shipper to state that delivery to the location has occurred, but it would not necessarily indicate that the recipient was there to receive the shipment. This proposed requirement is in direct response to concerns expressed by commenters over the lack of tracking of pharmaceuticals in the 2008 Pharmaceutical Universal Waste proposal.

Alternatively, EPA has learned that some stakeholders use bar-coding on the pharmaceuticals or on the boxes to track shipments. The barcodes contain detailed information, including the exact quantities and types of pharmaceuticals included in the shipment. Typically, when a reverse distributor receives a barcoded shipment, it will scan in the shipment and the sender will receive electronic notification that the shipment has arrived. This type of bar-code tracking would meet the delivery confirmation requirement of this proposed rule, but other mechanisms of ''delivery confirmation'' that are offered by common carriers, such as the U.S. Postal Service, FedEx or United Parcel Service (UPS), would also be acceptable.

Under this proposal, healthcare facilities and reverse distributors may use common carriers, such as the U.S. Postal Service, United Parcel Service, or FedEx [139] for shipments of potentially creditable hazardous waste pharmaceuticals to and between pharmaceutical reverse distributors. EPA believes that common carriers are able to provide safe shipment since these potentially creditable hazardous waste pharmaceuticals present low transportation risk. We note that healthcare facilities and pharmaceutical reverse distributors must meet the applicable Pipeline and Hazardous Materials Safety Administration (PHMSA) Hazardous Materials Regulation (HMR; 49 CFR parts 171–180) shipping requirements, including preparing proper shipping papers when shipping potentially creditable hazardous waste pharmaceuticals. A RCRA hazardous waste that does not meet DOT hazard classes 1–8 in the HMR, are only Class 9 hazardous materials when defined as a RCRA hazardous wastes that requires a manifest. As a result, the DOT shipping requirements will apply when potentially creditable hazardous waste pharmaceuticals are shipped to pharmaceutical reverse distributors only when the hazardous wastes are DOT class 1–8 hazardous materials.

EPA notes that a pharmaceutical reverse distributor is not required to sort the potentially creditable hazardous waste pharmaceuticals from the potentially creditable non-hazardous waste pharmaceuticals when they are destined for another reverse distributor. However, if the potentially creditable pharmaceuticals are not sorted, the pharmaceutical reverse distributor must follow the tracking procedures in this proposal for the entire shipment. On the other hand, if a pharmaceutical reverse distributor chooses to sort the potentially creditable hazardous waste pharmaceuticals from the creditable non-hazardous waste pharmaceuticals prior to shipping to another reverse distributor, only the potentially creditable hazardous waste pharmaceutical portion would have to be shipped according to these proposed standards. EPA asks for comment on whether the proposed tracking system and controls are sufficient to protect human health and the environment.

a. What Happens if a Healthcare Facility or Pharmaceutical Reverse Distributor Initiates a Shipment and Does Not Get Confirmation of Delivery?

If a healthcare facility or pharmaceutical reverse distributor initiates a shipment of potentially creditable hazardous waste pharmaceuticals to a reverse distributor and does not receive delivery confirmation from the intended recipient within seven calendar days, EPA is proposing that the healthcare facility or pharmaceutical reverse

[138] Pharmaceutical Universal Waste proposal, 73 FR 73529; December 2, 2008.

[139] Note EPA is not endorsing the use of any of the shipping companies cited.

distributor that initiated the shipment must contact the shipper and the intended recipient promptly to (1) report that the confirmation was not received and (2) to determine the status and whereabouts of the potentially creditable hazardous waste pharmaceuticals that were shipped. The Agency requests comment on whether any additional requirements, such as reporting to the implementing agency, are necessary in such cases.

b. Importing/Exporting Potentially Creditable Hazardous Waste Pharmaceuticals

If a healthcare facility or pharmaceutical reverse distributor imports potentially creditable hazardous waste pharmaceuticals, then it must comply with the proposed requirements for the shipment of potentially creditable hazardous waste pharmaceuticals. The proposed requirements would be in lieu of those for manifested hazardous waste imports found at 40 CFR part 262, subpart F. EPA requests comment on whether potentially creditable hazardous waste pharmaceuticals are imported into the U.S. and, if so, how they are currently declared to customs when imported.

If a healthcare facility or pharmaceutical reverse distributor exports potentially creditable hazardous waste pharmaceuticals then it must generally comply with 40 CFR part 262, subpart E, except that it is not required to manifest the potentially creditable hazardous waste pharmaceuticals.[140]

c. Recordkeeping for Shipments of Potentially Creditable Hazardous Waste Pharmaceuticals

EPA is proposing to require healthcare facilities and reverse distributors to keep records of the shipments of potentially creditable hazardous waste pharmaceuticals to reverse distributors. Specifically, we are proposing that healthcare facilities and reverse distributors that initiate a shipment to another pharmaceutical reverse distributor keep (1) records of advance notification regarding shipments of potentially creditable hazardous waste pharmaceuticals, (2) shipping papers, and (3) confirmation of receipt of shipment for three years after the shipment was initiated. These records are necessary to ensure that potentially creditable hazardous waste pharmaceuticals are reaching their intended destination and not diverted. In most cases, retaining records for 3 years should be sufficient for inspection purposes; however, we are proposing that the periods of retention are automatically extended during unresolved enforcement activity, or at the request of the EPA Regional Administrator. The Agency seeks comment on whether additional recordkeeping is necessary to document the cases when the pharmaceutical reverse distributor does not receive a shipment of potentially creditable pharmaceuticals within 7 calendar days and the steps must be taken to locate the shipment.

G. What are the proposed standards for pharmaceutical reverse distributors?

1. Background on Pharmaceutical Reverse Distributor Operations

Pharmaceutical reverse distributors act as intermediaries between healthcare facilities and pharmaceutical manufacturers. They receive shipments of potentially creditable hazardous waste pharmaceuticals from healthcare facilities and, on behalf of manufacturers, facilitate the process of crediting healthcare facilities for these pharmaceuticals. From stakeholder input and EPA site visits, EPA's understanding is that when a pharmaceutical reverse distributor receives a shipment of potentially creditable hazardous waste pharmaceuticals, the reverse distributor sorts through the shipment and often uses barcodes to scan items into its computer system. Based on manufacturers' return goods policies, the pharmaceutical reverse distributors determine which potentially creditable hazardous waste pharmaceuticals can be credited, as well as which must be sent on to another reverse distributor for completion of the crediting process.

In many cases, there is more than one reverse distributor involved in establishing and verifying manufacturer's credit for a particular potentially creditable hazardous waste pharmaceutical. For instance, reverse distributors may have contracts with specific pharmaceutical manufacturers such that only a specific pharmaceutical reverse distributor may facilitate credit for a particular manufacturer's pharmaceuticals. If the receiving reverse distributor has a contract with the healthcare facility, but not with the pharmaceutical manufacturer, then the receiving pharmaceutical reverse distributor sends the returned pharmaceutical on to the reverse distributor that has a contract with the pharmaceutical manufacturer in order to facilitate the credit process.

Because manufacturers' return goods policies change over time, sometimes a pharmaceutical reverse distributor receives a potentially creditable hazardous waste pharmaceutical that is not eligible for credit immediately, and the pharmaceutical reverse distributor retains the potentially creditable hazardous waste pharmaceutical on-site until it is credit eligible. EPA requests comment on how often this happens and how long the potentially creditable hazardous waste pharmaceuticals are kept on-site at reverse distributors to await changes in manufacturers' return goods policies.

In some cases, even after the pharmaceutical reverse distributor has awarded credit, a pharmaceutical manufacturer may request that the hazardous waste pharmaceuticals be transported back to the manufacturer to inventory and verify the amount of pharmaceuticals and credit. In developing this proposed rule, EPA considered all of the previous scenarios as part of the crediting process.

On the other hand, if the potentially creditable hazardous waste pharmaceuticals are not sent onward to another pharmaceutical reverse distributor, the pharmaceutical reverse distributor awards the manufacturer's credit to the healthcare facility and then manages the hazardous waste pharmaceuticals on-site until they are sent off-site for treatment and disposal. As discussed previously in this proposal, after a potentially creditable hazardous waste pharmaceutical has been evaluated and either credited or deemed non-creditable and no additional pharmaceutical reverse distributors will be involved in the crediting process, EPA proposes to use the term ''evaluated hazardous waste pharmaceutical.'' This is to distinguish between the potentially creditable hazardous waste pharmaceuticals awaiting determination within the reverse distribution system versus credited and non-creditable hazardous waste pharmaceuticals that have been through the reverse distributor process and are destined to be managed by a permitted or interim status TSDF. Both are considered hazardous waste pharmaceuticals, but they are managed differently under the proposed regulations.

EPA is not aware of any pharmaceutical reverse distributors that facilitate manufacturer's credit that also has interim status or a permit to treat or dispose of hazardous waste on-site. Therefore, EPA anticipates that pharmaceutical reverse distributors eventually send all evaluated hazardous waste pharmaceuticals off-site for

[140] The Controlled Substances Import and Export Act prohibits controlled substances from being imported or exported unless permitted by DEA, even when the controlled substances are wastes. See 21 U.S.C. 952 and 953.

treatment and disposal. EPA requests comment on whether the processes described previously are representative of the pharmaceutical reverse distribution process.

2. EPA's Rationale for Proposing New RCRA Management Standards for Pharmaceutical Reverse Distributors

This proposed rule is establishing standards for the management of both potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals that pharmaceutical reverse distributors receive and manage. The Agency notes that the management standards discussed in this section apply only to reverse distributors of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals and do not apply to reverse distribution or reverse logistics systems that may exist for other consumer products.

The current federal RCRA hazardous waste regulations at 40 CFR part 262 provide that only RCRA- permitted and interim status TSDFs may receive hazardous waste from off-site for treatment, storage, or disposal. However, the Agency does not believe it is necessary for pharmaceutical reverse distributors to obtain permits or have interim status to store hazardous waste pharmaceuticals in order to protect human health and the environment. Thus, EPA proposes a new category under RCRA called a ''pharmaceutical reverse distributor,'' which we proposed to define as any person that receives and accumulates potentially creditable hazardous waste pharmaceuticals for the purpose of facilitating or verifying manufacturer's credit. The definition specifies that any person, including forward distributors and pharmaceutical manufacturers, which processes pharmaceuticals for the facilitation or verification of manufacturer's credit is considered a pharmaceutical reverse distributor. EPA is proposing that pharmaceutical reverse distributors are not required to have interim status or a RCRA permit to accumulate hazardous waste pharmaceuticals and they may only accept potentially creditable hazardous waste pharmaceuticals from off-site provided they comply with the proposed standards in this rule. Pharmaceutical reverse distributors may not treat or dispose of hazardous waste on-site unless authorized to do so as a RCRA-permitted or interim status TSDF.

As discussed previously, EPA's existing interpretation allows pharmaceutical reverse distributors to be generators of hazardous waste pharmaceuticals after a decision is made about whether the pharmaceuticals will be repurposed. As a generator, a pharmaceutical reverse distributor currently must comply with the LQG, SQG, or CESQG generator requirements, depending on the total volume of hazardous waste generated in a calendar month. Some smaller pharmaceutical reverse distributors might stay under the hazardous waste quantity limits for CESQGs, which would mean that under the federal RCRA requirements, these CESQG pharmaceutical reverse distributors would not have to notify EPA as a generator and their hazardous waste pharmaceuticals could be disposed of with municipal and non-municipal solid waste (see § 261.5). However, the Agency has concerns with CESQG pharmaceutical reverse distributors not notifying EPA that they are managing hazardous waste. EPA is even more concerned about pharmaceutical reverse distributors that currently qualify as CESQGs placing the hazardous waste pharmaceuticals into the municipal and non-municipal solid waste stream and sending them to non-hazardous waste landfills. Some limited studies have shown active pharmaceutical ingredients present in landfill leachate that is collected in municipal solid waste landfill leachate systems.[141] [142] Landfill leachate is generally transported to a wastewater treatment plant to be treated before discharge; however, some pharmaceutical compounds pass through treatment and are discharged, becoming a potential contributor of the pharmaceutical compounds detected in our nation's waters.

EPA is proposing to revise its position regarding potentially creditable hazardous waste pharmaceuticals, such that they will be first considered discarded at the healthcare facilities, not at the reverse distributors. This revision is based on new information demonstrating to EPA that pharmaceuticals returned to a reverse distributor are rarely, if ever, recycled or reused, and therefore the decision to send a potentially creditable hazardous waste pharmaceutical to a pharmaceutical reverse distributor is a decision to discard the pharmaceutical (as discussed previously in Section V.D.1). Other comments on the December 2008 Pharmaceutical Universal Waste proposal indicated that notification to EPA by pharmaceutical reverse distributors and tracking of shipments of potentially creditable hazardous waste pharmaceuticals are critical and must be included in any regulatory scheme to ensure the safe management of potentially creditable hazardous waste pharmaceuticals.

As previously discussed, only between 2–6 percent of the potentially creditable hazardous wastes that are received by pharmaceutical reverse distributors are listed or characteristic hazardous wastes.[143] Therefore, the vast majority of the potentially creditable pharmaceutical waste that a pharmaceutical reverse distributor receives is not considered a characteristic or listed hazardous waste pharmaceutical under the existing definition of hazardous waste. This stands in contrast to a typical TSDF, which primarily manages hazardous waste. As a result, a pharmaceutical reverse distributor generally manages a smaller volume of hazardous waste than a typical permitted TSDF.

In addition, because the pharmaceuticals in the reverse distribution system are receiving credit, they are moved through the system efficiently. In fact, one national pharmacy retail chain informed EPA that the value of the credit they receive from manufacturers for returned pharmaceuticals is approximately $1 billion a year.[144] Healthcare facilities and reverse distributors have a vested interest in having potentially creditable hazardous waste pharmaceuticals processed and credited quickly and managed appropriately so money is not lost in the process.

Furthermore, potentially creditable hazardous waste pharmaceuticals generally present a low risk of release to the environment as they typically are still in the manufacturer's packaging. Since there is a low human health and environmental risk of release associated with the low volumes of potentially creditable hazardous waste pharmaceuticals shipped to reverse distributors for crediting purposes, and because EPA is not aware of any incidents of mismanagement resulting

[141] Barnes, K. K., Christenson, S. C., Kolpin, D. W., Focazio, M. J., Furlong, E. T., Zaugg, S. D., Meyer, M. T. and Barber, L. B. (2004), Pharmaceuticals and Other Organic Waste Water Contaminants Within a Leachate Plume Downgradient of a Municipal Landfill. Groundwater Monitoring & Remediation, 24: 119–126.

[142] Buszka, P.M., Yeskis, D.J., Kolpin, D.W., Furlong, E.T., Zaugg, S.D., and Meyer, M.T. (2009), Waste-Indicator and Pharmaceutical Compounds in Landfill-Leachate-Affected Ground Water near Elkhart, Indiana, 2000–2002. Bulletin of Environmental Contamination and Toxicology, 82.6:635–659.

[143] See EPA's request of information from reverse distributors, as well as their responses to EPA in the docket for this rulemaking: EPA–HQ–RCRA–2007–0932.

[144] Meeting with representatives from CVS/Caremark (November 8, 2012); see the docket for meeting notes (EPA–HQ–RCRA–2007–0932).

in environmental harm or releases of hazardous waste pharmaceuticals by reverse distributors, EPA believes that is not necessary to require reverse distributors to obtain RCRA hazardous waste storage permits with respect to typical reverse distribution operations, such as receiving, sorting, consolidating, and reshipping potentially creditable hazardous waste pharmaceuticals.

Thus, EPA is proposing to take a ''middle-of-the-road'' approach to regulating pharmaceutical reverse distributors by regarding them as a new type of RCRA hazardous waste entity—a pharmaceutical reverse distributor. This proposed approach addresses comments that EPA received on the December 2008 Pharmaceutical Universal Waste proposal and reflects EPA's proposed revised interpretation that the point of generation for potentially creditable hazardous waste pharmaceuticals is at the healthcare facility, not the reverse distributor.

EPA proposes to establish management standards for pharmaceutical reverse distributors in 40 CFR part 266, subpart P. These entities would not be subject to 40 CFR parts 262, 264, or 265. Generally, EPA is proposing that pharmaceutical reverse distributors comply with standards that are similar to the current federal LQG standards, in combination with certain requirements that permitted or interim status hazardous waste TSDFs must meet. We are establishing one set of requirements for all pharmaceutical reverse distributors, regardless of the amount of potentially creditable hazardous waste pharmaceuticals they receive. EPA believes this uniform set of standards will make it easier for pharmaceutical reverse distributors to comply with the new proposal, since the burden of having to count hazardous waste pharmaceuticals on a monthly basis, especially the 1 kg of acute hazardous waste pharmaceuticals, will be removed.

EPA proposes that a pharmaceutical reverse distributor will not be required to have a hazardous waste permit or interim status for on-site accumulation of creditable and evaluated hazardous waste pharmaceuticals provided it follows the proposed pharmaceutical reverse distributor standards. However, for activities such as treatment or disposal of hazardous waste pharmaceuticals or other hazardous waste, a pharmaceutical reverse distributor must either obtain a RCRA permit or have interim status. This proposal requires pharmaceutical reverse distributors to comply with standards that are similar to LQG standards for on-site accumulation of hazardous waste that are found in § 262.34(a) and (b). We are proposing these requirements because, as discussed prevoiusly, the value of the potentially creditable pharmaceuticals creates an incentive for proper management and the risk of release is low. Furthermore, many pharmaceutical reverse distributors are already LQGs and therefore this proposed rule should not represent a large shift in current practices or increased burden. However, once credit is provided, the value of the pharmaceuticals is eliminated and therefore the evaluated hazardous waste pharmaceuticals have a greater potential for mismanagement. As a result, we are proposing that pharmaceutical reverse distributors have additional standards for the management of evaluated hazardous waste pharmaceuticals. Note that while the LQG accumulation standards are found in §§ 262.34(a) and (b), these generator regulations reference many interim status TSDF standards in part 265. However, in the regulatory text and preamble for this rule, we reference the standards in part 265 directly for the applicable accumulation standards for pharmaceutical reverse distributors (rather than § 262.34(a) which would then simply refer the reader to part 265). However, the Agency requests comment as to whether we should include the regulatory standard directly in 40 CFR part 266, subpart P, instead of providing a cross-reference to the standard in 40 CFR part 265 in an effort to make the rules easier to follow and comply with.

3. Detailed Discussion of Proposed Pharmaceutical Reverse Distributor Standards

The proposed standards for pharmaceutical reverse distributors are organized into three sections. The first section applies to the pharmaceutical reverse distributor for the management of all potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals. The second section includes additional standards that would apply to the management of the potentially creditable hazardous waste pharmaceuticals that will be sent to another pharmaceutical reverse distributor for further evaluation or verification of credit and therefore continue to be regulated as potentially creditable hazardous waste pharmaceuticals. The third section includes additional standards that apply to the management of the evaluated hazardous waste pharmaceuticals that will not be sent to another pharmaceutical reverse distributor, but instead will be sent to a permitted or interim status TSDF.

a. Standards for Pharmaceutical Reverse Distributors

This portion of the preamble discusses the proposed standards that apply to pharmaceutical reverse distributors for the management of all hazardous waste pharmaceuticals on-site. Unlike the following two sections, the standards discussed in this section apply to all pharmaceutical reverse distributors, regardless of the subsequent destination of the hazardous waste pharmaceuticals. We note that a pharmaceutical reverse distributor must follow the proposed standards for the management of hazardous waste pharmaceuticals even if it generates other, non-pharmaceutical hazardous waste that is managed under 40 CFR part 262.

i. *Notification.* The first proposed requirement is that a pharmaceutical reverse distributor must notify EPA of its hazardous waste pharmaceutical activities via the Site ID form (EPA form 8700–12). Under the current RCRA Subtitle C program, both LQGs and TSDFs must submit a Site ID form to EPA. Thus, EPA believes it is appropriate, and in line with comments received on the 2008 Pharmaceutical Universal Waste proposal, to require pharmaceutical reverse distributors to notify EPA. A pharmaceutical reverse distributor that does not have an EPA ID number will be required to submit the Site ID form to obtain one. If this proposal is finalized, the Agency plans on revising the Site ID form to include a box to allow notifications by pharmaceutical reverse distributors. For those pharmaceutical reverse distributors that already have an EPA ID number, they will need to re-notify EPA as a pharmaceutical reverse distributor. Some pharmaceutical reverse distributors may also be generators of other types of hazardous waste (*e.g.,* from cleaning and maintenance operations). Therefore, it is possible that a pharmaceutical reverse distributor may notify on the same notification form as both a generator of hazardous waste and as a pharmaceutical reverse distributor.

ii. *Inventory.* EPA is proposing a new provision that is specific to pharmaceutical reverse distributors: the requirement is to keep an inventory of the potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals that are on-site. The inventory must include the identity (*e.g.,* name or national drug code (NDC)) and quantity of each potentially creditable hazardous waste pharmaceutical and evaluated hazardous waste pharmaceuticals. EPA

also recommends as a best management practice that pharmaceutical reverse distributors also keep an inventory of their non-hazardous waste pharmaceuticals as well. An inventory is a key requirement to protect public health by helping to prevent the diversion of hazardous waste pharmaceuticals. An inventory will allow the pharmaceutical reverse distributor to know which pharmaceuticals they have on-site at any time. The Agency believes that in many cases, pharmaceutical reverse distributors already maintain inventories and this proposed requirement is not expected to be burdensome for the pharmaceutical reverse distributors to implement. In fact, according to responses from pharmaceutical reverse distributors to a request for information, four out of eight of them indicated that they already keep inventories as best management practices or because it is required by the Board of Pharmacy in their state.[145] However, EPA requests comment on whether this practice is already commonly followed.

iii. *Security of the pharmaceutical reverse distributor.* EPA is proposing that pharmaceutical reverse distributors must meet a performance-based security requirement which is based on the existing interim status TSDF security requirements found at § 265.14. Specifically, due to increased thefts of narcotics from pharmacies reported in recent years in major media outlets,[146] EPA is concerned that pharmaceutical reverse distributors could also face such thefts since they accumulate unused pharmaceuticals or those that have exceeded their expiration date. Further, commenters on the 2008 Pharmaceutical Universal Waste proposal suggested that pharmaceutical universal waste handlers should meet the TSDF facility security requirement. EPA agrees with the commenters that the requirements that appear in the interim status TSDF security regulations would be appropriate to adopt and apply to pharmaceutical reverse distributors to prevent the illicit use of these pharmaceuticals and safeguard human health and thus, has included this requirement for pharmaceutical reverse distributors. The security of the facility requirement of § 265.14(a) requires a facility to ''prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility.'' EPA is proposing a similar requirement for pharmaceutical reverse distributors: they must prevent unknowing entry, and minimize the possibility for the unauthorized entry into the portion of the facility where potentially creditable and evaluated hazardous waste pharmaceuticals are kept (*e.g.,* a receiving area and accumulation area).

Based on site visits, EPA recognizes that many pharmaceutical reverse distributors may already meet the proposed security standard through the use of key cards that allow only authorized personnel into specific areas of the pharmaceutical reverse distributor, camera surveillance systems, and cages for storing pharmaceuticals. Some pharmaceutical reverse distributors may use fences and signs. EPA is including several examples of acceptable security measures in the regulatory text, but pharmaceutical reverse distributors are not limited to the examples provided. Further, if a pharmaceutical reverse distributor already meets the performance-based security standard by complying with other regulations, such as DEA's regulations, then the pharmaceutical reverse distributor would not need to install additional security.

iv. *Maximum 90 days for on-site accumulation and petition for an extension of accumulation time.*

EPA is proposing that, like LQGs, pharmaceutical reverse distributors may accumulate potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals on-site for up to 90 calendar days without having interim status or a permit. However, because of the value of the potentially creditable hazardous waste pharmaceuticals, and the low risk these materials present, the Agency has decided not to propose specific container management standards.

The 90-day time limit begins when the potentially creditable hazardous waste pharmaceuticals initially arrive at the pharmaceutical reverse distributor. The 90-day time limit follows the potentially creditable pharmaceutical, even after it becomes an evaluated hazardous waste pharmaceutical. That is, there is a single 90-day accumulation limit for the hazardous waste pharmaceutical at each pharmaceutical reverse distributor. However, some potentially creditable hazardous waste pharmaceuticals travel through more than one pharmaceutical reverse distributor to receive manufacturer's credit. In such cases, each pharmaceutical reverse distributor that receives the potentially creditable hazardous waste pharmaceuticals has a new 90-day accumulation limit. EPA requests comment on the 90-day timeframe and whether this timeframe is sufficient, or whether an alternative timeframe should be allowed.

As discussed previously, EPA is proposing that a pharmaceutical reverse distributor must inventory potentially creditable hazardous waste pharmaceuticals upon arrival. Many pharmaceutical reverse distributors utilize barcoding and scanners to log potentially creditable pharmaceuticals into a database upon arrival or soon after a shipment arrives. Current inventory systems may be adapted to provide verification of the time limits. For example, if a pharmaceutical reverse distributor includes the date of arrival in the inventory, then the pharmaceutical reverse distributor will be able to use the inventory to verify that potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals are not accumulated on-site for more than 90 calendar days. EPA is not proposing a specific method that pharmaceutical reverse distributors must use to document that accumulation does not exceed 90 calendar days. We anticipate that most pharmaceutical reverse distributors would use the inventory system to verify the 90-calendar day timeframe rather than using an additional requirement of labeling containers with dates for verification, but we request comment on this issue. We also request comment on whether EPA needs to specify a method of documenting that 90 calendar days is not exceeded.

Pharmaceutical reverse distributors have informed EPA that there are times when pharmaceutical returns may need to be consolidated for longer periods because they are subject to litigation and the pharmaceutical reverse distributor is not allowed to move them. Pharmaceutical reverse distributors may also need to handle large recalls of hazardous waste pharmaceuticals and might not be able to process all of the returned items within 90 calendar days. Therefore, EPA is proposing to allow a pharmaceutical reverse distributor to request from EPA an extension of the 90-day accumulation time limit for situations when the hazardous waste pharmaceuticals are involved in litigation, a recall, or in unforeseen circumstances beyond the control of the pharmaceutical reverse distributor. A pharmaceutical reverse distributor

[145] See all the responses EPA received from pharmaceutical reverse distributors in the docket for this proposed rulemaking (EPA–HQ–RCRA–2007–0932).

[146] ''Pharmacies Besieged by Addicted Thieves'' by Abby Goodnough Published: February 6, 2011 *http://www.nytimes.com/2011/02/07/us/07pharmacies.html.*

seeking an extension must submit a written request to the EPA Regional Administrator (in writing or electronically), explaining the reason for the extension, the approximate volume or weight of the hazardous waste pharmaceuticals that will be stored for more than 90-days and the amount of additional time requested. Under the existing RCRA subtitle C regulations, the extension of time typically allowed is limited to an extra 30 days for LQGs. However, due to the complex nature of pharmaceutical litigation and recalls, EPA is proposing to allow the EPA Regional Administrator to grant a time extension at their discretion on a case-by-case basis. EPA requests comment on whether it is necessary to place a limit on the length of time for which an extension may be granted.

v. *Contingency plan and emergency procedures.* The Agency is proposing to require that pharmaceutical reverse distributors meet standards that are the same as those that appear in the federal LQG regulations for developing a contingency plan and emergency procedures at 40 CFR part 265, subpart D. EPA believes that a pharmaceutical reverse distributor should be prepared to respond to potential emergencies just like LQGs and TSDFs. Since many pharmaceutical reverse distributors are already LQGs, they should already have contingency plans to address the hazards on-site. It may be possible that the pharmaceutical reverse distributors will have to amend their contingency plans to include the potentially creditable hazardous waste pharmaceuticals, which have been considered products, not hazardous waste, but we believe that such modifications should not impose much burden.

vi. *Closure.* Due to the generally low risk of release of the hazardous waste pharmaceuticals that pharmaceutical reverse distributors will accumulate on-site, as well as the value of the hazardous waste pharmaceuticals, EPA is proposing to require a performance-based closure standard that is based on the federal LQG closure standard found at § 265.111. Specifically, when a pharmaceutical reverse distributor closes its operations related to hazardous waste pharmaceuticals, it must control or minimize post-closure releases of hazardous waste constituents into the environment. This will entail removing the containers of hazardous waste pharmaceuticals (both potentially creditable hazardous waste pharmaceuticals as well as evaluated hazardous waste pharmaceuticals) from the facility before closure.

vii. *Reporting.* In some instances, a pharmaceutical reverse distributor may receive a shipment from a healthcare facility that includes items that are not potentially creditable pharmaceuticals. These shipments can include wastes that are clearly not eligible to receive credit, such as patient care waste (*e.g.,* IV tubing), contaminated personal protective equipment (PPE), medical waste, or other inappropriate wastes. Pharmaceutical reverse distributors are not the appropriate waste management facility for medical or infectious wastes and these wastes must be managed and transported from the healthcare facility directly to an appropriate waste disposal facility. In some cases, these non-creditable wastes may be hazardous waste. These non-creditable hazardous wastes are prohibited from being transported from a healthcare facility to a pharmaceutical reverse distributor; rather they should be manifested to a designated facility, such as a permitted or interim status TSDF. Nevertheless, a healthcare facility might incorrectly ship non-creditable hazardous wastes to a pharmaceutical reverse distributor.

EPA is proposing that if a pharmaceutical reverse distributor receives a shipment from a healthcare facility that includes hazardous waste that it is not authorized to receive, such as non-creditable hazardous waste or hazardous waste that is not a pharmaceutical, the pharmaceutical reverse distributor must submit an unauthorized waste report to the EPA Regional Administrator within 15 days of receiving the hazardous waste. We have adapted the existing requirement for situations when permitted and interim status TSDFs receive unmanifested hazardous waste (§ 264.76 and § 265.76, respectively) to make it appropriate for pharmaceutical reverse distributors that receive unauthorized hazardous waste. However, we are also proposing two additional requirements for pharmaceutical reverse distributors that receive inappropriate hazardous waste. First, the pharmaceutical reverse distributor must send a copy of the unauthorized hazardous waste report to the healthcare facility that sent the unauthorized hazardous waste. This requirement is intended to alert the healthcare facility of its mistake in order to prevent further shipments of non-creditable hazardous waste or non-pharmaceutical hazardous waste. Second, the pharmaceutical reverse distributor must manage the unauthorized hazardous waste that it receives in accordance with all applicable regulations. The Agency expects that the pharmaceutical reverse distributor will likely pass these additional costs (*e.g.,* medical waste incineration) on to the healthcare facility for the management of the hazardous waste and this will act as an incentive for the healthcare facility to take measures to prevent further shipments of unauthorized hazardous waste. We request comment on whether EPA's understanding regarding this type of situation is representative.

In order to prevent exposing employees to unnecessary risk, EPA recommends as a best management practice that pharmaceutical reverse distributors avoid sorting through shipments that contain non-creditable waste since the shipment may include hazardous waste, including infectious or radioactive healthcare waste. As a result, it is possible that a pharmaceutical reverse distributor receiving a shipment that includes non-creditable waste may be unsure whether the shipment includes hazardous waste. In such cases, EPA recommends that the pharmaceutical reverse distributor assume the shipment includes hazardous waste and submit an unauthorized waste report. Further, we recommend that pharmaceutical reverse distributors work with their clients to reduce the occurrence of inappropriate shipments.

viii. *Recordkeeping.* EPA is proposing three recordkeeping requirements to provide transparency for the movement of potentially creditable hazardous waste pharmaceuticals and as a means of verification upon inspection. First, a pharmaceutical reverse distributor must keep a copy of its notification (EPA form 8700–12) to EPA to indicate that it is a pharmaceutical reverse distributor operating under 40 CFR part 266, subpart P. A pharmaceutical reverse distributor must keep the record of notification for as long as it is subject to these requirements. Second, a pharmaceutical reverse distributor must keep copies of the records associated with shipments of potentially creditable hazardous waste pharmaceuticals that it receives. This includes a copy of the advance notification from the healthcare facility or other pharmaceutical reverse distributor, a copy of delivery confirmation, shipping papers and any unauthorized waste reports. We propose that these shipping records must be kept for three years from the date the pharmaceutical reverse distributor receives the shipment. We request comment on whether additional recordkeeping is necessary to document cases when shipments of potentially creditable hazardous waste pharmaceuticals do not reach their intended destination within 7 calendar

days. Third, a pharmaceutical reverse distributor must keep a copy of its current inventory at all times as long as the pharmaceutical reverse distributor remains in operation. The inventory is a living document that will constantly be updated and must be available for inspection. Finally, we propose that periods of record retention indicated previously for a pharmaceutical reverse distributor will be automatically extended during an enforcement action, or as requested by the EPA Regional Administrator to ensure that the appropriate records are available and can be reviewed as part of any enforcement action.

Note that additional recordkeeping requirements may also pertain to pharmaceutical reverse distributors. For example, a pharmaceutical reverse distributor that manifests its non-pharmaceutical hazardous waste is subject to the manifest recordkeeping requirements of § 262.40. Further, as discussed in subsequent sections, there are additional recordkeeping requirements that apply to pharmaceutical reverse distributors for the management of potentially creditable hazardous waste pharmaceuticals destined for another pharmaceutical reverse distributor and others that apply to pharmaceutical reverse distributors for the management of evaluated hazardous waste pharmaceuticals.

ix. *Evaluating potentially creditable hazardous waste pharmaceuticals within 21 days.* Based on stakeholder input and site visits, EPA has learned that when a pharmaceutical reverse distributor receives a shipment of potentially creditable hazardous waste pharmaceuticals, the reverse distributor sorts through the shipment and often uses barcodes to scan items into its system. The pharmaceutical reverse distributor then determines which potentially creditable hazardous waste pharmaceuticals must be transported to another reverse distributor and which ones will be credited and then sent off-site for treatment and disposal. EPA is proposing that this evaluation process must be completed within 21 days of arriving at the pharmaceutical reverse distributor. Likewise, if the pharmaceutical reverse distributor is a manufacturer, EPA is proposing that the manufacturer must finish verifying the appropriate credit within 21 calendar days of receiving the shipment of potentially creditable hazardous waste pharmaceuticals.

EPA has chosen to propose 21 calendar days to ensure that the pharmaceutical reverse distributor has a long enough of time to make the evaluation, yet a short enough time to ensure that potentially creditable hazardous waste pharmaceuticals do not linger awaiting evaluation. The Agency requests comment on this timeframe and whether it should be shortened or lengthened. We also want to emphasize that the 21 calendar days for evaluating the potentially creditable hazardous pharmaceuticals counts as part of the total 90 calendar days that the hazardous waste pharmaceuticals are allowed to accumulate on-site.

Once an evaluation is made on the incoming potentially creditable hazardous waste pharmaceuticals, if they are destined for another pharmaceutical reverse distributor, they are still considered potentially creditable hazardous waste pharmaceuticals. There are additional regulations in this proposal at § 266.510(b) that pertain to these potentially creditable hazardous waste pharmaceuticals (discussed in Section V.G.3.b.). If, however, they are destined for an interim status or permitted TSDF, they are considered ''evaluated hazardous waste pharmaceuticals.'' There are additional regulations in this proposal at § 266.510(c) that pertain to these evaluated hazardous waste pharmaceuticals (discussed in Section V.G.3.c.).

b. Additional Standards for Pharmaceutical Reverse Distributors Managing Potentially Creditable Hazardous Waste Pharmaceuticals Destined for Another Pharmaceutical Reverse Distributor

This section discusses the additional standards that apply to a pharmaceutical reverse distributor for the management of potentially creditable hazardous waste pharmaceuticals that require further evaluation or verification of manufacturer's credit at another pharmaceutical reverse distributor. These hazardous waste pharmaceuticals continue to be considered potentially creditable hazardous waste pharmaceuticals. Until manufacturer's credit is finalized, the potentially creditable hazardous waste pharmaceuticals retain their value and there is greater incentive to manage them carefully in order to receive full manufacturer's credit. Therefore, EPA is proposing few regulatory standards for the management of the potentially creditable hazardous waste pharmaceuticals that are destined for another pharmaceutical reverse distributor.

i. *Where potentially creditable hazardous waste pharmaceuticals can be sent.* The proposed regulations for pharmaceutical reverse distributors are structured so that there is a limit to the number of transfers of potentially creditable hazardous waste pharmaceuticals that may occur before they are ultimately transported to a TSDF for treatment and disposal. Stakeholders expressed concern that the 2008 Pharmaceutical Universal Waste proposal would have allowed hazardous waste pharmaceuticals to be shipped repeatedly and indefinitely from one universal waste handler to another. From discussions with pharmaceutical reverse distributors and reviewing information submitted via EPA's request for information, the Agency believes a reasonable limit is three transfers of potentially creditable hazardous waste pharmaceuticals before the pharmaceutical hazardous waste is ultimately transported to a TSDF. The three possible types of transfers are: [147]

(1) a healthcare facility may send potentially creditable hazardous waste pharmaceuticals to a pharmaceutical reverse distributor, which may or may not be a manufacturer;

(2) the first pharmaceutical reverse distributor may send the potentially creditable hazardous waste to another pharmaceutical reverse distributor, which may or may not be a manufacturer

(3) the second pharmaceutical reverse distributor can only send the potentially creditable hazardous waste pharmaceuticals on to a pharmaceutical reverse distributor that is a manufacturer.

EPA anticipates that healthcare facilities that are CESQGs will send their potentially creditable hazardous waste pharmaceuticals directly to pharmaceutical reverse distributors, and that the accumulation mechanism that we are proposing will be used to send only non-creditable hazardous waste pharmaceuticals to off-site healthcare facilities (see Section V.C.15.). However, EPA requests comment on whether CESQG healthcare facilities would benefit from being able to consolidate potentially creditable hazardous waste pharmaceuticals off-site, as well. Depending on comments, EPA will consider allowing a fourth transfer (for this limited situation) when potentially creditable hazardous waste pharmaceuticals are sent from a CESQG healthcare facility to an off-site healthcare facility for accumulation, as would also be allowed by proposed § 266.504(a).

[147] A healthcare facility or pharmaceutical reverse distributor also has the option of sending its hazardous waste pharmaceuticals to a RCRA permitted or interim status TSDF.

This chain of transfers ensures that the potentially creditable hazardous waste pharmaceuticals will be accumulated for no more than 270 days in total after leaving a healthcare facility and before being transported to a RCRA-permitted or interim status TSDF for treatment and disposal (assuming no accumulation time extensions are granted). EPA requests comment as to whether the three-transfer and 90-day limits are appropriate and whether more or fewer transfers are necessary for verification of manufacturer's credit.

Put another way, if a pharmaceutical reverse distributor receives potentially creditable hazardous waste pharmaceuticals from a healthcare facility, the pharmaceutical reverse distributor must send those potentially creditable hazardous waste pharmaceuticals to another pharmaceutical reverse distributor (which may or may not be a manufacturer) or must manage them as evaluated hazardous waste pharmaceuticals under proposed § 266.510(c). However, a pharmaceutical reverse distributor that receives potentially creditable hazardous waste pharmaceuticals from another pharmaceutical reverse distributor is more limited in where it can send the potentially creditable hazardous waste pharmaceuticals. It can send potentially creditable hazardous waste pharmaceuticals to a pharmaceutical reverse distributor that is the manufacturer or else must manage them as evaluated hazardous waste pharmaceuticals under § 266.510(c).

Regardless of the destination, each pharmaceutical reverse distributor must make an evaluation of the hazardous waste pharmaceuticals within 21 calendar days and may only accumulate the hazardous waste pharmaceuticals on-site for a maximum of 90 calendar days, unless an extension is granted by the Regional Administrator before it ships them off-site to another pharmaceutical reverse distributor or a RCRA-permitted or interim status TSDF. In addition, all shipments of evaluated hazardous waste pharmaceuticals are subject to proposed § 266.508 and shipments of all potentially creditable hazardous waste pharmaceuticals are subject to proposed § 266.509.

ii. *Recordkeeping for pharmaceutical reverse distributors shipping of potentially creditable hazardous waste pharmaceuticals to another pharmaceutical reverse distributor.* Pharmaceutical reverse distributors must keep records (paper or electronic) for each shipment of potentially creditable hazardous waste pharmaceuticals that it initiates to another pharmaceutical reverse distributor (whether it is a manufacturer or not). This includes a copy of the advance notification provided to the other pharmaceutical reverse distributor, a copy of delivery confirmation, as well as shipping papers or bill of lading. We propose that these shipping records must be kept for 3 years from the date it initiates the shipment.

c. Additional Standards for Pharmaceutical Reverse Distributors Managing Evaluated Hazardous Waste Pharmaceuticals

This section discusses the additional standards that apply to a pharmaceutical reverse distributor for the management of evaluated hazardous waste pharmaceuticals (*i.e.,* a hazardous waste pharmaceutical that was a potentially creditable hazardous waste pharmaceutical but has been evaluated by a pharmaceutical reverse distributor to establish whether it is eligible for manufacturer's credit and will not be sent to another pharmaceutical reverse distributor for further evaluation or verification). Evaluated hazardous waste pharmaceuticals have been through the entire crediting process. In order to minimize the potential for their mismanagement, EPA believes it is necessary to have additional standards for the evaluated hazardous waste pharmaceuticals.

i. *Accumulation area.* As discussed previously, EPA is proposing that a pharmaceutical reverse distributor must complete its evaluation of a potentially creditable hazardous waste pharmaceuticals within 21 calendar days of arriving at the pharmaceutical reverse distributor. Once the evaluation has been completed and the pharmaceutical reverse distributor knows that it is destined for treatment and disposal at a RCRA-permitted or interim status TSDF, rather than another pharmaceutical reverse distributor, the pharmaceutical is considered an evaluated hazardous waste pharmaceutical. Under the proposal, a pharmaceutical reverse distributor must establish an on-site accumulation area where it will accumulate these evaluated hazardous waste pharmaceuticals. An on-site accumulation area is needed so that the evaluated hazardous waste pharmaceuticals are segregated and clearly distinguished from the potentially creditable hazardous waste pharmaceuticals.

ii. *Weekly inspections.* EPA is proposing that the accumulation area for evaluated hazardous waste pharmaceuticals must be inspected at least weekly to ensure containers are not leaking and that diversion of the hazardous waste pharmaceuticals is not occurring. Under the recordkeeping requirements for pharmaceutical reverse distributors, we are proposing that a pharmaceutical reverse distributor must keep a log of the weekly inspections of the on-site accumulation area and that the log must be retained for at least three years from the date of inspection. The log is necessary to validate the weekly inspections.

iii. *Personnel training.* EPA is proposing to require that pharmaceutical reverse distributors meet the same federal classroom or on-the-job personnel training requirements that LQGs must meet (§ 265.16). However, we specify in this proposal that the personnel that need to be trained are those persons who handle the evaluated hazardous waste pharmaceuticals in the on-site accumulation area. EPA believes that these personnel are the individuals handling and managing the hazardous waste pharmaceuticals and must have appropriate hazardous waste training. The Agency requests comment on whether the training standards are appropriate for the specific reverse distributor personnel.

iv. *Labeling and management of containers in on-site accumulation area.* EPA is proposing container labeling similar to what was proposed under the 2008 pharmaceutical universal waste proposed rule. While containers of hazardous waste pharmaceuticals are in the accumulation area, they must be marked with the words, ''Hazardous Waste Pharmaceuticals.'' We are proposing this term in order to distinguish them from the non-hazardous waste pharmaceuticals and from the hazardous waste pharmaceuticals that are still considered potentially creditable. We are not proposing to require an accumulation start date on the label for the containers, because the reverse distributor's inventory will likely be used to verify the accumulation start date. However, a pharmaceutical reverse distributor may choose an alternate method, such as marking the date on each container as it arrives, to ensure that the hazardous waste pharmaceuticals are not accumulated at the pharmaceutical reverse distributor for more than 90 days, provided an extension is not granted. As explained previously, EPA prefers to allow a performance-based standard that allows flexibility to verify the 90-day accumulation time rather than require dating on the container labels, but we request comment regarding this requirement and whether

it is necessary to specify a method for how a pharmaceutical reverse distributor must verify that the 90-day maximum accumulation time is not exceeded.

In terms of container management standards, the Agency is proposing requirements that are similar to the container management standards for LQGs—that is, the standards in 40 CFR part 265, but the Agency is also proposing to include some additional management requirements specific to hazardous waste pharmaceuticals. Specifically, under 40 CFR 262.34(a)(1)(i), LQGs must comply with the container management standards in 40 CFR part 265, subpart I, which includes a requirement that containers of hazardous waste must be kept closed, except when adding or removing waste. In this document, EPA is proposing to require that only containers with hazardous waste pharmaceuticals that are liquids or gels be kept closed during accumulation due to the low potential for release for those hazardous waste pharmaceuticals that are in a solid form. However, because most potentially creditable hazardous waste pharmaceuticals are in their original packaging, if the original packaging for gels or liquids is intact and sealed or the pharmaceuticals have been repackaged (*e.g.,* for unit dosing) and the repackaged packaging for gels and liquids is intact and sealed, they are considered to meet the closed container standard. EPA requests comment on whether additional forms of hazardous waste pharmaceuticals (other than liquids and gels) need to be specified in the regulations and subject to the closed container requirement.

EPA is also proposing that containers of hazardous waste pharmaceuticals must be maintained in good condition to prevent leaks and the container material must be compatible with the hazardous waste pharmaceuticals placed in the container. In addition, we are proposing to require that a pharmaceutical reverse distributor that manages ignitable or reactive evaluated hazardous waste pharmaceuticals or that mixes or comingles incompatible evaluated hazardous waste pharmaceuticals must manage the container to prevent dangerous situations, such as fire, explosion, or release of toxic fumes.

Similar to healthcare facilities that accumulate non-creditable hazardous waste pharmaceuticals, pharmaceutical reverse distributors that accumulate evaluated hazardous waste pharmaceuticals must segregate the pharmaceuticals that are prohibited from being combusted because of the dilution prohibition of § 268.3(c) and accumulate them in separate containers from other evaluated hazardous waste pharmaceuticals.

There are also several existing LQG accumulation unit management standards in § 262.34(a) that EPA believes are not necessary to include for the management of evaluated hazardous waste pharmaceuticals. For instance, this proposal only sets standards for the accumulation of evaluated hazardous waste pharmaceuticals in containers. EPA does not think it is necessary to include accumulation units such as tanks, containment buildings, or drip pads because pharmaceutical reverse distributors do not currently use these types of accumulation units. However, if EPA is mistaken in this understanding and commenters indicate they would like to be able to use tanks, containment buildings, or drip pads, EPA would consider including in this proposal the LQG standards for accumulation in these units. The Agency solicits comment on this matter.

In addition, the Agency is not proposing to require pharmaceutical reverse distributors to meet the air emission standards found in 40 CFR part 265, subpart CC as required in § 262.34(a)(1)(i) because we anticipate that they will not be applicable. Specifically, § 265.1083(c) exempts tanks, surface impoundments, and containers from the organic air emission standards if the hazardous waste entering the accumulation unit has an average volatile organic concentration of less than 500 parts per million by weight, while § 265.1080(b)(2) exempts containers with a capacity of less than 0.1 m^3 (26 gallons) from the standards. EPA understands that the only evaluated hazardous waste pharmaceuticals that have the potential for air emissions are liquids and gels, but they generally do not contain volatile organics. Thus, they do not release organic air emissions, which is what the 40 CFR part 265, subpart CC, air emission standards for tanks, surface impoundments, and containers were promulgated to control. Moreover, because hazardous waste pharmaceuticals are often in their original packaging, and we are proposing to require that liquid and gel hazardous waste pharmaceuticals must be in intact, sealed packaging or otherwise in closed containers, EPA believes that the container air emission standards are unnecessary. In addition, the Agency anticipates that the packaging and containers for hazardous waste pharmaceuticals will often have a capacity less than 0.1 m^3 (26 gallons) further limiting the applicability of the container air emission standards.

Similarly, EPA does not anticipate that the 40 CFR part 265, subpart AA—air emissions standards for process vents—and subpart BB—air emission standards for equipment leaks—are applicable to the activities of a pharmaceutical reverse distributor and its management of hazardous waste pharmaceuticals. Therefore, like 40 CFR part 265, subpart CC discussed previously, EPA is not proposing to require that 40 CFR part 265, subparts AA and BB apply to pharmaceutical reverse distributors. EPA requests comments on whether its current understanding is correct and whether the 40 CFR part 265, subparts AA, BB, and CC RCRA air emission standards should be applied to pharmaceutical reverse distributors.

v. *Hazardous waste numbers (codes).* EPA is proposing to require that the containers of evaluated hazardous waste pharmaceuticals be labeled with the appropriate RCRA hazardous waste numbers. The hazardous waste numbers may be placed on the container label at any time during on-site accumulation, but they must be added prior to when the evaluated hazardous waste pharmaceuticals are transported off-site. The hazardous waste numbers must be marked on the container label in order to ensure that it is readily visible and cannot be separated from the hazardous waste. The hazardous waste numbers are necessary so that transporters, transfer facilities, and TSDFs to know how to properly transport, consolidate, treat, store and dispose of the hazardous waste in compliance with the applicable RCRA regulations. We are not requiring that the pharmaceutical reverse distributor be the party that adds the hazardous waste numbers to the containers. The proposed regulations allow a vendor to perform this duty on behalf of the pharmaceutical reverse distributor. In practice, however, if a vendor is responsible for assigning hazardous waste numbers, personnel from the pharmaceutical reverse distributor may need to assist in the process.

vi. *Shipping evaluated hazardous waste pharmaceuticals.* Although it is already stated in § 266.508(a) under the section of the regulations that pertains to shipping standards, for clarity, we propose to repeat in § 266.510 (the pharmaceutical reverse distributor section of the regulations) the requirement that pharmaceutical reverse distributors that ship evaluated hazardous waste pharmaceuticals off-site must do so in accordance with the proposed shipping requirements in

§ 266.508(a). This includes the applicable DOT packaging, marking and labeling requirements, as well as the requirement to utilize the hazardous waste manifest when shipping the evaluated hazardous waste to a designated facility.

vii. *Rejected shipments.* The Agency is proposing to require in § 266.510(c)(7) that pharmaceutical reverse distributors meet the same procedures as LQGs must meet for rejected shipments in § 262.42(c). If a designated permitted or interim status TSDF identified on the hazardous waste manifest cannot accept a shipment of evaluated hazardous waste pharmaceuticals from a pharmaceutical reverse distributor and the TSDF returns the shipment to the pharmaceutical reverse distributor, the pharmaceutical reverse distributor must sign the applicable item on the manifest. In addition, the pharmaceutical reverse distributor may consolidate the rejected hazardous waste pharmaceuticals on-site for up to 90 days provided they are managed in the on-site accumulation area and in accordance with this proposal's pharmaceutical reverse distributor standards for evaluated hazardous waste pharmaceuticals. The reporting requirements associated with rejected shipments are discussed separately under the reporting section.

viii. *Land disposal restrictions.* EPA is proposing in § 266.510(c)(8) that pharmaceutical reverse distributors are subject to the same land disposal restrictions (LDRs) that apply to LQGs with respect to their evaluated hazardous waste pharmaceuticals. In addition, EPA is proposing to amend the testing, tracking, and recordkeeping requirements for generators, treaters and disposal facilities at § 268.7 to add the words, ''pharmaceutical reverse distributors'' to the title of that section to make the applicability of the treatment standards clear.

ix. *Reporting by a pharmaceutical reverse distributor for evaluated hazardous waste pharmaceuticals.*

(1) *Biennial report.* EPA is proposing that pharmaceutical reverse distributors submit a BR for the evaluated hazardous waste pharmaceuticals that are transported to a TSDF in order for the Agency to have as complete a picture of the amount of hazardous waste generated, treated, stored, or disposed of annually. However, the BR should only include the evaluated hazardous waste pharmaceuticals, and not the potentially creditable hazardous waste pharmaceuticals that a pharmaceutical reverse distributor sends to another pharmaceutical reverse distributor. Specifically, we are proposing in § 266.510(c)(9)(i) that a pharmaceutical reverse distributor comply with the LQG BR requirements in § 262.41, except for § 262.41(a)(7), which includes the requirement to report changes in volume and toxicity of waste achieved during the year in comparison to previous years. The reason we are not requiring the pharmaceutical reverse distributor to provide such information is that they do not have control of the volume or toxicity of the hazardous waste pharmaceuticals it receives from the healthcare facility, and thus have no ability to reduce the volume or toxicity of the hazardous waste pharmaceuticals. Thus, EPA is not requiring the pharmaceutical reverse distributor to report this information in its BR.

(2) *Exception reporting.* For the reasons that EPA requires exception reporting generally—that is, to maintain the cradle to grave tracking system, EPA is proposing in § 266.510(c)(9)(ii)(A) that pharmaceutical reverse distributors provide an exception report when a TSDF does not return the hazardous waste manifest to the pharmaceutical reverse distributor for shipments of hazardous waste pharmaceuticals to a designated facility. Likewise, we are proposing in § 266.510(c)(9)(ii)(B) that pharmaceutical reverse distributors meet LQG exception reporting when a shipment from a pharmaceutical reverse distributor is rejected by the designated facility and forwarded onto an alternate facility.

x. *Recordkeeping by a pharmaceutical reverse distributor for evaluated hazardous waste pharmaceuticals.* Many of the proposed recordkeeping requirements that pertain to evaluated hazardous waste pharmaceuticals have been discussed in the sections previously, but for clarity, it is useful to restate them in this recordkeeping section, so that pharmaceutical reverse distributors can refer to one section to determine their recordkeeping requirements related to evaluated hazardous waste pharmaceuticals. In particular, we are proposing five recordkeeping requirements that pertain to evaluated hazardous waste pharmaceuticals at pharmaceutical reverse distributors. First, EPA is proposing that a pharmaceutical reverse distributor keeps a log (written or electronic) of its weekly inspections of the on-site accumulation area. The other four recordkeeping requirements that we are proposing in § 266.510(c)(10) for pharmaceutical reverse distributors are the same as the LQG recordkeeping requirements that appear in §§ 262.40–42 and § 265.16; these include hazardous waste manifest records, records of biennial reports, exception reporting and training documentation. EPA believes that these recordkeeping requirements are appropriate for pharmaceutical reverse distributors, many of whom are currently LQGs, but requests comment on this requirement.

EPA asks commenters to review the standards EPA is proposing for pharmaceutical reverse distributors and provide specific comment on whether the standards are appropriate and sufficient to protect human health and the environment.

d. When a Pharmaceutical Reverse Distributor Must Have a RCRA Hazardous Waste Permit

EPA is proposing to not require that a pharmaceutical reverse distributor have a RCRA permit or interim status for accumulating potentially creditable and evaluated hazardous waste pharmaceuticals, provided that the pharmaceutical reverse distributor follows all the conditions of the permitting exemption in § 266.510. In other words, a pharmaceutical reverse distributor would be subject to regulation as a TSDF and require a RCRA permit (or interim status) if it does not meet the conditions of § 266.510. In addition, a pharmaceutical reverse distributor must have a RCRA permit (or interim status) if it treats or disposes of hazardous waste on-site or if it accepts manifested hazardous waste from off-site. A pharmaceutical reverse distributor is required to reject shipments of manifested hazardous waste that it may inadvertently receive from off-site because a pharmaceutical reverse distributor is not a designated facility and therefore is not eligible to receive hazardous waste via a manifest. EPA believes that this approach to regulation of pharmaceutical reverse distributors that accumulate hazardous waste pharmaceuticals strikes an appropriate balance because it recognizes that pharmaceutical reverse distributors are different from typical hazardous waste TSDFs for permitting purposes, while it still imposes certain conditions for exemption from permitting requirements that provide the necessary environmental protection.

VI. Implementation and Enforcement

A. Healthcare Facilities

1. Determining Whether a Healthcare Facility is Subject to Part 266, Subpart P

EPA is proposing that healthcare facilities that are currently considered LQGs or SQGs are subject to the new 40 CFR part 266, subpart P requirements for the management of hazardous waste pharmaceuticals. Thus, a healthcare facility that generates (or accumulates)

more than 100 kg hazardous waste per calendar month, or more than 1 kg of acute hazardous waste per calendar month, or more than 100 kg of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in §§ 261.31, or 261.33(e), must manage its hazardous waste pharmaceuticals in compliance with the 40 CFR part 266, subpart P requirements. In addition, healthcare facilities that are CESQGs are subject to the prohibition on sewering hazardous waste pharmaceuticals in § 266.5052.

To determine whether a healthcare facility is a subject to 40 CFR part 266, subpart P, or a CESQG regulated under § 261.5, a healthcare facility must count all the hazardous waste—pharmaceutical and non-pharmaceutical—it generates in a calendar month. In counting the amount of hazardous waste generated per calendar month, we note that EPA is proposing to change which pharmaceuticals will be considered hazardous wastes (*i.e.,* potentially creditable hazardous waste pharmaceuticals). Specifically, EPA is proposing that potentially creditable hazardous waste pharmaceuticals transported to a pharmaceutical reverse distributor will be considered solid waste from the point of generation at the healthcare facility and therefore must be counted when determining whether the healthcare facility is a CESQG regulated under § 261.5, or whether it is regulated under 40 CFR part 266, subpart P. This differs from current practice where, although a healthcare facility must count the non-creditable hazardous waste pharmaceuticals it generates each calendar month toward its hazardous waste generator category, it does not count the potentially creditable hazardous waste pharmaceuticals it sends to a pharmaceutical reverse distributor. Therefore, although a healthcare facility *currently* may be considered a CESQG, when it begins counting its potentially creditable hazardous waste pharmaceuticals, it may no longer be a CESQG. In that case, the healthcare facility would be subject to the 40 CFR part 266, subpart P requirements.

2. Healthcare Facilities Managing Hazardous Waste Pharmaceuticals Under Part 266, Subpart P

EPA is proposing that all healthcare facilities, with the exception of CESQGs, will be subject to the same regulations for the management of their hazardous waste pharmaceuticals, regardless of the quantity of hazardous waste pharmaceuticals generated. A healthcare facility that generates both pharmaceutical and non-pharmaceutical hazardous waste must manage the non-pharmaceutical hazardous waste pursuant to part 262, but need not count its hazardous waste pharmaceuticals toward the facility's monthly hazardous waste generator category. In addition, if a healthcare facility does not want to keep track of the amount of hazardous waste it generates to ensure it does not exceed the CESQG quantity limits, it could choose to operate under this proposed rule. If it chooses to operate under this proposed rule, however, a healthcare facility must comply with all the requirements of this subpart for the management of its hazardous waste pharmaceuticals.

B. Pharmaceutical Reverse Distributors

1. Pharmaceuticals Sent to Pharmaceutical Reverse Distributors Are Solid Wastes

One difference between this proposal and the 2008 Pharmaceutical Universal Waste proposal is how RCRA would apply to pharmaceuticals returned to pharmaceutical reverse distributors to obtain manufacturer's credit. EPA is proposing to change its existing position on this issue. If this rule is finalized, this change would mean that the decision by a healthcare facility to send a pharmaceutical to a pharmaceutical reverse distributor is the decision to discard the pharmaceutical. Therefore, under this proposed rule, once the healthcare facility makes the decision to send a pharmaceutical to a pharmaceutical reverse distributor for credit, it is a solid waste at the healthcare facility. It is likely that a portion of the potentially creditable solid waste pharmaceuticals at healthcare facilities that are destined for a pharmaceutical reverse distributor will also meet the definition of hazardous waste and as a result, these potentially creditable hazardous waste pharmaceuticals would need to be managed in accordance with the standards proposed in this document. However, until this rule is final and effective, EPA's current position will remain in effect.

In addition, the Agency notes that the proposed change in EPA's position concerning reverse distribution and the management standards discussed in this document pertain only to the reverse distribution of hazardous waste pharmaceuticals and does not apply to reverse distribution or reverse logistics systems that may exist for other consumer products. This limitation is because EPA has studied and collected data for reverse distribution systems for hazardous waste pharmaceuticals, and not all consumer products.[148]

2. Pharmaceutical Reverse Distributors Managing Hazardous Waste Pharmaceuticals Under Part 266, Subpart P

Under this proposal, all pharmaceutical reverse distributors are subject to 40 CFR part 266, subpart P and will be subject to the same standards with respect to their hazardous waste pharmaceuticals, regardless of the amount of hazardous waste pharmaceuticals they manage. Even pharmaceutical reverse distributors that are currently CESQGs will be regulated under 40 CFR part 266, subpart P for the management of their hazardous waste pharmaceuticals. Therefore, as with healthcare facilities, a pharmaceutical reverse distributor subject to 40 CFR part 266, subpart P will no longer have to keep track of the amount of hazardous waste pharmaceuticals that it generates on a monthly basis.

C. Healthcare Facilities and Pharmaceutical Reverse Distributors Managing Non-Pharmaceutical Hazardous Waste in Accordance With 40 CFR Part 262 or Part 273

Most, if not all, healthcare facilities and pharmaceutical reverse distributors generate hazardous wastes other than pharmaceuticals. These, non-pharmaceutical hazardous wastes will continue to be regulated under 40 CFR part 262 (and other applicable Subtitle C regulations). However, because a healthcare facility or pharmaceutical reverse distributor operating under 40 CFR part 266, subpart P no longer has to count its hazardous waste pharmaceuticals, including acute hazardous waste pharmaceuticals such as warfarin, it could result in a change in the facility's overall generator category and thus change how its non-pharmaceutical hazardous waste must be managed. For example, the generator category for a healthcare facility or pharmaceutical reverse distributor may be reduced from an LQG to an SQG or even a CESQG, when it stops counting its hazardous waste pharmaceuticals, especially acute hazardous waste pharmaceuticals, toward its generator category.

If finalized, the standards established by this rulemaking apply only to the management of hazardous waste

[148] EPA is examining the reverse logistics of non-pharmaceutical hazardous wastes as part of its analysis of comments received on the Retail Notice of Data Availability that was published on February 14, 2014 (79 FR 8926).

pharmaceuticals at healthcare facilities and pharmaceutical reverse distributors. Healthcare facilities and pharmaceutical reverse distributors likely generate or manage other types of wastes. For example, hospitals may generate non-pharmaceutical hazardous wastes, such as solvents in their diagnostic laboratories; those hazardous wastes must still be managed in accordance with the RCRA Subtitle C requirements (such as the RCRA satellite accumulation regulations (§ 262.34(c)), or if it is a teaching hospital, the Academic Laboratories Rule (if it has opted into part 262, subpart K). Retail pharmacies in retail stores and grocery stores may have non-pharmaceutical hazardous wastes on-site as well, which must be managed in accordance with the 40 CFR part 262 requirements and all other applicable RCRA Subtitle C regulations. For example, fluorescent bulbs may be managed under the universal waste program (40 CFR part 273). For pharmaceutical reverse distributors, this proposed rule only applies to the management of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals. Some pharmaceutical reverse distributors may generate other non-pharmaceutical hazardous wastes from activities, such as cleaning and maintenance; other RCRA requirements will apply to those non-pharmaceutical hazardous wastes.

D. State Enforcement Activities and Interpretations

States have taken a variety of approaches regarding pharmaceutical hazardous wastes. One major goal of this proposed rule is to provide clarity on this topic, and thereby promote national consistency, which, in turn, should promote better compliance among healthcare facilities, including pharmacies.

California has taken numerous enforcement actions against national retail chains with pharmacies for not complying with the RCRA hazardous waste regulations. In recent years, the state took enforcement actions and imposed fines on the following chains: Kmart (2009), Walmart (2010), Target (2011), CVS (2012), Costco (2012), Walgreens (2012) and Rite-Aid (2013). In at least two settlement agreements, California directed the defendants (CVS and Costco) to ''initiate work with appropriate stakeholders from business and government, including the U.S. Environmental Protection Agency, the U.S. Food and Drug Administration, and the DTSC [Department of Toxic Substances Control], and thereafter either directly or through trade associations or informal coalitions of interested parties, undertake to promote federal regulatory reform regarding the proper management of nondispensable pharmaceuticals, including over-the-counter medications, through ''reverse distribution.'' [149] Through these settlement agreements, California is seeking clarity from EPA about its longstanding interpretation about the regulatory status of pharmaceuticals that are routed through pharmaceutical reverse distribution systems.

In 2012, Connecticut's Department of Energy and Environmental Protection (DEEP) took enforcement actions at seven CVS stores for violations of the RCRA hazardous waste regulations. Consent orders from Connecticut DEEP direct CVS stores in the state to follow a set of best management practices.[150] A number of the practices developed in these consent orders mirror some of the practices we are proposing in this rule, particularly with regard to pharmaceuticals destined for a pharmaceutical reverse distributor. Connecticut DEEP asserts RCRA jurisdiction over the pharmaceuticals destined for pharmaceutical reverse distributors by applying specific practices to their management. For example, CVS must maintain records of each shipment of non-dispensable pharmaceuticals to a pharmaceutical reverse distributor, including confirmation of receipt of the non-dispensable pharmaceuticals from the pharmaceutical reverse distributor receiving them. The best practices also include procedures for addressing situations when CVS does not receive delivery confirmation of shipment to a pharmaceutical reverse distributor. Further, the consent order sets out separate, more comprehensive practices for the non-dispensable pharmaceuticals that are not suitable for pharmaceutical reverse distribution.

Aside from best management practices developed by Connecticut as part of a consent order, at least two other states have developed guidance documents that apply conditions to the management of hazardous wastes pharmaceuticals in exchange for enforcement discretion. In particular, in 2008, the Washington State Department of Ecology issued guidance titled, Interim Enforcement Policy: Pharmaceutical Waste in Healthcare.[151] Like Connecticut's consent orders with CVS, this enforcement discretion policy has some elements in common with this proposed rule for hazardous waste pharmaceuticals. For instance, a healthcare facility must notify the Department of Ecology that it is operating under the policy and must train its staff involved in pharmaceutical waste management. Only a time limit, rather than a quantity limit, applies to the accumulation of the hazardous waste pharmaceuticals on-site. Of particular note is that Washington State prohibits disposing of most hazardous waste pharmaceuticals down the toilet or drain.

In 2011, Minnesota's Pollution Control Agency (MPCA) issued a fact sheet titled Reverse Distribution of Pharmaceuticals: Guidance for Minnesota Healthcare Providers.[152] In this guidance, Minnesota states, ''Whether a pharmaceutical is eligible for return credit does not affect its *product* or *waste* status. In Minnesota, if a pharmaceutical is not used or reused for its intended purpose, it is a *waste*. The MPCA considers health care practitioners and pharmacies to be *generators* of these pharmaceutical wastes. Nevertheless, the MPCA believes that the established reverse distribution system provides an environmentally protective method for handling waste pharmaceuticals. Therefore, it will allow Minnesota health care practitioners and pharmacies to manage certain pharmaceuticals through reverse distribution, subject to additional requirements discussed in this fact sheet.'' This is similar to the approach that EPA is proposing for potentially creditable hazardous waste pharmaceuticals. For example, like EPA's proposed rule, MPCA does not require hazardous waste pharmaceuticals destined for a pharmaceutical reverse distributor to be counted toward determining a healthcare facility's generator category, and MPCA does not require hazardous waste pharmaceuticals to be accompanied by a hazardous waste manifest when shipped to a pharmaceutical reverse distributor. By adopting a rule that is consistent with state approaches, EPA is bringing national consistency to the management

[149] *http://www.calepa.ca.gov/enforcement/orders/2012/CVSStipFinal.pdf* and *http://www.calepa.ca.gov/enforcement/orders/2012/CostcoFinal.pdf* or see the docket for this rulemaking EPA–HQ–RCRA–2007–0932.

[150] *http://www.ct.gov/deep/lib/deep/enforcement/consentorder/COWSWDH13005.pdf.* or see the docket for this rulemaking EPA–HQ–RCRA–2007–0932.

[151] See the interim enforcement policy in the docket for this rulemaking (EPA–HQ–RCRA–2007–0932) or see it online at *https://fortress.wa.gov/ecy/publications/documents/0704024.pdf.*

[152] See the guidance document in the docket for this rulemaking (EPA–HQ–RCRA–2007–0932) or see it online at *http://www.pca.state.mn.us/index.php/view-document.html?gid=4004.*

of hazardous waste pharmaceuticals, while avoiding disruption to practices already in place.

VII. Request for Comment on EPA's Efforts To Identify Additional Pharmaceutical Hazardous Wastes

Some of the comments EPA received in response to the 2008 Universal Waste proposal recommended that EPA add additional pharmaceutical wastes to the P and U hazardous waste lists (see § 261.33). Some commenters suggested that EPA assess the hazards from all discarded pharmaceuticals (especially chemotherapy drugs) that have come into the market since the promulgation of the original P and U hazardous waste lists [153] and that EPA update these lists to include discarded pharmaceuticals that are hazardous. In response to these comments, the Agency began gathering and reviewing information related to pharmaceuticals that may exhibit hazardous properties. EPA identified 204 drugs, which include 172 drugs that the National Institute for Occupational Safety and Health (NIOSH) and the Occupational Safety and Health Administration (OSHA) identified as hazardous, and 32 drugs that NIOSH proposed for addition to its hazardous drug list.[154] EPA also collected toxicity data and other information for these 204 drugs. These findings, along with additional information regarding the management of pharmaceutical wastes, are presented in the final report entitled *Data Collection on the Toxicity, Use, and Disposal of Hazardous Drugs Report* (September 2011) placed in the docket for this proposed rulemaking (EPA–HQ–RCRA–2007–0932).

Commenters specifically referred to EPA's P and U hazardous waste lists under the RCRA subtitle C regulations. Generally, in its hazardous waste determinations, EPA has evaluated both ''production wastes'' (from specific or non-specific sources; see §§ 261.31 and 261.32) and ''commercial chemical products'' that, when discarded, become wastes (§ 261.33). This latter category (commercial chemical products that are discarded) is the most relevant of the listed hazardous wastes to the pharmaceuticals wastes discussed elsewhere in this preamble, and to which commenters referred in the 2008 Universal Waste proposal. As discussed in Section IV.A.of this preamble, commercial chemical products listed in § 261.33 are (when discarded) defined as either P-listed ''acute'' hazardous wastes, or U-listed (non-acute) hazardous wastes. The criteria for listing a solid waste as hazardous under RCRA Subtitle C are described in § 261.11. A waste may be identified as a P-listed waste if it is shown to be fatal to humans or animals at low doses (see § 261.11(a)(2)). Thus, lethality data for any chemical is the principal factor for making a determination that a discarded commercial chemical product is a P-listed hazardous waste.[155]

In contrast, a waste may be identified as a U-listed waste if it contains any of the toxic constituents listed in Appendix VIII of 40 CFR part 261, and if, after examining each of 10 factors in § 261.11(a)(3), it is determined that the waste is capable of posing a ''substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.'' [156] Examples of these 10 factors include the toxicity and concentration of the hazardous constituent in the waste, the plausible types of improper management to which the waste could be subjected, the quantities of the waste generated at individual generation sites or on a regional or national basis, the nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes, and action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent. EPA may only revise either of these lists of commercial chemical products through notice-and-comment rulemaking.

In its September 2011 report, EPA found that 11 drugs on the NIOSH or OSHA lists of hazardous drugs meet the specific criteria for acute toxicity in § 261.11(a)(2) (identified as ''Tier 1'' drugs in the report). An additional 114 drugs on the NIOSH or OSHA lists did *not* meet the specific criteria in § 261.11(a)(2) for acute toxicity, but did have lethal doses for other animals or humans (''Tier 2'' drugs). The remaining 79 drugs had limited human or animal toxicity data, and no lethality data, and were designated ''Tier 3'' in the report. Thus, the vast majority of the NIOSH/OSHA hazardous drugs evaluated in the EPA 2011 report do not meet the criteria for listing as acute hazardous waste under RCRA subtitle C.[157] As discussed previously, to include a drug on the U-list, the Agency must demonstrate that a discarded drug would be ''capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.'' Therefore, for the NIOSH/OSHA drugs that do not meet the listing criteria for inclusion on the P-list, the Agency would have to examine the 10 factors in § 261.11(a)(3) to determine whether a drug meets the criteria to be included on the U-list. In addition to toxicity data (which is lacking in particular for the drugs identified as Tier 3), the types of information that would be relevant include waste volumes, plausible management scenarios, exposure potential, damage cases, and actions taken by other governmental agencies or regulatory programs. To obtain this information for this class of materials poses a challenge. While EPA has some information—the September 2011 report includes summaries of drug management practices and references to others—there remain significant gaps.

In addition, as discussed in Section IV.D. of this preamble, the EPA's OIG has recommended that EPA identify and review existing pharmaceuticals to determine whether they qualify for regulation as hazardous waste, and establish a process to review new pharmaceuticals to determine whether they qualify for regulation as hazardous waste. While EPA has an existing process generally for defining whether or not a solid waste is a listed hazardous

[153] May 19, 1980 **Federal Register** (45 FR 33084) and November 25, 1980 **Federal Register** (45 FR 78525).

[154] See NIOSH's Preventing Occupational Exposures to Antineoplastic and Other Hazardous Drugs in Healthcare Settings (*http://www.cdc.gov/niosh/docs/2004-165/*) and OSHA Technical Manual Section VI: Chapter 2—Controlling Occupational Exposure to Hazardous Drugs (*https://www.osha.gov/dts/osta/otm/otm_vi/otm_vi_2.html*). Note that the ''hazardous'' classification used by NIOSH and OSHA is not the same as the definition of hazardous under the RCRA subtitle C regulations.

[155] § 261.11(a)(2) states ''The Administrator shall list a solid waste as a hazardous waste only upon determining that the solid waste . . . has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. (Waste listed in accordance with these criteria will be designated Acute Hazardous Waste.)''

[156] The Agency cannot list hazardous wastes under section § 261.11(a)(3) based on inherent toxicity alone without considering exposure factors, particularly the likelihood of mismanagement. That is, EPA needs to examine each of the 10 factors and, to the extent it does not use one or more of them, must explain why they are irrelevant or unimportant. See *Dithiocarbamate Task Force* v. *EPA* (No. 95–1249).

[157] EPA emphasizes that this finding reflects the manner in which EPA defines acute hazardous waste under the RCRA subtitle C program; the NIOSH/OSHA lists are based upon different criteria related to preventing occupational exposure to these drugs.

waste (*i.e.,* EPA has regulatory criteria for defining listed hazardous waste described previously; EPA has established policies for evaluating risk and other factors in making listing determinations; [158] and EPA must use the notice-and-comment rulemaking process when proposing listing determinations), the OIG observed that EPA's hazardous waste program has not kept pace with the large number of pharmaceuticals that have been developed since 1980. EPA plans to regularly review the NIOSH/OSHA lists of hazardous drugs, as they represent a source of valuable information on pharmaceuticals that have already been identified as having the possibility of posing risks that might warrant regulation as hazardous waste.

EPA is also exploring ways to identify new sources of information, along with alternative approaches that can most efficiently address these concerns. EPA is using the opportunity in this preamble to seek stakeholders' input on the best course of action concerning regulation of additional pharmaceuticals as hazardous wastes. It is also an opportunity for stakeholders to provide additional information that they may have about potentially hazardous pharmaceuticals. Thus, before deciding on a possible proposal to list additional pharmaceuticals as hazardous wastes, we request comment on the September 2011 final report, and solicit information regarding additional potentially hazardous pharmaceuticals. We request information on the sources and identity of additional potentially hazardous pharmaceuticals along with annual product generation data, annual waste generation data, use information, toxicity data, waste storage and handling information, and disposal information.

In addition, we request stakeholder input for alternative approaches to making hazardous waste listing determinations for pharmaceuticals that do not meet the acute hazardous criteria. Based on the existing listing determination process described previously for non-acute wastes, there is no single toxicity effect (*e.g.,* LD_{50}) to readily determine whether or not the waste is hazardous under RCRA subtitle C. As such, we are seeking ideas on alternative approaches to more efficiently evaluate potentially hazardous non-acute discarded pharmaceuticals. For example, should EPA develop and promulgate new criteria specific to discarded pharmaceuticals that would allow it to establish a single hazardous waste listing for all discarded pharmaceuticals that meet the new criteria? Such approaches could also include consideration of whether discarded pharmaceuticals are already managed under a regulatory scheme that prevents mismanagement that a hazardous waste designation would otherwise address (similar to the hazardous waste listing factor that takes into account ''actions taken by other governmental agencies or regulatory programs''). We also are seeking information on any innovative processes or programs that states may have for identifying, reviewing, and making a hazardous waste determination for discarded pharmaceuticals.

The Agency emphasizes that no regulatory action is being proposed with respect to expanding the number of pharmaceuticals that are considered hazardous waste. We will use the comments we receive to help inform how to proceed with evaluating discarded pharmaceuticals as listed or characteristic hazardous wastes. Any action taken would be part of a separate, proposed rulemaking in the future.

VIII. Request for Comment on EPA's Efforts To Amend the Acute Hazardous Waste Listing for Nicotine and Salts (Hazardous Waste No. P075)

A. Background

In 1980, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA promulgated the list of commercial chemical products or manufacturing chemical intermediates (40 CFR 261.33) that are hazardous wastes if they are discarded or intended to be discarded, which included nicotine and salts (45 FR 33124; May 19, 1980). The phrase ''commercial chemical product or manufacturing chemical intermediate'' refers to a ''chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient'' (see the *Comment* following 40 CFR 261.33(d)). A chemical substance is listed in 40 CFR 261.33(e) as an acutely hazardous waste if it meets any of the criteria in 40 CFR 261.11(a)(2), which states that the waste ''has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness.''

B. Basis for Original Listing

EPA listed nicotine and salts (referred to commonly as just nicotine) as acutely hazardous waste (P075) in § 261.33(e) based on an estimated oral LD50 toxicity to humans of 1 mg/kg and a dermal LD50 toxicity to rabbits of 50 mg/kg.[159] As discussed previously, for humans, the standard in the regulations for acute toxicity is ''fatal to humans in low doses'' (see § 261.11(a)(2)). EPA's Background Document for Section 261.33 from 1981 provides a basis for what is meant by ''fatal to humans in low doses'' for chemicals that have been given through the oral route (''fatal to humans upon ingestion of ≤100 mg/kg''). The estimated oral LD50 to humans of 1 mg/kg falls within the criteria for ''fatal to humans in low doses.'' However, the background listing document and its references do not provide sufficient detail to determine the concentration of nicotine that was used to establish the estimated oral LD50 in humans.

C. Rationale for EPA's Efforts To Amend the P075 Listing

On February 14, 2014, EPA published a Notice of Data Availability (NODA) and Request for Comment (79 FR 8926) entitled ''Hazardous Waste Management and the Retail Sector: Providing and Seeking Information on Practices to Enhance Effectiveness to the RCRA Program.'' EPA received 44 comments in response to this NODA, many of which included comments related to pharmaceuticals, in particular comments concerning expired or returned low-concentration nicotine-containing smoking cessation products and e-cigarettes. The most detailed comments concerning the unsold low-concentration nicotine products were jointly submitted by the Retail Industry Leaders Association (RILA), the Food Marketing Institute (FMI), the National Association of Chain Drug Stores (NACDS), the National Retail Federation, and their members (referred to as the retail associations, retailers, or

[158] EPA's policy statement on hazardous waste listing determinations is contained in the **Federal Register** preamble to the first proposed Dyes and Pigments Listing Determination (59 FR 66072, December 22, 1994).

[159] See EPA's listing Background Document for Section 261.33, April 1981, in the docket for this proposed rule (EPA–HQ–RCRA–2007–0932).

commenters).[160] In their comments, the retail associations, representing a broad range of retailers within the retail industry, asked EPA to undertake a rulemaking to remove low-concentration nicotine products from the acute hazardous waste P075 classification under RCRA. The retailers believe these products do not meet RCRA's requirements for acute hazardous waste. Thus, according to the retailers, the acute hazardous classification is inappropriately making them subject to RCRA's LQG requirements, which become applicable when someone generates more than 1 kg/month of acute hazardous waste. The retailers also expressed concern that they are subject to increased economic burdens and reporting requirements because they are subject to RCRA's LQG requirements.

The commenters, to support their request to EPA, state that EPA's listing for nicotine and salts warrants a reevaluation, because in more recent literature concerning nicotine toxicity, doubts have been expressed about the estimated oral LD50 toxicity to humans of 1 mg/kg, used as a key basis for the listing. According to information provided by commenters, the estimated oral LD50 toxicity to humans of 1 mg/kg was based on extrapolations from toxicological effects observed as result of ''self-experiments'' performed with nonfatal doses of nicotine. However, according to the commenters, there are doubts about the 1 mg/kg estimate because people have survived after ingesting much larger amounts of nicotine.

The commenters also state that in 1980, when EPA listed nicotine and salts as acute hazardous wastes, the nicotine products in the market contained a high concentration of the chemical (*e.g.,* pesticides which contained 40 percent nicotine sulfate), but that these products are no longer on the market. The commenters stressed that the current nicotine products on the market are low-concentration nicotine products that do not meet the regulatory criteria for acutely hazardous wastes. The low-concentration nicotine-containing products that are currently on the market were identified by commenters as nicotine replacement therapy products (*e.g.,* gums, lozenges, patches, inhalers, and nasal sprays) and e-cigarettes. These products, according to the commenters, generally contain less than 3 percent nicotine.

While it may be reasonable for the commenters to conclude that toxicity is higher at higher concentrations of a chemical and lower at lower concentrations of a chemical, EPA currently lacks sufficient information to conclude that low-concentration nicotine-containing products are not acutely toxic as defined under 40 CFR 261.11(a)(2). In addition, except for warfarin and zinc phosphide, the listings for commercial chemical products under 40 CFR 261.33(e) are not concentration-based listings. The warfarin and zinc phosphide listings were changed to concentration-based listings because companies using products containing lower concentration formulations of warfarin and zinc phosphide petitioned EPA to amend the listings and provided LD50 data for animals for the lower concentration products to support their petition (see 49 FR 19922; May 10, 1984). The Agency does not think that linear extrapolations from toxicity levels determined using higher-concentration nicotine products can be used to characterize the acute toxicity of low-concentration nicotine-containing products. Furthermore, although nicotine pesticides are no longer available, high concentration nicotine products still exist. For example, manufacturers of nicotine-containing products, such as e-cigarettes, buy concentrated nicotine solutions and dilute them for consumer use.

In summary, nicotine and salts are P075 listed acute hazardous wastes if the waste arises from the discard of an unused commercial chemical product, manufacturing chemical intermediate, or off-specification material. Additionally, the P075 waste code applies only if the nicotine is present in pure or technical grade form, or is the sole active ingredient in the chemical formulation when discarded. As such, unused (unsold, expired, or returned) nicotine-containing products, including patches, gums, lozenges,[161] inhalers, nasal sprays and e-cigarettes,[162] are classified as P075 listed acute hazardous wastes when discarded. When discarded, these unsold products are causing many retailers to notify and operate as LQGs, which has resulted in increased economic burdens and reporting requirements for retailers. EPA is aware that this is an issue of great concern to the retail associations and their members and would like to address the issue, if possible, by amending the P075 listing to conditionally exempt certain low-concentration nicotine-containing products. The Agency is considering two possible approaches, described below, for amending the P075 listing.

D. Two Possible Approaches for Amending the P075 Listing

1. Exemption from P075 Listing for FDA-Approved Over-the-Counter Nicotine-Containing Smoking Cessation Products

The over-the-counter (OTC) nicotine-containing smoking cessation products, referred to also as nicotine replacement therapy (NRT) products (*i.e.,* nicotine patches, gums, and lozenges) are approved by the Food and Drug Administration (FDA), which ensures that the risk to the public using these products have been evaluated. EPA is currently trying to obtain the risk evaluation data for these products from FDA, which may provide data on the exact concentration of nicotine in the NRT products and any animal and/or human toxicity data associated with use of these products. The Agency is also trying to gather any publicly available animal and/or human toxicity data for these products, in particular toxicity data that could be compared to EPA's acute toxicity criteria under § 261.11(a)(2). If the Agency is successful in obtaining the toxicity data to support the conclusion that FDA-approved over-the-counter nicotine-containing smoking cessation products do not meet the criteria for listing as an acutely hazardous waste, then the Agency will propose to exempt these products from the P075 listing.

Since e-cigarettes have not been approved by the FDA as smoking cessation products, we do not anticipate being able to obtain animal or human toxicity data from the FDA on nicotine concentrations in e-cigarettes. To complicate matters, the concentration of nicotine in e-cigarettes is not limited by any regulation or approval process and is therefore unpredictable. As a result, this option would likely be limited to excluding FDA-approved over-the-counter nicotine-containing smoking cessation products from the P075 listing and would not include e-cigarettes.

2. Concentration-Based Exemption From P075 Listing for Low-Concentration Nicotine-Containing Products

The comments from the retail associations have stressed that the low

[160] See comments by the retail associations in response to EPA's Retail NODA in the docket for the Retail NODA (EPA–HQ–RCRA–2012–0426–0019).

[161] See memo from Dellinger to Smith, dated August 23, 2010, RCRA Online # 14817 regarding unused patches, gums and lozenges *http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/209444BADDA4ECDC852577ED00624E8F/$file/14817.pdf.*

[162] See memo from Johnson to DeWitt, May 8, 2015, regarding e-cigarettes, RCRA Online # 17850.

concentration nicotine products currently in the market (generally containing less than 3 percent nicotine) should not be classified as acutely hazardous wastes under RCRA. However, they did not submit any human toxicological data or animal LD50 data for these products to demonstrate that these products are not acutely toxic as defined under § 261.11(a)(2). Without these data, it is difficult for the Agency to justify exempting these products from the P075 listing. Furthermore, in order for the Agency to consider a concentration-based exemption for low-concentration nicotine-containing products from the P075 listing, the Agency needs human toxicological data and animal LD50 data for nicotine-containing products at maximum concentrations of nicotine in these products (*e.g.,* 3 percent nicotine). If the toxicological data for nicotine-containing products at maximum concentrations of nicotine in these products show that these products are not acutely toxic as defined under § 261.11(a)(2), then the Agency could propose a concentration-based exemption for these products (including e-cigarettes) from the P075 listing. However, depending on the toxicity data, the Agency may also propose to list the P075 exempt nicotine-containing products as non-acute hazardous wastes (U-listed wastes) under 40 CFR 261.33(f). In that case, the concentration-based exemption for nicotine-containing products from the P075 listing would be similar to what the Agency proposed for warfarin and zinc phosphide listings (see 48 FR 7714; February 23, 1983).

E. Request for Comments

EPA invites comments on all possible approaches to amend the acute hazardous waste listing for nicotine and salts, including the two approaches discussed above in Section VIII.D. We also request toxicity information for low-concentration nicotine-containing products that could help determine whether or not these products meet the criteria for acute hazardous wastes under § 261.11(a)(2). The Agency emphasizes that no regulatory language is currently being proposed with respect to amending the P075 listing to exempt the low-concentration nicotine-containing products. However, depending on the information received during the comment period, EPA could finalize one of the approaches discussed previously without a separate proposed rulemaking in the future.

In addition, we request comments on whether we should exempt other low-concentration nicotine-containing smoking cessation products, such as inhalers and nasal sprays, from the P075 listing under approach 1, described in the Section VIII.D, above. These products are also FDA-approved, but require a prescription to purchase. The nicotine-containing patches, gums, and lozenges are sold over-the-counter, so they do not require a prescription for purchase. We are interested in finding out what the differences are between nicotine-containing smoking cessation products requiring a prescription and those products that do not require a prescription (*e.g.,* in concentrations of nicotine, amount of nicotine delivered over time, health effects).

Finally, we request comment on whether we should include e-cigarettes and nicotine-containing e-liquids for the e-cigarettes within the scope of the definition of pharmaceutical. As described in this proposal, pharmaceutical hazardous wastes do not count toward generator category. Therefore, since e-cigarettes and nicotine-containing e-cigarette refill liquids (sometimes referred to as e-liquids or e-juice) are P075, if they are considered pharmaceuticals, they would not impact the hazardous waste generator category of the retailers. The retailers, however, would have to manage e-cigarettes and nicotine-containing liquids as hazardous waste pharmaceuticals under part 266, subpart P. We will use the comments we receive to help us decide whether and how to proceed with amending the scope of the definition of pharmaceutical to include e-cigarettes and nicotine-containing e-liquids.

IX. State Authorization

A. Applicability of Rules in Authorized States

Under Section 3006 of RCRA, EPA may authorize a qualified State to administer its own hazardous waste program within the State in lieu of the Federal program. Following authorization, EPA retains enforcement authority under Sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized State until the State adopted the federal requirement as State law.

In contrast, under RCRA Section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. The statute directs EPA to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While the State must still adopt HSWA related provisions as State law in order to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their program only when EPA enacts federal requirements that are more stringent or broader in scope than the existing federal requirements. RCRA Section 3009 allows the States to impose standards more stringent than those in the federal program (see also § 271.1).[163] Therefore, authorized States may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Effect on State Authorization

This action proposes to add a new subpart P to 40 CFR part 266, and it is being proposed in part under the authority of HSWA and in part under non-HSWA authority. The bulk of 40 CFR part 266, subpart P is being proposed under non-HSWA authority. Thus, when finalized, the amendments promulgated under non-HSWA authority would be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. However, the prohibition of sewering pharmaceutical hazardous wastes (§ 266.504) is being proposed under HSWA authority in section 3018 of RCRA. Thus, when finalized, the amendments promulgated under the authority of HSWA would be applicable on the effective date of the final rule in all states. Moreover, authorized states are required to modify

[163] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes state programs.

their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. This proposed rule is considered, on the whole, to be more stringent than the current federal standards. Therefore, authorized states will be required to modify their programs to adopt the amendments, when finalized. When a state adopts this new subpart, if elements of the state program are more stringent than this new subpart, the state has the option of retaining those more stringent elements. Likewise, when a state adopts this new subpart, the state has the option of adding elements that are more stringent or broader in scope than this new subpart.

C. Effect on State Authorization in States That Have Added Pharmaceuticals to the Universal Waste Program

The Universal Waste program allows states to add wastestreams to their own state program, even when the waste stream has not been added to the federal Universal Waste program, provided the state has adopted and been authorized for the petition process in §§ 260.20 and 260.23. Two states have added hazardous waste pharmaceuticals to their Universal Waste programs: Florida and Michigan. Because this proposed rule is considered more stringent than either the ''traditional RCRA'' standards or the Universal Waste program, both Florida and Michigan will be required to modify their programs to adopt an approach at least as stringent as the amendments, if this rule is finalized. Furthermore, because the Agency has determined that it is not appropriate to add hazardous waste pharmaceuticals to the Universal Waste program, both Florida and Michigan must remove hazardous waste pharmaceuticals from their Universal Waste program when they adopt this new subpart, although they may continue to regulate non-hazardous waste pharmaceuticals under the Universal Waste program, to the extent allowed under state law. In addition, states may not add hazardous waste pharmaceuticals to their Universal Waste program in the future.

X. Adding and Reserving Part 266, Subpart O

In addition to proposing new standards for the management of hazardous waste pharmaceuticals at healthcare facilities and pharmaceutical reverse distributors, EPA is proposing to add and reserve 40 CFR part 266, subpart O. Specifically, on May 22, 2001, EPA finalized a Project XL rule in 40 CFR part 266, subpart O (66 FR 28066) for US Filter Recovery Services. However, on July 2, 2008, EPA published a rule that withdrew 40 CFR part 266, subpart O (73 FR 37858). Generally, in order to avoid the potential for confusion that might be caused by reusing a subpart, EPA reserves a subpart that has already been used and removed. In 2008, when we removed 40 CFR part 266, subpart O, we neglected to reserve it. Consequently, we are proposing to add and reserve 40 CFR part 266, subpart O.

XI. Summary of Regulatory Impact Analysis

In order to meet the Office of Management and Budget (OMB) Circular A–4 requirement that EPA analyze the costs and benefits of regulations, we conducted an economic analysis of the proposed rule. The economic analysis follows OMB guidelines and estimates the costs and benefits of the rule. The economic analysis is titled ''Regulatory Impact Analysis for EPA's Proposed Healthcare Facility-Specific Regulations for the Management of Hazardous Waste Pharmaceuticals'' and is hereafter referred to as the Regulatory Impact Analysis (RIA). The RIA is summarized here while the full RIA can be found at regulations.gov under docket number EPA–HQ–RCRA–2007–0932.

This proposed rule may affect several different types of healthcare facilities, including hospitals, physicians' offices, dentists' offices, outpatient care centers, pharmacies, veterinary clinics, nursing care facilities, coroners' offices, other health practitioners, other ambulatory care services, and pharmaceutical reverse distributors. Based on data from the 2007 Economic Census and a limited number of states, the RIA estimates that the rule will affect approximately 174,000 facilities. Table 12 lists the number of facilities (by NAICS code) expected to be affected by the proposed rule. The vast majority of these (83.6%) are CESQGs, followed by SQGs (13.4%), and LQGs (3.0%).

TABLE 12: PROPOSED PHARMECUTICALS RULE FACILITIES CLASSIFIED BY NAICS CODES AND TYPE OF FACILITY		
NAICS	FACILITY TYPE	NUMBER OF FACILITIES
HELTHCARE FACILITIES AS DEFINED BY THIS PROPOSED RULE		
44611	Pharmacies	11,617
54194	Veterinary Clinics	7,847
6211	Physicians' Offices	60,823
6212	Dentists' Offices	35,106
6213	Other Health Practitioners (e.g., chiropractors)	34,555
6214	Outpatient Care Centers	8,227
6219	Other Ambulatory Health Care Services	2,586
622	Hospitals	6,505
6231	Nursing Care Facilities	4,508
623311	Continuing Care Retirement Communities	1,641
Subset of 92219	Medical Examiners and Coroners' Offices	552
Reverse Distributors		
Various NAICS	Reverse Distributors	56
	TOTAL	**174,023**

We estimate that there is a total of approximately 139,000 tons of RCRA hazardous waste generated by healthcare facilities annually. Approximately 36,200 tons (26%) of this total are hazardous waste pharmaceuticals.

A. Costs of the Proposed Rule

The estimated costs of the proposed rule are the incremental costs over and above the ''baseline'' (*i.e.,* assumptions about the way in which healthcare facilities currently dispose of their hazardous waste pharmaceuticals). The base case set of baseline assumptions reflects ''full compliance'' with the current RCRA hazardous waste requirements for the management of hazardous waste pharmaceuticals. A sensitivity analysis of baseline assumptions was also conducted that reflects only ''partial compliance'' with current regulations. To see the results for the partial compliance baseline sensitivity analysis, please see the RIA.

The estimated cost of the proposed rule, including the proposed prohibition on sewering of hazardous waste pharmaceuticals is estimated at $37 million annually under the full compliance baseline. However, there are also significant cost savings under the proposed rule: $24.3 million annually under the full compliance baseline. Therefore the net cost of the rule is $13 million annually ($37million cost minus $24.3 million cost savings = $13 million net costs). Please see the RIA for more detailed analysis and results regarding the cost of the rule and the regulatory options analyzed.

B. Benefits of the Proposed Rule

The proposed rule for the management of hazardous waste pharmaceuticals is expected to yield a range of environmental benefits as hospitals, medical clinics, and other healthcare facilities divert hazardous waste pharmaceuticals currently disposed in sewers, municipal solid waste landfills (MSWLFs), municipal waste combustors (MWCs), and medical waste autoclaves and incinerators, to hazardous waste incinerators. The rule reduces the amount of hazardous waste pharmaceuticals sewered into waterways, provides regulatory clarity for industry and provides healthcare facilities and pharmaceutical reverse distributors with cost savings.

The largest quantified benefit is from avoided sewering of hazardous waste pharmaceuticals. Disposal of hazardous waste pharmaceuticals through sewering is believed to be a widespread practice of disposal. Sewering is believed to be one of the most deleterious disposal methods because active pharmaceutical ingredients (APIs) entering surface waters, often untreated by municipal wastewater treatment plants, pose the potential for adverse human health and environmental effects since they may be absorbed by humans and other organisms. Under the proposed rule, the Agency anticipates preventing approximately 6,400 tons of hazardous waste pharmaceuticals annually into waterways via a sewering ban. While the Agency was not able to quantify the human health and environmental benefits of reducing or eliminating the sewering of hazardous waste pharmaceuticals, EPA did estimate the cost savings of eliminating the wastewater treatment costs associated with sewering such pharmaceuticals. The estimated cost savings of eliminated wastewater treatment related to the prevented sewering of hazardous waste pharmaceuticals is estimated to be $4.3 million annually.

The proposed rule will yield other benefits beyond the reduction in sewering of hazardous waste pharmaceuticals. For example, under the proposed rule, healthcare facilities will no longer be required to count hazardous waste pharmaceuticals toward their RCRA generator category. This, in turn, will lead to changes in a healthcare facility's generator category,

enabling them to realize an additional cost savings. The extent to which such changes in generator category will occur under the proposed rule is uncertain, but these changes would be most likely for those healthcare facilities for which hazardous waste pharmaceuticals make up a large portion of their overall hazardous waste generation. Please see the RIA for a breakout of cost savings by regulatory requirement.

XII. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735; October 4, 1993), this action is a ''significant regulatory action'' because it is likely to raise novel legal or policy issues under section 3(f)(4). Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821; January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action (EPA–HQ–RCRA–2007–0932).

Findings for the RIA indicate that the rule, as proposed, is projected to result in an aggregate annual cost of approximately $37 million based on a discount rate of 7%. However, the proposed rule will also achieve an annual cost savings, which is estimated to be $24.3 million. Therefore, the net cost of the rule is estimated at $13 million annually. The costs, which represents annualized incremental costs relative to the full compliance baseline, is below the $100 million threshold established under part 3(f)(1) of the Order.

In addition to calling for an assessment of regulatory costs, Executive Order 12866 also requires Federal agencies to assess benefits and, ''recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.'' As discussed previously, the cost savings for the rule are estimated to be $24.3 million annually. These cost savings are considered benefits of the rule. Also, EPA estimates that the proposed rule will lead to the diversion of approximately 6,440 tons annually of hazardous waste pharmaceuticals from sewer disposal to alternate forms of disposal. This reduction in sewering will likely reduce the concentration of active pharmaceutical ingredients in the nation's waterways, potentially benefiting both ecosystems and human populations. Please see the RIA for more details on the benefits of the proposed rule.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2486.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

EPA is proposing in this rule, under a new subpart P to 40 CFR part 266, new and revised reporting and recordkeeping requirements for healthcare facilities and pharmaceutical reverse distributors managing hazardous waste pharmaceuticals. These proposed requirements, which are also identified in the ICR supporting this action, will enable EPA and state regulatory agencies to identify the universe of healthcare facilities managing hazardous waste pharmaceuticals. The healthcare facilities must keep records of any test results, waste analyses or other determinations made on hazardous waste pharmaceuticals for three years from the date of analyses. In addition, the proposed requirements include provisions for improved tracking of hazardous waste pharmaceuticals that are routed through pharmaceutical reverse distributors.

EPA will use the collected information to ensure that hazardous waste pharmaceuticals are being managed in a protective manner. The tracking requirements ensure that these wastes arrive at their intended destinations rather than diverted for illicit purposes or managed at facilities not equipped to manage these wastes. These tracking requirements will also help facilities identify shipments that do not arrive at their destination as planned, allowing generators to take corrective action that will ensure that future shipments are transported to the appropriate location. In addition, during a facility inspection, information kept in facility records will help EPA and state environmental regulatory agencies determine whether or not regulatory requirements are being followed. Information marked on containers of hazardous waste pharmaceuticals will assist handlers and transporters in ensuring proper management during storage and shipment.

EPA has carefully considered the burden imposed upon the regulated community by the proposed regulations. EPA is confident that those activities required of respondents are necessary and, to the extent possible, has attempted to minimize the burden imposed. EPA believes strongly that if the minimum requirements specified under the proposed regulations are not met, neither the facilities nor EPA can ensure that hazardous waste pharmaceuticals are managed in a manner protective of human health and the environment.

EPA estimates that the total annual respondent burden for the new paperwork requirements in the proposed rule is approximately 54,857 hours, and the annual respondent cost for the new paperwork requirements in the rule is approximately $3,457,478. The estimated annual hourly burden ranges from 0.1 to 3.5 hours per response for the 28,637 respondents. However, in addition to estimating the annual respondent burden associated with new paperwork requirements in the proposed rule, the Agency also estimated the annual benefits (hours and cost savings) to respondents from the new paperwork requirements in comparison to complying with the existing RCRA hazardous waste information collection requirements for hazardous waste pharmaceuticals (*e.g.,* preparation of biennial reports, recordkeeping, etc.). Taking both the new proposed and existing RCRA requirements into account, EPA expects the proposed rule would result in a net annual paperwork burden to the 28,637 respondents of approximately 28,660 hours or $2,301,873. The net cost to EPA of administering the rule is expected to be negligible, since the Agency is not required to review and approve any information submitted by respondents. Burden is defined at 5 CFR 1320.3(b).

Respondents/affected entities: Private entities.

Respondent's obligation to respond: Mandatory per 40 CFR part 266, subpart P.

Estimated number of respondents: 28,637.

Frequency of response: Once.

Total estimated burden: 54,857 hours.

Total estimated cost: $3,457,478, includes $1,038,856 annualized capital or operation & 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. Submit your comments on the Agency's need for this information, the accuracy of the

provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *oria_submissions@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than October 26, 2015. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Small Business Analysis

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are indicated in Table 13. The Agency has determined that costs of the regulation for a facility are less than 1 percent of annual revenue.

To assess the number of small entities in the regulated universe, EPA consulted NAICS-level data from the 2007 Economic Census and tallied the number of facilities, by NAICS code, owned by entities with revenues below SBA's threshold for consideration as small. Entities in revenue categories above the SBA threshold are *not* considered small. See Table 12 for the SBA thresholds and revenues.

TABLE 13: SBA 2014 SMALL BUSINESS SIZE STANDARDS (USING 2007 NAICS CODES)

FACILITY TYPE	SBA SIZE STANDARD (FIRM-LEVEL, ANNUAL REVENUE)	PERCENTAGE OF GENERATORS CONSIDERED "SMALL" UNDER SBA STANDARD	NUMBER OF GENERATORS THAT ARE SMALL
Pharmacies	$27.5 million	46%	5,390
Veterinary Clinics	$7.5 million	95%	7,416
Physicians' Offices	$11.0 million	88%	53,577
Dentists' Offices	$7.5 million	97%	33,932
Other Health Practitioners (e.g., chiropractors)	$7.5 million	93%	32,036
Outpatient Care Centers (ex-kidney dialysis centers)	$15.0 million	68%	4,787
Outpatient Care Centers (kidney dialysis centers)	$38.5 million	14%	161
Other Ambulatory Health Care Services	$15.0 million	66%	1,707
Hospitals	$38.5 million	25%	1,634
Nursing Care Facilities (e.g., assisted living facilities, nursing homes, U.S. veterans domiciliary centers)	$15.0 million	44%	1,985
Continuing Care Retirement Communities	$27.5 million	62%	1,023
Medical Examiners and Coroners' Offices	Size standards not established	100%	552
Reverse Distributors	Various NAICS	50%	28
		Total Number of Small Facilities	**144,228**

Source:
U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, effective July 14, 2014.

The percentage of facilities that qualify as small under SBA's thresholds were estimated for each industry affected by the proposed rule. These percentages were applied to the number of facilities in the regulatory universe, as presented in the RIA. After estimating the number of small entities by NAICS code, the average cost per small entity was estimated based on the model facility costs presented in the RIA. Next, the EPA determined whether the per

facility costs incurred by small entities represent more than 1% of annual revenues, which required estimating small entities' average annual revenues. For each NAICS code, the average per facility revenue of entities considered small under the SBA standard was estimated based on data from the 2007 Economic Census.

The proposed rule is expected to impact a total of 144,228 small entities (1,634 hospitals, 142,566 other healthcare facilities (*i.e.,* healthcare facilities that are not hospitals) and 28 pharmaceutical reverse distributors). The highest cost impact to small entities is estimated to be 0.013% of revenues at other healthcare facilities and 0.002% of revenues at hospitals. Because pharmaceutical reverse distributers are in various NAICS codes, the Agency was not able to obtain revenue data for pharmaceutical reverse distributors. However the estimated cost impact to small entity pharmaceutical reverse distributors is estimated at $5,300 annually, which the Agency does not anticipate will cause significant hardship on pharmaceutical reverse distributors that are small entities. However, the Agency requests comment on the cost impacts on small entity pharmaceutical reverse distributors that process creditable hazardous waste pharmaceuticals.

In the RIA, small entity impacts are presented incremental to the full compliance baseline. The annual per facility costs incremental to both baselines are estimated to be much less than 1% of average annual revenues. Since the incremental impact to the smallest healthcare facilities in terms of revenue is less than 1% of average annual revenues, the proposed rule is not expected to cause a significant impact to a substantial number of small businesses. Please see the RIA for a detailed analysis of cost impacts on small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

This rule does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. As indicated previously, the annual net cost is estimated to be $13 million annually after cost savings ($37 million cost minus $24.3 million in cost savings). Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. While some hospitals and coroners' offices are publicly owned, the requirements affecting those facilities are not unique in that they are the same as those affecting all facilities in the proposed rule. Also, using data on revenues of hospitals owned by state and local governments, EPA estimated that the costs of the rule borne by state and local governments represent less than 0.001% of their revenues. Therefore, the costs incurred by small governments are not expected to be significant.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

To assess the potential tribal implications of the proposed rule, EPA compiled data on the number of tribally run healthcare facilities in the U.S. and estimated the costs of the proposed rule for these facilities. Estimates of tribally run healthcare facilities were obtained from the U.S. Department of Health and Human Services' Indian Health Service (IHS), as summarized in Table 14.[164] Data were not readily available on the size or hazardous waste generation amounts for the tribally run healthcare facilities identified by the IHS. To estimate the potential costs of each regulatory option, per facility costs derived in the RIA were applied to the IHS facility counts. Based on these values, Table 14 summarizes the costs that tribally run healthcare facilities are expected to incur under the proposed rule. OMB has not issued guidance on what constitutes a substantial burden on tribal governments under this executive order. The relatively low costs estimated for tribally run healthcare facilities in Table14, however, suggest that the proposed rule will not impose a substantial burden on tribal governments. EPA welcomes comments on the proposed rule's impact on tribal governments. EPA specifically solicits additional comment on this proposed action from tribal officials.

[164] Indian Health Service (IHS), U.S. Department of Health and Human Services, IHS Year 2013 Profile, available at *http://www.ihs.gov/PublicAffairs/IHSBrochure/Profile.asp,* accessed December 20, 2012.

TABLE 14: COST IMPACTS FOR HEALTHCARE FACILITIES OWNED AND OPERATED BY NATIVE AMERICAN TRIBES USING A 7 PERCENT DISCOUNT RATE (MILLIONS OF YEAR 2011$)

FACILITY TYPE	NUMBER OF FACILITIES[1]	PROPOSED RULE
Total Annual Costs Incremental to Full Compliance Baseline		
Hospitals	16	$0.019
Tribal Operated Facilities	16	$0.088
Health Centers	258	
Alaska Village Clinics	164	
Health Stations	75	
TOTAL	**529**	$0.107

Notes:

1. Indian Health Service (HIS), U.S. Department of Health and Human Services, IHS Year 2013 Profile, available at http://www.ihs.gov/PublicAffairs/IHSBrochure/Profile.asp, accessed December 20, 2012.
2. Estimate reflects annual cost impact for tribal operated facilities, health centers, Alaska village clinics, and health stations combined.

The EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to permit them to have meaningful and timely input into its development. A summary of that consultation is provided in the docket for this proposed rule (see EPA–HQ–RCRA–2007–0932).

As required by section 7(a), the EPA's Tribal Consultation Official has certified that the requirements of the executive order have been met in a meaningful and timely manner. A copy of the certification is included in the docket for this proposed rule (see EPA–HQ–RCRA–2007–0932).

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

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

To examine whether the proposed rule has a disproportionate impact on children, the RIA uses a geographic analysis of demographics near wastewater treatment plants and hazardous waste combustion facilities. Table 15 summarizes the results of this analysis. As indicated in the table, this analysis finds that children (*i.e.,* individuals under the age of 18) account for a slightly larger share of the population (28.5%) in the one-mile radius around wastewater treatment plants than they account for nationally (25.3%). Among the catchment zones of wastewater treatment plants, however, children make up a much smaller portion of the population (9.8%). Within both the one- and three-mile buffers around hazardous waste combustion facilities, children's share of the population slightly exceeds their share nationally.

These data suggest that the proposed rule will not result in a disproportionate adverse impact on children. Because the children's share of the population near hazardous waste combustion facilities is near the national average, any increase in the combustion of hazardous waste combustion that occurs as a result of the proposed rule is unlikely to have a significant disproportionate impact on children's health. The data in Table 15 also show that the number of children living in close proximity to wastewater treatment plants, in areas likely to benefit from the rule, far exceeds the number of children who live near hazardous waste combustion facilities. This suggests that the diversion of hazardous waste pharmaceuticals from wastewater treatment plants to combustion facilities will benefit a much greater number of children than it may put at greater risk of adverse health effects. See Table 15 for the demographics of children surrounding wastewater treatment plants and hazardous waste combustion facilities. Please see the RIA for a detailed methodology of the children's health analysis.

TABLE 15: SUMMARY OF CHILDREN'S HEALTH ASSESSMENT		
GEOGRAPHIC AREA	NUMBER OF CHILDREN IN AREA	NATIONAL % OF POPULATION UNDER THE AGE OF 18
Wastewater treatment plants, one-mile radius	7.8 million (28.5%)[1]	25.3%
Wastewater treatment plants, catchment areas	4.4 million (9.8%)[1]	
Hazardous waste combustion facilities, one-mile radius	5,012 (26.1%)[1]	
Hazardous waste combustion facilities, three-mile radius	64,710 (25.6%)[1]	
GEOGRAPHIC AREA	NUMBER OF FACILITIES WHERE CHILDREN'S SHARE OF THE LOCAL POPULATION EXCEEDS NATIONAL AVG. %	
Wastewater treatment plants, one-mile radius	8,908	
Wastewater treatment plants, catchment areas	5,171	
Hazardous waste combustion facilities, one-mile radius	13	
Hazardous waste combustion facilities, three-mile radius	11	
GEOGRAPHIC AREA	NUMBER OF FACILITIES WHERE CHILDREN'S SHARE OF THE LOCAL POPULATION EXCEEDS STATE AVG. %	
Wastewater treatment plants, one-mile radius	8,992	
Wastewater treatment plants, catchment areas	5,149	
Hazardous waste combustion facilities, one-mile radius	14	
Hazardous waste combustion facilities, three-mile radius	11	

Notes:
1. Values in parentheses represent children's proportion of the population.

Sources: RTI International, U.S. Synthesized Population 2005–2009 Version 2.0, August 2012; U.S. EPA Clean Watershed Needs Database; and U.S. EPA, Assessment of the Potential Costs, Benefits, & Other Impacts of the Hazardous Waste Combustion MACT Final Rule Standards, September 2005.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211, (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

The proposed rule does not directly regulate energy production or consumption. Changes in the management of hazardous waste pharmaceuticals stipulated in the proposed rule are not expected to impact energy production or distribution. Similarly, the management requirements outlined in the proposed rule will have minimal impact on energy consumption (*e.g.,* from transporting hazardous waste pharmaceuticals that otherwise would have been sewered). Because the changes in energy production and consumption under the proposed rule are likely to be minimal, the proposed rule is not expected to have a significant adverse effect on energy supply, distribution, or use. In addition, no measurable adverse impacts are expected on energy prices or foreign supplies.

I. National Technology Transfer and Advancement Act (NTTAA)

This proposed rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects

on minority, low-income or indigenous populations. The results of this evaluation are summarized in the following paragraphs. The evaluation is contained in the Regulatory Impact Analysis (RIA), which can be found at regulations.gov under docket number EPA–HQ–RCRA–2007–0932.

To meet the requirements of Executive Order 12898, EPA analyzed potential environmental justice impacts associated with the diversion of hazardous waste pharmaceuticals from sewer disposal to hazardous waste combustion facilities. Populations living near and downstream from wastewater treatment plants may also benefit from the elimination of sewering of hazardous waste pharmaceuticals. To the extent that minority and/or low-income populations near or downstream from wastewater treatment plants make up a disproportionately high portion of the overall population, the proposed rule may result in positive environmental justice impacts. See Table 16 for the results of the Environmental Justice analysis.

Overall, EPA expects that the proposed rule may positively affect U.S. environmental justice populations, although the size of the impact will vary by wastewater treatment plant. As suggested by Table 16, the reduction in sewering expected under the proposed rule may benefit relatively large minority and low-income populations in close proximity to or downstream from wastewater treatment plants. The diversion of hazardous waste pharmaceuticals to combustion facilities, however, may increase the environmental burden borne by environmental justice populations near these combustion facilities. Although these effects offset each other to a certain degree, the number of minority and low-income individuals near wastewater treatment facilities greatly exceeds the number near hazardous waste combustion facilities. This suggests that, on the whole, the proposed rule may benefit environmental justice populations.

TABLE 16: DEMOGRAPHICS FOR POPULATIONS NEAR WASTEWATER TREATMENT FACILITIES & COMMERCIAL HAZARDOUS WASTE COMBUSTION FACILITIES

GEOGRAPHIC AREA	MINORITY POPULATION	LOW-INCOME POPULATION	% OF NATIONAL POPULATION	
			RACIAL & ETHNIC MINORITIES	LOW-INCOME POPULATION
Wastewater treatment plants, one-mile radius	6.2 million (22.6%)[1]	3.8 million (14.0%)[1]	24.7%	11.4%
Wastewater treatment plants, catchment areas	3.8 million (8.6%)[1]	2.2 million (4.9%)[1]		
Hazardous waste combustion facilities, one-mile radius	3,578 (18.7%)[1]	3,130 (16.3%)[1]		
Hazardous waste combustion facilities, three-mile radius	67,329 (26.6%)[1]	42,782 (16.9%)[1]		

GEOGRAPHIC AREA	NO. OF FACILITIES EXCEEDING:	
	NATIONAL AVG. MINORITY %.	NATIONAL AVG. LOW-INCOME %.
Wastewater treatment plants, one-mile radius	3,233	7,886
Wastewater treatment plants catchment areas	3,151	7,358
Hazardous waste combustion facilities, one-mile radius	6	4
Hazardous waste combustion facilities, three-mile radius	7	4

GEOGRAPHIC AREA	NO. OF FACILITIES EXCEEDING:	
	STATE AVG. MINORITY %.	STATE AVG. LOW-INCOME%.
Wastewater treatment plants, one-mile radius	3,596	7,949
Wastewater treatment plants, catchment areas	3,562	7,391
Hazardous waste combustion facilities, one-mile radius	7	13
Hazardous waste combustion facilities, three-mile radius	8	16

Notes:

1. Values in parentheses represent the proportion of the population considered a racial or ethnic minority or below the Federal Poverty Level.

Sources: RTI International, U.S. Synthesized Population 2005–2009 Version 2.0, August 2012; U.S. EPA Clean Watershed Needs Database; and U.S. EPA, Assessment of the Potential Costs, Benefits, & Other Impacts of the Hazardous Waste Combustion MACT Final Rule Standards, September 2005.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Energy, Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 273

Environmental protection, Hazardous materials transportation, Hazardous waste.

Dated: August 31, 2015.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, Title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 2. Amend § 261.5 by adding paragraph (c)(8) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(c) * * *

(8) Is a hazardous waste pharmaceutical managed under 40 CFR part 266, subpart P.

* * * * *

■ 3. Amend § 261.7 by adding paragraph (c) to read as follows:

§ 261.7 Residues of hazardous waste in empty containers.

* * * * *

(c) Healthcare facilities and pharmaceutical reverse distributors operating under 40 CFR part 266, subpart P are subject to § 266.507 for the management of hazardous waste pharmaceutical residues in containers, in lieu of this section.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 4. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C 6906, 6912, 6922–6925, 6937, and 6938.

■ 5. Amend § 262.10 by adding paragraphs (m) and (n) to read as follows:

§ 262.10 Purpose, scope and applicability.

* * * * *

(m) All pharmaceutical reverse distributors (as defined in § 266.500) are subject to 40 CFR part 266, subpart P for the management of hazardous waste pharmaceuticals in lieu of this part.

(n) Each healthcare facility (as defined in § 266.500) must determine whether it is subject to 40 CFR part 266, subpart P for the management of hazardous waste pharmaceuticals, based on the total hazardous waste it generates per calendar month (including pharmaceutical hazardous waste and non-pharmaceutical hazardous waste). Healthcare facilities that generate (or accumulate) more than 100 kg (220 pounds) of hazardous waste per calendar month, or more than 1 kg (2.2 pounds) of acute hazardous waste per calendar month, or more than 100 kg (220 pounds) per calendar month of any residue or contaminated soil, waste, or other debris, resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in § 261.31 or § 261.33(e), are subject to 40 CFR part 266, subpart P for the management of hazardous waste pharmaceuticals in lieu of this part.

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 6. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 3017, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

Subpart O—[Reserved]

■ 7. Add reserved subpart O:

■ 8. Add subpart P to read as follows:

Subpart P — Hazardous Waste Pharmaceuticals

Sec.

266.500 Definitions for this subpart.
266.501 Applicability.
266.502 Standards for healthcare facilities managing non-creditable hazardous waste pharmaceuticals.
266.503 Standards for healthcare facilities managing potentially creditable hazardous waste pharmaceuticals.
266.504 Healthcare facilities that are conditionally exempt small quantity generators (CESQGs).
266.505 Prohibition of sewering hazardous waste pharmaceuticals.
266.506 Conditional exemption for hazardous waste pharmaceuticals that are also controlled substances.
266.507 Management of hazardous waste pharmaceutical residues in containers.
266.508 Shipping non-creditable hazardous waste pharmaceuticals from a healthcare facility or evaluated hazardous waste pharmaceuticals from a pharmaceutical reverse distributor.
266.509 Shipping potentially creditable hazardous waste pharmaceuticals from a healthcare facility or a pharmaceutical reverse distributor to a pharmaceutical reverse distributor.
266.510 Standards for the management of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals at pharmaceutical reverse distributors.

Subpart P—Hazardous Waste Pharmaceuticals

§ 266.500 Definitions for this subpart.

The following definitions apply to this subpart:

Evaluated hazardous waste pharmaceutical means a hazardous waste pharmaceutical that was a potentially creditable hazardous waste pharmaceutical but has been evaluated by a pharmaceutical reverse distributor to establish whether it is eligible for manufacturer's credit and will not be sent to another pharmaceutical reverse distributor for further evaluation or verification.

Hazardous waste pharmaceutical means a pharmaceutical that is a solid waste, as defined in § 261.2, and is listed in part 261, subpart D, or exhibits one or more characteristics identified in part 261, subpart C.

Healthcare facility means:

(1) Any person that:

(i) Provides preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, and counseling, service, assessment or procedure with respect to the physical or mental condition, or functional status, of a human or animal or that affects the structure or function of the human or animal body; or

(ii) Sells or dispenses over-the-counter or prescription pharmaceuticals.

(2) This definition includes, but is not limited to, hospitals, psychiatric hospitals, ambulatory surgical centers, health clinics, physicians' offices, optical and dental providers, chiropractors, long-term care facilities, ambulance services, coroners and medical examiners, pharmacies, long-term care pharmacies, mail-order pharmacies, retailers of over-the-counter medications; and veterinary clinics and hospitals.

Household waste pharmaceutical means a pharmaceutical that is a solid waste, as defined in § 261.2, but is exempt from being a hazardous waste under § 261.4(b)(1).

Long-term care facility means a licensed entity that provides assistance with activities of daily living, including managing and administering pharmaceuticals to one or more individuals at the facility. This definition includes, but is not limited to, assisted living, hospices, nursing homes, skilled nursing facilities, and the assisted living and skilled nursing care

portions of continuing care retirement communities. Not included within the scope of this definition are group homes, independent living communities, and the independent living portions of continuing care retirement communities.

Non-creditable hazardous waste pharmaceutical means a hazardous waste pharmaceutical that is not expected to be eligible for manufacturer's credit.

Non-hazardous waste pharmaceutical means a pharmaceutical that is a solid waste, as defined in § 261.2, and is not listed in 40 CFR part 261, subpart D, and does not exhibit a characteristic identified in 40 CFR part 261, subpart C.

Non-pharmaceutical hazardous waste means a solid waste, as defined in § 261.2, that is listed in 40 CFR part 261, subpart D, or exhibits one or more characteristics identified in 40 CFR part 261, subpart C, but is not a pharmaceutical, as defined in this section.

Pharmaceutical means any chemical or biological product that is intended for use in the diagnosis, cure, mitigation, care, treatment, or prevention of disease or injury of a human or other animal; or any chemical or biological product that is intended to affect the structure or function of the body of a human or other animal. This definition includes, but is not limited to: dietary supplements as defined by the Federal Food, Drug and Cosmetic Act, prescription drugs, over-the-counter drugs, residues of pharmaceuticals remaining in containers, personal protective equipment contaminated with pharmaceuticals, and clean-up material from spills of pharmaceuticals.

Pharmaceutical reverse distributor means any person that receives and accumulates potentially creditable hazardous waste pharmaceuticals for the purpose of facilitating or verifying manufacturer's credit. Any person, including forward distributors and pharmaceutical manufacturers, that processes pharmaceuticals for the facilitation or verification of manufacturer's credit is considered a pharmaceutical reverse distributor.

Potentially creditable hazardous waste pharmaceutical means:

(1) A hazardous waste pharmaceutical that has the potential to receive manufacturer's credit and is:

(i) Unused or un-administered; and

(ii) Unexpired or less than one year past expiration date.

(2) The term does not include ''evaluated hazardous waste pharmaceuticals,'' residues of pharmaceuticals remaining in containers, contaminated personal protective equipment, and clean-up material from the spills of pharmaceuticals.

§ 266.501 Applicability.

(a) A healthcare facility that is a conditionally exempt small quantity generator remains subject to § 261.5 and is *not* subject to this subpart, except for §§ 266.504, 266.505, and 266.507(a) and (b).

(b) A healthcare facility that is a conditionally exempt small quantity generator has the option of complying with this subpart for the management of its hazardous waste pharmaceuticals, as an alternative to complying with the conditional exemption of § 261.5.

(c) A healthcare facility or pharmaceutical reverse distributor remains subject to all applicable hazardous waste regulations with respect to the management of its non-pharmaceutical hazardous waste.

(d) With the exception of healthcare facilities identified in subsection (a), a healthcare facility is subject to:

(1) Sections 266.502 and 266.504 through 266.508 of this subpart with respect to the management of:

(i) Non-creditable hazardous waste pharmaceuticals, and

(ii) Potentially creditable hazardous waste pharmaceuticals if they are not destined for a pharmaceutical reverse distributor.

(2) Sections 266.503 through 266.507 and 266.509 of this subpart with respect to the management of potentially creditable hazardous waste pharmaceuticals that are destined for a pharmaceutical reverse distributor.

(e) A pharmaceutical reverse distributor is subject to §§ 266.505 through 266.510 of this subpart with respect to the management of hazardous waste pharmaceuticals.

(f) This subpart does not apply to the management of hazardous waste pharmaceuticals that are generated or managed by entities other than healthcare facilities and pharmaceutical reverse distributors.

§ 266.502 Standards for healthcare facilities managing non-creditable hazardous waste pharmaceuticals.

(a) *Notification and withdrawal from this subpart for healthcare facilities managing non-creditable hazardous waste pharmaceuticals*—(1) *Notification.* A healthcare facility must notify the EPA Regional Administrator, using the Site Identification Form (EPA form 8700–12), that it is a healthcare facility operating under this subpart. A healthcare facility is not required to fill out Box 11 (Description of Hazardous Waste) of the Site Identification Form with respect to its hazardous waste pharmaceuticals. A healthcare facility must submit a separate notification (Site Identification Form) for each site or EPA Identification Number.

(i) A healthcare facility that already has an EPA identification number must re-notify the EPA Regional Administrator, using the Site Identification Form (EPA form 8700–12), that it is a healthcare facility as part of its next Biennial Report, if it is required to submit one; or if not required to submit a Biennial Report, within 60 days of the effective date of this subpart, or within 60 days of becoming subject to this subpart.

(ii) A healthcare facility that does not have an EPA identification number must obtain one by notifying the EPA Regional Administrator, using the Site Identification form (EPA form 8700–12), that it is a healthcare facility as part of its next Biennial Report, if it is required to submit one; or if not required to submit a Biennial Report, within 60 days of the effective date of this subpart, or within 60 days of becoming subject to this subpart.

(iii) A healthcare facility must keep a copy of its notification on file for as long as the healthcare facility is subject to this subpart.

(2) *Withdrawal.* A healthcare facility that operated under this subpart but is no longer subject to this subpart, because it is a conditionally exempt small quantity generator under § 261.5, and elects to withdraw from this subpart, must notify the appropriate EPA Regional Administrator using the Site Identification Form (EPA form 8700–12) that it is no longer operating under this subpart. A healthcare facility is not required to fill out Box 11 (Description of Hazardous Waste) of the Site Identification Form with respect to its hazardous waste pharmaceuticals. A healthcare facility must submit a separate notification (Site Identification Form) for each EPA Identification Number.

(i) A healthcare facility must submit the Site Identification Form notifying that it is withdrawing from this subpart before it begins operating under the conditional exemption of § 261.5(b).

(ii) A healthcare facility must keep a copy of its withdrawal on file for three years from the date of signature on the notification of its withdrawal.

(b) *Training of employees managing non-creditable hazardous waste pharmaceuticals at healthcare facilities.* A healthcare facility must ensure that all employees that manage non-creditable hazardous waste pharmaceuticals are thoroughly familiar

with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

(c) *Hazardous waste determination for non-creditable hazardous waste pharmaceuticals at healthcare facilities.* A healthcare facility that generates a solid waste that is a pharmaceutical must determine whether the solid waste pharmaceutical is a hazardous waste pharmaceutical (*i.e.,* it exhibits a characteristic identified in 40 CFR part 261, subpart C or is listed in 40 CFR part 261, subpart D) in order to determine whether the waste is subject to this subpart. A healthcare facility may choose to manage its solid waste pharmaceuticals as hazardous waste pharmaceuticals under this subpart even if the solid waste pharmaceuticals do not exhibit a characteristic identified in 40 CFR part 261, subpart C and are not listed in 40 CFR part 261, subpart D.

(d) *Standards for containers used to accumulate non-creditable hazardous waste pharmaceuticals at healthcare facilities.* (1) A healthcare facility must place non-creditable hazardous waste pharmaceuticals in a container that is structurally sound, compatible with its contents, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A healthcare facility that manages ignitable or reactive hazardous waste pharmaceuticals, or that mixes or commingles incompatible hazardous waste pharmaceuticals must manage the container so that it does not have the potential to:

(i) Generate extreme heat or pressure, fire or explosion, or violent reaction;

(ii) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(iii) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(iv) Damage the structural integrity of the container of hazardous waste pharmaceuticals; or

(v) Through other like means threaten human health or the environment.

(3) A healthcare facility must keep containers of non-creditable hazardous waste pharmaceuticals closed and secured in a manner that prevents unauthorized access to its contents.

(4) A healthcare facility may accumulate hazardous waste pharmaceuticals and non-hazardous pharmaceutical waste in the same container, except that hazardous waste pharmaceuticals prohibited from being combusted because of the dilution prohibition of § 268.3(c) must be accumulated in separate containers.

(e) *Labeling containers used to accumulate non-creditable hazardous waste pharmaceuticals at healthcare facilities.* A healthcare facility must label or clearly mark each container of hazardous waste pharmaceuticals with the phrase ''Hazardous Waste Pharmaceuticals.''

(f) *Maximum accumulation time for non-creditable hazardous waste pharmaceuticals at healthcare facilities.* (1) A healthcare facility may accumulate non-creditable hazardous waste pharmaceuticals on-site for one year or less without a permit or having interim status. A healthcare facility may accumulate for more than one year without a permit or having interim status, only if the requirements of paragraph (f)(3) of this section are met.

(2) A healthcare facility that accumulates non-creditable hazardous waste pharmaceuticals on-site must demonstrate the length of time that the hazardous waste pharmaceuticals have been accumulating, starting from the date it first becomes a waste. A healthcare facility may make this demonstration by any of the following methods:

(i) Marking or labeling the container of non-creditable hazardous waste pharmaceuticals with the date that hazardous waste pharmaceuticals became a waste;

(ii) Maintaining an inventory system that identifies the date the non-creditable hazardous waste pharmaceutical being accumulated first became a waste;

(iii) Placing the non-creditable hazardous waste pharmaceuticals in a specific area and identifying the earliest date that any of the non-creditable hazardous waste pharmaceuticals in the area became a waste; or

(iv) Any other method which clearly demonstrates the length of time that the non-creditable hazardous waste pharmaceuticals have been accumulating from the date it first became a waste.

(3) A healthcare facility may request from the EPA Regional Administrator an extension beyond the one year accumulation time limit for non-creditable hazardous waste pharmaceuticals involved in litigation, a recall, or unforeseen circumstances beyond the control of the healthcare facility.

(i) A request must be sent to the EPA Regional Administrator in writing (paper or electronic). The request for an extension must include an explanation of the reason an extension is requested, the approximate volume or weight of the hazardous waste pharmaceuticals that will be accumulated more than 90 days, and the amount of additional time requested.

(ii) The amount of time extension granted is at the discretion of the EPA Regional Administrator on a case-by-case basis.

(g) *Land disposal restrictions for non-creditable hazardous waste pharmaceuticals.* The hazardous waste pharmaceuticals generated by a healthcare facility are subject to the Land Disposal Restrictions of 40 CFR part 268. A healthcare facility that generates hazardous waste pharmaceuticals must comply with the land disposal restrictions in accordance with § 268.7(a) requirements, except that it is not required to identify the hazardous waste numbers (codes).

(h) *Procedures for healthcare facilities for managing rejected shipments of non-creditable hazardous waste pharmaceuticals.* A healthcare facility that sends a shipment of non-creditable hazardous waste pharmaceuticals to a designated facility and later receives that shipment back as a rejected load in accordance with the manifest discrepancy provisions of § 264.72 or § 265.72 of this chapter, may accumulate the returned hazardous waste pharmaceuticals on-site for up to an additional 90 days provided the rejected or returned shipment is managed in accordance with paragraphs (d) and (e) of this section. Upon receipt of the returned shipment, the healthcare facility must:

(1) Sign either:

(i) Item 18c of the original manifest, if the original manifest was used for the returned shipment; or

(ii) Item 20 of the new manifest, if a new manifest was used for the returned shipment;

(2) Provide the transporter a copy of the manifest;

(3) Within 30 days of delivery of the rejected shipment, send a copy of the manifest to the designated facility that returned the shipment to the healthcare facility; and

(4) Transport or offer for transport the returned shipment in accordance with the shipping standards of § 266.508(a).

(i) *Reporting by healthcare facilities for non-creditable hazardous waste pharmaceuticals*—(1) *Biennial report by healthcare facilities.* Healthcare facilities are not subject to biennial reporting requirements under § 262.41, with respect to non-creditable hazardous waste pharmaceuticals managed under this subpart.

(2) *Exception report by healthcare facilities for a missing copy of the manifest.* (i) For shipments from a

healthcare facility to a designated facility: If a healthcare facility does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the non-creditable hazardous waste pharmaceuticals were accepted by the initial transporter, the healthcare facility must submit:

(A) A legible copy of the original manifest, indicating that the healthcare facility has not received confirmation of delivery, to the EPA Regional Administrator for the Region in which the healthcare facility is located, and

(B) A handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received and explaining the efforts taken to locate the non-creditable hazardous waste pharmaceuticals and the results of those efforts.

(ii) For shipments rejected by the designated facility and shipped to an alternate facility: If a healthcare facility does not receive a copy of the manifest for a rejected shipment of the non-creditable hazardous waste pharmaceuticals that is forwarded by the designated facility to an alternate facility (using appropriate manifest procedures), with the handwritten signature of the owner or operator of the alternate facility within 60 days of the date the waste was accepted by the initial transporter forwarding the shipment of non-creditable hazardous waste pharmaceuticals from the designated facility to the alternate facility, the healthcare facility must submit:

(A) A legible copy of the original manifest, indicating that the healthcare facility has not received confirmation of delivery, to the EPA Regional Administrator for the Region in which the healthcare facility is located, and

(B) A handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received and explaining the efforts taken to locate the non-creditable hazardous waste pharmaceuticals and the results of those efforts.

(3) *Additional reports.* The EPA Regional Administrator may require healthcare facilities to furnish additional reports concerning the quantities and disposition of non-creditable hazardous waste pharmaceuticals.

(j) *Recordkeeping by healthcare facilities for non-creditable hazardous waste pharmaceuticals.* (1) A healthcare facility must keep a copy of each manifest signed in accordance with § 262.23(a) for three years or until it receives a signed copy from the designated facility which received the non-creditable hazardous waste pharmaceuticals. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(2) A healthcare facility must keep a copy of each exception report for a period of at least three years from the date of the report.

(3) A healthcare facility must keep records of any test results, waste analyses, or other determinations made to support its hazardous waste determination(s) for at least three years from the date of the test, analysis, or other determination.

(4) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity, or as requested by the EPA Regional Administrator.

(k) *Response to releases of non-creditable hazardous waste pharmaceuticals at healthcare facilities.* (1) A healthcare facility must immediately contain all releases of non-creditable hazardous waste pharmaceuticals and other residues from non-creditable hazardous waste pharmaceuticals.

(2) A healthcare facility must determine whether any material resulting from the release is a non-creditable hazardous waste pharmaceutical, and if so, must manage the non-creditable hazardous waste pharmaceutical residues and spill clean-up materials in accordance with the requirements of this subpart.

(l) *Long-term care facilities that manage non-creditable hazardous waste pharmaceuticals.* A healthcare facility that is a long-term care facility and that has individuals that administer their own pharmaceuticals must collect any unused non-creditable hazardous waste pharmaceuticals from those self-administering individuals and manage them in accordance with this subpart.

(m) *Accepting creditable and non-creditable hazardous waste pharmaceuticals from an off-site healthcare facility that is a CESQG.* A healthcare facility may accept creditable and non-creditable hazardous waste pharmaceuticals from an off-site healthcare facility that is a conditionally exempt small quantity generator under § 261.5, without a permit or without having interim status, provided the receiving healthcare facility:

(1) Is under the control of the same person, as defined in § 260.10, as the conditionally exempt small quantity generator healthcare facility that is sending the hazardous waste pharmaceuticals off-site or has a contractual relationship whereby the receiving healthcare facility supplies pharmaceuticals to the conditionally exempt small quantity generator healthcare facility,

(2) Is operating under this subpart for the management of its hazardous waste pharmaceuticals,

(3) Manages the non-creditable hazardous waste pharmaceuticals that it receives from off-site in compliance with this subpart, and

(4) Keeps records of the hazardous waste pharmaceuticals shipments it receives from off-site for 3 years from the date that the shipment is received.

§ 266.503 Standards for healthcare facilities managing potentially creditable hazardous waste pharmaceuticals.

(a) *Hazardous waste determination for creditable hazardous waste pharmaceuticals at the healthcare facility.* A healthcare facility that generates a solid waste that is a potentially creditable pharmaceutical must determine whether the potentially creditable solid waste pharmaceutical is a potentially creditable hazardous waste pharmaceutical (*i.e.,* it listed in 40 CFR part 261, subpart D or exhibits a characteristic identified in 40 CFR part 261, subpart C). A healthcare facility may choose to manage its potentially creditable solid waste pharmaceuticals as potentially creditable hazardous waste pharmaceuticals under § 266.509 even if the solid waste pharmaceuticals do not exhibit a characteristic identified in 40 CFR part 261, subpart C and are not listed in 40 CFR part 261, subpart D.

(b) Healthcare facilities are prohibited from sending hazardous wastes other than potentially creditable hazardous waste pharmaceuticals to a pharmaceutical reverse distributor.

(c) *Biennial Report by healthcare facilities.* Healthcare facilities are not subject to biennial reporting requirements under § 262.41, with respect to potentially creditable hazardous waste pharmaceuticals managed under this subpart.

(d) *Recordkeeping.* (1) A healthcare facility that initiates a shipment of potentially creditable hazardous waste pharmaceuticals to a pharmaceutical reverse distributor must keep the following records (paper or electronic) for each shipment of potentially creditable hazardous waste pharmaceuticals for 3 years from the date of shipment:

(i) A copy of the advance notification provided to the pharmaceutical reverse distributor;

(ii) The confirmation of delivery; and

(iii) The shipping papers or bill of lading.

(2) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity, or as requested by the EPA Regional Administrator.

§ 266.504 Healthcare facilities that are conditionally exempt small quantity generators (CESQGs).

(a) *Potentially creditable hazardous waste pharmaceuticals.* A healthcare facility that is a conditionally exempt small quantity generator may send its potentially creditable hazardous waste pharmaceuticals to a pharmaceuticals reverse distributor.

(b) *Off-site collection of hazardous waste pharmaceuticals generated by a healthcare facility that is a CESQG.* A healthcare facility that is a conditionally exempt small quantity generator may send its hazardous waste pharmaceuticals off-site to another healthcare facility, provided the receiving healthcare facility meets the conditions in § 266.502(m) of this subpart.

(c) *Long-term care facilities that are CESQGs.* A long-term care facility that is a conditionally exempt small quantity generator may dispose of its hazardous waste pharmaceuticals in a collection receptacle of an authorized collector (as defined by the Drug Enforcement Administration) that is registered with the Drug Enforcement Administration provided the contents are collected, stored, transported, destroyed and disposed of in compliance with all applicable Drug Enforcement Administration regulations for controlled substances.

§ 266.505 Prohibition of sewering hazardous waste pharmaceuticals.

All healthcare facilities and pharmaceutical reverse distributors are prohibited from discharging hazardous waste pharmaceuticals to a sewer system that passes through to a publicly-owned treatment works. The exclusion in § 261.4(a)(1)(ii) for mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly-owned treatment works does not apply to a hazardous waste pharmaceutical.

§ 266.506 Conditional exemption for hazardous waste pharmaceuticals that are also controlled substances.

(a) The following are exempt from 40 CFR parts 260 through 273, provided the conditions of paragraph (b) of this section are met:

(1) A hazardous waste pharmaceutical that is also listed on a schedule of controlled substances by the Drug Enforcement Administration in 21 CFR part 1308, and

(2) An authorized collector (as defined by the Drug Enforcement Administration) registered with the Drug Enforcement Administration that collects controlled substances collected from an ultimate user (as defined by the Drug Enforcement Administration) and co-mingles them with hazardous waste pharmaceuticals that are exempt as a household waste under § 261.4(b)(1).

(b) *Conditions for exemption.* The hazardous waste pharmaceuticals must be collected, stored, transported, destroyed and disposed of in compliance with all applicable Drug Enforcement Administration regulations for controlled substances, and combusted at one of the following:

(1) A permitted large municipal waste combustor (LMWC), subject to 40 CFR part 62, subpart FFF for existing LMWCs, or 40 CFR part 60, subparts Ea and Eb for new LMWCs, or

(2) A permitted small municipal waste combustor (SMWC), subject to 40 CFR part 62, subpart JJJ for existing SMWCs, or 40 CFR part 60, subparts AAAA and BBBB for new SMWCs, or

(3) A unit that has a permit or interim status to burn hazardous waste and is covered by 40 CFR part 63, subpart EEE. A unit that is exempt from 40 CFR part 63, subpart EEE as specified in § 63.1200(b) of this chapter is not covered by subpart EEE.

§ 266.507 Management of hazardous waste pharmaceutical residues in containers.

(a) *Dispensing and unit-dose containers.* A dispensing bottle, vial, or ampule (not to exceed 1 liter or 1000 pills); or a unit-dose container, (*e.g.,* a unit-dose packet, cup, wrapper, blister pack, or delivery device) is considered empty and the residues are not regulated as hazardous waste provided:

(1) All pharmaceuticals have been removed from the dispensing bottle, vial or ampule; or the unit-dose container, (*e.g.,* unit-dose packet, cup, wrapper, blister pack, or delivery device) using the practices commonly employed to remove materials from that type of container, and

(2) Any dispensing bottle or unit-dose container that is an original manufacturer's product package is destroyed prior to disposal in such a manner as would prevent further use of the container.

(b) *Dispensed syringes.* The residues remaining in a syringe are not regulated as hazardous waste provided:

(1) The syringe has been used to administer the pharmaceutical to a patient, and

(2) The syringe is placed in a sharps container that is managed in accordance with all applicable federal, state, and local medical waste requirements.

(c) *Other containers, including delivery devices.* The residues remaining in all other types of unused or used containers that once held pharmaceuticals must be managed as hazardous waste pharmaceuticals, if the residues are listed in 40 CFR part 261, subpart D or exhibit a characteristic identified in 40 CFR part 261, subpart C. This includes, but is not limited to, the residues in intravenous (IV) bags and tubing, inhalers, aerosols, nebulizers, tubes of ointment, gels or creams.

§ 266.508 Shipping non-creditable hazardous waste pharmaceuticals from a healthcare facility or evaluated hazardous waste pharmaceuticals from a pharmaceutical reverse distributor.

(a) A healthcare facility or pharmaceutical reverse distributor that ships either non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals, respectively, off-site to a designated facility (such as a permitted or interim status treatment, storage, or disposal facility), must comply with:

(1) The following pre-transport requirements, before transporting or offering for transport off-site:

(i) *Packaging.* Package the waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR parts 173, 178, and 180.

(ii) *Labeling.* Label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR part 172, subpart E.

(iii) *Marking.* (A) Mark each package of hazardous waste pharmaceuticals in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR part 172, subpart D;

(B) Mark each container of 119 gallons or less used in such transportation with the following words and information in accordance with the requirements of 49 CFR 172.304:

HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety

authority or the U.S. Environmental Protection Agency.

Healthcare Facility's or Pharmaceutical Reverse Distributor's Name and Address__.

Healthcare Facility's or Pharmaceutical Reverse Distributor's EPA Identification Number__.

Manifest Tracking Number__.

(iv) *Placarding.* Placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR part 172, subpart F.

(v) *Shipping papers.* Prepare shipping papers in accordance with 49 CFR part 172, subpart C.

(2) The manifest requirements of 40 CFR part 262, subpart B, except that:

(i) A healthcare facility shipping non-creditable hazardous waste pharmaceuticals is not required to list hazardous waste codes in box 13 of EPA Form 8700–22.

(ii) A healthcare facility shipping non-creditable hazardous waste pharmaceuticals must write the words ''hazardous waste pharmaceuticals'' in Box 14 (the special handling instructions and additional information) of EPA Form 8700–22.

(b) *Exporting non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals.* A healthcare facility or pharmaceutical reverse distributor that exports non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals is subject to 40 CFR part 262, subpart E.

(c) *Importing non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals.* Any person that imports non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals is subject to 40 CFR part 262, subpart F. A healthcare facility or pharmaceutical reverse distributor may not accept imported non-creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals, unless they have a permit or interim status that allows them to accept hazardous waste from off-site.

§ 266.509 Shipping potentially creditable hazardous waste pharmaceuticals from a healthcare facility or a pharmaceutical reverse distributor to a pharmaceutical reverse distributor.

(a) A healthcare facility or a pharmaceutical reverse distributor who transports or offers for transport potentially creditable hazardous waste pharmaceuticals off-site to a pharmaceutical reverse distributor must:

(1) Provide advance notice (paper or electronic) to the pharmaceutical reverse distributor of the intent to ship potentially creditable hazardous waste pharmaceuticals to the receiving pharmaceutical reverse distributor before each shipment of potentially creditable hazardous waste pharmaceuticals is sent, and

(2) Comply with the pre-transport requirements of § 266.508(a)(1)(i) through (v).

(b) Upon receipt of each shipment of potentially creditable hazardous waste pharmaceuticals, the receiving pharmaceutical reverse distributor must provide confirmation (paper or electronic) to the healthcare facility or pharmaceutical reverse distributor that initiated the shipment that the shipment of potentially creditable hazardous waste pharmaceuticals has arrived.

(c) If a healthcare facility or pharmaceutical reverse distributor initiates a shipment of potentially creditable hazardous waste pharmaceuticals to a pharmaceutical reverse distributor and does not receive delivery confirmation within seven calendar days from the date that the shipment of potentially creditable hazardous waste pharmaceuticals was sent, the healthcare facility or pharmaceutical reverse distributor that initiated the shipment must contact the shipper and the intended recipient (*i.e.,* the pharmaceutical reverse distributor) promptly to report that the confirmation was not received and to determine the status of the potentially creditable hazardous waste pharmaceuticals.

(d) *Exporting potentially creditable hazardous waste pharmaceuticals.* (1) A healthcare facility or pharmaceutical reverse distributor that sends potentially creditable hazardous waste pharmaceuticals to a foreign destination must comply with the following requirements in addition to paragraphs (a) through (c) of this section:

(i) Comply with the requirements applicable to a primary exporter at 40 CFR 262.53, 262.56(a)(1) through (4), (a)(6), and (b) and 262.57;

(ii) Export such potentially creditable hazardous waste pharmaceuticals only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in 40 CFR part 262, subpart E; and

(iii) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

(2) A transporter of potentially creditable hazardous waste pharmaceuticals to a foreign destination other than those OECD countries specified 40 CFR 262.58(a)(1) (in which case the transporter is subject to the requirements of 40 CFR part 262, subpart H) may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

(i) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(ii) The shipment is delivered to the facility designated by the person initiating the shipment.

(e) *Importing potentially creditable hazardous waste pharmaceuticals.* Any person that imports potentially creditable hazardous waste pharmaceuticals into the United States is subject to paragraphs (a) through (c) of this section in lieu of 40 CFR part 262, subpart F.

§ 266.510 Standards for the management of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals at pharmaceutical reverse distributors.

A pharmaceutical reverse distributor may accept potentially creditable hazardous waste pharmaceuticals from off-site and accumulate potentially creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals on-site without a permit or without having interim status, provided that it complies with the following conditions:

(a) *Standards for pharmaceutical reverse distributors managing potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.*

(1) *Notification.* A pharmaceutical reverse distributor must notify the EPA Regional Administrator, using the Site Identification Form (EPA form 8700–12), that it is a pharmaceutical reverse distributor operating under this subpart.

(i) A pharmaceutical reverse distributor that already has an EPA identification number must re-notify the EPA Regional Administrator, using the Site Identification Form (EPA form 8700–12), that it is a pharmaceutical reverse distributor, as defined in § 266.500, within 60 days of the effective date of this subpart, or within 60 days of becoming subject to this subpart.

(ii) A pharmaceutical reverse distributor that does not have an EPA identification number must obtain one by notifying the EPA Regional Administrator, using the Site Identification Form (EPA form 8700–12), that it is a pharmaceutical reverse distributor, as defined in § 266.500, within 60 days of the effective date of this subpart, or within 60 days of becoming subject to this subpart.

(2) *Inventory by the pharmaceutical reverse distributor.* A pharmaceutical reverse distributor must maintain an inventory of all the potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals that are accumulated on-site.

(i) A pharmaceutical reverse distributor must inventory each potentially creditable hazardous waste pharmaceutical upon arrival at the pharmaceutical reverse distributor.

(ii) The inventory must include the identity (*e.g.,* name or national drug code (NDC)) and quantity of each potentially creditable hazardous waste pharmaceutical and evaluated hazardous waste pharmaceutical.

(3) *Security at the pharmaceutical reverse distributor facility.* A pharmaceutical reverse distributor must prevent unknowing entry and minimize the possibility for the unauthorized entry into the portion of the facility where potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals are kept.

(i) Examples of methods that may be used to prevent unknowing entry and minimize unauthorized entry include, but are not limited to:

(A) 24-hour continuous monitoring surveillance system;

(B) An artificial barrier such as a fence; or

(C) Means to control entry, such as keycard access.

(ii) If the pharmaceutical reverse distributor already meets the security requirements of this paragraph because of other regulatory requirements, such as Drug Enforcement Administration regulations, the facility is not required to provide separate security measures pursuant to this section.

(4) *Maximum accumulation time for hazardous waste pharmaceuticals at a pharmaceutical reverse distributor.* A pharmaceutical reverse distributor may accumulate potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals on-site for 90 calendar days or less. The 90 days start when the potentially creditable hazardous waste pharmaceutical arrives at the pharmaceutical reverse distributor and applies to all hazardous waste pharmaceuticals accumulated on-site, regardless of whether they are destined for another pharmaceutical reverse distributor (*i.e.,* potentially creditable hazardous waste pharmaceuticals), or a permitted or interim status treatment, storage or disposal facility (*i.e.,* evaluated hazardous waste pharmaceuticals).

(5) *Extension of 90-day accumulation time limit at a pharmaceutical reverse distributor.* A pharmaceutical reverse distributor may request an extension of its 90-day accumulation time limit for hazardous waste pharmaceuticals from the EPA Regional Administrator due to unforeseen circumstances beyond the control of the pharmaceutical reverse distributor, or if the potentially creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals are involved in litigation or a recall.

(i) A written request must be sent to the EPA Regional Administrator (paper or electronic). The request for an extension must include an explanation of the reason an extension is requested, the approximate volume or weight of the hazardous waste pharmaceuticals that will be accumulated more than 90 days, and the amount of additional time requested.

(ii) The amount of time granted for an extension is at the discretion of the EPA Regional Administrator on a case-by-case basis.

(6) *Contingency plan and emergency procedures at a pharmaceutical reverse distributor.* A pharmaceutical reverse distributor that accepts potentially creditable hazardous waste pharmaceuticals from off-site must prepare a contingency plan and comply with the other requirements of 40 CFR part 265, subpart D.

(7) *Closure of a pharmaceutical reverse distributor.* When closing an area where a pharmaceutical reverse distributor accumulates potentially creditable hazardous waste pharmaceuticals or evaluated hazardous waste pharmaceuticals, the pharmaceutical reverse distributor must control, minimize, or eliminate to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere.

(8) *Reporting by a pharmaceutical reverse distributor*—(i) *Unauthorized waste report.* A pharmaceutical reverse distributor must submit an unauthorized hazardous waste report if the pharmaceutical reverse distributor receives hazardous waste from off-site that it is not authorized to receive (*e.g.,* non-creditable hazardous waste pharmaceuticals, non-pharmaceutical hazardous waste). The pharmaceutical reverse distributor must prepare and submit an unauthorized waste report to the EPA Regional Administrator within 15 days after receiving the unauthorized hazardous waste and the pharmaceutical reverse distributor must send a copy of the unauthorized waste report to the healthcare facility (or other entity) that sent the unauthorized hazardous waste. The pharmaceutical reverse distributor must manage the unauthorized hazardous waste in accordance with all applicable regulations for generators of non-pharmaceutical hazardous waste. The unauthorized waste report must be signed by the owner or operator of the pharmaceutical reverse distributor, or his authorized representative, and contain the following information:

(A) The EPA identification number, name and address of the pharmaceutical reverse distributor;

(B) The date the pharmaceutical reverse distributor received the hazardous waste;

(C) The EPA identification number, name and address of the healthcare facility that shipped the hazardous waste, if available;

(D) A description and the quantity of each unauthorized hazardous waste the pharmaceutical reverse distributor received;

(E) The method of treatment, storage, or disposal for each unauthorized hazardous waste; and

(F) A brief explanation of why the waste was unauthorized, if known.

(ii) *Additional reports.* The EPA Regional Administrator may require pharmaceutical reverse distributors to furnish additional reports concerning the quantities and disposition of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals.

(9) *Recordkeeping by pharmaceutical reverse distributors.* A pharmaceutical reverse distributor must keep the following records (paper or electronic):

(i) A copy of its notification on file for as long as the facility is subject to this subpart;

(ii) A copy of the advance notification, delivery confirmation, the shipping papers or bill of lading for each shipment of potentially creditable hazardous waste pharmaceuticals that it receives, and a copy of each unauthorized waste report, for at least three years from the date it receives the shipment;

(iii) A copy of its inventory for as long as the facility is subject to this subpart; and

(iv) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity, or as requested by the EPA Regional Administrator.

(10) A pharmaceutical reverse distributor that is not a pharmaceutical manufacturer must evaluate a potentially creditable hazardous waste pharmaceutical within 21 calendar days of arriving at the pharmaceutical reverse distributor to establish whether it is destined for another pharmaceutical reverse distributor for further evaluation or verification of manufacturer's credit or for a permitted or interim status treatment, storage or disposal facility. This 21 calendar days is part of the 90 calendar days allowed for on-site accumulation.

(i) A potentially creditable hazardous waste pharmaceutical that is destined for another pharmaceutical reverse distributor is still considered a ''potentially creditable hazardous waste pharmaceutical'' and must be managed in accordance with paragraph (b) of this section.

(ii) A potentially creditable hazardous waste pharmaceuticals that is destined for a permitted or interim status treatment, storage or disposal facility is considered an ''evaluated hazardous waste pharmaceutical'' and must be managed in accordance with paragraph (c) of this section.

(11) A pharmaceutical reverse distributor that is a pharmaceutical manufacturer must evaluate a potentially creditable hazardous waste pharmaceutical to verify manufacturer's credit within 21 calendar days of arriving at the facility and must manage the evaluated hazardous waste pharmaceuticals in accordance with paragraph (c) of this section. This 21 calendar days is part of the 90 calendar days allowed for on-site accumulation.

(b) *Additional standards for pharmaceutical reverse distributors managing potentially creditable hazardous waste pharmaceuticals destined for another pharmaceutical reverse distributor.* A pharmaceutical reverse distributor that does not have a permit or interim status must comply with the following conditions, in addition to the requirements in paragraph (a) of this section, for the management of potentially creditable hazardous waste pharmaceuticals that are destined for another pharmaceutical reverse distributor for further evaluation or verification of manufacturer's credit:

(1) A pharmaceutical reverse distributor that receives potentially creditable hazardous waste pharmaceuticals from a healthcare facility must send those potentially creditable hazardous waste pharmaceuticals to another pharmaceutical reverse distributor within 90 days from when the potentially creditable hazardous waste pharmaceuticals arrived or follow paragraph (c) of this section for evaluated hazardous waste pharmaceuticals.

(2) A pharmaceutical reverse distributor that receives potentially creditable hazardous waste pharmaceuticals from another pharmaceutical reverse distributor must send those potentially creditable hazardous waste pharmaceuticals to a pharmaceutical reverse distributor that is a pharmaceutical manufacturer within 90 days from when the potentially creditable hazardous waste pharmaceuticals arrived or follow paragraph (c) of this section for evaluated hazardous waste pharmaceuticals.

(3) A pharmaceutical reverse distributor must ship potentially creditable hazardous waste pharmaceuticals destined for another pharmaceutical reverse distributor in accordance with § 266.509.

(4) *Recordkeeping.* A pharmaceutical reverse distributor must keep the following records (paper or electronic) for each shipment of potentially creditable hazardous waste pharmaceuticals that it initiates to another pharmaceutical reverse distributor, for at least three years from the date of shipment:

(i) A copy of the advance notification provided to the pharmaceutical reverse distributor;

(ii) The confirmation of delivery; and

(iii) The shipping papers or bill of lading.

(c) *Additional standards for pharmaceutical reverse distributors managing evaluated hazardous waste pharmaceuticals.* A pharmaceutical reverse distributor that does not have a permit or interim status must comply with the following conditions, in addition to the requirements of paragraph (a) of this section, for the management of evaluated hazardous waste pharmaceuticals:

(1) *Accumulation area at the pharmaceutical reverse distributor.* A pharmaceutical reverse distributor must designate an on-site accumulation area where it will accumulate evaluated hazardous waste pharmaceuticals.

(2) *Weekly inspections of on-site accumulation area.* A pharmaceutical reverse distributor must inspect its on-site accumulation area at least weekly, looking at containers for leaks and for deterioration caused by corrosion or other factors, as well as for signs of diversion.

(3) *Personnel training at a pharmaceutical reverse distributor.* Personnel at a pharmaceutical reverse distributor that handle evaluated hazardous waste pharmaceuticals are subject to the training requirements of § 265.16.

(4) *Labeling and management of containers at on-site accumulation area.* A pharmaceutical reverse distributor accumulating evaluated hazardous waste pharmaceuticals in containers in an on-site accumulation area must:

(i) Label the containers with the words, ''hazardous waste pharmaceuticals'';

(ii) Ensure the containers are in good condition and managed to prevent leaks;

(iii) Use containers that are made of or lined with materials which will not react with, and are otherwise compatible with, the evaluated hazardous waste pharmaceuticals, so that the ability of the container to contain the waste is not impaired;

(iv) Keep containers closed, if holding liquid or gel evaluated hazardous waste pharmaceuticals. If the liquid or gel evaluated hazardous waste pharmaceuticals are in their original, intact, sealed packaging; or repackaged, intact, sealed packaging, they are considered to meet the closed container standard;

(v) A pharmaceutical reverse distributor that manages ignitable or reactive evaluated hazardous waste pharmaceuticals, or that mixes or commingles incompatible evaluated hazardous waste pharmaceuticals must manage the container so that it does not have the potential to:

(A) Generate extreme heat or pressure, fire or explosion, or violent reaction;

(B) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(C) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(D) Damage the structural integrity of the container of hazardous waste pharmaceuticals; or

(E) Through other like means threaten human health or the environment; and

(vi) Accumulate evaluated hazardous waste pharmaceuticals that are prohibited from being combusted because of the dilution prohibition of § 268.3(c) (*e.g.,* arsenic trioxide (P012)) in separate containers from other evaluated hazardous waste pharmaceuticals at the pharmaceutical reverse distributor.

(5) *Hazardous waste numbers.* Containers of evaluated hazardous waste pharmaceuticals must be marked with the applicable hazardous waste number(s) (*i.e.,* hazardous waste code(s)) prior to transport off-site.

(6) *Shipments.* A pharmaceutical reverse distributor must ship evaluated hazardous waste pharmaceuticals that

are destined for a permitted or interim status treatment, storage or disposal facility, in accordance with § 266.508(a).

(7) *Procedures for a pharmaceutical reverse distributor for managing rejected shipments.* A pharmaceutical reverse distributor who sends a shipment of evaluated hazardous waste pharmaceuticals to a designated facility with the understanding that the designated facility can accept and manage the waste, and later receives that shipment back as a rejected load in accordance with the manifest discrepancy provisions of § 264.72 or § 265.72 of this chapter, may accumulate the returned hazardous waste pharmaceuticals on-site for up to an additional 90 days in the on-site accumulation area provided the rejected or returned shipment is managed in accordance with paragraph (a) of this section. Upon receipt of the returned shipment, the pharmaceutical reverse distributor must:

(i) Sign either:

(A) Item 18c of the original manifest if the original manifest was used for the returned shipment; or

(B) Item 20 of the new manifest if a new manifest was used for the returned shipment;

(ii) Provide the transporter a copy of the manifest;

(iii) Within 30 days of delivery of the rejected shipment of the evaluated hazardous waste pharmaceuticals, send a copy of the manifest to the designated facility that returned the shipment to the pharmaceutical reverse distributor; and

(iv) Transport or offer for transport the returned shipment of evaluated hazardous waste pharmaceuticals in accordance with the shipping standards of § 266.508(b).

(8) *Land disposal restrictions.* Evaluated hazardous waste pharmaceuticals are subject to the Land Disposal Restrictions of 40 CFR part 268. A pharmaceutical reverse distributor that accepts potentially creditable hazardous waste pharmaceuticals from off-site must comply with the land disposal restrictions in accordance with § 268.7(a) requirements.

(9) *Reporting by a pharmaceutical reverse distributor for evaluated hazardous waste pharmaceuticals.* (i) *Biennial report by a pharmaceutical reverse distributor.* A pharmaceutical reverse distributor that ships evaluated hazardous waste pharmaceuticals off-site must prepare and submit a single copy of a biennial report to the EPA Regional Administrator by March 1 of each even numbered year in accordance with § 262.41, except § 262.41(a)(7).

(ii) *Exception reporting by a pharmaceutical reverse distributor for a missing copy of the manifest.* (A) For shipments from a pharmaceutical reverse distributor to a designated facility:

(*1*) If a pharmaceutical reverse distributor does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the evaluated hazardous waste pharmaceuticals were accepted by the initial transporter, the pharmaceutical reverse distributor must contact the transporter or the owner or operator of the designated facility to determine the status of the evaluated hazardous waste pharmaceuticals.

(*2*) A pharmaceutical reverse distributor must submit an exception report to the EPA Regional Administrator for the Region in which the pharmaceutical reverse distributor is located if it has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the evaluated hazardous waste pharmaceutical was accepted by the initial transporter. The exception report must include:

(*i*) A legible copy of the manifest for which the pharmaceutical reverse distributor does not have confirmation of delivery; and

(*ii*) A cover letter signed by the pharmaceutical reverse distributor, or its authorized representative, explaining the efforts taken to locate the evaluated hazardous waste pharmaceuticals and the results of those efforts.

(B) For shipments rejected by the designated facility and shipped to an alternate facility:

(*1*) A pharmaceutical reverse distributor that does not receive a copy of the manifest with the handwritten signature of the owner or operator of the alternate facility within 35 days of the date the evaluated hazardous waste pharmaceutical was accepted by the initial transporter must contact the transporter or the owner or operator of the alternate facility to determine the status of the hazardous waste. The 35 day timeframe begins the date the waste is accepted by the transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

(*2*) A pharmaceutical reverse distributor must submit an Exception Report to the EPA Regional Administrator for the Region in which the pharmaceutical reverse distributor is located if it has not received a copy of the manifest with the handwritten signature of the owner or operator of the alternate facility within 45 days of the date the hazardous waste was accepted by the initial transporter. The 45-day timeframe begins the date the hazardous waste is accepted by the transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility. The Exception Report must include:

(*i*) A legible copy of the manifest for which the generator does not have confirmation of delivery; and

(*ii*) A cover letter signed by the pharmaceutical reverse distributor, or its authorized representative, explaining the efforts taken to locate the evaluated hazardous waste pharmaceuticals and the results of those efforts.

(10) *Recordkeeping by a pharmaceutical reverse distributor for evaluated hazardous waste pharmaceuticals.* (i) A pharmaceutical reverse distributor must keep a log (written or electronic) of the weekly inspections of the on-site accumulation area, required by paragraph (c)(2) of this section. This log must be retained as a record for at least three years from the date of the inspection.

(ii) A pharmaceutical reverse distributor must keep a copy of each manifest signed in accordance with § 262.23(a) for three years or until it receives a signed copy from the designated facility which received the evaluated hazardous waste pharmaceutical. This signed copy must be retained as a record for at least three years from the date the evaluated hazardous waste pharmaceutical was accepted by the initial transporter.

(iii) A pharmaceutical reverse distributor must keep a copy of each biennial report for at least three years from the due date of the report.

(iv) A pharmaceutical reverse distributor must keep a copy of each exception report for at least three years from the submission of the report.

(v) A pharmaceutical reverse distributor must keep records to document personnel training, in accordance with § 265.16.

(d) *When a pharmaceutical reverse distributor must have a permit.* A pharmaceutical reverse distributor is an operator of a hazardous waste treatment, storage or disposal facility and is subject to the requirements of 40 CFR parts 264, 265, and 267 and the permit requirements of 40 CFR part 270, if the pharmaceutical reverse distributor:

(1) Does not meet the conditions of this section;

(2) Accepts manifested hazardous waste from off-site; or

(3) Treats or disposes of hazardous waste on-site.

PART 268—LAND DISPOSAL RESTRICTIONS

■ 9. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

■ 10. Amend Section 268.7 by revising the section heading and the paragraph (a) subject heading to read as follows:

§ 268.7 Testing, tracking, and recordkeeping requirements for generators, pharmaceutical reverse distributors, treaters, and disposal facilities.

(a) *Requirements for generators and pharmaceutical reverse distributors:*

* * *

* * * * *

■ 11. Amend § 268.50 by adding paragraphs (a)(4) and (5) to read as follows:

§ 268.50 Prohibitions on storage of restricted wastes.

(a) * * *

(4) A healthcare facility accumulates such wastes in containers on-site solely for the purpose of the accumulation of such quantities of hazardous waste pharmaceuticals as necessary to facilitate proper recovery, treatment, or disposal and the healthcare facility complies with the requirements in § 266.502 of this chapter.

(5) A pharmaceutical reverse distributor accumulates such wastes in containers on-site solely for the purpose of the accumulation of such quantities of hazardous waste pharmaceuticals as necessary to facilitate proper recovery, treatment, or disposal and the pharmaceutical reverse distributor complies with § 266.510 of this chapter.

* * * * *

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

■ 12. The authority citation for part 273 continues to read as follows:

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

■ 13. Amend § 273.80 by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 273.80 General.

(a) Except as provided in paragraph (d), any person seeking to add a hazardous waste or category of hazardous waste to this part may petition for a regulatory amendment under this subpart and 40 CFR 260.20 and 260.23.

* * * * *

(d) Pharmaceutical hazardous waste is regulated by 40 CFR part 266, subpart P and may not be added as a category of hazardous waste for management under this part.

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Part IV

Office of Personnel Management

5 CFR Parts 410, 550, 551, *et al.*
Overtime Pay for Border Patrol Agents; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 410, 550, 551, and 870

RIN 3206–AN19

Overtime Pay for Border Patrol Agents

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to implement section 2 of the Border Patrol Agent Pay Reform Act of 2014, as amended, which established a new method of compensating Border Patrol agents for overtime work. Payments under this new provision will become payable beginning with the first pay period beginning in January 2016. These regulations affect only Border Patrol agents in the U.S. Customs and Border Protection component of the Department of Homeland Security.

DATES: *Effective date:* This rule is effective October 15, 2015.

Applicability dates: This rule is applicable beginning on January 10, 2016, except that §§ 550.1602–550.1605 and 550.1611–550.1615 are applicable on the effective date of this rule, as provided by section 2(i) of Public Law 113–277, as amended.

FOR FURTHER INFORMATION CONTACT: Bryce Baker by telephone at (202) 606–2858 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On June 17, 2015, the Office of Personnel Management (OPM) published proposed regulations (80 FR 34540) to implement section 2 of the Border Patrol Agent Pay Reform Act of 2014 (Pub. L. 113–277, December 18, 2014, as amended by Pub. L. 114–13, May 19, 2015), hereafter referred to as ''BPAPRA.'' BPAPRA established a new method of compensating Border Patrol agents for overtime work. Most BPAPRA provisions are effective on the first day of the first pay period beginning on or after January 1, 2016.

The 30-day comment period for the proposed regulations ended on July 17, 2015. We received comments from 1 agency, 1 union, and 66 individuals. This **Federal Register** notice provides general information, addresses the comments received, and issues final regulations that reflect changes to the proposed regulations. OPM is adding a new subpart P, Overtime Pay for Border Patrol Agents, in part 550 (Pay Administration—General) of title 5, Code of Federal Regulations, and revising other related regulations.

Summary of BPAPRA

Under BPAPRA, a new form of overtime compensation will apply to Border Patrol agents employed by the U.S. Customs and Border Protection (CBP) component of the Department of Homeland Security (DHS). The key features of BPAPRA are summarized below:

- Most Border Patrol agents will have the opportunity each year to elect to be assigned to one of three types of ''regular tour of duty'' which provide different rates of compensation: (1) A Level 1 regular tour of duty, which provides an overtime supplement equal to 25 percent of basic pay for a regular schedule of 10 hours each regular workday, including 2 overtime hours; (2) a Level 2 regular tour of duty, which provides an overtime supplement equal to 12.5 percent of basic pay for a regular schedule with 9 hours each regular workday, including 1 overtime hour; and (3) a Basic regular tour of duty with a regular 8-hour workday, which provides no overtime supplement.
- CBP may assign regular tours of duty in certain circumstances without regard to agent elections. For example, agents assigned to care for canines must be assigned a Level 1 regular tour of duty. Agents in certain positions—headquarters, administrative, or training or fitness instructor—must be assigned a Basic regular tour of duty unless a different tour is justified based on a staffing analysis. In addition, generally no more than 10 percent of agents at a location may have a Level 2 or Basic regular tour of duty. In other words, generally at least 90 percent of agents at a location must have a Level 1 regular tour of duty. CBP may revise the percentage requirement for a location if justified based on a staffing analysis.
- The requirement for 1 or 2 hours of scheduled overtime within a Level 2 or Level 1 regular tour of duty, respectively, applies only if the agent performs work during regular time on that same day. For example, if an agent takes leave for a full 8-hour basic workday, no obligation to perform those scheduled overtime hours accrues on that day, and there is no loss of pay.
- The overtime supplement for regularly scheduled overtime hours within the assigned Level 1 or Level 2 regular tour of duty is a percentage of the agent's hourly rate of basic pay and is multiplied by the number of paid hours of basic pay (*i.e.,* hours of regular time, whether work or paid absence) in the biweekly pay period. Thus, the supplement is payable during paid leave or other paid time off taken from the 40-hour basic workweek.
- The overtime supplement is subject to the title 5 premium pay cap.
- An agent may not receive other premium pay for regularly scheduled overtime hours *within* his or her regular tour of duty (*i.e.,* hours covered by the overtime supplement).
- The overtime supplement is treated as part of basic pay for retirement and certain other purposes, such as life insurance and severance pay.
- In consultation with OPM, CBP must develop a plan to ensure that the assignment of an overtime supplement to an agent during the period beginning 3 years before the agent reaches retirement age and service requirements is consistent with the agent's career average overtime supplement.
- Overtime work in excess of the biweekly regular tour of duty (generally 100, 90, or 80 hours, as applicable) is separately compensable. If the additional overtime work is regularly scheduled in advance of the workweek, the work is compensated under the regular title 5 overtime provisions (5 U.S.C. 5542). If the additional overtime work is irregular, the work is compensated by crediting the agent with compensatory time off. However, no more than 10 hours of compensatory time off may be earned in a biweekly pay period (unless a written waiver of this provision is approved in advance) and no more than 240 hours may be earned during a leave year.
- If the agent is absent during required scheduled overtime within the regular tour of duty (*i.e.,* obligated overtime hours), payment of the overtime supplement is not affected but the agent accrues an obligation (debt) to perform other overtime work to make up for work not performed. Any accrued compensatory time off will be applied against that overtime hours debt. Any additional overtime work outside the regular tour of duty in future pay periods will also be applied against that debt.
- All Border Patrol agents are FLSA-exempt. This exemption applies to both the minimum wage and the maximum hours and overtime provisions of the FLSA.

Statutory Effective Date

BPAPRA was enacted on December 18, 2014 as Public Law 113–277. On May 19, 2015, BPAPRA was amended by Public Law 114–13 to clarify the

effective date of certain provisions. Section 1(a) of Public Law 114–13 added a new subsection (i) in section 2 of BPAPRA. That section 2(i) provided that subsections (b), (c), (d), and (g) of section 2 of BPAPRA are effective on the first day of the first pay period beginning on or after January 1, 2016, except that (1) any provision of 5 U.S.C. 5550(b) (as added by section 2(b) of BPAPRA) relating to administering elections and making advance assignments to a regular tour of duty is applicable before the January 2016 effective date to the extent determined necessary by the OPM Director and (2) the OPM Director's authority to issue regulations (in particular, the authority in 5 U.S.C. 5550(b)(1)(B) related to election procedures) is effective as necessary before the January 2016 effective date.

As required by these regulations, CBP must provide election information notices to Border Patrol agents no later than November 1 and agents must make elections for the upcoming annual period no later than December 1. Thus, BPAPRA provisions related to administering annual elections and advance assignments for the annual period beginning in January 2016 (§§ 550.1602–550.1605 and 550.1611–550.1615) must be effective as necessary before January 2016.

As provided by Public Law 114–13, regular tours of duty and any associated overtime supplements established under 5 U.S.C. 5550 (as added by section 2(b) of BPAPRA) will first take effect on the first day the first pay period beginning on or after January 1, 2016. That pay period begins on January 10, 2016. Other BPAPRA provisions that are effective on January 10, 2016 include (1) the amendments to 5 U.S.C. 5542 (dealing with overtime pay and compensatory time off) made by section 2(c) of BPAPRA, (2) the amendments to 5 U.S.C. 8331 (dealing with retirement-creditable basic pay) made by section 2(d) of BPAPRA, (3) the amendments to 5 U.S.C. 5547 (dealing with the premium pay cap) made by section 2(g)(1) of BPAPRA, and (4) the amendments to section 13(a) of the FLSA (dealing with FLSA exemptions) made by section 2(g)(2) of BPAPRA.

The ''Applicability Dates'' shown at the beginning of the Preamble reflect the statutory effective dates.

Comments on Proposed Regulations

Below we will summarize and respond to comments on the proposed regulations, organized by the affected regulatory section number. We received 68 comments, including comments from CBP, the agency employing Border Patrol agents, and from the National Border Patrol Council (NBPC), a labor union that represents Border Patrol agents. Comments from CBP and NBPC are identified, while comments from individuals are not. Also, we address below certain clarifying changes we are making that are not a response to a specific comment but provide a general response to comments requesting greater clarity.

General Comments on BPAPRA

A number of commenters expressed general concerns and objections about the content of the BPAPRA statute. Some objected to the loss of entitlement to overtime pay under FLSA rules and the resulting loss in pay. Some objected to being paid the equivalent of a straight rate for within-tour overtime work through the Border Patrol overtime supplement. Some objected to the title 5 capped overtime hourly rate that would be applied to regularly scheduled overtime hours outside the agent's regular tour. Some objected to the use of compensatory time off to compensate agents for irregular overtime hours and to the statutory rules governing such compensatory time off. Some believed it was unfair that other categories of employees have more generous overtime pay entitlements—for example, Customs and Border Protection officers who receive a double overtime rate. Some stated they would prefer receiving law enforcement availability pay. Some objected to the fact that the Basic tour was the default tour for employees in headquarters and certain other positions, which penalizes them for providing critically important services to CBP. One commenter objected to changes in the pay rules being made in mid-career. Another objected to having three possible types of tours, stating that all agents should work the same hours. A couple of commenters objected to the general requirement that 90 percent of agents have a Level 1 tour (100 hours per pay period). One commenter objected to the requirement to make up for absences from within-tour obligated overtime hours. Some commenters acknowledged that their union supported the bill, but asserted that many agents opposed it. Several commenters stated their belief that the new overtime pay system would result in morale and staffing problems.

The above-described comments relate to provisions in the law itself. OPM regulations must implement those provisions and cannot make changes to address these comments.

§ 550.1603—Definitions

NBPC commented that the definitions of *irregular overtime work* and *regularly scheduled work* (which includes regularly scheduled overtime work) require that the work be officially ordered or approved, a title 5 concept that is different than the ''suffered-or-permitted'' standard used under FLSA. NBPC stated that agents frequently must extend their work hours to pursue illegal aliens or drug smugglers without supervisory approval due to lack of radio communications. NBPC recommended that the regulations be revised to provide that agents be compensated for hours when they voluntarily extend their workday, especially if they are unable to contact a supervisor.

By law, agents are no longer subject to FLSA rules, including the suffered-or-permitted standard, but are instead under title 5 rules; therefore, we are applying the longstanding ''ordered-or-approved'' standard that applies to normal overtime (5 U.S.C. 5542(a)). Under the title 5 standard, overtime work is either ordered in advance or approved after the fact based on agency policies. CBP should clearly communicate to agents its policies regarding when an agent's activities will be retroactively approved as compensable hours of work. We note that agents were formerly covered by the administratively uncontrollable overtime (AUO) provision in 5 U.S.C. 5545(c)(2), which expressly recognizes that an employee is generally responsible for recognizing, without supervision, circumstances that require the employee to remain on duty. While the AUO provisions no longer apply, CBP may provide agents with similar discretion (subject to after-the-fact agency approval) under agency policies as necessary to support its mission. Some matters relating to overtime work, such as procedures and appropriate arrangements for adversely affected employees, may be subject to collective bargaining.

We are making a clarifying change to the definition of *overtime supplement* to state that, for an agent with a Basic regular tour of duty, the overtime supplement is 0 percent. This change has been made to clarify that the 0 percent overtime supplement should be used in career average calculations under § 550.1615. Under 5 U.S.C. 5550(b)(1)(G)(i), the career average is based on the ''average border patrol rate of pay level,'' where the Border Patrol rate of pay may be a Level 1 rate (Basic rate plus 25 percent overtime supplement), Level 2 (Basic rate plus

12.5 percent overtime supplement), or Basic rate (0 percent overtime supplement). In drafting our regulations, we found it clearer to focus on the overtime supplement as a separate payment rather than refer to an aggregate rate. Thus, in the regulations on the career average computation, we are computing a career average overtime supplement, but that average must include any periods where a 0 percent supplement was in effect.

§ 550.1604—CBP Authority

CBP commented that the regulations should specifically reassert that nothing in the statute or regulations may be construed to affect the requirement that a Border Patrol agent must work overtime as assigned as a condition of employment. CBP was concerned that some may think that only overtime work within the regular tour of duty was required. CBP cited 5 U.S.C. 5550(g) and BPAPRA section 2(f) to show that agents are required to perform outside-tour overtime work in accordance with CBP needs.

We agree that CBP has clear authority to require agents to work outside-tour overtime based on CBP needs. In fact, the proposed regulations addressed this matter in § 550.1604, which explicitly cited 5 U.S.C. 5550(g) and BPAPRA section 2(f). This provision is unchanged in the final regulations. In general, OPM regulations do not address when a work requirement is a ''condition of employment,'' since that is a matter of agency policy under its broad management authority in 5 U.S.C. 301–302.

§§ 550.1611 and 550.1612—Tour Assignments

An individual commented that employees working at training centers have functions to perform that require overtime beyond the regular 8-hour basic workday.

We understand this comment to be directed at the fact that a Basic tour (40 hours a week) is the default tour assignment for an agent holding a training instructor position at a CBP training facility. This is a matter of law, but both the law and the regulations recognize the possibility of assigning training instructors a Level 1 or Level 2 tour based on a comprehensive staffing analysis under BPAPRA section 2(e). (See 5 U.S.C. 5550(b)(1)(D)(iv) and 5 CFR 550.1611(f)(3).) We note that CBP may assign scheduled and irregular overtime to training instructors as necessary to perform needed work beyond the assigned tour. (See BPAPRA sections 2(a) and 2(f)(1).)

One individual explained how it was unfair and harmful to CBP to deny headquarters and academy training staff the option of receiving an overtime supplement (Level 1 or 2). The individual observed that, faced with drastic pay reductions, agents would not seek promotions to headquarter/academy positions or would seek demotions to leave those positions. Another individual commented that some headquarters agents have duties that are more operational than administrative and that it is unfair to deny such agents a Level 1 or Level 2 tour.

The BPAPRA statute expressly provides that a Basic tour (40-hour week) is the default tour for agents in certain positions, including agents in a position at CBP headquarters, a position as a training instructor at a CBP training facility, an administrative position, or a position as a fitness instructor (5 U.S.C. 5550(b)(1)(D)(iv)). A headquarters position, regardless of whether it is considered primarily operational or administrative is covered by this provision. Congress determined that all headquarters positions should be treated the same in terms of the default tour. However, a Level 1 or Level 2 tour may be assigned to agents holding a headquarters position based on a comprehensive staffing analysis showing such tours are necessary to more adequately fulfill CBP operational requirements.

Two individuals commented that the term ''administrative position'' is vague and should be defined in regulation.

We considered whether we should attempt to define the term ''administrative position'' when we drafted the proposed regulations. We concluded then, and continue to believe now, that CBP is in the best position to determine whether a particular position is primarily administrative in nature. We have revised § 550.1611(f)(3) to clarify that CBP is responsible for making that determination.

CBP provided comments requesting clarification regarding how long an agent with an assigned Level 1 or Level 2 tour could be detailed to a position that is authorized only for a Basic tour, such as a headquarters position and a training academy position. CBP noted that the proposed regulations did not address this issue and recommended that, at a minimum, the time limit be 60 workdays.

We agree that the proposed regulations did not address the treatment of a temporary detail of an agent to a position that requires a Basic regular tour of duty under 5 U.S.C. 5550(b)(1)(D)(iv) and § 550.1611(f)(3). We do not believe that a short temporary detail should affect an agent's otherwise applicable assigned tour. Rather than establish a rule based on the number of workdays, we are establishing a rule based on the number of calendar days to simplify administration. We believe that it would be reasonable to establish 90 days as the calendar day limit. Ninety calendar days is roughly equivalent to the 60 workdays that CBP originally requested as a minimum. Accordingly, we are adding a new paragraph (g) in § 550.1611 to address temporary details that involve (*i.e.,* detail to or from) a position of the type described in § 550.1611(f)(3). For consistency, this treatment must work in both directions. If an agent officially in a position not requiring a Basic tour (*i.e.,* noncovered position) is serving under a temporary detail to a position whose incumbent is normally required to have a Basic tour (*i.e.,* covered position), the agent will be considered to be serving in a noncovered position during the first 90 days of the detail. Likewise, if an agent in a covered position requiring a Basic tour is serving under a temporary detail to a noncovered position, the agent will be considered to be in a covered position during the first 90 days of the detail. After completing 90 days under a temporary detail, an agent will be considered, for the purpose of applying paragraph (f)(3), to hold the position to which temporarily detailed for the remainder of the detail, notwithstanding the agent's official position of record.

NBPC commented that § 550.1611(f)(2) is not clear. Consistent with law, that provision states that an agent who is ''unable to perform overtime on a daily basis, as determined by CBP,'' must be assigned a Basic tour. NBPC states that the regulation should be clarified to state that this provision is triggered only when an agent's law enforcement authority is revoked and asserts that this was always the intent.

The plain language of the law does not limit an ''inability'' finding to situations where an agent's law enforcement authority is revoked (*e.g.,* due to an investigation, loss of security clearance, or suspension or other disciplinary action). The law simply states ''if at any time U.S. Customs and Border Protection concludes that a border patrol agent is unable to perform overtime on a daily basis'' it must assign the agent a Basic tour. If Congress intended to limit the application to situations where law enforcement authority is revoked, it could have easily so stated that. The Senate committee report on BPAPRA states that CBP has authority to assign a Basic tour

''if CBP thinks the agent is unable, *for any reason,* to work the additional hours'' (emphasis added). S. Rep. No. 113–248, p. 13 (August 26, 2014). Given the clear language of the law and intent of Congress, CBP is permitted to make these determinations for any reason, subject to any limitations prescribed by OPM in regulation. The proposed regulations included no such limitations.

CBP also commented on § 550.1611(f)(2), requesting that OPM provide guidance on what constitutes being ''unable to perform'' the obligated overtime hours. CBP stated its belief that, at a minimum, the term included situations in which an agent's law enforcement authority is revoked. CBP also asked for clarification regarding situations where an agent is on light duty for physical or medical reasons (*e.g.,* working an 8-hour basic workday, but not overtime hours). CBP pointed out that such an agent may have unused compensatory time off that could be applied against the accruing overtime hours debt. CBP also asked for clarification regarding whether the ''inability'' provision could be applied to an agent who is on paid leave for a full day and therefore is not accruing an overtime hours debt.

Given the requests for clarification from both CBP and NBPC, we are making revisions in these final regulations. We are adding a new a paragraph (e) in § 550.1612 and amending paragraph (f)(2) in § 550.1611 to reference that new paragraph. Paragraph (e) addresses the bases on which CBP may make a determination regarding an employee's inability to perform overtime work and the effective date of such an inability determination. In paragraph (e)(1), we provide that an inability determination may be made (i) when an agent's law enforcement authority is revoked, (ii) when an agent's inability will last for an extended period due to physical or health reasons, or (iii) for any other appropriate reason, as determined by CBP, but excluding inability based on lack of work, rather than the employee's availability to work. The second condition parallels a similar provision that applies to recipients of law enforcement availability pay under 5 CFR 550.184(d). CBP will determine what constitutes an ''extended period'' under its policies. CBP would not be required to make an inability determination for a short-term medical condition. The third condition provides CBP with discretion, as intended by Congress, but clarifies that an inability determination cannot be based on lack of work (workload), but must be based solely on the employee's ability and availability to work. Workload management is the responsibility of CBP, which should adjust staffing levels and assignments as necessary to ensure that agents have sufficient work to fill agents' assigned regular tours of duty at any location. The third condition provides a broad, catch-all authority to cover any other appropriate situations where CBP determines that it is reasonable to find that an agent is unable to regularly perform overtime work. Some matters relating to overtime assignments, such as procedures and appropriate arrangements for adversely affected employees, may be subject to collective bargaining.

In paragraph (e)(2) of § 550.1612, we state a general rule that the change to a Basic tour takes effect on the agent's next workday; however, we provide for the possibility of exceptions. CBP may delay the effective date until the beginning of the next week or biweekly pay period (which simplifies administration). CBP may delay the effective date to allow an employee who is working during regular time to use up unused compensatory time off hours by applying those hours against the debt resulting from the agent's absences during obligated overtime hours. CBP may delay the effective date to allow an employee to use accrued paid leave or other paid time off if the agent will be performing no work during regular time for a continuous block of time. CBP may also delay the effective date during a continuous leave without pay period granted under the Family and Medical Leave Act. The above-described delays are approved at CBP's discretion; however, we provide that CBP must delay the effective date when the employee's inability to perform overtime work is based on a job-related injury covered by workers' compensation provisions.

CBP commented that the regulations should allow an agent to request, during an annual period, a change to a regular tour of duty with a lesser number of hours, notwithstanding the agent's election for that annual period. CBP noted that OPM regulations for the law enforcement availability pay (LEAP) program allows criminal investigators to request that LEAP be temporarily discontinued due to a personal or family hardship. (See 5 CFR 550.182(f), ''Voluntary opt-out.'')

The BPAPRA law is very specific regarding the circumstances under which types of regular tours of duty are assigned. In particular, the BPAPRA specifically provides that tours are elected/assigned for a full annual period, with a limited set of superseding rules. Thus, the statutory framework differs from that found in the LEAP law. Fortunately, the concern CBP raises can largely be addressed within the BPAPRA statutory framework. Under 5 U.S.C. 5550(b)(1)(D)(iii), CBP may determine that an agent is ''unable to perform overtime on a daily basis'' and then assign a Basic tour. The law does not prescribe the specific reasons the agent is ''unable'' to perform overtime. As discussed above, we are adding a new paragraph (e) in § 550.1612, which provides additional parameters for this CBP authority. Paragraph (e)(1)(iii) allows CBP to base an inability determination on other appropriate reasons, as determined by CBP. This broad language would allow CBP to approve a requested mid-year change in an agent's tour based on personal or family hardship situation, if CBP determines that the hardship makes the agent unable to work the otherwise applicable tour.

CBP raised the idea that perhaps an agent's tour election or assignment could be changed pursuant to a directed assignment to another agent position in situations not covered by § 550.1612(d). CBP pointed out that OPM regulations allow elections to be made regarding the tour a new agent will have after completing basic training—even though the law is silent about such elections.

We don't believe a change in an agent's position provides any basis for changing the agent's tour election or assignment unless one of the superseding rules cited in § 550.1612(d) are applicable. Those superseding rules are found in § 550.1611(f) and § 550.1622 and are based on statutory provisions. (We have revised § 550.1612(d) to reference all of § 550.1622, rather than just paragraph (b), to avoid confusion. Paragraph (c) of § 550.1622 (dealing with canine handlers) is already implicated by paragraph (f)(1) of § 550.1611.) The BPAPRA law clearly anticipates that tour elections will be applicable for a full annual period absent a superseding tour assignment. If an agent changes positions, CBP is responsible for ensuring that the agent is assigned sufficient work in the new position to fill the agent's assigned tour.

In contrast, since the BPAPRA law did not address the assignment of tours to newly hired agents, there was a clear policy gap that OPM needed to fill by regulation. The law was focused on agents who were already on board as of November 1 and able to make elections for the next annual period. It did not address agents hired during the annual period. Also, the law addressed periods of ''advanced training'' but not periods

of ''initial training.'' Regulations were necessary to cover these unaddressed circumstances.

Based on comments received regarding § 550.1622(c) (dealing with canine handlers), we are making changes in § 550.1611(e) and § 550.1612(d). Those changes address the canine handler issues but also apply generally to other circumstances. (See section of this Supplementary Information dealing with comments on § 550.1622.)

§ 550.1614—10 Percent Limit on Agents at Location Without a Level 1 Tour

Several commenters objected to the default 10 percent limit on the number of agents in any location who could have less than a Level 1 tour (*i.e.,* Basic or Level 2). They had understood that the limit was going to be 20 percent (allowing 10 percent in the Basic tour category and 10 percent in the Level 2 category). They objected to being forced to have a Level 1 tour (10-hour workday) with a 25 percent overtime supplement, which they equated to receiving the equivalent of the regular straight rate for within-tour overtime hours. One individual was concerned that seniority would be used to determine which employees could have a Level 2 or Basic tour and that he/she would not be able to have a Basic tour that would allow him/her to spend time with a new child. Some commenters questioned whether there was sufficient work to justify requiring 90 percent of agents to have a Level 1 tour.

The BPAPRA law clearly provides that, as a default rule, not more than 10 percent of agents (*i.e.,* combined count) at any location may be assigned to a Level 2 tour *or* a Basic tour (5 U.S.C. 5550(b)(1)(E)). Congressional intent is also clear. The Senate committee report on the bill that was later enacted as BPAPRA provides: ''The bill initially requires that no more than 10 percent of the agents at any given location be allowed to work less than 100 hours per two-week pay period. . . . CBP must unilaterally assign agents to work the extra hours in order to ensure that 90 percent of Border Patrol agents in that location are working 100 hours per pay period.'' S. Rep. No. 113–248, p. 9. The report also refers to ''the bill's baseline requirement that 90 percent of agents at a location work 100 hours per pay period at the level 1 Border Patrol rate of pay.'' *Id.* at 11. Under 5 U.S.C. 5550(b)(1)(E), the baseline requirement may be waived at a particular location based on a comprehensive staffing analysis conducted under BPAPRA section 2(e). OPM's regulations in § 550.1614(b) address this waiver authority and allow CBP to establish a higher percentage limit than 10 percent based on the staffing analysis. OPM regulations do not establish specific criteria for selecting which agents can have a tour of less than Level 1; however, in § 550.1613, we require that CBP establish a written selection plan that identifies selection criteria and the priority of those criteria.

NBPC questioned the regulation at § 550.1614(d), which provides that assignments of tours to individual agents must be consistent with the pay assignment continuity requirement in § 550.1615, regardless of the percentage limits set under § 550.1614. NBPC commented that it was completely contrary to the express intent of Congress that the pay assignment continuity requirement trump the § 550.1614 percentage limits (*i.e.,* 10 percent baseline or alternative percentage limit under the waiver authority). NBPC stated that it was beyond the authority of OPM—even given its authority to regulate BPAPRA—to craft an exception to an express direction of Congress.

Section 550.1614(d) relies on express language in the law stating that, ''notwithstanding any other provision of law,'' CBP ''may take such action as is necessary'' to implement the pay assignment continuity plan, including the unilateral assignment of agents to any of three tours (5 U.S.C. 5550(b)(1)(G)(ii)). In addition, Congress granted OPM broad authority to regulate BPAPRA (section 2(h); see also 5 U.S.C. 5548). The ''notwithstanding any other provision of law'' language gives ample authority to trump the percentage limits established under 5 U.S.C. 5550(b)(1)(E). Any CBP selection plan under § 550.1613 must be ''consistent with the requirements of this subpart,'' and thus must incorporate the superseding rule in § 550.1614(d). If agents are in their ''control period'' (*i.e.,* have met retirement age and service requirements or are within 3 years of meeting those requirements), the average of assigned overtime supplement percentages over any 3-year period must be consistent with their career average overtime supplement percentage in order to protect the retirement fund.

§ 550.1615—Pay Assignment Continuity

We received general comments regarding § 550.1615 and retirement-related matters.

One commenter made general comments on the obvious administrative complexities of implementing and administering the pay assignment continuity provisions of BPAPRA.

Three commenters noted CBP's actions to decertify some positions from receiving AUO pay will create a ''gap'' in pay received by agents spanning the period when AUO ceased being paid and continuing through the implementation of BPAPRA, which lowers the amount of retirement-creditable basic pay that agents receive during this period of time compared to what they expected. A commenter noted that this could reduce an agent's high-3 average pay. Another commenter asked if ''pay reform has included a gap measure'' to make up for the loss of AUO pay and noted that AUO decertification would result in agents not reaching their ''high 3 target.'' This commenter suggested that any period when an agent's AUO pay was decertified should not be included in the calculation of the agent's high-3 average pay for retirement calculation purposes.

As noted in the Supplementary Information published with the proposed rule, various reviews indicated that AUO was being used improperly for some DHS employees, and DHS has taken actions to address the matter. The suggestions concerning ways to address the ''gap'' in retirement-creditable pay caused by the decertification of certain positions for AUO pay is beyond the scope of the regulations. There is no provision in BPAPRA to provide replacement retirement-creditable pay to agents occupying positions decertified from receiving AUO during the period covering the decertification until the implementation of BPAPRA. In addition, there is no legal authority to disregard a period of creditable service and retirement-creditable basic pay from consideration for the computation of the high-3 ''average pay period'' as if the period of service and the pay received during that service never existed. Under 5 U.S.C. 8331(4) and 8401(3), the high-3 ''average pay period'' is a period of 3 consecutive years of creditable service during which an employee has his or her highest rates of retirement-creditable basic pay. The high-3 average pay is used in computing an employee's retirement annuity. In effect, the commenter's suggested solution appears to be an attempt to avoid the word ''consecutive'' in the statutory definition of ''average pay.'' The calculation of the high-3 ''average pay period'' entails the consideration of all possible periods of 3 consecutive years of creditable service and retirement-creditable basic pay to determine which of the periods comprises the high-3 ''average pay period.'' If decertification of an agent's

position causes the agent's retirement-creditable basic pay to be less than what he or she otherwise expected, the high-3 ''average pay period'' may shift to a period of 3 consecutive years that is different from what would have otherwise comprised the high-3 ''average pay period.'' Furthermore, we note that the statutory definition of the high-3 ''average pay'' does not always result in the high-3 ''average pay'' being based on an employee's final three years of creditable service, since an agent's high-3 average salary period is the period when the agent had his/her highest average retirement-creditable basic pay over 3 consecutive years of creditable service, whenever that is.

One commenter posed a series of questions about the effects of the regulation. First, the commenter asked how the Border Patrol Interim Pay (which excludes AUO pay) affects the control period. Second, the commenter asked if § 550.1615 means that an agent cannot be promoted after age 50 or after 22 years of service because a promotion would also ''inflate'' the high-3 average pay via a pay increase that would not have been paid into the retirement system over the agent's career. Third, the commenter asked whether a change of duty stations with different locality pay would not be allowed because an agent would make more money not previously paid into the retirement system. Fourth, the commenter asked whether, under the 2.5 percent consistency standard stated in the proposed rule, an agent who worked 17 years with 25 percent AUO, and who elected 12.5 percent (Level 2 regular tour of duty) or 0 percent (Basic regular tour of duty) for a year just prior to his or her last year of service before retirement, would not be allowed to elect 25 percent (Level 1 regular tour of duty) during that last year.

In response to the first question, once the new overtime program for Border Patrol agents takes effect on January 10, 2016, CBP must control an agent's tour assignments (and associated overtime supplements) during the ''control period'' that begins when the agent is within 3 years of meeting age and service requirements for an immediate retirement annuity. During the control period, the CBP must ensure that an agent's average overtime supplement during any 3-year period is consistent with the agent's career-average overtime supplement percentage. Under the proposed rule, an agent's career average is based solely on periods of time during which an agent is covered by the new overtime program. (See proposed § 550.1615(a)(3). See also discussion of this in the Supplementary Information of the proposed rule, 80 FR 34544.) Thus, under the proposed rule, the interim period of time when agents are not receiving AUO pay but are, instead, receiving overtime pay under standard title 5 overtime provisions (May 17, 2015–January 9, 2016) would not have affected the career average used during the control period. However, we have made significant changes to § 550.1615(a), which are discussed below. The changes will not result in any agent's career average overtime supplement being less than it would have been under the proposed regulations, since we are providing for the use of the greater of two computations, one of which is the computation used in the proposed regulations. As explained below, the other computation will consider an agent's whole career prior to the beginning of the control period; thus, that computation would be affected by the loss of AUO pay during the interim period.

In response to the second question, § 550.1615 has no effect on promotions. Section 550.1615 deals with CBP controlling tour assignments and the resulting overtime supplement percentage during an agent's control period. It focuses on the career-average overtime supplement percentage, not the dollar amount of the supplement or the total rate. OPM actuarial calculations that determine the level of agency retirement contributions take into account average salary growth due to grade progression.

In response to the third question, § 550.1615 has no effect on the ability of agents to make geographic moves. Section 550.1615 deals with CBP controlling tour assignments and the resulting overtime supplement percentage during an agent's control period. It focuses on the career average overtime supplement percentage, not the dollar amount of the supplement or the total rate. OPM actuarial calculations that determine the level of agency retirement contributions take into account average locality pay that reflects geographic moves.

In response to the fourth question, during an agent's control period, the CBP must ensure that an agent's average overtime supplement percentage during any 3-year period is consistent with (within 2.5 percentage points of) the agent's career-average overtime supplement percentage. Under the proposed regulations, an agent's career average is based solely on periods of time during which an agent is covered by the new overtime program. (See proposed rule at § 550.1615(a)(3)). See also discussion of this in the Supplementary Information of the proposed rule, 80 FR 34544.) Thus, under the proposed rule, prior periods of time when an agent was receiving AUO pay would not have affected the career average used during the control period. However, we have made significant changes to § 550.1615(a) in the final rule, which are discussed below. The changes will not result in any agent's career average overtime supplement being less than it would have been under the proposed regulations, since we are providing for the use of the greater of two computations, one of which is the computation used in the proposed regulations. As explained below, the other computation will consider an agent's whole career prior to the beginning of the control period and would include an agent's AUO percentages in computing the career average overtime supplement.

The greater of the two computations will be used as the career average overtime supplement that will limit what tour and overtime supplement can be assigned to an agent during his or her control period. While an agent's retirement-creditable basic pay will be controlled during the control period, it is possible that some or all of an agent's high-3 average salary period will be outside that control period and could reach back to periods when an agent was receiving AUO pay, especially in the case of agents retiring in the next several years.

One commenter expressed the opinion that the regulations on pay assignment continuity are ''particularly confusing and vague'' and requested clarification. The commenter also stated that ''controlling the work levels accessible to covered employees in the three-years before their retirement seem[s] discriminatory and arbitrary.''

BPAPRA places the responsibility for developing and implementing a plan to ensure, to the greatest extent practicable, pay assignment continuity with CBP, subject to consultation with OPM. OPM's regulations provide a basic framework, metrics, and a consistency standard for CBP to utilize in the design of its plan. The only means under BPAPRA to maintain pay continuity is through CBP's plan to concurrently control the assignment of agents to one of three types of ''regular tour of duty'' which provide one of three rates of pay (reflecting an overtime supplement of 25, 12.5, or 0 percent). Therefore, the law requires that pay continuity be maintained through assignments of agents to one of three types of fixed ''regular tour of duty''; other means of

maintaining pay continuity are precluded by BPAPRA.

One commenter stated that ''pay reform'' is changing the ''pension plan'' and asked if there were ''any plans to grandfather agents that have more than 10 years of service.'' This commenter also asked where ''the language that spells out and authorizes the drastic changes to the current retirement/pension plans for Border Patrol Agents'' could be found in BPAPRA.

BPAPRA makes only one significant change to subchapter III of chapter 83 of title 5, United States Code, the provisions for the Civil Service Retirement System (CSRS), and chapter 84 of title 5, United States Code, the provisions for the Federal Employees' Retirement System (FERS). Section 2(d) of BPAPRA amends the definition of ''basic pay'' for CSRS and FERS retirement purposes to provide that a Border Patrol overtime supplement is basic pay for retirement purposes. (See also 5 U.S.C. 5550(d).) Section 2(b) of BPAPRA added a new section 5550 in title 5, which includes a pay assignment continuity provision in section 5550(b)(1)(G). That provision requires that an agent's average overtime supplement during the agent's control period be consistent with the agent's career average overtime supplement in order to protect the retirement fund and provide equitable treatment of agents. By design, BPAPRA has an effect on agents' retirement-creditable basic pay, which in turn affects the agents' high-3 average pay used to compute the agents' retirement annuity. BPAPRA included no grandfathering provision related to retirement matters.

Another commenter raised issues with the designation of certain Border Patrol positions as headquarters positions that are only entitled to the Basic border patrol rate of pay. This comment refers to determinations made by CBP that are beyond the scope of the regulations.

One commenter was concerned about the ''cryptic, opaque language'' describing the high-3 ''average pay period'' in the proposed rule, and in the Supplementary Information published with the proposed rule. This commenter asked for a clarification of the concept of the high-3 ''average pay period.'' Under 5 U.S.C. 8331(4) and 8401(3), the high-3 ''average pay period'' is a period of 3 consecutive years of creditable service during which an employee has his or her highest rates of retirement-creditable basic pay. Further explanation of the high-3 ''average pay period'' is provided in the context of our responses to other comments.

One commenter asserted, generally, that the pay assignment continuity provisions at § 550.1615 are unjust, unfair, and are ''OPM's attempt to further harm the U.S. Border Patrol by implementing ideas and standards that are not in the law.'' The pay assignment continuity provisions are an implementation of the statute at 5 U.S.C. 5550(b)(1)(G). Within the statutory framework provided by Congress, we have striven to implement the law in a reasonable and fair way, while also recognizing OPM's fiduciary responsibilities to protect the retirement fund.

One commenter asked, generally, how BPAPRA will affect retirement, specifically the high-3 ''average pay period'' used in retirement annuity calculations. How BPAPRA affects the computation of an agent's high-3 ''average pay period'' of an agent will depend on the particular work and pay history of the agent. In general, because of the statutory requirement that generally no more than 10 percent of agents at a location may have a Level 2 or Basic regular tour of duty, most agents should be consistently assigned to Level 1 regular tour of duty, and their high-3 average pay will reflect that. BPAPRA does require that an agent assigned to a headquarters, administrative, training instructor, or fitness instructor position be assigned a Basic regular tour of duty (with no overtime supplement), except as otherwise justified based on a CBP staffing analysis or the need to comply with the pay assignment continuity provision. This statutory requirement might affect the amount of retirement-creditable additional pay that the agent would otherwise receive.

We also received comments on specific sections of the proposed rule. Several commenters, including CBP, had concerns about proposed § 550.1615(a)(3), which provided, in part, that ''[i]f an agent is in a control period . . . when the provisions of this subpart first become applicable to the agent, the agent's initially assigned overtime supplement percentage must be considered the agent's career average.'' One commenter believed that proposed § 550.1615(a)(3) appears to artificially compute an agent's career average. Other commenters were concerned that this provision would harm agents who are in their control period when BPAPRA is implemented and who are assigned to positions at the Office of Border Patrol Headquarters, the CBP Border Patrol Academy, and other positions generally excluded from a Level 1 or Level 2 regular tour of duty. CBP and one commenter noted that it will be difficult to find agents willing to accept assignments to headquarters, and other positions limited to a 0 percent overtime supplement. A commenter also noted that these agents in headquarters, administrative, training instructor, or fitness instructor positions can only be assigned to a Basic regular tour of duty despite the fact that they have been working a large amount of overtime in the field for many years. Another commenter stated that agents working in a headquarters or academy position would be harmed by the implementation of the pay assignment continuity regulation. For example, some agents would have a career average overtime supplement ''locked'' at 0 percent because they will already be in their control period and have a Basic tour (due to holding a headquarters position) when BPAPRA takes effect, even if they later work another 5, 8 or 10 years out in the field. The commenter pointed out that these agents may have been working significant overtime (and receiving AUO pay) over most of their career and stated that all hours of overtime worked during the agents' career should be considered.

One of the most challenging implementation issues BPAPRA presents is the logical quandary of how to establish a *career* average *border patrol rate of pay* for agents who are immediately in their control period when BPAPRA is implemented, when no agent will have any history of being paid under 5 U.S.C. 5550. As a solution (hereafter ''Option 1''), one commenter proposed that an agent ''should be allowed to choose their level of overtime supplement, but at retirement then OPM can determine if those years were inflated compared to the rest of his/her career. If they were, then there should be a calculation as to the average over the previous ten years, or something to that effect. If he/she has regularly worked 15–25 hours of overtime whether on AUO or FEPA, and is at level 1 at retirement, then there is no artificial inflation.''

Another commenter proposed a second solution (hereafter ''Option 2'') to address the problem of establishing a career average border patrol rate of pay for agents who are in their control period and who are assigned to a headquarters, administrative, training instructor, or fitness instructor position restricted to a Basic regular tour of duty. Option 2 would create a ''waiver period'' until the comprehensive staffing analysis CBP is required to complete under section 2(e) of BPAPRA is completed. During the proposed ''waiver period'' an agent's retirement high-3 average pay would be ''based off

of whatever election they chose, even though they may be in a Headquarters, Instructor, etc., position.''

The proposed Option 1 solution is not consistent with the statutory framework because it would necessitate a determination, after the fact, regarding whether the agent artificially inflated his or her average pay for the purposes of increasing his or her annuity. BPAPRA does not provide OPM with authority to modify an employee's retirement-creditable basic pay or high-3 average pay. Limiting the creditability of the overtime supplement to an average amount over some period of years would conflict with 5 U.S.C. 5550(d), which provides that ''[*a*]*ny* pay in addition to the basic border patrol rate of pay for a border patrol agent resulting from application of the level 1 border patrol rate of pay or the level 2 border patrol rate of pay'' shall be treated as basic pay for retirement purposes. The only means under BPAPRA to maintain pay continuity is through CBP's plan to concurrently control the assignment of agents to one of three types of ''regular tour of duty,'' which provides one of three rates of pay (reflecting three levels of overtime supplement).

The proposed Option 2 solution is also legally impermissible. The comprehensive staffing analysis CBP is required to complete under section 2(e) of BPAPRA might determine that certain headquarters, administrative, training instructor, or fitness instructor positions at certain duty stations require assignment to other than a Basic border patrol rate of pay. However, there is no assurance that this would be the result of the comprehensive staffing analysis for every affected position. If we attempted to set a waiver period of a fixed length, it would be viewed as arbitrary and would leave some agents just outside the period who are arguably just as deserving of the special treatment. Furthermore, one important implementation issue under BPAPRA regarding pay continuity is how to establish a career average border patrol rate of pay for agents who are immediately in their control period when BPAPRA is implemented when no agent has any history of having received pay under 5 U.S.C. 5550. A ''waiver period'' where the agent's retirement high-3 average pay would be based on whatever election they chose (with no relationship to what the agent actually receives as retirement-creditable pay) does not address the issue of how to establish the career average of an agent who is immediately in his or her control period, especially for those who are limited to the Basic border patrol pay rate when BPAPRA is implemented. Section 5550(b)(1)(G)(i) requires use of the average border patrol rate of pay level ''to which the border patrol agent has been assigned''—not the level the employee elected, but was not actually assigned. Option 2 also conflicts with what is permitted by the statutory definitions of ''basic pay'' and ''average pay.'' ''Basic pay'' for retirement is pay actually received for which retirement deductions and agency contributions have been paid to the retirement fund. ''Average pay'' is the 3 consecutive years of creditable service during which an employee has his or her highest rates of retirement-creditable basic pay. These definitions do not permit basic pay to be deemed to have been received, and deeming basic pay, without employee retirement deductions or agency contributions, would itself produce an unfunded liability of the retirement fund.

Another commenter and CBP suggested that any period, of any length of time, when an agent cannot be assigned to a Level 1 or Level 2 regular tour of duty (and a 25 or 12.5 percent overtime supplement) should be excluded from calculation of the agent's career average overtime supplement. However, it is not possible to disregard periods of pay within an agent's career and still be consistent with the goals of pay assignment continuity provisions of BPAPRA.

CBP expressed concerns about § 550.1615 similar to those expressed by other commenters. CBP's comments on this aspect of the proposed rule focused on language of the pay assignment continuity provisions of BPAPRA which state the purpose of the provisions are to assure that an agent is ''not able to artificially enhance his/her retirement annuity.'' CBP argued that limiting consideration of the agent's career for pay assignment continuity *only* to time under Border Patrol rate of pay is inherently unfair to those agents who are currently at or near the control period on the effective date of BPAPRA and who are assigned to positions statutorily limited to Basic rate of Border Patrol pay because these agents will forever be limited to the Basic tour of duty regardless of how many additional years the employee continues to work as a Border Patrol agent. CBP noted that these agents, along with the agency, have already paid years of retirement contributions to the retirement fund based on AUO pay.

CBP also expressed concern that agents assigned to a position (such as headquarters, at training facilities, or in initial training) that is precluded, by statute or regulation, from receiving other than Basic border patrol rate of pay, or was similarly precluded from receiving AUO pay (available to other Border Patrol agents) that would have been included in their basic pay for retirement purposes, would experience a reduction of their career average because they will have the periods of 0 percent overtime supplement percentage factored into their career average calculation. CBP noted that this would discourage agents from accepting assignments to headquarters, administrative, training instructor, or fitness instructor positions.

CBP stated that ''the stated statutory language [concerning pay assignment continuity] is too simplistic to comport with the clear statutory purpose [*i.e.,* to assure that an agent is ''not able to artificially enhance his/her retirement annuity.'']. '' CBP argued that the career average intended by Congress allows the regulatory provisions establishing an agent's career average to not be limited to overtime under the BPAPRA. CBP reasoned that this is permissible, particularly considering agents who have already completed the majority of their careers (and made attendant deposits into the retirement fund) based on AUO pay, in light of statutory language which provides that an agent's pay should be consistent with ''the *average* border patrol rate of pay level to which the border patrol agent has been assigned during the course of the *career* of the border patrol agent.'' CBP's argument relied on the dictionary definition of the word ''career,'' which, in CBP's analysis, requires consideration of pay prior to implementation of the new overtime supplement. CBP argued that the statutory language, which provides that pay assignment continuity is to be achieved ''to the greatest extent practicable,'' implies some leeway in setting rules. CBP also noted that the general purpose of the pay assignment continuity provision is to prevent an agent from artificially enhancing his or her annuity, which should be the guide for establishing rules. In general, CBP argued that consideration of AUO as career pay is within the spirit of pay assignment continuity and that AUO is, in fact, basic pay for retirement and cannot be considered an ''artificial'' enhancement of an agent's retirement benefit.

CBP suggested several alternative changes to the regulations. First, CBP proposed that ''[a]t a minimum, CBP believes it should be free to consider AUO pay at least since the start-up of DHS (when CBP has clear electronic pay records [*i.e.,* from CY 2003]) for those individuals who will have less than 4

years under border patrol pay at the time they are within 3 years of retirement eligibility and, because of their assigned positions they are not free to receive other than basic border patrol rate of pay.'' As another alternative, CBP suggested that OPM define ''career'' for the purpose of the regulations as a period of at least 10 years under the Border Patrol rate of pay or AUO as the minimum basis of what constitutes a career, but only for those employees who are currently at or near the control period and who hold a position that is required by law to have a Basic tour with a 0 percent overtime supplement. CBP suggested a 10-year career because it roughly coincides with the period for which DHS has electronic pay records.

Alternatively, CBP suggested, ''in light of Congressional intent that the agent not be able to 'artificially enhance' their own retirement annuities,'' that the rule should be changed to define career ''to exclude periods when the agent, for the good of the agency (and *not* of their own volition), is assigned to a position (such as headquarters, at training facilities, or in initial training) that is precluded, by statute or regulation, from receiving other than basic border patrol rate of pay or was similarly precluded from receiving other overtime pay (available to other border patrol agent) that would have been included in their base pay for retirement purposes.''

CBP suggested another alternative for employees who have more than 20 years of service as a Border Patrol agent. CBP suggested allowing consideration of only the 20 years that produced the employee's largest percentages of AUO pay and the Border Patrol overtime supplement in determining the career average.

We understand CBP's concerns; however, we emphasize that the underlying purpose of pay assignment continuity provisions of BPAPRA—the purpose behind the objective of ensuring that ''agents are not able to artificially enhance their retirement annuities'' (5 U.S.C. 5550(b)(1)(G)(iv))—is ultimately to protect the Civil Service Retirement and Disability Fund. To make this express, we have added the goal of protecting the retirement fund to § 550.1615(a)(1). We note that section 5550(b)(1)(G)(i) requires that tour assignments during an agent's control period be consistent with the ''average border patrol rate of pay level to which the border patrol agent has been *assigned''* during the agent's career up to that point, regardless of how that tour was assigned. The pay assignment continuity provision is designed to protect the retirement fund by controlling tour assignments (including those made by employee elections) during the control period, which in turn controls the overtime supplement percentages during that control period, thus ensuring consistency with the career average.

After considering all of the comments on § 550.1615, we have decided to change § 550.1615 to establish a rule for computing the career average overtime supplement percentage that we believe is a reasonable interpretation of the statute and that is consistent with legislative intent. This rule will operate so as not to artificially inflate or deflate retirement calculations, while providing fair treatment of agents. In this final rule, § 550.1615(a)(2) has been changed so that the career average overtime supplement percentage of an agent is the greater of (1) the average overtime supplement percentages (25 percent, 12.5 percent, or 0 percent) assigned during service as an agent on or after January 10, 2016, that is prior to the beginning of the agent's control period; or (2) the average of the assigned overtime supplement percentages during all service as an agent that is prior to the beginning of the agent's control period, with assigned overtime supplement percentages (25, 12.5, or 0 percent) assigned during service on or after January 10, 2016, and with assigned percentages of AUO under 5 U.S.C. 5545(c)(2) treated as overtime supplement percentages for any period of service prior to January 10, 2016. This change addresses the concerns expressed by CBP and various individual commenters. The first method is the same that was included in the proposed regulations. Because of the ''greater of'' approach, no agent will be treated worse than he would have been treated under the proposed rule, and some agents will be treated better. For example, agents who have a Basic tour under the new overtime program established under BPAPRA, but who had years of service before January 2016 during which they received 25 percent AUO pay, will have their career average based on their total Border Patrol agent career prior to the beginning of their control period; thus, the career average will reflect the years when 25 percent AUO pay was received.

The second method is based on an interpretation of section 5550(b)(1)(G)(i) that gives weight to the language ''course of the career'' by reaching back to the portion of an agent's career before the BPAPRA overtime program takes effect on January 10, 2016. Since both AUO pay and the Border Patrol overtime supplement are retirement-creditable basic pay, inclusion of AUO pay is appropriate and fair and does not have a negative impact on the retirement fund. Given the extremely negative impact that considering only periods on or after January 1, 2016, in computing the career average would have had on certain agents and given the lack of any apparent Congressional intent to create such a negative impact, we concluded it would be reasonable to create a second method, while preserving the first method that relied on a narrower reading of the statutory language. The ''greater of'' approach ensures that no employee is disadvantaged.

The revised § 550.1615(a)(3) addresses a matter previously addressed in § 550.1615(a)(2) of the proposed regulations. Paragraph (a)(3) provides that, in applying 550.1615(a)(2), the assigned overtime supplement percentage is used regardless of whether or not the payable amount of the overtime supplement is limited by a premium pay cap. This protects an agent's career average from decreasing when a pay cap is imposed.

Section 550.1615(a)(4) has been added to provide that, in applying paragraph (a)(2) of this section, if an agent's control period begins on January 10, 2016, the agent's initially assigned overtime supplement percentage must be considered the agent's career average under § 550.1615(a)(2)(i). This provision is consistent with the second sentence in § 550.1615(a)(3) of the proposed rule.

A sentence has been added at the end of § 550.1615(b) to clarify that if, as of January 10, 2016, the date that is 3 years before the agent first met age and service requirements for an immediate retirement has already passed, then the agent's control period is considered to have begun on January 10, 2016.

In deciding on the revisions to § 550.1615 described above, we have necessarily had to reject the other alternative changes suggested by CBP and other commenters. We do not believe that it is reasonable to limit the definition of ''career'' for the purpose of the regulations as a period of at least 10 years under section 5550 or the AUO program simply because the electronic payroll records of DHS are conveniently available for this period. OPM has made its electronic retirement records available to DHS, which should allow CBP access to information more than 10 years old. As we explained in response to other commenters, the goals of pay assignment continuity do not allow periods of 0 percent overtime supplement to be disregarded for the calculation of an agent's career average overtime supplement or the high-3 average pay. We appreciate the difficulties presented by the statutory

exclusion of headquarters, administrative, training instructor, or fitness instructor positions from being assigned to Level 1 or Level 2 regular tours of duty, at least in the absence of a CBP staffing analysis allowing those assignments, but that is a consequence of the law which regulations cannot remedy.

One commenter expressed concern about the definition of *control period* at § 550.1615(b) and length of time he or she would have to spend in the control period. This commenter was also concerned about a statement made in the Supplementary Information published with the proposed rule regarding the two exceptions allowed at § 550.1615(c)(2) to the requirement that an agent's career average overtime supplement must be ''consistent'' with the agent's assigned overtime supplement during *all consecutive 3-year periods within the ''control period.''* We stated: ''We cannot allow an agent whose overtime supplement is not affected by the premium pay cap to voluntarily elect a lesser percentage during the control period, since the agent could later elect again to have a higher percentage that is consistent with his/her career average. While the overtime supplement used in the agent's high-3 average pay would not exceed a percentage that is consistent with the agent's career average, the agent (and CBP) will have made inadequate retirement contributions during the portion of the control period when the lesser percentage was in effect.'' The commenter noted that he or she will be eligible for retirement in 6 years but will not be mandated to retire for 16 years. The commenter stated: ''If this statement along with the entire section covering Pay Assignment Continuity 550.1615 stands as written I will be forced to maintain 1 overtime level for the duration of my career starting in 3 years and potentially continuing for 13 more years as the entire time in service will be considered a control period.'' CBP, however, stated that it ''agree[d] with OPM both that the 'statutory language cannot logically be interpreted as establishing a control period only during the 3 years preceding the date an agent meets age and service requirements,' and that the primary reason for the provisions under 5 U.S.C. 5550(b)(1)(G) are to assure that the employee is 'not able to artificially enhance his/her retirement annuity.''' As we explained in the Supplementary Information for the proposed rule, OPM interprets the ''eligible for immediate retirement'' language in section 5550(b)(1)(G)(i) to refer to eligibility based on meeting all eligibility requirements, including the condition of separation from service. Since an employee's future separation date is unknown, all possible 3-year periods preceding all possible separation dates are included in the control period. (See 80 FR 34543–34544.) This approach achieves the desired objective of controlling agents' high-3 average pay based on the last 3 years of service.

One commenter expressed concern that agents who consistently have a Level 1 tour and are promoted to grade GS–15 where they are reaching the premium pay cap will be unfairly forced to continue to work a Level 1 tour because they have a high career average overtime supplement percentage and must be consistent with that. The commenter pointed out that, because of the premium pay cap, the agent will still be depositing the same amount of money into the retirement account whether he/she is at the Level 1 or the Level 2. The commenter recommended that such agents be allowed to have a reduced tour.

This issue was already addressed in the proposed regulations. Under § 550.1615(c)(2)(i) (in both the proposed and final regulations), if an agent's overtime supplement is limited by the premium pay cap, the agent may elect a regular tour of duty with lesser hours providing an overtime supplement that is less than the agent's career average, as a permitted exception to the consistency requirement.

NBPC commented that the definition at § 550.1615(b) of ''control period'' would control an agent's overtime supplement assignments for many years. NBPC suggested that lengthy control periods could be instead addressed by ''a process by which an Agent would acknowledge that he or she does not intend to retire at the first eligible date and instead state an anticipated retirement date.''

The supplementary information published with the proposed rule includes a lengthy explanation of our statutory interpretation for the definition of ''control period'' in the rule. (See 80 FR 34543–34544.) The regulations allow a 2.5 percent variation between an agent's career average overtime supplement and the agent's assigned overtime supplement to allow for a reasonable divergence between the two averages.

NBPC's proposed suggestion concerning the definition at § 550.1615(b) of ''control period'' is not a practical solution to the potential problem of agents ''artificially enhance[ing] their retirement annuities.'' An agent could, with the best of intentions, decide on an anticipated retirement date, only to see his or her personal circumstances change unexpectedly, necessitating a sudden change in his or her retirement date. An employee's decision to retire at a certain date can be revoked as late as the planned last day of service. This could result in the agent never being subject to pay assignment continuity before his or her retirement.

NBPC also commented on the relationship between § 550.1615 and § 550.1614(d), which addresses CBP's authority in connection with the pay assignment continuity requirement. Section 550.1614(d) provides that the pay assignment continuity requirement in § 550.1615 trumps that requirement in § 550.1614, which regulates the statutory requirement that, except when justified based on a CBP staffing analysis, no more than 10 percent of agents stationed at a location may be assigned a Level 2 or Basic regular tour of duty (*i.e.,* at least 90 percent of agents at a location must be assigned a Level 1 regular tour of duty). The NBPC commented, ''[t]he idea that pay continuity trumps the staffing requirement, or any operational requirement or necessity, is completely contrary to the expressed intent of Congress. Throughout the entire legislative process the primary concern that Congress articulated with the BPAPRA was whether it would diminish border security. . . [T]he NBPC and the Administration proposed that the legislation be altered to provide that at least 90% of the Agents must be at Level 1 to ensure that Border Patrol had adequate manpower.''

The purpose of the statutory provision at 5 U.S.C. 5550(b)(1)(E), the statutory requirement that, except when justified based on a CBP staffing analysis, no more than 10 percent of agents stationed at a location may be assigned a Level 2 or Basic regular tour of duty, is to ''ensure that the Border Patrol has a stable floor of staffing, allowing managers with a steady annual base-line of hours to plan border security operations.'' S. Rep. No. 113–248, at 9. In addition, the NBPC comment does not consider that the statutory provisions of pay assignment continuity include the provision at 5 U.S.C. 5550(b)(1)(G)(ii) of title 5, United States Code, which provides:

(ii) Implementation.—*Notwithstanding any other provision of law,* U.S. Customs and Border Protection may take such action as is necessary, including the unilateral assignment of border patrol agents to the level 1 border patrol rate of pay, the level 2 border patrol rate of pay, or the basic border

patrol rate of pay, to implement the plan developed under this subparagraph.

(emphasis added) This statutory provision is discussed in the supplementary information (at 80 FR 34544, June 17, 2015). The introductory phrase of § 5550(b)(1)(G)(ii)—''*Notwithstanding any other provision of law''*—is the statutory basis for § 550.1614(d) providing that the pay assignment continuity requirement in § 550.1615 takes precedence over the percentage limit requirement in § 550.1614. For clarification, we are revising § 550.1614(d)(1) by adding the phrase ''notwithstanding any other provision of law or this subpart,'' consistent with the § 5550(b)(1)(G)(ii) statutory provision upon which paragraph (d) is based.

As noted in the Supplementary Information for the proposed regulations, § 550.1615(d)(2) implements the provision in 5 U.S.C. 5550(b)(1)(G)(vi), which states that nothing in section 5550(b)(1)(G) may be construed to limit the ability of CBP to assign regular tours as necessary to meet operational requirements. Section 550.1604, reflects various provisions in BPAPRA (section 2(a) and 2(f)(1) of BPAPRA and 5 U.S.C. 5550(g)) that make clear that CBP has authority to assign unscheduled work as needed to meet mission needs and operational requirements, notwithstanding the regular tour assigned to agents. Thus, as a general matter, OPM does not consider the need to meet operational requirements as preventing CBP from also controlling agents' regular tour as necessary to comply with the pay assignment continuity requirement. As necessary to meet its operational requirements, CBP may assign outside-tour overtime work to an agent whose tour is limited due to the pay assignment continuity provision. Given the comments regarding the extent to which the pay assignment continuity takes precedence over other rules governing tour assignments, we are further clarifying in § 550.1615(d)(2) that, before exercising the authority in paragraph (d)(2) to allow assignment of a regular tour of duty that does not comply with the pay assignment continuity plan, CBP must first determine that it cannot adequately address the specific operational requirements in question by other means. For example, CBP could assign the affected agent outside-tour overtime work to address the specific operational requirements at issue. Also, CBP could possibly assign outside-tour overtime work to other agents to meet those work requirements. As part of the clarification of § 550.1615(d)(2), we have added language stating that, if the authority under paragraph (d)(2) is exercised, CBP must return the affected agent to a regular tour of duty that complies with pay assignment continuity plan as soon as possible.

CBP also noted the statutory primacy of pay assignment continuity requirements and asked if pay assignment continuity would take precedence over the statutory requirement that agents in certain positions (*i.e.,* a headquarters, administrative, training instructor, or fitness instructor position) can only be assigned a Basic border patrol rate of pay and a 0 percent overtime supplement.

The introductory phrase of § 5550(b)(1)(G)(ii)—''*Notwithstanding any other provision of law''*—allows an agent who is assigned to a headquarters, administrative, training instructor, or fitness instructor position during their control period to be assigned to a Level 1 or Level 2 border patrol rate of pay, if such an assignment is required to maintain pay assignment continuity under the plan developed by CBP.

NBPC also commented on § 550.1615(c), which provides that the average overtime supplement for all consecutive 3-year periods within the ''control period'' is considered to be ''consistent'' with the career average percentage of overtime supplement if the two averages are within 2.5 percentage points of each other. NBPC faults the regulations because ''[n]owhere in the proposed regulations is there an explanation for how OPM determined this 2.5 [percent] metric. . . The NBPC believes that a more reasonable metric would be to use the level at which an agent spends half or more of his or her career.''

We do not view half of a career as a reasonable interpretation of the word ''consistent'' with the ''average border patrol rate of pay level . . . assigned during the course of the career of the border patrol agent'' (5 U.S.C. 5550(b)(1)(G)(i)). A simple example shows how the NBPC's proposed alternative would not produce consistency. In this example, an agent enters the control period after serving 20-years as an agent, where the agent was assigned a 25 percent overtime supplement for 10 years and a 0 percent overtime supplement for 10 years. Under the proposed rule, the career average would be 12.5 percent; however, NBPC's proposed alternative would allow the agent to have a 25 percent overtime supplement during the control period, which would not be consistent with the career average and would not protect the retirement fund.

OPM continues to believe that it is reasonable to allow an agent's average overtime supplement percentage during any 3-year period within the agent's control period to be considered ''consistent'' if it is within 2.5 percentage points of the agents' career average overtime supplement percentage. In our view, requiring a 0 percentage point difference would not be feasible given that the CBP can only affect the average during the control period by using combinations of 25, 12.5, and 0 percent overtime supplements. On the other side, we do not view a 5 percentage point difference as close enough to be considered consistent. However, the final rule provides that CBP must provide reports so that OPM can evaluate whether the CBP's pay assignment continuity plan and the 2.5 percent consistency requirement are adequately protecting the retirement fund.

§ 550.1616—Corrective Actions

NBPC requested clarification of § 550.1616, which addresses corrective actions in connection with tour assignments and allows retroactive corrections in cases of fraud or fault on the part of the agent. NBPC stated the proposed regulation should be changed to also allow for retroactive correction of tour assignments when (1) an agent worked the requisite hours but has not been paid properly (*e.g.,* working Level 1 hours but only being provided Level 2 pay) and (2) an agent elected to work a higher level tour but the agency erroneously did not assign it. NBPC was concerned that the proposed regulation would relieve CBP for any liability for financial detriment to an agent.

We agree that clarification is needed. First, let us address the two scenarios raised by NBPC. First, NBPC described a scenario in which agents worked the ''requisite hours'' but did not receive pay for those hours, such as working Level 1 hours but getting Level 2. In fact, it is possible for an agent who elected Level 2 to be assigned outside-tour overtime hours that result in the agent having in some pay periods aggregate hours that may be equivalent to those of a Level 1 tour. However, that does not change the tour that the agent elected and that, by law, must be implemented. No retroactive correction would be appropriate. By law, if an agent works overtime hours beyond the assigned tour, the agent is entitled to overtime pay (for regularly scheduled overtime) or compensatory time off (for irregular overtime hours). Thus, the agent will receive compensation for

those outside-tour overtime hours, but any regularly scheduled overtime pay received will not be retirement-creditable basic pay.

Second, NBPC described a scenario in which an agent elected to work a higher level tour but the agency erroneously did not assign it. We did not intend to bar retroactive correction in cases where CBP failed to implement an employee's valid tour election (when no superseding tour assignment applies under § 550.1611(f)). We would expect an employee to quickly identify such an error after receiving a Leave and Earnings Statement for an affected pay period. However, there could be a short period of time during which the payroll system improperly pays the employee before the error is corrected. In such a case, a retroactive correction should be made, since the employee made a valid election, which must be implemented (absent a superseding rule). If, as expected, the employee worked the correct tour despite the payroll system error, the retroactive correction will be simple.

Upon review of proposed § 550.1616, we believe that the bar on retroactive corrections is too broadly stated. We are revising § 550.1616 to specifically identity circumstances in which retroactive correction of a tour assignment may not be made. In other situations involving assignment of an incorrect tour (whether an error in terms of the actual scheduling of work or merely an error in payroll system), a retroactive correction will be required and appropriate adjustments in pay (including adjustments in retirement contributions) must be made. If the employee was underpaid, the normal principles governing back pay under 5 U.S.C. 5596 and 5 CFR part 550, subpart H will apply. If the employee was overpaid, the debt will be subject to collection under normal debt collection procedures (including 5 U.S.C. 5514 and 5 CFR part 550, subpart K).

We reviewed possible scenarios in which an agent might be assigned the incorrect tour, including failure to implement a valid election or to apply the superseding rules in § 550.1611(f) or § 550.1622(b). We determined that the bar on retroactive corrections of a tour assignment should be limited to two scenarios: (1) Misapplication of the consistency requirement under the pay assignment continuity provision and (2) misapplication of the 10 percent limit (or authorized alternative limit) on the number of agents at a location with a Basic or Level 2 tour. The bar on retroactive correction does not apply if the error is related to fraud or misrepresentation on the part of the affected agent. These scenarios are defined as involving a tour assignment error that is an error in the actual scheduling of work, not just a payroll system error. Both of these scenarios involve mathematical computations in determining the appropriate tour assignment. Mathematical errors could go undetected for a long period and it would be disruptive to retroactively change a tour assignment under these circumstances. An erroneous tour assignment in connection with the percentage limitation described in § 550.1614 could also be due to misapplication of selection procedures established under § 550.1613. Under § 550.1614, CBP could force one agent to have a Level 1 tour instead of a preferred shorter tour, while another agent would get a preferred shorter tour. If those tour assignments were incorrect due to a CBP error in applying selection procedures, the error would be corrected prospectively. However, CBP would not retroactively change the Level 1 tour assignment for the agent who worked that tour, nor would CBP retroactively change the other agent's preferred shorter tour to a Level 1 tour.

Retroactive tour assignment corrections would be possible with respect to determinations regarding whether an agent should or should not be categorized as (1) a canine handler under § 550.1611(f)(1), (2) unable to perform overtime on a daily basis under § 550.1611(f)(2), or (3) holding a headquarters or other position requiring a Basic tour under § 550.1611(f)(3). Making determinations under these provisions is more straightforward, and tour assignments should be consistent with the agent's actual status. The retroactive correction could result in an agent being assigned a longer or a shorter tour.

§ 550.1621—Rules Governing Pay for Agents on Level 1 or 2 Tour

A few commenters were concerned that an agent with a Level 1 or 2 tour would accrue an overtime hours debt if the agent takes a full day of leave (*e.g.,* annual, sick, or military leave). They believe it would be unfair to be required to make up for overtime hours associated with a day of leave.

This concern is misplaced. The BPAPRA law and regulations provide that there is no accrual of an overtime hours debt on a day when an agent is on leave for the full 8-hour basic workday. By law, the obligation to work within-tour overtime on a regular workday (2 hours for Level 1, and 1 hour for level 2) applies only if the agent performs ''work'' during the 8 hours of regular time on that same day. (See § 550.1621(a)(3), (b)(3), and (e).)

Another commenter expressed concern that pay received during paid leave would not include overtime pay. This commenter understood that there was no obligation to work overtime during a full-day of leave; however, he thought that the exclusion of those hours would affect the pay received during paid leave.

This concern is also misplaced. An agent with a Level 1 or 2 tour will receive the applicable overtime supplement during periods of paid leave. An agent's overtime supplement (25 percent or 12.5 percent) is computed by multiplying the applicable percentage times the agent's hourly rate of basic pay and multiplying the result times the number of paid hours of regular time in the pay period (subject to the biweekly premium pay cap). (See § 550.1621(a)(4) and (b)(4).) Paid hours of regular time would include any paid hours of leave during that time. Thus, for example, if an agent with a Level 1 tour is on paid leave for the full 80 hours of a biweekly pay period, the overtime supplement will equal 25 percent of the agent's biweekly rate of basic pay (subject to the biweekly premium pay cap). The fact that the agent does not have any obligated overtime hours during full days of paid leave has no effect on the computation of the overtime supplement, since the overtime supplement is based on the number of paid regular time hours.

While a number of commenters were critical of the fact that BPAPRA provides the equivalent of ''straight pay'' (*i.e.,* regular rate of pay with no overtime premium) for within-tour overtime through the payment of the overtime supplement, the commenters did not consider the added value of receiving overtime pay during periods of paid time off (including paid leave and paid holiday time off) when no overtime is worked. Based on available data, on average, a Federal employee might use about 340 hours of paid time off during a year. Thus, during the course of a year, a typical agent might receive extra pay equal to 25 percent of his or her rate of basic pay for 340 hours, attributable to receiving credit for overtime pay during paid leave hours, which produces extra annual pay equal to about 4 percent of total annual basic pay. In addition, commenters did not recognize the added value of the overtime supplement being treated as retirement-creditable basic pay—a treatment that is contrary to normal retirement rules that exclude overtime pay from basic pay (5 U.S.C. 8331(3)). Based on the FERS normal cost

contribution rates, treating a 25 percent overtime supplement as retirement-creditable basic pay has a present value of about 7 percent of total annual basic pay.

CBP expressed concern that the substitution of overtime hours for absences during the regular tour of duty might be misconstrued as supplanting the normal management functions related to approval of absences. CBP recommended that OPM confirm in the regulations that absences during the regular tour of duty (in particular, during obligated overtime hours) are subject to approval by the employee's supervisor.

We do not believe we need to add anything to the regulations regarding the fact that absences during the basic workweek are subject to management approval under agency policies. (Management handling of absences is not specifically addressed in law or OPM regulations, but is left to agency policies established under the agency head's broad authority to manage agency employees under 5 U.S.C. 301–302.) The existence of a leave without pay substitution rule in 5 CFR 550.112(d) has never raised any issues regarding the need for management approval of absences during the basic workweek. However, we recognize that the concept of obligated overtime hours under the Border Patrol overtime program is new and unique. Therefore, to avoid any confusion, we are adding a paragraph (f) in § 550.1621, which expressly states that any absence during obligated overtime hours is subject to management approval under CBP policies. This is consistent with the treatment of absences during the basic workweek.

CBP expressed concern that, under the proposed regulations, an agent with a Level 1 or 2 tour could use 8 hours of compensatory time off during regular time and not have an overtime obligation on that same day, since an overtime obligation is triggered only when an agent performs ''work'' during regular time. CBP viewed this as essentially providing an agent with 10 hours of paid time off when the agent was charged for only 8 hours of compensatory time off. CBP offered the view that this outcome was contrary to BPAPRA section 2(f), which provides that nothing in the Act shall be ''construed to require compensation of a border patrol agent for hours during which the border patrol agent is actually performing work or using approved paid leave or other paid time off''—since it believed the language in 5 U.S.C. 5542(g)(5)(C) could be interpreted to mean that compensatory time off is not ''paid time off.'' CBP also asserted that providing 10 hours of paid time off for 8 hours of compensatory time off was in conflict with 5 U.S.C. 5542(g)(5)(D), which precludes an agent from receiving ''any cash value'' for compensatory time off, and with 5 U.S.C. 5542(g)(1)(B)(ii) and (g)(2)(B)(ii), which provide that an agent receives compensatory time off for an equal amount of irregular overtime work. CBP recommended that OPM revise its regulations in § 550.1621 to provide that usage of compensatory time off constitutes ''work'' in applying § 550.1621(a)(3) and (b)(3) similar to the way that OPM provided that union ''official time'' is work for that purpose. (See § 550.1621(e).)

We do not agree with CBP's analysis or its recommendation. Use of compensatory time off excuses an agent from duty only during regular time (*i.e.,* the 8-hour basic workday). An agent is getting 8 hours of paid time off in exchange for using 8 hours of compensatory time off. The rule in question—providing that an agent with a Level 1 or 2 tour has a within-tour overtime obligation only on a day on which the agent performs work during regular time—deals with the overtime supplement and the hours obligations associated with that supplement. The overtime supplement is not paid on an hour-for-hour basis, but is paid for a set of ''obligated overtime hours'' where the obligation accrues under specific conditions. The number of obligated overtime hours can vary pay period to pay period. For example, for an agent with a Level 1 tour, the number of obligated overtime hours in a biweekly pay period may range anywhere from 0 to 20 hours. The rule that an overtime obligation is created only when an agent with a Level 1 or 2 tour performs work provides a benefit to agents within the new overtime program—a benefit which has a monetary value, as discussed in the above paragraph responding to criticisms that the overtime supplement effectively provides straight rate compensation.

Our regulations treat usage of compensatory time off in the same manner they treat annual leave or other paid time off. If an agent with a Level 1 tour has a full day (8 hours) of annual leave, the obligation to perform 2 hours of within-tour overtime does not accrue. We don't view this as giving the agent 10 hours of annual leave. Rather, we are just applying BPAPRA's rules regarding the overtime supplement and the associated hours obligations. Likewise, when an agent has 8 hours of holiday time off, we don't view the agent as receiving 10 hours of holiday time off merely because there are no obligated overtime hours on that day. The same logic applies to compensatory time off. We see no basis under the law for treating compensatory time off differently than other types of paid time off. (We understand CBP's policy perspective that it is inappropriate to allow agents to work irregular overtime hours and earn compensatory time off and then to bundle those compensatory time off hours in a way that reduces within-tour overtime obligations. However, we believe a law change would be needed to achieve CBP's desired policy. For example, Congress could revise BPAPRA to specifically provide that the normal overtime obligation will accrue on any day when an agent uses any amount of compensatory time off.)

Under 5 U.S.C. 5550(b)(2)(A)(ii) and (3)(A)(ii), the within-tour overtime hours obligation accrues only if the employee ''performs work'' during regular time on that day. In our view, the term ''work'' cannot reasonably be interpreted to include use of compensatory time off which allows an employee to be excused from duty. In contrast, union ''official time'' under 5 U.S.C. 7131 involves specific activities that Congress has deemed to support Government objectives. While using official time, an employee is in a special duty status and is accountable for the time, not excused from all duty. Thus, official time has always been treated as work time for various purposes, including the application of overtime thresholds.

We do not interpret 5 U.S.C. 5542(g)(5)(C) as meaning that compensatory time off is not paid time off. That provision states: ''[the agent] shall be required to use 1 hour of compensatory time off for each hour of regular time not worked for which the border patrol agent is not on paid leave or other paid time off.'' CBP believes that the word ''other'' implies that compensatory time off is not paid time off. We believe it is clear that this provision is simply stating that compensatory time off is used in place of time not worked when other paid time off is not being used.

We do not believe that 5 U.S.C. 5542(g)(5)(D) is in conflict with the proposed regulations. The language stating that an employee is not ''entitled to any cash value'' for compensatory time off clearly refers to *unused* compensatory time off, since the use of compensatory time off generates basic pay. (See implementing regulation at § 550.1625(h).) Moreover, as explained above, the rule providing that an overtime obligation does not accrue

when no work is performed during regular time is not an application of compensatory time off against an overtime hours debt. There is no overtime hours debt if the agent performs no work during regular time on the same day. Thus, while unused compensatory time off may be applied (not used) against an overtime hours debt, there is no such application in the absence of such a debt.

We do not view 5 U.S.C. 5542(g)(1)(B)(ii) and (g)(2)(B)(ii) as relevant. Those clauses provide that an agent receives compensatory time off for an equal amount of irregular overtime work. In other words, they deal with the *earning* of compensatory time off, not its usage. OPM regulation at § 550.1625(b) implements the hour-for-hour earning requirement. Section 5542(g)(5)(C) deals with *usage* and requires that 1 hour of compensatory time off be used for each hour of ''regular time'' not worked. That is exactly what OPM's regulation at § 550.1625(g) provides, and the fact that an agent has no overtime obligation on a day when he or she uses compensatory time off during 8 hours of regular time is not inconsistent with that requirement. The removal of an overtime obligation by operation of 5 U.S.C. 5550(b)(2)(A)(ii) and (3)(A)(ii) is not the same as using compensatory time off. By definition, compensatory time off may be used only during regular time. (As explained above, compensatory time off may be *applied* against an overtime hours debt, but only if the debt exists.)

§ 550.1622—Canine Handlers

Two individual commenters questioned whether Border Patrol agents would receive 1 hour of regularly scheduled overtime work for providing canine care on a scheduled day off under proposed § 550.1622(c).

Under both the law and proposed § 550.1622(c), Border Patrol agents do not receive additional pay beyond the 25 percent overtime supplement for canine care duties performed on a scheduled day off. BPAPRA expressly addresses how Border Patrol agents are compensated for canine care duties. BPAPRA states that any canine care provided by an agent, without regard to the actual duration or ''whether such care occurs on the regular workday,'' is counted as 1 hour of scheduled overtime within the agent's regular tour of duty (5 U.S.C. 5550(b)(1)(F)(ii)). Thus, the canine care may actually be provided anytime, including on a non-workday. Regardless of the time or day the canine care is actually provided or how much time is actually spent providing canine care, an agent with canine care duties is automatically credited with 1 hour of scheduled overtime for canine care on each regular workday. Thus, these credited hours count toward the within-tour overtime obligation associated with a Level 1 tour and the corresponding 25 percent overtime supplement.

NBPC also commented on proposed § 550.1622(c). NBPC expressed concern that, if a Border Patrol agent is temporarily relieved of canine care duties, he or she could see a diminution in pay under proposed § 550.1622(c).

Based on NBPC's comment, we are revising proposed § 550.1611(e) and proposed § 550.1612(d) to clarify how a change in an agent's circumstances (in relation to § 550.1611(f) or § 550.1622) *during* the annual period affects the agent's assigned tour. We are also adding a paragraph (2) to in § 550.1622(c) to further clarify what tour of duty applies to an agent who is temporarily relieved of canine care duties. Under revised § 550.1611(e), we provide that an annual election superseded by operation of the superseding provisions of § 550.1611(f) or § 550.1622 remains the default election in the event there is a change in the circumstances that triggered application of those superseding provisions. Thus, while § 550.1611(f)(1) states that ''an agent who is assigned canine care duties must be assigned a Level 1 regular tour of duty,'' the agent's annual election remains the default election made under § 550.1611(c) or (d) if § 550.1611(f)(1) ceases to be applicable during the annual period. In revised § 550.1612(d), we further clarify that CBP may change an agent's tour of duty based on a change in circumstances, such as being temporarily relieved of canine care duties, during the annual period. The circumstances in §§ 550.1611(f) and 550.1622 could become applicable during the annual period or could cease to be applicable during the annual period. In either case, the affected agent's assigned tour would be changed accordingly.

Further, we are adding a paragraph (2) to § 550.1622(c) to make clear that when an agent is temporarily relieved of canine care duties for more than 2 full pay periods, the agent's tour of duty will automatically revert to his or her default election under § 550.1611(c) or (d). For example, consider a Border Patrol agent with canine care duties who had elected a Level 2 tour when making an annual election, but who now has a Level 1 tour based on application of § 550.1611(f)(1). If the agent is temporarily relieved of his or her canine care duties for more than 2 full pay periods during the annual period, the agent's tour of duty will revert to default election (Level 2 tour of duty) made under § 550.1611(c) or (d). The agent will return to a Level 1 tour under § 550.1611(f)(1) when resuming canine care responsibilities. Further, paragraph (2) of § 550.1622(c) states that, when an agent is temporarily relieved of canine care duties for a time period shorter than 2 full pay periods, he or she may either remain at the Level 1 tour with a 25 percent overtime or temporarily return to his or her default election for the annual period under § 550.1611(c) or (d). Note that, if an agent remains at the Level 1 tour while temporarily relieved of canine care duties, he or she does not receive the 1 hour of regularly scheduled overtime canine care credit and must work 2 hours of regularly scheduled overtime for each day on which the agent performs work during regular time.

NBPC further commented that OPM should add clarifying language in § 550.1622(c) to make clear that canine handlers will always be assigned to a Level 1 tour regardless of pay assignment continuity.

We disagree. As stated previously concerning NBPC's comment on proposed § 550.1614(d), OPM's regulations rely on express language in the BPAPRA stating that, ''notwithstanding any other provision of law,'' CBP ''may take such action as is necessary'' to implement the pay assignment continuity plan, including the unilateral assignment of agents to any of three tours (5 U.S.C. 5550(b)(1)(G)(ii)). Thus, in § 550.1611(f)(5), we provide that the pay assignment continuity provision will take precedence over tour assignments that would otherwise be made under paragraphs (f)(1)-(4) (where paragraph (f)(1) addresses canine handlers). The purpose of the pay assignment continuity provision is to protect the retirement fund. In order to provide that protection, an agent's tour assignments during his or her control period must be consistent with the agent's career average overtime supplement percentage. It would be detrimental to the retirement fund and to principles of equity if an agent could circumvent the career average consistency requirement by obtaining a canine handler position. Therefore, we are not revising proposed § 550.1622(c) or the related regulation at § 550.1611(f)(5).

§ 550.1625—Irregular Overtime and Compensatory Time Off

Two individuals objected to the rules governing compensatory time off, including the biweekly 10-hour limit on earning compensatory time off and 26

pay period time limit on using compensatory time off.

The rules cited by the two individuals are statutory, and OPM has no authority to revise them by regulation. (See 5 U.S.C. 5542(g)(4) and (5).)

An individual commented that OPM regulations should require that compensatory time off be treated in the same manner as annual leave (*i.e.,* a right vs. a privilege) to ensure that agents are allowed to use the compensatory time off they earn before expiration of the 26-pay-period time limit on using such time off.

The exact timing regarding when compensatory time off is used is subject to management approval. The same rule applies to annual leave. Just as OPM has not issued specific regulations regarding when an agency may deny an employee's request to use annual leave at a particular time, we are not issuing specific regulations regarding when a Border Patrol agent's request to use compensatory time off at a particular time may be denied. We expect CBP will issue supplemental guidance to address such matters.

NBPC commented that, for the purpose of applying the premium pay cap, compensatory time off should be assigned a value based on the agent's hourly rate of basic pay. NBPC stated this would be more consistent with Congressional intent than the approach in the proposed regulations.

In the proposed regulations at § 550.1625(d), we provided that, for the purpose of applying the premium pay cap under 5 U.S.C. 5547, Border Patrol compensatory time off hours would be assigned a dollar value based on the overtime pay that would have been payable if the hours had been regularly scheduled outside the agent's tour. This is consistent with the treatment of compensatory time off earned under the title 5 provision (5 U.S.C. 5543) that applies to most Federal employees. The definition of ''premium pay'' in 5 CFR 550.103 states that it includes the dollar value of earned hours of compensatory time off, and that value is set in 5 CFR 550.114(g) as the amount of ''overtime pay'' the employee would have otherwise received. Thus, we have a long-established precedent for computing the value of compensatory time off at an overtime rate for the purpose of applying the premium pay cap. Congress reflected its knowledge of the existing OPM regulations when it specifically provided in BPAPRA that the value of Border Patrol compensatory time off must be counted in applying the premium pay cap (5 U.S.C. 5542(g)(5)(F); see also BPAPRA section 2(f)(3)). In exercising its broad regulatory authority under 5 U.S.C. 5548 and BPAPRA section 2(h), OPM has chosen to be consistent with its longstanding regulations and assign the value of Border Patrol compensatory time off based on an overtime rate. We decline to make the change recommended by NBPC.

§ 550.1626—Absences During the Regular Tour of Duty

Two commenters asked how long an agent has to repay an overtime hours debt resulting from absences during obligated overtime hours.

Our regulations do not mandate a specific time limit for repaying an overtime hours debt. However, the law and the regulations require that any unused compensatory time off and future outside-tour overtime work must be automatically applied against the debt. Since CBP has authority to assign outside-tour overtime work, it has the ability to ensure that an employee's debt is being eliminated over a reasonable period of time. The absence of a regulatory time limit does not preclude CBP from establishing a time limit by agency policy, but the enforcement mechanism would be for CBP to order the agent to perform outside-tour overtime work. Under the regulations, CBP does not have authority to require a monetary repayment until movement to a non-agent position or separation (including separation upon death). (See § 550.1626(d).)

An individual recommended revising § 550.1626(d) to allow an agent's positive balances of certain other types of paid time off (*i.e.,* annual leave and sick leave, but not military leave) to be applied against an overtime hours debt at the end of each year. The individual stated that this would prevent an excessive amount of debt from accruing over the course of a career and being payable upon retirement.

As explained above, CBP has authority to assign outside-tour overtime work and thereby prevent an excessive debt of overtime hours. We are not inclined to take the step of requiring liquidation of the debt at the end of each year. This matter could be revisited after we have a chance to see how the program is working. However, we agree partially with the commenter's suggestion that an agent's positive balances of certain paid time off should be applied to offset any debt of overtime hours before converting the hours to a monetary debt. We are revising § 550.1626(d) to require that, at movement to a non-agent position or separation, any positive balance of annual leave, time-off awards, or compensatory time off for travel be applied to reduce the hours debt before it is converted to a monetary debt. We are including only types of accrued paid time off that can be used for *any* purpose. Thus, we did not include sick leave, military leave, or religious compensatory time off.

CBP commented that there should be a cap on the overtime hours debt such as 80 hours. CBP suggested that an agent who reached the debt limit would be automatically assigned a Basic tour based on a finding that the agent was unable to perform overtime on a daily basis (§ 550.1611(f)(2)).

We do not agree that a regulatory limit on the number of overtime debt hours should be established. As explained in our above responses to comments about the idea of time limits on eliminating an overtime hours debt, CBP has authority to assign outside-tour overtime work and thereby prevent an excessive debt of overtime hours. CBP also has authority to make a determination that an agent is unable to perform overtime on a daily basis, which would place the agent on a Basic tour with no within-tour overtime and prevent adding to an overtime hours debt going forward. Such a determination should be based on the agent's ability to work, not on a mathematical rule. CBP also has authority to disapprove an agent's request to be absent during obligated overtime hours and to take appropriate disciplinary action if an agent is absent without approval.

CBP commented that the regulations should not allow agents to receive compensation for hours substituted for periods of suspension or absence without leave approval (AWOL), since it would provide cash value for compensatory time off (earned by working irregular overtime hours). CBP cited 5 U.S.C. 5542(g)(5)(D), which provides that an agent ''shall not be entitled to any cash value for compensatory time off earned under section 5550.''

We do not agree with CBP's position. The substitution of outside-tour overtime hours is merely a device to implement overtime hours thresholds. In other words, substitution recognizes that, due to a period of nonpay status, an outside-tour hour cannot be treated as an overtime hour for pay purposes, since the hours are below the overtime threshold. Under 5 U.S.C. 5550(f), substitution of outside-tour overtime hours for ''leave without pay'' is required, and the term ''leave without pay'' includes all periods of nonpay status. (See definition in § 550.1603, which is consistent with OPM's longstanding application of the leave without pay substitution rule in 5 CFR

550.112(d), as necessary to ensure proper application of overtime thresholds.) The substitution of an irregular overtime hour is done *before* creating compensatory time off hours. Section 5550(f)(1)(A)(ii) states that an hour substituted for a leave without pay hour ''shall not be credited as overtime hours for any purpose.'' Thus, an outside-tour overtime hour that would otherwise be an irregular overtime hour loses its character as an overtime hour for any purpose, including the provisions regarding the conversion of irregular overtime hours to compensatory time off hours. OPM's regulation at § 550.1626(a) states that an hour substituted for leave without pay may not be considered to be an overtime hour for any purpose, and specifically cites § 550.1625, which is the section dealing with compensatory time off.

Thus, section 5542(g)(5)(D) is not violated by the substitution of what would otherwise be an irregular overtime hour for leave without pay. If used in substitution, the irregularly scheduled outside-tour hour is not treated as an overtime hour and cannot be converted to a compensatory time off hour. Since it is never a compensatory time off hour, there is no violation of the rule that no cash value be provided for a compensatory time off hour. (In any event, as we have explained above, OPM interprets section 5542(g)(5)(D) as barring cash payments for *unused* compensatory time off, since *use* of compensatory time off necessarily generates basic pay.)

We understand CBP's concern to be that agents appear to be receiving compensation for suspension and AWOL through substitution of other hours of work. But, again substitution is merely a device to ensure that overtime thresholds are being applied and that overtime pay is not provided for hours below the overtime threshold. A suspension or AWOL hour (or any other type of leave without pay) is not actually generating any compensation. Compensation is generated by the hour that is being substituted for the nonpay status hour. The nonpay status still has the effect of reducing pay for the pay period.

If CBP's concern is that an employee who is suspended or placed in AWOL status may have an accrued balance of compensatory time off (based on irregular overtime hours worked in a previous pay period) and that such compensatory time off may be used during a period of suspension or AWOL, that concern is misplaced. There is no authority to use compensatory time off during a period of suspension or AWOL. The designation of a period of time as a period of suspension or AWOL precludes use of any other type of time off.

§ 550.1632—Hazardous Duty Pay

One commenter requested that OPM specifically detail when an agent would be eligible to earn hazardous duty pay.

As provided in § 550.1632, agents are eligible for hazardous duty pay, subject to the requirements of 5 U.S.C. 5545(d) and subpart I of this part. An agent is eligible for hazardous duty pay if he or she meets the statutory and regulatory requirements as applicable to a specific set of circumstances. We are not amending proposed § 550.1632, since hazardous duty pay is addressed in subpart I.

§ 550.1633—Treatment of Overtime Supplement as Basic Pay

NBPC commented that OPM should clarify that the Level 1 or Level 2 overtime supplement is considered ''premium pay'' for workers' compensation purposes. NBPC noted the BPAPRA statute clearly addressed this.

We agree that the treatment of the overtime supplement for workers' compensation purposes is addressed in law at 5 U.S.C. 5550(d), where the workers' compensation provision in title 5 (section 8114(e)) is referenced. Section 5550(d) provides that the overtime supplement is ''basic pay'' (not premium pay) for purposes of applying the workers' compensation law. OPM regulations address this in § 550.1633(c). No further clarification is needed.

§ 550.1635—Alternative Work Schedules

NBPC provided comments in opposition to proposed § 550.1635 prohibiting Border Patrol agents from having a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II. NBPC commented that both BPAPRA and the committee report were silent in regards to whether an employee could work an alternative work schedule and do not expressly exclude it. NBPC stated that OPM should not bar the ability of the NBPC to negotiate for alternative work schedules on behalf of its members. NBPC conceded that while BPAPRA does say that agents working the three types of regular tours of duty ''shall have a regular tour of duty consisting of 5 workdays per week,'' it also states that nothing shall ''be construed to limit the right of U.S. Customs and Border Protection to assign both scheduled and unscheduled work to a border patrol agent based on the needs of U.S. Customs and Border Protection.'' NBPC suggests that by limiting agents to 8 hour daily tours, § 550.1635 would limit the right of CBP to schedule work as needed. NBPC states that recent legal interpretations of the word ''shall'' have also shown that an employer is not required to follow a certain provision, but instead has a choice of whether or not to do so. NBPC suggests that the term ''shall'' in BPAPRA should be read in a similar manner. NBPC further commented that BPAPRA does not rescind the title 5 provisions in subchapter II or chapter 61 that permits compressed work schedules.

Several individuals also provided comments in opposition to the proposed § 550.1635. Several individual commenters specifically mentioned CBP's Overtime Transitional Plan which has allowed Border Patrol agents to work compressed work schedules. Other commenters stated that allowing agents to work a compressed work schedule would boost the morale of the agents. Several commenters suggested that a compressed work scheduled would allow better coverage of shifts by allowing supervisors to schedule all agents to work 10 hours. Both NBPC and several commenters suggest OPM's regulations permit alternative work schedules, particularly a compressed work schedule.

We disagree with the commenters and are making no changes to proposed § 550.1635. We believe the clear language of BPAPRA does not allow a Border Patrol agent to have a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II. BPAPRA states that all Border Patrol agents ''shall'' have a regular tour of duty consisting of 5 workdays per week with an 8 hour regular tour of duty and either zero, one, or two hours of regularly scheduled overtime per day depending upon the employee election. We believe that word ''shall'' in BPAPRA is both clear and unambiguous. We also do not believe that § 550.1635 limits the ability of CBP to assign work. CBP may still assign Border Patrol agents to perform work as necessary, including additional irregular and regularly scheduled overtime hours. The flexibility to assign scheduled tours of duty linked to the overtime supplement is limited to the options provided under the law. Further, while CBP's Overtime Transitional Plan may have allowed Border Patrol agents to work compressed work schedules, the clear language of BPAPRA does not permit agents to work compressed work schedules. Similarly, any potential improvement in employee morale via alternative work schedules cannot

overcome the clear language of BPAPRA barring their usage.

NBPC's comments cite a court case, *Abbey* v. *United States,* 745 F.3d 1363 (Fed. Cir. 2014), to support its position that the word ''shall'' can be interpreted to mean ''may'' (not necessarily required). As a general principle, the use of ''shall'' in statute means ''must.'' The *Abbey* case involved a specific set of circumstances that are not applicable in interpreting BPAPRA. BPAPRA expressly provides that Border Patrol agents ''shall'' have one of three types of fixed regular tours of duty. BPAPRA links a specific rate of pay to a specific regular tour of duty with fixed number of hours each regular workday as an absolute and mandatory requirement. Any flexibility CBP has with respect to regular tours of duty is in choosing which tour to assign to which employee, not in changing the nature of the tour itself.

We also note that the laws governing flexible and compressed work schedules include special rules related to overtime hours, compensatory time off, and night pay that are inconsistent with the BPAPRA rules, and Congress did not amend chapter 61 to address those inconsistencies, indicating that Congress did not intend for chapter 61 to be applicable. For example, section 6123(a)(1) provides that, for employees with a flexible work schedule, an agency head may grant compensatory time off for regularly scheduled overtime hours notwithstanding any other provision of law; however, section 5542(g) (as added by BPAPRA) provides that agents must be paid for regularly scheduled overtime and can receive compensatory time off only for irregular overtime hours.

§ 550.1636—Exemption From Fair Labor Standards Act

Several commenters generally opposed Border Patrol agents being exempt from the minimum wage and overtime provisions of the Fair labor Standards Act (FLSA) under proposed § 550.1636. One individual stated that agents were being treated differently than other law enforcement officers and requested that agents be eligible for FLSA overtime pay. Another commenter suggested that exempting agents from the minimum wage and overtime provisions of the FLSA was contrary to labor laws of the United States. Another commenter stated the CBP officers receive better pay than Border Patrol agents and work shorter hours and questioned the fairness of Border Patrol agents being exempt under the FLSA. Several commenters requested that OPM's proposed regulations be amended to allow Border Patrol agents to remain eligible for the wage and overtime provisions of the FLSA.

We are not amending proposed § 550.1636. BPAPRA specifically provides that the minimum wage and overtime provisions of the FLSA are not applicable to Border Patrol agents.

§ 550.1637—Travel Time

One individual provided a comment in opposition to an agent's travel time not being considered hours of work and stated that agents, while traveling, continue to carry their firearm and are prepared to perform their law enforcement functions should the situation arise. The individual recommended that any travel time by an agent be considered hours of work.

We disagree. Certain travel time is considered hours of work under § 550.112(g). However, we do not agree that carrying a firearm and being prepared to perform law enforcement functions constitute the performance of actual work by an agent while traveling. We are not amending proposed § 550.1637.

§ 550.1638—Official Time

NBPC commented that the requirement that agents serving as union representatives perform agency work during any period of regularly scheduled overtime is impractical and ''makes little operational sense'' because agents are normally deployed in the field ''often more than an hour away from the station.'' The union stated that it believes the regulations should be amended to make clear that scheduled overtime may be either official time or agency work in the field, or that the regulations should allow agents to work on average one day in the field per week to fulfill the overtime requirement.

We understand this comment to mean that, for example, an agent could request a weekly schedule consisting of four days with a 10-hour daily basic work requirement and a fifth day containing 10 within-tour overtime hours. However, such a schedule does not comply with any of the three schedules allowed under BPAPRA, since those schedules require an 8-hour basic workday with a fixed amount of within-tour overtime each workday (one within-tour overtime hour under Level 2 or two within-tour overtime hours under Level 1). (See the section of this Supplementary Information addressing § 550.1635, which further addresses issues related to alternative work schedules.)

A schedule of the type requested by the NBPC comment cannot be accommodated in these regulations and, further, it is required that agency work be conducted during periods of overtime. Nevertheless, we acknowledge the unique operational environment at CBP and balance it with these constraints. In response to the NBPC comment on this topic, along with its comments on § 550.1603 (which are further addressed in the section of the Supplementary Information addressing § 550.1603), we have made some clarifying modifications to § 550.1638. The final regulation provides additional clarification regarding the specific circumstances under which agents may engage in representational work while in an obligated overtime status. In addition, the final regulation makes clear that when CBP determines an agent's official time duties during the basic workday make it impracticable to perform agency work during scheduled obligated overtime hours, and CBP excuses the agent from working those hours as a result, the agent will accrue an overtime hours debt. CBP would then provide the agent with an opportunity to eliminate the resulting overtime hours debt by performing agency work outside the agent's regular tour of duty at another time. In addition to this opportunity, we note that an agent may opt to eliminate an overtime hours debt by substituting available compensatory time off that the agent has earned in the past.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects

5 CFR Part 410

Education, Government employees.

5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

5 CFR Part 551

Government employees, Wages.

5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

For the reasons stated in the preamble, OPM is amending parts 410, 550, 551, and 870 of title 5 of the Code of Federal Regulations as follows:

PART 410—TRAINING

■ 1. The authority citation for part 410 continues to read as follows:

Authority: 5 U.S.C. 1103(c), 2301, 2302, 4101, *et seq.;* E.O. 11348, 3 CFR, 1967 Comp., p. 275, E.O. 11478, 3 CFR 1966–1970 Comp., page 803, unless otherwise noted, E.O. 13087; and E.O. 13152.

Subpart D—Paying for Training Expenses

■ 2. In § 410.402, add paragraph (b)(8) to read as follows:

§ 410.402 Paying premium pay.

* * * * *

(b) * * *

(8) *Border Patrol agent overtime supplement.* A Border Patrol agent may receive an overtime supplement under 5 U.S.C. 5550 and 5 CFR part 550, subpart P, during training, subject to the limitation in 5 U.S.C. 5550(b)(2)(G) and (b)(3)(G) and 5 CFR 550.1622(b).

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

■ 3. The authority citation for subpart A of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5504(d), 5541(2)(iv), 5545a(h)(2)(B) and (i), 5547(b) and (c), 5548, and 6101(c); sections 407 and 2316, Pub. L. 105–277, 112 Stat. 2681–101 and 2681–828 (5 U.S.C. 5545a); section 2(h), Pub. L. 113–277, 128 Stat. 3005; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

■ 4. Amend § 550.103 by adding a sentence at the end of the definition of *premium pay* and adding in alphabetical order a definition of *regular tour of duty* to read as follows:

§ 550.103 Definitions.

* * * * *

Premium pay * * * This includes an overtime supplement received by a Border Patrol agent under 5 U.S.C. 5550 and subpart P of this part for regularly scheduled overtime hours within the agent's regular tour of duty and the dollar value of hours of compensatory time off earned by such an agent.

* * * * *

Regular tour of duty, with respect to a Border Patrol agent covered by 5 U.S.C. 5550 and subpart P of this part, means the basic 40-hour workweek plus any regularly scheduled overtime work hours that the agent is assigned to work as part of an officially established 5-day weekly work schedule generally consisting of—

(1) 10-hour workdays (including 2 overtime hours each workday) in exchange for a 25-percent overtime supplement (Level 1); or

(2) 9-hour workdays (including 1 overtime hour each workday) in exchange for a 12.5-percent overtime supplement (Level 2).

* * * * *

■ 5. In § 550.107, remove ''and'' at the end of paragraph (a)(3), remove the period at the end of paragraph (a)(4) and add in its place ''; and'', and add paragraph (a)(5).

The addition reads as follows:

§ 550.107 Premium payments capped on a biweekly basis when an annual limitation otherwise applies.

(a) * * *

(5) An overtime supplement for regularly scheduled overtime hours within a Border Patrol agent's regular tour of duty under 5 U.S.C. 5550.

* * * * *

■ 6. In § 550.111, add paragraph (j) to read as follows:

§ 550.111 Authorization of overtime pay.

* * * * *

(j) For Border Patrol agents covered by 5 U.S.C. 5550 and subpart P of this part, overtime work means hours of work in excess of applicable thresholds, as specified in § 550.1623, excluding hours that are—

(1) Compensated by payment of an overtime supplement for regularly scheduled overtime within the agent's regular tour of duty under § 550.1621;

(2) Compensated by the earning of compensatory time off under § 550.1625; or

(3) Used in substitution or application under § 550.1626.

■ 7. In § 550.122, add paragraph (e) to read as follows:

§ 550.122 Computation of night pay differential.

* * * * *

(e) *Border Patrol agents.* For a Border Patrol agent covered by 5 U.S.C. 5550 and subpart P of this part, no night pay differential is payable for regularly scheduled overtime hours within the agent's regular tour of duty, as required by 5 U.S.C. 5550(b)(2)(C), (b)(3)(C), and (c)(1)(A). The overtime supplement payable for such scheduled overtime hours is not part of the agent's rate of basic pay used in computing the night pay differential for other hours that qualify for such a differential.

■ 8. In § 550.132, add paragraph (d) to read as follows:

§ 550.132 Relation to overtime, night, and Sunday pay.

* * * * *

(d) For a Border Patrol agent covered by 5 U.S.C. 5550 and subpart P of this part, no holiday premium pay is payable for regularly scheduled overtime hours within the agent's regular tour of duty, as required by 5 U.S.C. 5550(b)(2)(C), (b)(3)(C), and (c)(1)(A). The overtime supplement payable for such scheduled overtime hours is not part of the agent's rate of basic pay used in computing the holiday premium pay for other hours that qualify for such premium pay.

■ 9. In § 550.172, add the designation ''(a)'' at the beginning of the existing paragraph and add paragraph (b) to read as follows:

§ 550.172 Relation to overtime, night, and holiday pay.

* * * * *

(b) For a Border Patrol agent covered by 5 U.S.C. 5550 and subpart P of this part, no Sunday premium pay is payable for regularly scheduled overtime hours within the agent's regular tour of duty, as required by 5 U.S.C. 5550(b)(2)(C), (b)(3)(C), and (c)(1)(A). The overtime supplement payable for such scheduled overtime hours is not part of the agent's rate of basic pay used in computing the Sunday premium pay for other hours that qualify for such premium pay.

Subpart B—Advances in Pay

■ 10. The authority citation for subpart B of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5524a, 5527, 5545a(h)(2)(B), 5550(d)(1)(B); E.O. 12748, 3 CFR, 1992 comp., p. 316.

■ 11. In § 550.202, amend the definition of *rate of basic pay* by removing ''and'' at the end of paragraph (3), removing the period at the end of paragraph (4) and adding in its place ''; and'', and adding paragraph (5).

The additions reads as follows:

§ 550.202 Definitions.

* * * * *

Rate of basic pay * * *

(5) An overtime supplement for regularly scheduled overtime within a Border Patrol agent's regular tour of duty under 5 U.S.C. 5550 (as allowed under 5 U.S.C. 5550(d)(1)(B)).

Subpart G—Severance Pay

■ 12. The authority citation for subpart G of part 550 continues to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, 3 CFR, 1964–1965 Comp., p. 357.

■ 13. In § 550.703, amend the definition of *rate of basic pay* by removing ''and'' at the end of paragraph (3), removing the period at the end of paragraph (4) and adding in its place ''; and'', and adding paragraph (5).

The addition reads as follows:

§ 550.703 Definitions.

* * * * *

Rate of basic pay * * *

(5) An overtime supplement for regularly scheduled overtime within a Border Patrol agent's regular tour of duty under 5 U.S.C. 5550 (as required by 5 U.S.C. 5550(d)(1)(A)).

* * * * *

Subpart L—Lump-Sum Payment for Accumulated and Accrued Annual Leave

■ 14. The authority citation for subpart L continues to read as follows:

Authority: 5 U.S.C. 5553, 6306, and 6311.

§ 550.1204 [Amended]

■ 15. In § 550.1204, amend paragraph (a) by removing ''compensatory time off earned under 5 U.S.C. 5543 and § 550.114(d) or § 551.531(d) of this chapter'' and adding in its place ''unused compensatory time off earned under 5 U.S.C. 5543 and § 550.114(d) or § 551.531(d) or under 5 U.S.C. 5542(g) and § 550.1625''.

■ 16. In § 550.1205, remove ''; and'' at the end of paragraph (b)(5)(ii) and add a period in its place and add paragraph (b)(5)(iv).

The addition reads as follows:

§ 550.1205 Calculating a lump-sum payment.

* * * * *

(b) * * *

(5) * * *

(iv) An overtime supplement for regularly scheduled overtime within a Border Patrol agent's regular tour of duty under 5 U.S.C. 5550, as in effect immediately prior to the date the agent became eligible for a lump-sum payment under § 550.1203. The agency must base the lump-sum payment on the agent's assigned overtime supplement percentage. The assigned percentage will be considered fixed for the duration of the lump-sum annual leave projection period described in § 550.1204, even if an annual period for elections under 5 U.S.C. 5550 begins during that projection period. In cases where the amount of the overtime supplement actually payable in a pay period was limited by a statutory cap, the agency must base the lump-sum payment on a reduced percentage rate that reflects the actual amount of the overtime supplement the agent could receive in a pay period.

* * * * *

■ 17. Add subpart P to read as follows:

Subpart P—Overtime Pay for Border Patrol Agents.

General Provisions

Sec
550.1601 Purpose and authority.
550.1602 Coverage.
550.1603 Definitions.
550.1604 Authority of U.S. Customs and Border Protection.
550.1605 Interpretation instruction.

Assignment of Regular Tour of Duty and Overtime Supplement

550.1611 Assignments for an annual period.
550.1612 Assignments made at other times.
550.1613 Selection of agents for assignment.
550.1614 Limit on percentage of agents who do not have a Level 1 regular tour of duty.
550.1615 Pay assignment continuity.
550.1616 Corrective actions.

Treatment of Overtime Work

550.1621 Rules for types of regular tour of duty.
550.1622 Circumstances requiring special treatment.
550.1623 Overtime work outside the regular tour of duty.
550.1624 Regularly scheduled overtime outside the regular tour of duty.
550.1625 Irregular overtime and compensatory time off.
550.1626 Leave without pay during regular time and absences during obligated overtime hours.

Relationship to Other Provisions

550.1631 Other types of premium pay.
550.1632 Hazardous duty pay.
550.1633 Treatment of overtime supplement as basic pay.
550.1634 Leave and other paid time off.
550.1635 Alternative work schedule.
550.1636 Exemption from Fair Labor Standards Act.
550.1637 Travel time.
550.1638 Official time.

Subpart P—Overtime Pay for Border Patrol Agents

Authority: 5 U.S.C. 5548 and 5550(b)(1)(B) and (d)(1)(B); section 2(h), Pub. L. 113–277, 128 Stat. 3005.

General Provisions

§ 550.1601 Purpose and authority.

This subpart contains OPM regulations to implement section 2 of the Border Patrol Agent Pay Reform Act of 2014 (Pub. L. 113–277), which added section 5550 in title 5, United States Code, and made related statutory amendments. The Act created a special overtime pay program for Border Patrol agents in the U.S. Customs and Border Protection component within the Department of Homeland Security. OPM has authority under 5 U.S.C. 5548(a) to regulate subchapter V (Premium Pay) of chapter 55 of title 5, United States Code, including section 5550 and the Act's amendments to sections 5542 and 5547. OPM was also granted broad authority to promulgate necessary regulations to carry out the Act and the amendments made by the Act under section 2(h) of the Act.

§ 550.1602 Coverage.

This subpart applies to an employee of the U.S. Customs and Border Protection component of the Department of Homeland Security (or any successor organization) who holds a position assigned to the Border Patrol Enforcement classification series 1896 or any successor series, consistent with classification standards established by OPM. Such an employee is referred to as a ''Border Patrol agent'' or ''agent'' in this subpart.

§ 550.1603 Definitions.

For the purpose of this subpart—

Advanced training means all training, other than initial training, provided on a whole-workday basis. Advanced training excludes training that covers only part of an 8-hour basic workday.

Agent means a Border Patrol agent.

Annual period means a 1-year period that begins on the first day of the first pay period beginning on or after January 1 of a given year and ends on the day before the first day of the first pay period beginning on or after January 1 of the next year. The term ''year'' in 5 U.S.C. 5550(b)(1)(A) and (C) and the term ''leave year'' in 5 U.S.C. 5542(g)(5)(A) are interpreted to be an annual period as defined here.

Basic regular tour of duty means an officially established weekly regular tour of duty consisting of five 8-hour workdays (including no overtime hours) for which no overtime supplement is payable.

Basic workday means the 8 nonovertime hours on a day within an agent's basic workweek.

Basic workweek, for full-time employees, means the 40-hour workweek established in accordance with 5 CFR 610.111.

Border Patrol agent means an employee to whom this subpart applies, as provided in § 550.1602.

CBP means the component of the Department of Homeland Security known as U.S. Customs and Border Protection (or any successor organization). When this term is used in the context of CBP making determinations or taking actions, it means management officials of CBP who are authorized to make the given determination or take the given action.

Hybrid pay period means a biweekly pay period within which—

(1) An agent has one type of established regular tour of duty for one part of the pay period and another type of regular tour of duty for a different part of the pay period; or

(2) An individual is employed as an agent for only a portion of the pay period.

Initial training means training for newly hired agents—including initial orientation sessions, basic training, and other preparatory activities—provided prior to the agent's first regular work assignment in which he or she will be authorized to make arrests and carry a firearm.

Irregular overtime work means officially ordered or approved overtime work that is not regularly scheduled overtime work—*i.e.,* overtime work that is not part of the agent's regularly scheduled administrative workweek.

Leave without pay means a period of time within an agent's basic workweek during which the agent is in nonpay status, including periods of unpaid voluntary absence with approval, absence without approval (AWOL), suspension, or furlough.

Level 1 regular tour of duty means an officially established weekly regular tour of duty generally consisting of five 10-hour workdays (including 2 overtime hours each workday) that provides entitlement to a 25 percent overtime supplement.

Level 2 regular tour of duty means an officially established weekly regular tour of duty generally consisting of five 9-hour workdays (including 1 overtime hour each workday) that provides entitlement to a 12.5 percent overtime supplement.

Obligated overtime hours means regularly scheduled overtime hours that an agent with a Level 1 or Level 2 regular tour of duty is obligated to work as part of the agent's regular tour of duty, if the agent performs any amount of work during regular time on same day, and that are converted into an overtime hours debt when the agent fails to work the hours.

Overtime hours debt means the balance of obligated overtime hours not worked for which the agent has not satisfied the hours obligation by applying compensatory time off hours or other overtime hours of work outside the agent's regular tour of duty.

Overtime supplement means a payment received (in addition to the regular amount of basic pay for nonovertime work) in exchange for regularly scheduled overtime work within an agent's Level 1 or Level 2 regular tour of duty. For an agent who is assigned a 10-hour workday as part of the agent's Level 1 regular tour of duty, the overtime supplement is 25 percent. For an agent who is assigned a 9-hour workday as part of the agent's Level 2 regular tour of duty, the overtime supplement is 12.5 percent. The overtime supplement is computed as provided in § 550.1621(a)(4) and (b)(4). For an agent with a Basic regular tour of duty, the overtime supplement is 0 percent.

Pay period means a 14-day biweekly pay period.

Rate of basic pay means the regular nonovertime rate of pay payable to an agent, excluding any overtime supplement, but including any applicable locality payment under 5 CFR part 531, subpart F; special rate supplement under 5 CFR part 530, subpart C; or similar payment or supplement under other legal authority, before any deductions and exclusive of additional pay of any other kind. An overtime supplement is included as part of an agent's rate of basic pay for purposes outside this subpart, as provided in § 550.1633.

Regularly scheduled administrative workweek, for a full-time employee, means the period within an administrative workweek, established in accordance with 5 CFR 610.111, within which the employee is regularly scheduled to work.

Regularly scheduled work means work (including overtime work) that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with 5 CFR 610.111.

Regular time means the regular basic (nonovertime) hours within an agent's 8-hour basic workday within the 40-hour basic workweek.

Regular tour of duty means the basic 40-hour workweek plus any regularly scheduled overtime work hours that the agent is assigned to work as part of an officially established 5-day weekly work schedule generally consisting of—

(1) 10-hour workdays (including 2 overtime hours each workday) in exchange for a 25 percent overtime supplement (Level 1); or

(2) 9-hour workdays (including 1 overtime hour each workday) in exchange for a 12.5 percent overtime supplement (Level 2).

§ 550.1604 Authority of U.S. Customs and Border Protection.

Authorized management officials of U.S. Customs and Border Protection are responsible for determining the mission requirements and operational needs of the organization and have the right to assign scheduled and unscheduled work as necessary to meet those requirements and needs, regardless of an agent's officially established regular tour of duty. (See subsections (a) and (f)(1) of section 2 of Pub. L. 113–277 and 5 U.S.C. 5550(g).)

§ 550.1605 Interpretation instruction.

As required by section 2(f) of the Border Patrol Agent Pay Reform Act of 2014 (Public Law 113–277), nothing in section 2 of the Act or this subpart may be construed to require compensation of an agent other than for hours during which the agent is actually performing work or using approved paid leave or other paid time off. This section does not prevent CBP from granting paid excused absence from an agent's basic workweek under other authority.

Assignment of Regular Tour of Duty and Overtime Supplement

§ 550.1611 Assignments for an annual period.

(a) *Annual period.* The assignment of a regular tour of duty and overtime supplement to an agent is in effect for a full annual period (or the portion of such period during which the individual is employed as an agent), except as otherwise provided in this subpart. The annual period is a 1-year period that begins on the first day of the first pay period beginning on or after January 1 of a given year and ends on the day before the first day of the first pay period beginning on or after January 1 of the next year.

(b) *Information regarding annual election opportunity.* No later than November 1 of each year, CBP must provide each currently employed agent with information regarding the opportunity to elect a regular tour of duty and corresponding overtime supplement for the next annual period. The information must include an explanation of election options and procedures. For an agent who will be in initial training status on the first day of the annual period, this paragraph is not applicable, and § 550.1612(a) and (b) will apply instead.

(c) *Annual election opportunity.* No later than December 1 of each year, an agent to whom paragraph (b) of this section is applicable may make an

election among three options for the regular tour of duty and corresponding overtime supplement (as described in § 550.1621) that the agent wishes to be applicable to him or her during the next annual period.

(d) *Failure to make an election.* If an agent fails to make a timely election under paragraph (c) of this section, CBP must assign the agent a Level 1 regular tour of duty for the annual period (*i.e.,* deemed election) with a 25 percent overtime supplement, except as otherwise provided in paragraph (f) of this section or § 550.1622.

(e) *Effect of agent election.* CBP must assign an agent the regular tour of duty elected by the agent under paragraph (c) or (d) of this section unless CBP informs the agent of an alternative assignment, as provided under paragraph (f) of this section or § 550.1622. CBP may change the assignment during the annual period, as provided under § 550.1612(d). An annual election under paragraph (c) or (d) of this section that is superseded as provided under paragraph (f) of this section or § 550.1622 remains as the default election in the event that the superseding circumstances cease to be applicable, subject to § 550.1612(d).

(f) *Management assignment to tour.* CBP may assign a different regular tour of duty than that elected by the agent under paragraph (c) or (d) of this section for an upcoming annual period under the following circumstances:

(1) An agent who is assigned canine care duties must be assigned a Level 1 regular tour of duty, subject to § 550.1622(c);

(2) An agent who is unable to perform overtime on a daily basis, as determined by CBP, must be assigned a Basic regular tour of duty with no overtime supplement until such time as CBP determines the agent is able to perform the required overtime on a daily basis, subject to the rules in § 550.1612(e);

(3) An agent who holds a position at CBP headquarters, as a training instructor at a CBP training facility, or as a fitness instructor—or who holds another type of position that CBP has determined to be an administrative position— must be assigned a Basic regular tour of duty unless CBP determines a Level 1 or Level 2 regular tour of duty may be assigned to the agent based on a comprehensive staffing analysis conducted for the agent's duty station as required by section 2(e) of the Border Patrol Agent Pay Reform Act of 2014 (Public Law 113–277);

(4) CBP determines that an agent must be assigned to a Level 1 regular tour of duty to ensure that not more than 10 percent (or higher percentage established under § 550.1614(b)) of agents stationed at a location are assigned to a Level 2 regular tour of duty or a Basic regular tour of duty, as required by 5 U.S.C. 5550(b)(1)(E) and § 550.1614; or

(5) CBP determines that assignment of a different regular tour of duty is necessary to comply with the pay assignment continuity provisions in 5 U.S.C. 5550(b)(1)(G) and § 550.1615, notwithstanding any other provision of law or this subpart (including paragraphs (f)(1) through (4) of this section).

(g) *Temporary detail.* If an agent is serving in a position under a temporary detail, that position may not be considered, for the purpose of applying paragraph (f)(3) of this section, to be the position held by the agent during the first 90 days of the detail. After completing 90 days under a temporary detail, an agent will be considered, for the purpose of applying paragraph (f)(3) of this section, to hold the position to which temporarily detailed for the remainder of the detail, notwithstanding the agent's official position of record.

§ 550.1612 Assignments made at other times.

(a) *Initial training period.* An individual who is newly hired as an agent must be assigned a Basic regular tour of duty during any period of initial training. After completing any period of initial training, an agent must be assigned a Level 1 regular tour of duty for any portion of the annual period remaining at that point, except under applicable circumstances described in paragraph (f) of § 550.1611 or paragraph (b) of this section.

(b) *Election by new agent.* An agent who would otherwise be assigned a regular tour of duty under paragraph (a) of this section may submit an election of a different regular tour of duty to be effective on a prospective basis for the remaining portion of the annual period. CBP must provide the agent with election information no later than the date the agent begins a regular work assignment (*i.e.,* after completing any period of initial training). CBP must assign an agent the regular tour of duty elected by the agent under this section unless CBP informs the agent of an alternative assignment based on the circumstances described in paragraph (f) of § 550.1611. Such election must be submitted to CBP no later than 30 days after the agent begins a regular work assignment and, if approved by CBP, is effective on the first day of the first pay period beginning on or after the later of—

(1) The date the election was submitted; or

(2) The date the agent completed initial training.

(c) *Belated election for new agent's first annual period.* An individual who is newly hired as an agent during the period beginning on November 2 and ending on the day before the first day of the next annual period may make an election to take effect at the beginning of the next annual period notwithstanding the normally applicable December 1 election deadline, if the agent will not be in initial training status on the first day of the annual period. Such election must be submitted no later than 30 days after receiving election information, but before the first day of the annual period. Such an election is subject to the same requirements and conditions that apply to an election for an annual period under paragraphs (e) and (f) of § 550.1611. If such election is not made, CBP must assign the agent a Level 1 regular tour of duty with a 25 percent overtime supplement for the next annual period, except under applicable circumstances described in paragraph (f) of § 550.1611.

(d) *Change in tour during annual period.* CBP may change an agent's assigned regular tour of duty during an annual period based on a change in the circumstances described in § 550.1611(f) or in § 550.1622. For example, an agent's regular tour of duty may be changed one or more times during an annual period as necessary to comply with the pay assignment continuity provision described in § 550.1611(f)(5). As provided in § 550.1611(e), an annual election under § 550.1611(c) or (d) that is superseded by operation of § 550.1611(f) or § 550.1622 remains as the default election and becomes effective in the event that § 550.1611(f) or § 550.1622 ceases to be applicable. A tour change under this paragraph is effective with the change in circumstances, as determined by CBP, except as otherwise provided in paragraph (e)(2) of this section and § 550.1622(c)(2).

(e) *Inability determination and effective date of tour change.* The action to assign a Basic regular tour of duty based on a determination that an agent is unable to perform overtime on a daily basis under § 550.1611(f)(2) is subject to the following rules:

(1) The inability determination may be made—

(i) When an agent's law enforcement authority is revoked (*e.g.,* in connection with an investigation, loss of security clearance, or a suspension);

(ii) When an agent is unable to perform overtime duties for an extended

period due to physical or health reasons; or

(iii) For any other appropriate reason, as determined by CBP, but excluding inability based on lack of work (as opposed to inability based on the employee's availability).

(2) The change to a Basic regular tour of duty is effective on the next workday following a CBP inability determination, except that—

(i) CBP may delay the effective date to coincide with the beginning of a week or a biweekly pay period;

(ii) CBP may delay the effective date as necessary to allow an agent who is able to work during regular time to exhaust a positive balance of unused compensatory time off (by applying that balance against the newly accruing overtime hours debt resulting from work during regular time);

(iii) CBP may delay the effective date as necessary to allow an agent to use accrued paid leave or other paid time off if the agent will be performing no work during regular time for a continuous period;

(iv) CBP may delay the effective date during a continuous period of leave without pay granted under 5 U.S.C. chapter 63, subchapter V (dealing with family and medical leave); and

(v) CBP must delay the effective date during any period of paid leave, continuation of pay, or leave without pay granted in connection with application of 5 U.S.C. chapter 81 (dealing with workers' compensation due to a job-related injury).

§ 550.1613 Selection of agents for assignment.

If application of paragraphs (f)(3) and (4) of § 550.1611 (or application of those paragraphs through § 550.1612) requires CBP to select agents for assignment to a particular regular tour of duty out of a pool of agents who prefer a different assignment, CBP must make any such selection consistent with an established written plan that includes the criteria that will be considered and the priority of those criteria. Such plan must be consistent with the requirements of this subpart.

§ 550.1614 Limit on percentage of agents who do not have a Level 1 regular tour of duty.

(a) CBP must take such action as is necessary, including unilateral assignment of agents to a Level 1 regular tour of duty, to ensure that not more than 10 percent of agents stationed at a location are assigned to a Level 2 regular tour of duty or a Basic regular tour of duty, as required by 5 U.S.C. 5550(b)(1)(E), notwithstanding any other provision of law or this subpart, except as provided by paragraphs (b), (c), and (d) of this section. For the purpose of this paragraph, the term ''location'' means a Border Patrol sector, which includes all subordinate organizational structures and related geographic areas within the sector (*e.g.,* stations).

(b) CBP may waive the 10 percent limit in paragraph (a) of this section and apply a higher percentage limit if CBP determines it is able to adequately fulfill its operational requirements under that higher limit based on a comprehensive staffing analysis conducted for the agent's duty station under section 2(e) of the Border Patrol Agent Pay Reform Act of 2014 (Pub. L. 113–277).

(c) The 10 percent limit in paragraph (a) does not apply to agents working at CBP headquarters or at a CBP training location.

(d) Regardless of the percentage limits set under this section, assignments of regular tours of duty to individual agents must be made consistent with the requirement to ensure pay assignment continuity under § 550.1615.

§ 550.1615 Pay assignment continuity.

(a) *Plan.* (1) In consultation with OPM, CBP must develop and implement a plan to ensure, to the greatest extent practicable, that the assignment of a regular tour of duty to an agent during all consecutive 3-year periods within the control period specified in paragraph (b) of this section produces an average overtime supplement percentage (during each 3-year period) that is consistent with the agent's average overtime supplement percentage during the course of the agent's career prior to the beginning of that control period, subject to paragraph (c) of this section. The purpose of this plan is to protect the retirement fund and ensure that agents are not able to artificially enhance their retirement annuities during the period when the high-3 average pay may be determined (in accordance with 5 U.S.C. 8331(4) or 5 U.S.C. 8401(3)).

(2) In applying paragraph (a)(1) of this section, the career average overtime supplement percentage for an agent is the greater of—

(i) The average of overtime supplement percentages (25 percent, 12.5 percent, or 0 percent) assigned during service as an agent on or after January 10, 2016, that is prior to the beginning of the agent's control period (as specified in paragraph (b) of this section); or

(ii) The average of the overtime supplement percentages during all service as an agent that is prior to the beginning of the agent's control period (as specified in paragraph (b) of this section), with assigned overtime supplement percentages (25, 12.5, or 0 percent) assigned during service on or after January 10, 2016, and with assigned percentages of administratively uncontrollable overtime under 5 U.S.C. 5545(c)(2) treated as overtime supplement percentages for any period of service prior to January 10, 2016.

(3) In applying paragraph (a)(2) of this section, the assigned overtime supplement percentage is used regardless of whether or not the payable amount of the overtime supplement is limited by a premium pay cap.

(4) In applying paragraph (a)(2) of this section, if an agent's control period begins on January 10, 2016, as provided in paragraph (b), the agent's initially assigned overtime supplement percentage must be considered the agent's career average under paragraph (a)(2)(i).

(b) *Control period.* The period of time during which CBP must control an agent's assignment to a regular tour of duty (*i.e.,* the control period) begins on the date 3 years before the agent meets age and service requirements for an immediate retirement and remains in effect during all subsequent service in a Border Patrol agent position. If, as of January 10, 2016, the date that is 3 years before the agent first met age and service requirements for an immediate retirement has already passed, then the agent's control period is considered to have begun on January 10, 2016.

(c) *Consistency requirement.* (1) The consistency requirement in paragraph (a) of this section is considered to be met when the agent's average overtime supplement percentage during all consecutive 3-year periods within the control period specified in paragraph (b) of this section is within 2.5 percentage points of the agent's average overtime supplement percentage during the course of the agent's career prior to the beginning of that control period, except as provided in paragraph (c)(2) of this section.

(2) Notwithstanding the consistency requirement in paragraph (a) of this section, the CBP plan may allow an agent to be assigned a regular tour of duty that provides an overtime supplement percentage that is less than that necessary to produce an average percentage (during all consecutive 3-year periods within the control period specified in paragraph (b)) that is consistent with the agent's career average percentage if—

(i) The agent's overtime supplement is limited by the premium pay cap under §§ 550.105 and 550.107 and the agent voluntarily elects a regular tour of duty

providing such a lesser overtime supplement percentage that is approved by CBP; or

(ii) CBP determines an agent is unable to perform overtime on a daily basis due to a physical or medical condition affecting the agent and assigns the agent a Basic regular tour of duty, as described in § 550.1611(f)(2), (but only if such assignment makes it impossible to satisfy the consistency requirement during any given consecutive 3-year period).

(d) *CBP authority.* (1) CBP may take such action as is necessary, including the unilateral assignment of a regular tour of duty to implement the plan described in paragraph (a) of this section, notwithstanding any other provision of law or this subpart, except as provided in paragraph (d)(2) of this section.

(2) Notwithstanding the requirements of 5 U.S.C. 5550(b)(1)(G) and this section, CBP is authorized to assign agents to regular tours of duty as necessary to meet operational requirements. Before exercising the authority to allow assignment of a regular tour of duty that does not comply with the plan described in paragraph (a) of this section, CBP must first determine that it cannot adequately address the specific operational requirements in question by other means, such as the assignment of overtime work outside the regular tour of duty to the affected agent or other agents. If this authority is exercised, CBP must return an affected agent to a regular tour of duty that complies with the plan described in paragraph (a) of this section as soon as possible.

(e) *Reporting requirements*—(1) *Annual data reporting for agents within their control period.* For each agent within the control period specified in paragraph (b) of this section, CBP must provide to OPM no later than March 30th of each year the following information (in a format specified by OPM) based on data compiled through the end of the most recent annual period:

(i) The date the agent became subject to controls on the assignment to a regular tour of duty;

(ii) The date the agent will become subject to mandatory separation under 5 U.S.C. 8335(b) or 5 U.S.C. 8425(b);

(iii) The service computation date based on eligibility under 5 U.S.C. 8336(c) or 5 U.S.C. 8412(d);

(iv) The average overtime supplement percentage during the course of the agent's career prior to the beginning of the control period specified in paragraph (b);

(v) The average overtime supplement percentage for the time period beginning with the date the agent became subject to controls on the assignment to a regular tour of duty and ending on the last day of the most recent annual period;

(vi) The average overtime supplement percentage for the last three annual periods (excluding any time that was not within a control period specified in paragraph (b) of this section);

(vii) The average overtime supplement percentage for the most recent annual period (excluding any time that was not within a control period specified in paragraph (b) of this section), and;

(viii) Any other information requested by OPM.

(2) *Annual data reporting for all agents.* No later than March 30th of each year, CBP must provide to OPM the following information (in a format specified by OPM) for each agent compiled for the preceding calendar year based on salary payments made during that year:

(i) The amount of earnings subject to retirement deductions, including overtime supplement payments, received during the most recent calendar year;

(ii) The amount of earnings subject to retirement deductions during the most recent calendar year minus the total amount of the overtime supplement payments during that year;

(iii) The service computation date computed as though law enforcement officer service is regular employee service (*i.e.,* the ''regular'' SCD);

(iv) The service computation date computed with credit for law enforcement officer service, and any other service creditable for eligibility under 5 U.S.C. 8336(c) or 5 U.S.C. 8412(d) (*i.e.,* the ''LEO'' SCD);

(v) Date of birth;

(vi) Gender;

(vii) Retirement system (*e.g.,* CSRS, FERS, FERS–RAE, FERS–FRAE); and

(viii) Any other information requested by OPM.

(3) *Additional data.* CBP must provide additional data as requested by OPM at any time, including data on the percentage rate of administratively uncontrollable overtime under § 550.154 during the period before the annual period that begins in January 2016.

(f) *Corrective actions.* If it is determined that the consistency requirement described in paragraphs (a) and (c) of this section is not being met for a particular agent, CBP must document why the differential occurred and establish any necessary actions, including the modification of the plan described in paragraph (a) of this section, to ensure that the goal of pay assignment continuity is achieved going forward. Consistent with § 550.1616(b), CBP is not required to retroactively correct an agent's assigned tour or overtime supplement based on violation of the consistency requirement, except when CBP determines there exists, in connection with an agent's assigned overtime supplement, evidence of fraud, misrepresentation, fault, or lack of good faith on the part of that agent.

§ 550.1616 Corrective actions.

(a) Except at provided in paragraph (b) of this section, an error made in connection with the assignment of an agent's regular tour of duty (including any associated overtime supplement) must be corrected as soon as possible.

(b) A retroactive correction of a tour assignment (*i.e.,* actual assigned work schedule as opposed to an error in the payroll system) may not be made in the following circumstances, unless CBP determines there exists, in connection with an agent's assigned tour, evidence of fraud, misrepresentation, fault, or lack of good faith on the part of the affected agent:

(1) Correction of an error in applying the consistency requirement described in §§ 550.1611(f)(5) and 550.1615; and

(2) Correction of an error that caused an employee to have a Level 1 regular tour of duty based solely on misapplication of the applicable percentage limitation described in §§ 550.1611(f)(4) and 550.1614.

Treatment of Overtime Work

§ 550.1621 Rules for types of regular tour of duty.

(a) *Level 1 regular tour of duty.* For an agent with a Level 1 regular tour of duty and a 25 percent overtime supplement, the following rules apply:

(1) The agent has an officially established weekly regular tour of duty generally consisting of five 10-hour workdays (an 8-hour basic workday and 2 regularly scheduled overtime hours);

(2) The agent's 8-hour basic workday (regular time) may be interrupted by an unpaid off-duty meal break;

(3) The obligation to perform 2 hours of overtime work on a day including part of the agent's regular tour of duty does not apply if the agent performs no work during regular time on that day, subject to paragraph (e) of this section;

(4) As compensation for regularly scheduled overtime hours within the regular tour of duty, the agent is entitled to an overtime supplement equal to 25 percent of the agent's hourly rate of basic pay times the number of paid hours of regular time for the agent in the

pay period (subject to the premium cap in §§ 550.105 and 550.107 and the restriction in § 550.1626(a)(5)), and no additional compensation or compensatory time off may be provided for such overtime hours;

(5) For any additional regularly scheduled overtime hours outside the regular tour of duty, the agent is entitled to overtime pay as provided in § 550.1624, except as otherwise provided by § 550.1626;

(6) For any irregular overtime hours, the agent is entitled to be credited with compensatory time off as provided in § 550.1625, except as otherwise provided by § 550.1626;

(7) The agent must be charged corresponding amounts of paid leave, compensatory time off, other paid time off, or time in nonpay status for each hour (or part thereof) the agent is absent from duty during regular time, as provided in § 550.1634, except as otherwise provided in § 550.1626(a); and

(8) If the agent is absent during regularly scheduled overtime hours within the agent's regular tour of duty that the agent is obligated to work, the agent accrues an obligation to perform other overtime work for each hour (or part thereof) the agent is absent, and such obligation must be satisfied as provided in § 550.1626.

(b) *Level 2 regular tour of duty.* For an agent with a Level 2 regular tour of duty and a 12.5 percent overtime supplement, the following rules apply:

(1) The agent has an officially established weekly regular tour of duty generally consisting of five 9-hour workdays (an 8-hour basic workday and 1 regularly scheduled overtime hour);

(2) The agent's 8-hour basic workday (regular time) may be interrupted by an unpaid off-duty meal break;

(3) The obligation to perform 1 hour of overtime work on a day including part of the agent's regular tour of duty does not apply if the agent performs no work during regular time on that day, subject to paragraph (e) of this section;

(4) As compensation for regularly scheduled overtime hours within the regular tour of duty, the agent receives an overtime supplement equal to 12.5 percent of the agent's hourly rate of basic pay times the number of paid hours of regular time for the agent in the pay period (subject to the premium cap in §§ 550.105 and 550.107 and the restriction in § 550.1626(a)(5)), and no additional compensation or compensatory time off may be provided for such overtime hours;

(5) For any additional regularly scheduled overtime hours outside the regular tour of duty, the agent is entitled to overtime pay as provided in § 550.1624, except as otherwise provided by § 550.1626;

(6) For any irregular overtime hours, the agent is entitled to be credited with compensatory time off as provided in § 550.1625, except as otherwise provided by § 550.1626;

(7) The agent must be charged corresponding amounts of paid leave, compensatory time off, other paid time off, or time in nonpay status for each hour (or part thereof) the agent is absent from duty during regular time, as provided in § 550.1634, except as otherwise provided in § 550.1626(a); and

(8) If the agent is absent during regularly scheduled overtime hours within the agent's regular tour of duty that the agent is obligated to work, the agent accrues an obligation to perform other overtime work for each hour (or part thereof) the agent is absent, and such obligation must be satisfied as provided in § 550.1626.

(c) *Basic regular tour of duty.* For an agent with a Basic regular tour of duty that includes no scheduled overtime hours and provides no overtime supplement, the following rules apply:

(1) The agent has an officially established weekly regular tour of duty generally consisting of five 8-hour basic workdays;

(2) The agent's 8-hour basic workday (regular time) may be interrupted by an unpaid off-duty meal break;

(3) For any regularly scheduled overtime hours, the agent is entitled to overtime pay as provided in § 550.1624, except as otherwise provided by § 550.1626;

(4) For any irregular overtime hours, the agent is entitled to be credited with compensatory time off as provided in § 550.1625, except as otherwise provided by § 550.1626; and

(5) The agent must be charged corresponding amounts of paid leave, compensatory time off, other paid time off, or time in nonpay status for each hour (or part thereof) the agent is absent from duty during regular time, as provided in § 550.1634, except as otherwise provided in § 550.1626(a).

(d) *Effect of premium pay cap.* If a premium pay cap established under 5 U.S.C. 5547 and §§ 550.105 and 550.107 limits payment of an overtime supplement or regularly scheduled overtime pay, or limits crediting of compensatory time off, the affected agent is still required to perform assigned overtime work.

(e) *Meaning of ''work''.* In applying paragraphs (a)(3) and (b)(3) of this section, the term ''work'' refers to paid hours of work, consistent with § 550.112, except that paid leave and other paid time off when an agent is excused from duty are not considered to be work hours. Official time under 5 U.S.C. 7131 during regular time is considered to be paid hours of ''work'' during the time an employee otherwise would be in a duty status.

(f) *Approval of absences.* Any absence during obligated overtime hours (as described in paragraphs (a)(8) and (b)(8) of this section) is subject to management approval under CBP policies.

§ 550.1622 Circumstances requiring special treatment.

(a) *General.* The rules in paragraphs (b) and (c) of this section provide for special treatment based on specified circumstances and apply notwithstanding any other provision of this subpart.

(b) *Advanced training.* (1) During the first 60 days of advanced training in a calendar year, an agent's assigned regular tour of duty must be considered to continue and the agent must be deemed to have worked during any nonwork period within obligated overtime hours for the purpose of determining the agent's total hours to be compared to the applicable overtime threshold (as provided in § 550.1623(a)(2)(iv)), except as provided under paragraph (b)(2) of this section.

(2) If an agent, during the period covered by paragraph (b)(1) of this section, performs creditable overtime work outside the agent's regular tour of duty on a day when the agent performed less than the required amount of obligated overtime work, the overtime work outside the regular tour of duty must be applied towards the obligated overtime hours, as provided in § 550.1626(b). After any such substitution, CBP must credit the agent with hours of work for any remaining nonwork time during obligated overtime hours on the same day for the purpose of determining the agent's total hours to be compared to the applicable overtime threshold. For example, if an agent performs 2 creditable hours of regularly scheduled overtime work outside the agent's Level 1 regular tour of duty on a training day when the agent performed half an hour of work during the 2 hours of obligated overtime, CBP would substitute 1.5 hours of regularly scheduled overtime outside the regular tour of duty for 1.5 hours of obligated overtime when no work was performed. CBP would not provide the agent with any credit for nonwork hours under paragraph (b)(1) of this section, since the 0.5 hours of actual work plus the 1.5 substituted hours account for the entire 2-hour period. The agent would be paid

for the unsubstituted half hour of creditable regularly scheduled overtime work under § 550.1624.

(3) For days of advanced training in excess of 60 days in a calendar year, an agent must be assigned a Basic regular tour of duty and be treated accordingly. If this results in a hybrid pay period in which an agent has two types of regular tours of duty within the same biweekly pay period, CBP must determine the number of overtime hours outside the regular tour of duty as provided in § 550.1623(c). For an agent who is assigned a Basic regular tour of duty during advanced training under this paragraph, CBP must change the agent's regular tour of duty to the type in effect before the Basic tour was assigned when the agent is no longer participating in advanced training.

(4) Paragraphs (b)(1) through (3) of this section apply solely to advanced training that is provided in whole-workday increments (*i.e.,* covering an entire 8-hour basic workday).

(c) *Canine care.* (1) For an agent assigned to provide care for a canine and assigned to the Level 1 regular tour of duty border patrol rate of pay, the combined sum of basic pay plus the 25 percent overtime supplement is considered to provide compensation for all canine care. Such an agent must be credited with 1 hour of regularly scheduled overtime work as part of the regular tour of duty on each day containing a part of that tour, without regard to the actual duration of such care or the time and day when such care was actually provided. That leaves the agent with an additional obligation to perform 1 other hour of regularly scheduled overtime work as part of the agent's regular tour of duty on any day containing a part of the employee's tour, if the agent performs work during regular time on that day and thus has obligated overtime hours. An agent may receive no other compensation or compensatory time off for hours of canine care beyond what is specifically provided under this paragraph.

(2) If an agent is generally assigned to provide care for a canine, but is temporarily relieved of that duty for any reason (*e.g.,* no dog available), the agent may not receive the 1-hour credit for canine care on a day when the agent is relieved from providing canine care. If the period during which the agent is temporarily relieved from providing canine care lasts more than two full pay periods, CBP must assign the agent's tour based on the agent's default election for the annual period as provided in § 550.1611(c) or (d) unless other circumstances described in paragraph (f) of § 550.1611 are applicable. For shorter periods, the Level 1 regular tour of duty assigned based on canine care responsibilities will continue unless the agent requests a different tour based on the agent's default election for the annual period.

§ 550.1623 Overtime work outside the regular tour of duty.

(a) *General.* (1) For the purpose of determining hours of overtime work outside an agent's regular tour of duty in order to apply §§ 550.1624, 550.1625, and 550.1626, CBP must apply the applicable biweekly overtime threshold prescribed in paragraphs (b) and (c) of this section. An agent's total hours of work (as determined under paragraph (a)(2) of this section) must be compared to the applicable threshold, and hours in excess of that threshold are overtime hours in applying §§ 550.1624, 550.1625, and 550.1626. The 8-hour daily and 40-hour weekly overtime thresholds under 5 U.S.C. 5542(a) and § 550.111 are not applicable to agents.

(2) An agent's total hours of work in a pay period for the purpose of applying applicable overtime thresholds is equal to the sum of:

(i) Time determined to be hours of work in duty status (regular time or overtime), subject to this subpart, 5 U.S.C. 4109 and 5 CFR 410.402 (related to training periods), and 5 U.S.C. 5542(b) and § 550.112 (establishing general rules), except that paragraphs (d) and (e) of § 550.112 are superseded by § 550.1626;

(ii) Paid leave or other paid time off during a period of nonduty status within an agent's regular time;

(iii) Obligated overtime hours during which no work is performed (creating a debt of hours) and for which no substitution is made under § 550.1626(b);

(iv) Nonwork hours deemed to be hours of work during obligated overtime hours on a day of advanced training under § 550.1622(b); and

(v) Overtime hours normally scheduled within an agent's regular tour of duty that an agent is not obligated to work because the agent performs no work during regular time on that day (as provided in paragraphs (a)(3) and (b)(3) of § 550.1621).

(b) *Overtime thresholds for standard tours.* (1) The applicable biweekly overtime threshold prescribed in paragraph (b)(2) of this section applies during a pay period to an agent whose regular tour of duty is fixed at one of the three standard tours for the entire pay period. (2) For an agent covered by paragraph (b)(1) of this section, the threshold used to determine whether an agent has performed overtime work outside the regular tour of duty in a given pay period is—

(i) 100 hours for a Level 1 regular tour of duty;

(ii) 90 hours for a Level 2 regular tour of duty; or

(iii) 80 hours for a Basic regular tour of duty.

(c) *Overtime threshold for hybrid pay period.* (1) For a hybrid pay period in which an agent has one type of regular tour of duty in effect for one part of the period and another type for another part of the period, the threshold used to determine whether an agent has performed overtime work outside the regular tour of duty in a given pay period is equal to the sum of the regular time hours (paid or unpaid) and the number of normally scheduled overtime hours within a regular tour of duty (whether obligated or not and whether worked or not) in the pay period. For example, if an agent has a Level 1 regular tour of duty in the first week of a pay period and a Level 2 regular tour of duty in the second week, the agent's regular time hours would be 40 in the first week and 40 in the second week and the normally scheduled overtime hours within a regular tour of duty would be 10 (5 days times 2 hours each day) in the first week and 5 (5 days times 1 hour each day) in second week, resulting in an biweekly overtime threshold of 95 hours.

(2) For a hybrid pay period in which an individual is employed as a Border Patrol agent for only part of the pay period, the threshold used to determine whether an agent has performed overtime work outside the regular tour of duty in a given pay period is equal to the sum of the paid regular time hours (paid or unpaid) and the number of normally scheduled overtime hours within a regular tour of duty (whether obligated or not and whether worked or not) during the portion of the pay period the individual was employed as an agent. For example, if an individual is employed as an agent only during the second week of a pay period and has a Level 1 regular tour of duty, the overtime threshold would be 50 hours (40 regular time hours plus 10 normally scheduled overtime hours) in determining whether the agent has overtime hours in that week that are compensable under §§ 550.1624, 550.1625, and 550.1626.

§ 550.1624 Regularly scheduled overtime outside the regular tour of duty.

(a) *Coverage.* Any regularly scheduled overtime hours outside an agent's regular tour of duty, as specified in § 550.1623, are covered by this section, except that such hours are excluded

from coverage under this section when required by the superseding provisions in § 550.1626.

(b) *Rates.* Agents receive overtime pay at the rates specified under 5 U.S.C. 5542(a) and § 550.113 for regularly scheduled overtime hours covered by paragraph (a) of this section, subject to the premium pay limitation established under 5 U.S.C. 5547 and §§ 550.105 and 550.107. An agent's rate of basic pay (without any overtime supplement) is used in computing overtime pay for such hours.

(c) *Avoiding additional regularly scheduled overtime.* (1) As required by section 2(c)(2) of the Border Patrol Agent Pay Reform Act of 2014 (Public Law 113–277), CBP must, to the maximum extent practicable, avoid the use of regularly scheduled overtime work by agents outside of the regular tour of duty.

(2) Notwithstanding paragraph (c)(1) of this section, CBP may allow use of regularly scheduled overtime work outside an agent's regular tour of duty if an agent volunteers to perform such overtime (*e.g.,* to reduce an overtime hours debt).

§ 550.1625 Irregular overtime and compensatory time off.

(a) *Coverage.* An agent is entitled to compensatory time off as provided in this section for irregular overtime hours outside an agent's regular tour of duty, as specified in § 550.1623, except that such hours are excluded from coverage under this section (except paragraph (c) of this section) when required by the superseding provisions in § 550.1626. The compensatory time off provisions in 5 U.S.C. 5543 and 5 CFR 550.114 are not applicable to an agent.

(b) *Earning on an hour-for-hour basis for irregular overtime.* Subject to the limitations specified in this section and the superseding provisions in § 550.1626, an agent must receive compensatory time off for an equal amount of time spent performing irregular overtime work.

(c) *Call-back overtime work.* Notwithstanding paragraph (b) of this section, consistent with 5 U.S.C. 5542(b)(1) and § 550.112(h), an agent must be deemed to have performed 2 hours of irregular overtime work for a lesser amount of irregular overtime work if—

(1) An agent is required perform such work on a day when the agent was not scheduled to work; or

(2) An agent is required to return to the agent's place of employment to perform such work.

(d) *Earning limited by premium pay cap.* An agent may not be credited with earning compensatory time off if the value of such time off would cause the sum of the agent's basic pay and premium pay in the given pay period to exceed the limitation established under 5 U.S.C. 5547 and §§ 550.105 and 550.107 in the period in which it was earned. The dollar value of compensatory time off for the purpose of this paragraph is the amount of overtime pay the agent would have received for the period during which compensatory time off was earned if the overtime had been regularly scheduled outside the agent's regular tour of duty.

(e) *Pay period limit.* (1) An agent may not earn more than 10 hours of compensatory time off during any pay period unless—

(i) CBP, as it determines appropriate, approves in writing a waiver of the 10-hour limit; and

(ii) Such waiver approval is executed in advance of the performance of any work for which compensatory time off is earned.

(2) If a waiver of the 10-hour limit described in paragraph (e)(1) of this section is not granted, the agent involved may not be ordered to perform the associated overtime work.

(f) *Annual period limit.* An agent may not earn more than 240 hours of compensatory time off during an annual period.

(g) *Usage.* (1) An agent may use compensatory time off by being excused from duty during regular time (in an amount equal to the compensatory time off being used) during the agent's basic workweek.

(2) An agent's balance of unused compensatory time off is used to satisfy an overtime hours debt, as provided in § 550.1626(c)(1).

(h) *Time limit for usage and forfeiture.* An agent must use any hours of compensatory time off not later than the end of the 26th pay period after the pay period during which the compensatory time off was earned. Any compensatory time off not used within that time limit, or prior to separation from an agent position, is forfeited and not available for any purpose, regardless of the circumstances. An agent may not receive any cash value for unused compensatory time off. An agent may not receive credit towards the computation of the agent's retirement annuity for unused compensatory time off.

§ 550.1626 Leave without pay during regular time and absences during obligated overtime hours.

(a) *Substitution for leave without pay during regular time.* (1) For any period of leave without pay during an agent's regular time (basic workweek), an equal period of work outside the agent's regular time in the same pay period must be substituted to the extent such work was performed. Any time substituted for leave without pay must be treated for all pay computation purposes as if it were regular time (except as provided in paragraph (a)(5) of this section) and may not be considered an overtime hour of work for any purpose, including §§ 550.1621(a)(4) and (b)(4), 550.1624, and 550.1625.

(2) Hours of work must be substituted for regular time work under paragraph (a)(1) of this section before being substituted for regularly scheduled overtime within the agent's regular tour of duty under paragraph (b) of this section.

(3) Hours used for substitution under paragraph (a)(1) of this section must be substituted in the following priority order: first, irregular overtime hours; second, regularly scheduled overtime hours outside the regular tour of duty; and third, regularly scheduled overtime hours within the regular tour of duty.

(4) The substitution of overtime hours for leave without pay is solely for pay computation purposes. The substitution does not change the hours of an agent's basic workweek or the fact that the agent was in a particular type of nonpay status during those hours. The hours that are substituted are considered to have been performed when they were worked, not during the leave without pay hours for which they are substituted. For example, if an agent performs 4 hours of overtime work outside the agent's regular tour of duty during the first week of a pay period and then is placed in leave without pay during the second week due to a shutdown furlough caused by a lapse in appropriations, the 4 hours must be substituted for furlough hours for the purpose of computing pay owed the agent for the week before the furlough began.

(5) If overtime hours are substituted for an absence without approval (AWOL) or a suspension, the basic pay for such substituted hours may not be used in computing an agent's overtime supplement.

(b) *Substitution for absences during obligated overtime hours within the regular tour of duty.* (1) For a period of absence during obligated overtime hours within an agent's regular tour of duty, an equal period of work outside the agent's regular tour of duty in the same pay period must be substituted to the extent such work was performed. Any time so substituted must be treated for all pay computation purposes as if it

were obligated overtime work and may not be considered an overtime hour of work for any other purpose, including §§ 550.1624 and 550.1625.

(2) In substituting hours of work under paragraph (b)(1) of this section, work performed on the same day as the period of absence must be substituted first in circumstances described in § 550.1622(b)(2). Hours substituted under this paragraph must be substituted in the following priority order: first, irregular overtime hours; and second, regularly scheduled overtime hours outside the regular tour of duty.

(3) After substituting hours under paragraph (b)(2) of this section, any remaining hours used for substitution under paragraph (b)(1) of this section must be substituted in the following priority order: first, irregular overtime hours; and second, regularly scheduled overtime hours outside the regular tour of duty.

(4) The substitution of overtime hours outside the regular tour of duty for obligated overtime hours not worked is solely for pay computation purposes. The substitution does not change the hours of an agent's regular tour of duty. The hours that are substituted are considered to have been performed when they were worked, not during the obligated overtime hours for which they are substituted.

(c) *Application of compensatory time off or future overtime work to offset overtime hours debt.* (1) If a Border Patrol agent does not have sufficient additional work in a pay period to substitute for all periods of absence during obligated overtime hours within the agent's regular tour of duty for that pay period, any unused balance of compensatory time off hours previously earned under § 550.1625 must be applied towards the newly accrued overtime hours debt.

(2) If an agent has a remaining overtime hours debt after applying paragraphs (b) and (c)(1) of this section, any additional overtime work outside the agent's regular tour of duty in subsequent pay periods that would otherwise be credited under § 550.1624 or § 550.1625 must be applied towards the overtime hours debt until that debt is satisfied. The application of such hours must be done in the following priority order: first, irregular overtime hours; and second, regularly scheduled overtime hours outside the regular tour of duty. Any overtime hour applied under this paragraph (c)(2) may not be considered an overtime hour of work for any other purpose.

(d) *Unsatisfied overtime hours debt at movement to a non-agent position or separation.* (1) Any unsatisfied overtime hours debt that exists at the time of movement to a non-agent position or separation from Federal service must be recovered to the extent possible by offsetting the affected employee's positive balance (if any) of annual leave, time-off awards, or compensatory time off for travel. In cases where the offset will totally eliminate the debt, an agent's balances must be applied in the following order: first, the balance of annual leave; second, the balance of time-off awards; and third, the balance of compensatory time off for travel.

(2) Any unsatisfied overtime hours debt that exists at the time of movement to a non-agent position or separation from Federal service after applying paragraph (d)(1) of this section must be converted to a monetary debt equal to the result of multiplying the agent's hourly rate of basic pay at the time of movement to a non-agent position or separation by the number of hours in the overtime hours debt. CBP must follow standard debt collection procedures to recover any debt.

Relationship to Other Provisions

§ 550.1631 Other types of premium pay.

(a) An agent may not receive premium pay for night, Sunday, or holiday work for hours of regularly scheduled overtime work within the agent's regular tour of duty.

(b) An agent may receive premium pay for night, Sunday, or holiday work, as applicable, for hours not covered by paragraph (a) of this section, in accordance with 5 U.S.C. 5545(a) and (b) and section 5546 and corresponding regulations, except that section 5546(d) does not apply. (For an agent, pay for overtime work on a Sunday or holiday is determined under 5 U.S.C. 5542(g), not under section 5546(d).) The agent's rate of basic pay (without any overtime supplement) must be used in computing such premium payments.

(c) An agent may not be paid standby duty premium pay under 5 U.S.C. 5545(c)(1) or administratively uncontrollable overtime pay under 5 U.S.C. 5545(c)(2).

§ 550.1632 Hazardous duty pay.

An agent is eligible for hazardous duty pay, subject to the requirements in 5 U.S.C. 5545(d) and subpart I of this part. The agent's rate of basic pay (without any overtime supplement) must be used in computing any hazardous duty pay.

§ 550.1633 Treatment of overtime supplement as basic pay.

Regularly scheduled overtime pay within an agent's regular tour of duty is treated as part of basic pay or basic salary only for the following purposes:

(a) 5 U.S.C. 5524a and 5 CFR part 550, subpart B, pertaining to advances in pay;

(b) 5 U.S.C. 5595(c) and 5 CFR part 550, subpart G, pertaining to severance pay;

(c) 5 U.S.C. 8114(e), pertaining to workers' compensation;

(d) 5 U.S.C. 8331(3) and 5 U.S.C. 8401(4) and related provisions that rely on the definition in those paragraphs, pertaining to retirement benefits;

(e) Subchapter III of chapter 84 of title 5, United States Code, pertaining to the Thrift Savings Plan;

(f) 5 U.S.C. 8704(c), pertaining to life insurance; and

(g) For any other purposes explicitly provided for by law or as the Office of Personnel Management may prescribe by other regulation.

§ 550.1634 Leave and other paid time off.

(a) An agent is subject to the rules governing leave accrual and usage under 5 U.S.C. chapter 63 on the same basis as other employees. The tour of duty for leave accrual and usage purposes is the basic workweek, which excludes regularly scheduled overtime hours within the regular tour of duty established under this subpart. The agent must be charged corresponding amounts of leave for each hour (or part thereof) the agent is absent from duty during regular time (except that full days off for military leave must be charged when required).

(b) An agent is subject to the normally applicable rules governing other types of paid time off (such as holiday time off under 5 U.S.C. chapter 61, compensatory time off for religious observances under subpart J of this part, or compensatory time off for travel under subpart N of this part) on the same basis as other covered employees. The tour of duty used in applying those rules is the basic workweek, which excludes regularly scheduled overtime hours within the regular tour of duty established under this subpart. The agent must be charged corresponding amounts of paid time off for each hour (or part thereof) the agent is absent from duty during regular time.

(c) In computing a lump-sum annual leave payment under 5 U.S.C. 5551–5552, an overtime supplement for an agent's regularly scheduled overtime hours within the agent's regular tour of duty is included, as provided in § 550.1205(b)(5)(iv).

§ 550.1635 Alternative work schedule.

An agent may not have a flexible or compressed work schedule under 5

U.S.C. chapter 61, subchapter II. The regular tour of duty established under this subpart is a special work schedule established under 5 U.S.C. 5550. CBP may allow flexible starting and stopping times for an agent's basic workday if it determines such flexibility is appropriate for the position in question.

§ 550.1636 Exemption from Fair Labor Standards Act.

The minimum wage and the hours of work and overtime pay provisions of the Fair Labor Standards Act do not apply to Border Patrol agents. (See also 5 CFR 551.217.)

§ 550.1637 Travel time.

(a) A Border Patrol agent's travel time to and from home and the agent's regular duty station (or to an alternative work location within the limits of the agent's official duty station, as defined in § 550.112(j)) may not be considered hours of work under any provision of law.

(b) Official travel time away from an agent's official duty station may be creditable hours of work as provided in § 550.112(g). When an agent travels directly between home and a temporary duty location outside the limits of the agent's official duty station (as defined in § 550.112(j)), the time the agent would have spent in normal home to work travel must be deducted from any creditable hours of work while traveling.

§ 550.1638 Official time.

An agent who uses official time under 5 U.S.C. 7131 may be assigned to a Level 1 or Level 2 regular tour of duty, but is required to perform agency work during obligated overtime hours or to accrue an overtime hours debt. Official time may be used during overtime hours only when, while the agent is engaged in the performance of agency work, an event arises incident to representational functions that must be immediately addressed during the overtime hours. CBP may excuse the agent from duty during scheduled obligated overtime hours if it determines that an agent's official time duties during the basic workday make it impracticable to perform agency work during the scheduled obligated overtime hours on that day. The agent will accrue an overtime hours debt for that excused time. If CBP excuses the agent in this manner, then it must provide the agent with an opportunity to eliminate the resulting overtime hours debt by performing agency work outside the agent's regular tour of duty at another time. As provided in § 550.1621(e), official time during regular time is considered to be ''work'' when an agent otherwise would be in a duty status in applying paragraphs (a)(3) and (b)(3) of § 550.1621.

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

■ 18. The authority citation for part 551 continues to read as follows:

Authority: 5 U.S.C. 5542(c); Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93–259, 88 Stat. 55 (29 U.S.C. 204f).

Subpart B—Exemptions and Exclusions

■ 19. In § 551.216, revise paragraph (c)(2) to read as follows:

* * * * *

§ 551.216 Law enforcement activities and 7(k) coverage for FLSA pay and exemption determinations.

* * * * *

(c) * * *

(2) Employees whose primary duties involve patrol and control functions performed for the purpose of detecting and apprehending persons suspected of violating criminal laws;

* * * * *

■ 20. Add § 551.217 to read as follows:

§ 551.217 Exemption of Border Patrol agents.

A Border Patrol agent (as defined in 5 U.S.C. 5550(a)(2) and 5 CFR 550.1603) is exempt from the minimum wage and the hours of work and overtime pay provisions of the Act.

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

■ 21. The authority citation for part 870 is revised to read as follows:

Authority: 5 U.S.C. 8704(c), 8716; Subpart J also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251, and section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 870.302(a)(3) also issued under section 145 of Pub. L. 106–522, 114 Stat. 2472; Secs. 870.302(b)(8), 870.601(a), and 870.602(b) also issued under Pub. L. 110–279, 122 Stat. 2604; Sec. 870.510 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515; Subpart E also issued under 5 U.S.C. 8702(c); Sec. 870.601(d)(3) also issued under 5 U.S.C. 8706(d); Sec. 870.703(e)(1) also issued under section 502 of Pub. L. 110–177, 121 Stat. 2542; Sec. 870.705 also issued under 5 U.S.C. 8714b(c) and 8714c(c); Public Law 104–106, 110 Stat. 521.

Subpart B—Types and Amount of Insurance

■ 22. In § 870.204, remove ''and'' at the end of paragraph (a)(2)(x), remove the period at the end of paragraph (a)(2)(xi) and add in its place ''; and'', and add paragraph (a)(2)(xii).

The addition reads as follows:

§ 870.204 Annual rates of pay.

* * * * *

(a) * * *

(2) * * *

(xii) An overtime supplement for regularly scheduled overtime within a Border Patrol agent's regular tour of duty under 5 U.S.C. 5550 (as required by 5 U.S.C. 5550(d)).

* * * * *

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Part V

Securities and Exchange Commission

17 CFR Parts 270 and 274

Removal of Certain References to Credit Ratings and Amendment to the Issuer Diversification Requirement in the Money Market Fund Rule; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release No. IC–31828; File No. S7–07–11]

RIN 3235–AL02

Removal of Certain References to Credit Ratings and Amendment to the Issuer Diversification Requirement in the Money Market Fund Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting certain amendments, initially proposed in March 2011 and re-proposed in July 2014, related to the removal of credit rating references in rule 2a–7, the principal rule that governs money market funds, and Form N–MFP, the form that money market funds use to report information to the Commission each month about their portfolio holdings, under the Investment Company Act of 1940 (''Investment Company Act'' or ''Act''). The amendments will implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). In addition, the Commission is adopting amendments to rule 2a–7's issuer diversification provisions to eliminate an exclusion from these provisions that is currently available for securities subject to a guarantee issued by a non-controlled person.

DATES: Effective Date: October 26, 2015; Compliance Date: October 14, 2016.

FOR FURTHER INFORMATION CONTACT: Adam Bolter, Senior Counsel; Erin C. Loomis, Senior Counsel; Amanda Hollander Wagner, Senior Counsel; Thoreau Bartmann, Branch Chief; or Sarah G. ten Siethoff, Assistant Director, Investment Company Rulemaking Office, at (202) 551–6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. Credit Rating References
B. Exclusion from the Issuer Diversification Requirement
II. Discussion
A. Eligible Securities
B. Conditional Demand Features
C. Monitoring Minimal Credit Risks
D. Stress Testing
E. Form N–MFP
F. Exclusion from the Issuer Diversification Requirement
III. Compliance Period for the Final Rule and Form Amendments
IV. Paperwork Reduction Act Analysis
V. Economic Analysis
VI. Regulatory Flexibility Act Certification
Statutory Authority

I. Background

A. Credit Rating References

Section 939A of the Dodd-Frank Act requires each federal agency, including the Commission, to ''review any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings.'' [1] That section further provides that each such agency shall ''modify any such regulations identified by the review . . . to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations.'' [2]

As a step toward implementing these mandates, and as a complement to similar initiatives by other federal agencies,[3] in March 2011 the Commission proposed to replace references to credit ratings issued by nationally recognized statistical rating organizations (''NRSROs'') in two rules and four forms under the Securities Act of 1933 (''Securities Act'') and the Investment Company Act, including rule 2a–7 and Form N–MFP under the Investment Company Act.[4] We subsequently adopted certain of the rule provisions proposed in 2011: Namely, amendments to rule 5b–3 under the Investment Company Act, new rule 6a–5 under the Investment Company Act, and amendments to Forms N–1A, N–2, and N–3 under the Securities Act and the Investment Company Act.[5] But in light of comments received on the 2011 proposed amendments to rule 2a–7 and Form N–MFP, and in conjunction with the wider money market fund reforms that the Commission adopted in July 2014 (the ''2014 money market fund reforms''),[6] we decided to re-propose the amendments to rule 2a–7 and Form N–MFP instead of adopting them directly following the 2011 proposal.[7] Specifically, the 2014 re-proposed amendments to rule 2a–7 and Form N–MFP (the ''2014 Proposing Release,'' ''Proposing Release,'' or ''proposal'') [8] responded to concerns that commenters raised with respect to the 2011 proposal.

We received 16 comment letters on the 2014 proposal.[9] The majority of commenters generally supported the proposed amendments to varying degrees.[10] However, many commenters expressed concern about the proposed ''exceptionally strong'' standard to replace credit ratings references in the requirements of rule 2a–7 for those securities eligible to be purchased by money market funds.[11] These

[1] Public Law 111–203, Sec. 939A(a)(1)–(2). Section 939A of the Dodd-Frank Act applies to all federal agencies.

[2] Public Law 111–203, Sec. 939A(b). Section 939A of the Dodd Frank Act provides that agencies shall seek to establish, to the extent feasible, uniform standards of creditworthiness, taking into account the entities the agencies regulate and the purposes for which those entities would rely on such standards.

[3] A number of other federal agencies have also taken action to implement Section 939A of the Dodd-Frank Act, as discussed in Removal of Certain References to Credit Ratings and Amendment to the Issuer Diversification Requirement in the Money Market Fund Rule, Investment Company Act Release No. 31184 (Jul. 23, 2014) [79 FR 47986 (Aug. 14, 2014)] (''2014 Proposing Release'' or ''Proposing Release'').

[4] *See* References to Credit Ratings in Certain Investment Company Act Rules and Forms, Investment Company Act Release No. 29592 (Mar. 3, 2011) [76 FR 12896 (Mar. 9, 2011)] (''2011 Proposing Release'').

[5] In December 2013, we adopted amendments removing references to credit ratings in rule 5b–3 and eliminating the required use of credit ratings in Forms N–1A, N–2, and N–3. *See* Removal of Certain References to Credit Ratings under the Investment Company Act, Investment Company Act Release No. 30847 (Dec. 27, 2013) [79 FR 1316 (Jan. 8, 2014)] (''2013 Ratings Removal Adopting Release''). We adopted new rule 6a–5 on November 19, 2012. *See* Purchase of Certain Debt Securities by Business and Industrial Development Companies Relying on an Investment Company Act Exemption, Investment Company Act Release No. 30268 (Nov. 19, 2012) [77 FR 70117 (Nov. 23, 2012)].

[6] *See* Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 31166 (Jul. 23, 2014) [79 FR 47736 (Aug. 14, 2014)] (''2014 Money Market Fund Adopting Release'').

[7] *See* 2014 Proposing Release, *supra* note 3.

[8] For clarity and because the re-proposal issued in July 2014 functions as the proposal for this adopting release, we refer to the re-proposal simply as the proposal throughout.

[9] The comment letters on the Proposing Release (File No. S7–07–11) are available at *http://www.sec.gov/comments/s7-07-11/s70711.shtml.* The Commission received 18 comment letters on the Proposing Release, but 2 of these letters did not discuss amendments to remove NRSRO credit ratings references from rule 2a–7 and Form N–MFP.

[10] Comment Letter of Chris Barnard (Aug. 23, 2014) (''Barnard Comment Letter''); Comment Letter of Michael Mark-Berger (Jul. 28, 2014) (''Berger Comment Letter''); Comment Letter of BlackRock, Inc. (Oct. 14, 2014) (''BlackRock Comment Letter''); Comment Letter of CFA Institute (Oct. 14, 2014) (''CFA Institute Comment Letter''); Comment Letter of the Investment Company Institute (Oct. 14, 2014) (''ICI Comment Letter''); Comment Letter of the Independent Directors Council (Oct. 7, 2014) (''IDC Comment Letter''); Comment Letter of Invesco Ltd. (Oct. 14, 2014) (''Invesco Comment Letter''); Comment Letter of Mutual Fund Directors Forum (Sep. 14, 2014) (''MFDF Comment Letter''); Comment Letter of Charles Schwab Investment Management, Inc. (Oct. 14, 2014) (''Schwab Comment Letter'').

[11] We proposed to replace the reference to NRSRO credit ratings in rule 2a–7's definition of ''eligible

commenters suggested that the proposed ''exceptionally strong'' standard could lead to interpretive confusion in light of the similar existing ''minimal credit risk'' requirement, and might potentially change the kinds of securities that funds could purchase, contrary to the intent of the proposal to retain a similar degree of credit quality standards as under current rule 2a–7.[12]

In adopting final amendments to rule 2a–7 and Form N–MFP to implement Section 939A of the Dodd-Frank Act, we have carefully considered the comments received, and the final amendments include certain modifications intended to respond to commenters' concerns. As proposed, we are adopting amendments to rule 2a–7 that would remove references to ratings and adopt a uniform standard to define an eligible security to be a security that has been determined to present minimal credit risks. However, we have eliminated the proposed ''exceptionally strong capacity'' standard from this determination, and as a substitute for this finding, the final rule amendments require that a minimal credit risk determination include, to the extent appropriate, an analysis of the guidance factors discussed in the preamble of the Proposing Release.[13] We believe that this approach will better fulfill the original goals of the rulemaking by replacing credit ratings references with a new standard that includes objective factors, which is designed to retain a similar degree of credit quality in money market fund portfolios as under the current rule.

For these reasons, we are also adopting a similar approach for funds to determine whether a long-term security subject to a conditional demand feature is an eligible security.[14] Finally, we are also adopting other amendments to rule 2a–7 and Form N–MFP, including the requirement that funds engage in ongoing monitoring of their portfolio securities and perform stress testing for a credit deterioration rather than specifically for a ratings downgrade, substantially as they were proposed, with certain changes as discussed below.

B. Exclusion From the Issuer Diversification Requirement

Rule 2a–7's risk limiting conditions require a money market fund's portfolio to be diversified, both as to the issuers of the securities it acquires and providers of guarantees and demand features related to those securities.[15] When we proposed the amendments to rule 2a–7 that were adopted as part of the 2014 money market fund reforms, we discussed and sought comment on alternatives to the rule's diversification provisions that we had considered to appropriately limit money market funds' risk exposure.[16] Some of the comments we received in response prompted us to re-evaluate the current exclusion to the issuer diversification requirement for securities subject to a guarantee issued by a non-controlled person.[17] In consideration of these comments, and consistent with our reform goal of limiting concentrated exposure of money market funds to particular economic enterprises, as part of the 2014 proposal we proposed an amendment that would eliminate this exclusion from rule 2a–7's issuer diversification requirement.[18]

We received 8 comment letters discussing the proposed issuer diversification amendment,[19] with most of these commenters opposing the proposed amendment.[20] After carefully considering the comments we received, as well as the staff's updated analysis of relevant data, the Commission is adopting the proposed diversification amendments as proposed.[21] We believe that, on balance, adopting the proposed issuer diversification amendment will help increase the resiliency of money market funds, and thereby better protect their investors, by limiting their ability to have concentrated exposure to any particular issuer. We are also adopting several technical amendments to Form N–MFP and the portfolio diversification provisions of rule 2a–7.[22]

II. Discussion

A. Eligible Securities

Under current rule 2a–7, money market funds must limit their portfolio investments to securities that are both ''eligible securities'' and have been determined by fund boards to pose minimal credit risks to the fund.[23] Currently, rule 2a–7 defines ''eligible securities'' largely by reference to NRSRO ratings, and generally requires that 97% of a fund's portfolio securities be rated in the top short-term credit quality category by an NRSRO[24] (known as ''first tier'' securities).[25]

The proposal would have eliminated the rule's reference to NRSRO ratings in the eligible security definition, and consolidated the minimal credit risk standard into a single new standard under rule 2a–7's definition of eligible security.[26] As a substitute for NRSRO ratings in the eligible security definition, the proposed new standard would have required an eligible security to be a security with a remaining

security'' with a required finding that each security's issuer ''has an exceptionally strong capacity to meet its short-term financial obligations.'' *See* 2014 Proposing Release, *supra* note 3, at section II.A.1. Many commenters expressed concern about this proposed standard. *See* Comment Letter of Better Markets, Inc. (Oct. 14, 2014) (''Better Markets Comment Letter''); Comment Letter of the Consumer Federation of America (Oct. 14, 2014) (''CFA Comment Letter''); Comment Letter of the Dreyfus Corporation (Oct. 14, 2014) (''Dreyfus Comment Letter''); Comment Letter of Fidelity Investments (Oct. 14, 2014) (''Fidelity Comment Letter''); ICI Comment Letter; Comment Letter of the Committee on Investment Management Regulation of the New York City Bar (Oct. 14, 2014) (''NYC Bar Comment Letter''); Schwab Comment Letter; Comment Letter of the Securities Industry and Financial Markets Association (Oct. 14, 2014) (''SIFMA Comment Letter''); Comment Letter of Vanguard (Oct. 14, 2014) (''Vanguard Comment Letter''); *see also infra* section II.A.

[12] *See, e.g.,* Dreyfus Comment Letter; Fidelity Comment Letter.

[13] *See* rule 2a–7(a)(11); *see also infra* section II.A.

[14] *See* rule 2a–7(d)(2)(iii); *see also infra* section II.B.

[15] *See* rule 2a–7(d)(3).

[16] *See* Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 30551 (Jun. 5, 2013) [78 FR 36834 (Jun. 19, 2013)] (''2013 Money Market Fund Proposing Release'').

[17] *See, e.g.,* 2014 Money Market Fund Adopting Release, *supra* note 6, at n.1612 and accompanying text. Current rule 2a–7's risk limiting conditions generally require that money market funds limit their investments in the securities of any one issuer of a first tier security (other than government securities) to no more than 5 percent of total assets. Money market funds must also generally limit their investments in securities subject to a demand feature or a guarantee to no more than 10 percent of total assets from any one provider. Notwithstanding these conditions, a money market fund is not required to be diversified with respect to issuers of securities that are subject to a guarantee issued by a non-controlled person. *See* current rule 2a–7(d)(3); *see also infra* section II.F (detailed discussion of current issuer diversification requirements).

[18] *See* Proposing Release, *supra* note 3, at section II.C.

[19] *See* Better Markets Comment Letter; BlackRock Comment Letter; Dreyfus Comment Letter; ICI Comment Letter; Schwab Comment Letter; Comment Letter of the Structured Finance Industry Group (Oct. 14, 2014) (''SFIG Comment Letter''); SIFMA Comment Letter; Vanguard Comment Letter.

[20] *See* BlackRock Comment Letter; Dreyfus Comment Letter; ICI Comment Letter; SFIG Comment Letter; SIFMA Comment Letter; Vanguard Comment Letter.

[21] *See* rule 2a–7(d)(3).

[22] *See infra* sections II.E. and II.F.

[23] Current rule 2a–7(d)(2)(i).

[24] Rule 2a–7 limits a money market fund's portfolio investments to ''eligible securities,'' or securities that have received credit ratings from the ''requisite NRSROs'' in one of the two highest short-term rating categories or comparable unrated securities. A requisite NRSRO is an NRSRO that a money market fund's board of directors has designated for use (a ''designated NRSRO'') and that issues credit ratings that the board determines, at least annually, are sufficiently reliable for the fund to use in determining the eligibility of portfolio securities. *See* current rule 2a–7(a)(11), (a)(24).

[25] Current rule 2a–7(a)(12). The rule currently also permits up to 3% of a fund's portfolio to be invested in so called ''second tier'' securities, or securities which are rated in the second highest short-term credit quality category by an NRSRO. Current rule 2a–7(d)(2)(ii).

[26] *See* proposed rule 2a–7(a)(11).

maturity of 397 calendar days or less that the fund's board of directors (or its delegate [27]) determined presents minimal credit risks, which determination would have included a finding that the security's issuer has an exceptionally strong capacity to meet its short-term financial obligations. Thus, under our proposal, a money market fund would have been limited to investing in securities that the fund's board (or its delegate) had determined present minimal credit risks, notwithstanding any rating the security may have received. To assist funds in their minimal credit risk determination under the revised standard, the proposal also included as guidance a number of factors that funds should consider, to the extent appropriate, as part of that process.[28] These credit analysis factors were presented in both a primary list of factors generally applicable to all securities, and a secondary list of factors applicable to specific asset classes. In addition, under the proposal, fund boards would no longer have been required to designate NRSROs or to use their ratings to determine first or second tier status.[29] Accordingly, the proposal would have eliminated the distinction between first and second tier securities, and would have removed the prohibition on funds investing more than 3 percent of their portfolios in second tier securities.[30] The intent of these proposed amendments was to remove references to NRSRO ratings from rule 2a–7 while retaining a degree of credit risk similar to that permitted under the current rule.

Most of the commenters who discussed the proposed definition of ''eligible security'' generally supported it,[31] although, as described below, many of these commenters expressed certain reservations about details of the Commission's approach and various aspects of the proposed definition. Two commenters supported the elimination of the first and second tier distinction.[32] However, two other commenters expressed concern that removal of the distinction and the limit on second tier securities could lead to funds purchasing more risky securities.[33] Some of the commenters who supported the amendment stated that the Commission's proposed definition of eligible security would provide an appropriate substitute standard of creditworthiness in rule 2a–7.[34] Other commenters who opposed the definition,[35] and even some that generally supported the Commission's approach,[36] cautioned that the lack of objective criteria in the proposed definition could make it more likely that money market funds would increase their exposure to riskier securities. Specifically, some commenters argued that the proposed definition would produce an incentive for money market funds to reach for yield.[37] A number of commenters also contended that the proposed definition might decrease uniformity among funds in evaluating credit risk, which could cause certain funds to present significantly greater risks to investors than others.[38]

Some commenters who acknowledged that the removal of credit ratings from rule 2a–7 could create incentives for funds to invest in riskier securities also suggested that certain countervailing factors would alleviate this concern. These commenters stated that revising the definition of eligible security should mitigate concerns about increased credit risk and decreased uniformity by creating a single standard for identifying eligible securities, particularly when viewed in conjunction with the proposed Form N–MFP disclosure requirements and new disclosure requirements that were adopted as part of the 2014 money market fund reforms (which we expect would help to expose the increased volatility and other risks that could accompany greater investment in riskier portfolio holdings).[39]

While generally supporting the overall approach of incorporating the eligible security definition into the general minimal credit risk determination, multiple commenters expressed concerns about the proposed secondary ''exceptionally strong capacity'' standard incorporated in the proposed definition of eligible security. They suggested that the Commission should reconsider or clarify this standard for a number of reasons. Several commenters argued that the word ''exceptional'' implies something unusual or extraordinary, which could be read as not including a large number of money market securities of very high credit quality that comprise a portion of money market fund portfolios today.[40] Commenters also argued that the word ''exceptional'' is not commonly used with gradations, yet rule 2a–7 was designed to allow different gradations of high quality securities.[41] Accordingly, these commenters argued that the proposed standard might have the effect of restricting the universe of securities which money market funds could purchase, contrary to the stated goal of the proposal of seeking to retain a similar degree of credit quality in fund portfolios as under the current rule.[42]

Some commenters also contended that the ''exceptionally strong capacity'' language adds an unnecessary standard to a money market fund's minimal credit risk analysis and imposes burdens on advisers without any corresponding benefit to investors.[43] Specifically, these commenters argued that money market funds' minimal credit risk determinations already provide the framework for making a

[27] *See* current rule 2a–7(j) (permitting a money market fund's board to delegate to the fund's investment adviser or officers a number of the determinations required to be made by the fund's board under the rule, including minimal credit risk determinations).

[28] Proposing Release, *supra* note 3, at 47991–47993. The proposal also requested comment on these factors and whether codifying these factors would further ensure that funds use objective factors and market data in making credit quality determinations and thereby promote uniformity in making minimal credit risk determinations and/or assist money market fund managers in understanding their obligations pertaining to portfolio quality under rule 2a–7.

[29] *See* proposed rule 2a–7(a)(11); 2a–7(d)(2); current rule 2a–7(d)(2)(ii). In conforming changes, the proposal would have moved the requirement currently in the definition of eligible security that the issuer of a demand feature or guarantee promptly notify the holder of the security in the event the demand feature or guarantee is substituted with another demand feature or guarantee (if such substitution is permissible) to the paragraphs of the rule that address securities subject to guarantees and conditional demand features. *Compare* current rule 2a–7(a)(12)(iii)(B) *with* proposed rule 2a–7(d)(2)(ii) and 2a–7(d)(2)(iii)(D). We are adopting these amendments as proposed.

[30] Money market funds also are currently limited from investing more than 0.5% of their assets in second tier securities of a single issuer and 2.5% of their portfolios in second tier securities issued, guaranteed or subject to a demand feature issued by the same entity. *See* current rule 2a–7(d)(3)(i)(C) and 2a–7(d)(3)(iii)(C). These limits also would be eliminated under the final rule.

[31] *See, e.g.,* CFA Institute Comment Letter; MFDF Comment Letter; Schwab Comment Letter.

[32] *See* Fidelity Comment Letter; MFDF Comment Letter.

[33] *See* Better Markets Comment Letter; CFA Comment Letter.

[34] CFA Institute Comment Letter; Invesco Comment Letter; MFDF Comment Letter.

[35] CFA Comment Letter; Vanguard Comment Letter.

[36] BlackRock Comment Letter; CFA Institute Comment Letter.

[37] *See id.*

[38] BlackRock Comment Letter; CFA Comment Letter; CFA Institute Comment Letter; NYC Bar Comment Letter; Schwab Comment Letter; Vanguard Comment Letter.

[39] *See* CFA Institute Comment Letter; Invesco Comment Letter; Schwab Comment Letter; SIFMA Comment Letter.

[40] Fidelity Comment Letter; Dreyfus Comment Letter; ICI Comment Letter; NYC Bar Comment Letter; Schwab Comment Letter; SIFMA Comment Letter.

[41] Dreyfus Comment Letter; ICI Comment Letter; NYC Bar Comment Letter; SIFMA Comment Letter.

[42] *See, e.g.,* Dreyfus Comment Letter; ICI Comment Letter; NYC Bar Comment Letter; SIFMA Comment Letter.

[43] Dreyfus Comment Letter; Fidelity Comment Letter; SIFMA Comment Letter.

definitive finding of creditworthiness, and previously provided staff guidance regarding minimal credit risk factors has enhanced clarity and consistency in the application of this standard across the industry.[44] Commenters argued that the ''exceptionally strong capacity'' standard would result in confusion for the industry[45] and operational and procedural burdens[46] that money market funds' current minimal credit risk analysis does not entail. Commenters raising these concerns advocated for a modified approach that restricts money market fund investments to those that the fund's board (or the board's delegate) determines present minimal credit risks, but this determination would not involve an additional finding that the security's issuer has an exceptionally strong capacity to meet its short-term financial obligations (or any similar finding).[47] In addition, some commenters argued that the difference between the ''exceptionally strong'' and ''very strong'' (the proposed new standard relating to conditional demand features discussed below) standards is not readily apparent, and argued that a consistent credit risk standard should apply equally to eligible securities and securities subject to a conditional demand feature, as discussed below.[48]

Numerous commenters expressed support for the guidance factors included in the Proposing Release.[49] One commenter, however, objected to the inclusion of the asset-specific factors, suggesting that they could become stale and outdated.[50] Commenters who supported the use of these factors stated that the factors were consistent with best practices and appropriately tailored.[51] Some commenters presented technical recommendations about specific guidance factors.[52] One commenter suggested including additional guidance factors regarding counterparty relationships and the effects of rising interest rates on credit risk.[53]

Commenters' opinions varied on whether the guidance factors should be codified. Multiple commenters expressed support for preserving the factors as guidance, rather than codifying them, in order to provide funds with flexibility and the ability to respond to changing market conditions, financing terms, laws, and regulations.[54] Conversely, some commenters urged the Commission to codify the guidance factors as part of rule 2a–7.[55] One commenter argued that codification of the factors would enhance investor protections.[56] Another commenter stated that the inclusion of the factors in rule 2a–7 would promote uniform credit quality standards in the absence of specific NRSRO ratings requirements, and would facilitate inspections by Commission staff to aid in maintaining those standards.[57] The commenters who specifically mentioned the secondary list of asset-specific factors mostly supported them.[58] Two of these commenters believed that the asset-specific factors should be incorporated into the rule,[59] but others opposed codification of any of the factors, including the asset-specific ones.[60] One commenter opposed the inclusion of the asset-specific factors even as guidance, stating that the dynamic nature of the marketplace could cause such specific guidance to become stale and outdated.[61]

1. Revised ''Eligible Security'' Definition

After review of comments received, we are today adopting a revised standard for eligible securities under rule 2a–7 that does not require an ''exceptionally strong capacity'' fund board finding, but instead requires a single uniform minimal credit risk finding, based on the capacity of the issuer or guarantor of a security to meet its financial obligations.[62] As a complement to this uniform minimal credit risk standard, we are also today codifying the general credit analysis factors into rule 2a–7, the use of which should assist fund boards by serving as objective and verifiable tools to rely on in the absence of NRSRO ratings and which should help to achieve our goal of maintaining a similar degree of credit risk as in current money market fund portfolios.[63]

We have been persuaded by the commenters that suggested that the ''exceptionally strong capacity'' determination could create an unclear standard for determining eligible securities that might change the current credit quality profile of money market funds. Variations in how this language may be understood could lead to some funds only purchasing the lowest risk securities possible, creating a risk profile even more stringent than the

[44] Dreyfus Comment Letter; Fidelity Comment Letter; SIFMA Comment Letter. In addition to presenting updated guidance on credit analysis factors, *see supra* note 28, the Proposing Release noted that Commission staff has previously provided guidance on specific factors that a board could consider in making minimal credit risk determinations under rule 2a–7. *See* Letter to Registrants from Kathryn McGrath, Director, Division of Investment Management, SEC (May 8, 1990) (''1990 Staff Letter''); *see also* Letter to Matthew Fink, President, Investment Company Institute from Kathryn McGrath, Director, Division of Investment Management, SEC (Dec. 6, 1989) (''1989 Staff Letter'').

[45] Dreyfus Comment Letter; Fidelity Comment Letter.

[46] Fidelity Comment Letter.

[47] Dreyfus Comment Letter; Fidelity Comment Letter; SIFMA Comment Letter.

[48] IDC Comment Letter; Schwab Comment Letter; *see infra* section II.B.

[49] *See, e.g.,* Better Markets Comment Letter; BlackRock Comment Letter; CFA Comment Letter; ICI Comment Letter; IDC Comment Letter; NYC Bar Comment Letter; Schwab Comment Letter.

[50] ICI Comment Letter.

[51] IDC Comment Letter; MFDF Comment Letter.

[52] Fidelity Comment Letter; ICI Comment Letter. The first commenter provided suggestions regarding guidance on two of the asset-specific credit factors, asset-backed securities and repurchase agreements. These suggestions have been adopted in this release, as discussed below. The second commenter suggested that the phrase ''worst case scenario'' should be removed from the list of general factors. Because the phrase limited the situations that might be analyzed under this factor, we are not including this phrase in the final rule. *See* rule 2a–7(a)(11)(i)(C).

[53] CFA Institute Comment Letter.

[54] ICI Comment Letter; IDC Comment Letter; Schwab Comment Letter. Similarly, some commenters suggested that the Commission reiterate that the list of factors is not meant to be exhaustive. *See* IDC Comment Letter; MFDF Comment Letter; SIFMA Comment Letter.

[55] Better Markets Comment Letter; CFA Comment Letter; NYC Bar Comment Letter.

[56] Better Markets Comment Letter.

[57] NYC Bar Comment Letter. Two of the commenters supporting codification also recommended that the Commission require a fund's analysis of the factors to be appropriately documented. *See* Better Markets Comment Letter; CFA Comment Letter.

[58] Better Markets Comment Letter; BlackRock Comment Letter; MFDF Comment Letter; NYC Bar Comment Letter; Schwab Comment Letter.

[59] Better Markets Comment Letter; NYC Bar Comment Letter.

[60] *See, e.g.,* BlackRock Comment Letter; Schwab Comment Letter; ICI Comment Letter. *See also* CFA Institute Comment Letter (providing a list of factors that it considered appropriate, comprised of only the primary factors with two suggested additions, though it did not discuss possible codification).

[61] ICI Comment Letter.

[62] Rule 2a–7(a)(11). We are also adopting as proposed the elimination of the following defined terms from the rule: ''designated NRSRO,'' ''first tier security,'' ''rated security,'' ''requisite NRSROs,'' ''second tier security,'' and ''unrated security.'' We are also making final several proposed revisions of provisions in the rule that currently reference these terms. *See* current rule 2a–7(a)(12) (eligible security); rule 2a–7(d)(2) (portfolio quality); rule 2a–7(d)(3)(i)(A)(1) and (C) (portfolio diversification); rule 2a–7(d)(3)(iii)(C) (portfolio diversification); rule 2a–7(f)(1) (downgrades); rule 2a–7(h)(3) (record keeping and reporting); rule 2a–7(j) (delegation). In addition, fund boards will no longer have to designate NRSROs, disclose them in the statement of additional information or use their ratings to determine first or second tier status. Finally, we are also adopting as proposed a conforming change to the recordkeeping requirements under the rule to reflect that funds must retain a written record of the determination that a portfolio security is an eligible security, including the determination that it presents minimal credit risks.

[63] The codified factors only include the general factors that were discussed in the Proposing Release. Proposing Release, *supra* note 3, at 47991–47992. The asset-specific factors are not codified, but revised as discussed in section II.A.2 below, and continue to be included as guidance.

current standard. Others might interpret the standard differently and not limit their securities purchases in the same way, which might thereby create significant disparities between money market funds. Such different interpretations might also lead to difficulties in our inspection staff's review of compliance with the proposed standard. We also appreciate commenters' concerns that it may be difficult to determine the difference between ''exceptionally strong'' and other similar standards such as ''very strong'' credit quality. Accordingly, the Commission has decided that adopting a uniform standard based on the well-developed existing requirement that a security present minimal credit risks, in conjunction with codifying the general factors to be considered, as discussed below, will more effectively achieve the goals of the proposal.

The requirement that a security present minimal credit risks to a money market fund has been part of rule 2a–7 since it was adopted in 1983.[64] The minimal credit risk determination was meant to provide an independent assurance of safety above and beyond the existence of a ''high quality'' rating by an NRSRO, as explained in the original adopting release:

> [T]he mere fact that an instrument has or would receive a high quality rating may not be sufficient to ensure stability. The Commission believes that the instrument must be evaluated for the credit risk that it presents *to the particular fund* at that time in light of the risks attendant to the use of amortized cost valuation or penny-rounding (emphasis added).[65]

Under this existing standard, a board (or its delegate) should determine that a security presents minimal credit risks not just in isolation, but also in the context of the fund as a whole. The 2014 Proposing Release made clear that the removal of NRSRO ratings is not intended to change the current risk profile of money market funds, or their evaluation of minimal credit risks.[66] In determining whether a security presents minimal credit risks, therefore, a board (or its delegate) should consider not just the individual risks of the security, but also the overall impact of adding that security to the fund in light of the fund's other holdings.[67] Such consideration might include an examination of correlation of risk among the securities held or purchased, the credit risks associated with market-wide stresses, or specific security credit or liquidity disruptions. Based on comments received, we are persuaded that this existing requirement to evaluate the minimal credit risk of portfolio securities on the fund as a whole (not just on a security-by-security basis) will help mitigate potential risks that money market funds might change their current credit risk profile after our removal of NRSRO ratings references from the rule as part of the final amendments.

2. Codified Factors

Although we believe that the minimal credit risk standard should serve as an effective limitation on credit risk in money market fund portfolios even without the proposed secondary ''exceptionally strong'' finding, we appreciate commenters' concerns that eliminating the ''floor'' provided by NRSRO ratings in the rule without a replacement might lead to fund managers taking on additional credit risk if the rule does not provide objective and verifiable standards. As discussed above, several commenters suggested that codifying the general factors would enhance investor protections and promote uniform credit quality standards in the absence of specific NRSRO ratings requirements. We agree.

Accordingly, the final rule amendments now include, as part of the analysis of minimal credit risks, a requirement to consider, to the extent appropriate, the general credit analysis factors from the Proposing Release.[68] As noted in the Proposing Release, our staff has had opportunities to observe how money market fund advisers evaluate minimal credit risk, and although staff has noted a range in the quality and breadth of credit risk analyses among the money market funds examined, staff has also observed that most of the advisers to these funds evaluate some common factors that bear on the ability of an issuer or guarantor to meet its short-term financial obligations. Based on staff observations in examinations and prior staff guidance, we understand that most money market fund managers already generally take these factors into account, as appropriate, when they determine whether a portfolio security presents minimal credit risks. We believe that codifying the general factors will help provide a uniform and objective check on credit risk that can be verified by our examiners. We also believe that incorporating these factors into the rule text will further promote effective and uniform application of the risk standard. Although multiple commenters expressed support for preserving the factors as guidance, rather than codifying them,[69] the Commission believes that codification of these factors is justified by the need for verifiable credit quality determinations in the absence of required references to NRSRO ratings. In addition, the Commission believes that the changes to the proposed standard made in this final rule should reduce the likelihood of increased credit risk because funds will have to perform a rigorous analysis using the codified factors and consider how each security affects the aggregate risk of the portfolio.

As discussed above, commenters disagreed over the proposed elimination of the first and second tier distinction,[70] with two commenters expressing concern that removing the distinction and the limit on second tier securities could lead to funds purchasing more risky securities.[71] However, we believe that the codification of the credit analysis factors in the final rule, combined with the increased transparency gained through our amendments to Form N–MFP disclosures (both adopted today, as well as the amendments adopted as part of the 2014 money market fund reforms[72]), should mitigate this concern. The codified credit factors should establish a minimum baseline that should help guard against the risk that funds'

[64] Valuation of Debt Instruments and Computation of Current Price Per Share by Certain Open-End Investment Companies, Investment Company Act Release No. 13380 (Jul. 11, 1983) [48 FR 32555 (Jul. 18, 1983).]

[65] *Id.* at 32560.

[66] *See, e.g.,* Proposing Release, *supra* note 3, at 47989.

[67] In order to clarify that the requirements of the minimal credit risks analysis have not changed from the original requirements as described in the 1983 release, the phrase ''to the fund'' has been added to the final rule definition of eligible security. Rule 2a–7(a)(11). This phrase is intended to indicate that, unlike a security's NRSRO rating that measures only the security's risks in isolation, the minimal credit risk determination must consider any credit risk introduced by the security to the entire fund.

[68] Rule 2a–7(a)(11)(i). The Proposing Release included a second list of asset-specific factors that staff had observed funds making use of for credit analysis of specific types of securities which will be retained as guidance as discussed further below. Proposing Release, *supra* note 3, at 47992–47993.

[69] ICI Comment Letter; IDC Comment Letter; Schwab Comment Letter. Similarly, some commenters suggested that the Commission reiterate that the list of factors is not meant to be exhaustive. *See* IDC Comment Letter; MFDF Comment Letter; SIFMA Comment Letter. As noted below, we state that the list of factors in the rule and the additional factors discussed in this release as guidance are not meant to be exhaustive, and there may be additional factors that could be relevant depending on the type of security analyzed.

[70] *See* Fidelity Comment Letter; MFDF Comment Letter; Better Markets Comment Letter; CFA Comment Letter.

[71] *See* Better Markets Comment Letter; CFA Comment Letter.

[72] For example, the 2014 money market fund reforms eliminated the 60-day delay in making public the information filed on Form N–MFP.

approach to credit analysis will become less uniform, or that some funds would substantially increase the riskiness of their portfolios by increasing their investments in second tier securities. Such changes would not likely be consistent with a minimal credit risk analysis using the factors we are codifying today.

Therefore, the final rule requires a money market fund's board (or its delegate) to consider, in making its minimal credit risk determinations, the capacity of each security's issuer, guarantor, or provider of a demand feature, to meet its financial obligations, and in doing so, consider, to the extent appropriate, the following factors: (1) Financial condition; (2) sources of liquidity; (3) ability to react to future market-wide and issuer- or guarantor-specific events, including ability to repay debt in a highly adverse situation; and (4) strength of the issuer or guarantor's industry within the economy and relative to economic trends, and issuer or guarantor's competitive position within its industry.[73] In incorporating the credit analysis factors into the rule, we have revised them to make them as generally applicable as possible to all money market funds. As we discussed in the Proposing Release, and as reflected in a number of comments received, we understand that the majority of the industry already typically considers these factors when making minimal credit risk determinations.[74] One commenter's recommendation suggested that we include as a codified factor an analysis of the existence, nature, and magnitude of any counterparty relationships.[75] However, in its observations of how money market funds evaluate minimal credit risk, our staff has not identified this factor as one of the common factors that bear on the ability of an issuer or guarantor to meet its short-term financial obligations and we are not aware of other information that suggests that many money market funds are currently performing (or have the information readily available to perform) this type of analysis. Accordingly, we are not including as a codified factor an analysis of counterparty relationships, although we believe that, to the extent that funds have such information available, analyzing counterparty relationships should assist funds in making minimal credit risk determinations.

As discussed in the Proposing Release, the financial condition factor generally should include examination of recent financial statements, including consideration of trends relating to cash flow, revenue, expenses, profitability, short-term and total debt service coverage, and leverage (including financial and operating leverage). The second factor, sources of liquidity, generally should include consideration of bank lines of credit and alternative sources of liquidity. The third factor, involving market-wide events, generally should include analysis of risk from various scenarios, including changes to the yield curve or spreads, especially in a changing interest rate environment. The fourth factor, the competitive position of the firm and its industry, generally should include consideration of diversification of sources of revenue, if applicable.[76] As explained in the proposal, in addition to the codified factors used to evaluate the issuer or guarantor of a security, a minimal credit risk evaluation may also include consideration of whether the price and/or yield of the security itself is similar to that of other securities in the fund's portfolio.[77]

The Commission is not codifying the asset-specific factors into the final rule text. As one commenter pointed out,[78] overly specific and numerous factors could over time become dated. Consistent with the concern raised by this commenter, the Commission is mindful of the pitfalls that may result from codifying too many factors, and/or factors that are not sufficiently broad and yet relevant enough to withstand changing markets over time. The Commission believes that keeping these asset-specific factors as guidance may help avoid any unintended burden while providing funds with additional and potentially relevant considerations that may be useful when making minimal credit risk determinations in the absence of required references to NRSRO ratings. Accordingly, we are limiting the factors we are codifying into the rule itself to the list of general factors that we believe are sufficiently universal and tested enough to avoid this problem, but that will form the basis of a rigorous analysis. Nonetheless, where relevant, funds may wish to consider whether the asset-specific factors should also be evaluated in making minimal credit risk determinations, especially if they make significant investment in such asset classes. In addition, we have included a cross reference in the rule text to the guidance regarding the asset specific factors, to better inform readers of the applicability of the asset specific factor guidance discussed here.[79]

Accordingly, to the extent applicable, fund advisers may wish to consider the following asset-specific factors:

- For municipal securities: (i) Sources of repayment; (ii) issuer demographics (favorable or unfavorable);[80] (iii) the issuer's autonomy in raising taxes and revenue; (iv) the issuer's reliance on outside revenue sources, such as revenue from a state or federal government entity; and (v) the strength and stability of the supporting economy.[81]
- For conduit securities under rule 2a–7:[82] Analysis of the underlying

[73] As explained in the Proposing Release, many of these considerations have been included in staff guidance as well as in best practices for determining minimal credit risk set forth in Appendix I of the Report of the Money Market Working Group submitted to the Board of Governors of the Investment Company Institute in 2009. *See also* 1990 Staff Letter and 1989 Staff Letter, *supra* note 44.

[74] *See* Proposing Release, *supra* note 3, section II.A.1, at nn. 53–57 and accompanying text.

[75] CFA Institute Comment Letter.

[76] *See* Proposing Release, *supra* note 3, section II.A.1, at 47991–47992.

[77] *See* 2014 Proposing Release, *supra* note 3. This consideration is not being incorporated into the rule text because it does not relate to the overall strength of a security's issuer or guarantor, as do the codified factors. We therefore believe that it would be more useful for a fund's manager to evaluate a security's price and/or yield (as compared with other similar portfolio securities) as a way to quickly assess the appropriateness of a given security, and hence is provided only as guidance.

[78] ICI Comment Letter.

[79] We have also incorporated technical recommendations from two commenters on the assets specific factor guidance. ICI Comment Letter; Fidelity Comment Letter. We have (1) combined the two bullets on repurchase agreements into one; (2) altered language in the guidance on repurchase agreements, reflecting increased standardization of the market; and (3) removed the reference to analyzing underlying assets in the asset-backed securities bullet.

[80] Demographics could include considerations such as the type, size, diversity and growth or decline of the local government's tax base, including income levels of residents, and magnitude of economic activity.

[81] *See* 1989 Staff Letter, *supra* note 44 (additional factors such as sources of repayment, autonomy in raising taxes and revenue, reliance on outside revenue sources and strength and stability of the supporting economy should be considered with respect to tax-exempt securities); *see also* Guidance on Due Diligence Requirements in Determining Whether Securities are Eligible for Investment, Office of the Comptroller of the Currency, Docket ID OCC–2012–0006 [77 FR 35259 (Jun. 13, 2012)] (''OCC Guidance'') (matrix of examples of factors for national banks and federal savings associations to consider as part of a robust credit risk assessment framework (''OCC credit risk factors'') for certain investment securities includes capacity to pay and assess operating and financial performance levels and trends).

[82] Under rule 2a–7, a ''conduit security'' means a security issued by a municipal issuer involving an arrangement or agreement entered into, directly or indirectly, with a person other than a municipal issuer, which arrangement or agreement provides for or secures repayment of the security. Rule 2a–7(a)(7). A ''municipal issuer'' is defined under the rule to mean a state or territory of the United States (including the District of Columbia), or any political subdivision or public instrumentality of a state or

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obligor for all securities except asset-backed securities (including asset-backed commercial paper).[83]

• For asset-backed securities, such as asset-backed commercial paper: (i) Analysis of the terms of any liquidity or other support provided; and (ii) legal and structural analyses to determine that the particular asset-backed security involves no more than minimal credit risks for the money market fund.[84]

• For other structured securities, such as variable rate demand notes,[85] tender option bonds,[86] extendible bonds[87] or ''step up'' securities,[88] or other structures: In addition to analysis of the issuer or obligor's financial condition, analysis of the protections for the money market fund provided by the legal structure of the security.[89]

• For repurchase agreements under rule 2a–7: A financial analysis and assessment of the minimal credit risk of the counterparty, an assessment as to whether the haircut level is appropriate for the particular type of collateral based upon price volatility in the market for such collateral type, and a legal analysis of the protections for the money market fund provided by the terms of the repurchase agreements.

The list of factors in the rule and the additional factors discussed in this release as guidance are not meant to be exhaustive, and there may be additional factors that could be relevant depending on the type of security analyzed. We recognize that the range and type of specific factors appropriate for consideration could vary depending on the category of issuer and particular security or credit enhancement under consideration, and that the board (or its delegate) therefore may determine to include other factors in its credit assessment.[90] We also recognize that specific purchases may require more or less analysis depending on the security's risk characteristics. As discussed in greater detail below, amended rule 2a–7 will also require that the written record of the minimal credit risk determination address any factors considered and the analysis of those factors.[91]

B. Conditional Demand Features

Rule 2a–7 limits money market funds to investing in securities with remaining maturities of no more than 397 days.[92] A long-term security subject to a conditional demand feature[93] (''underlying security''), however, may be determined under the current rule to be an eligible security (or a first tier security) if among other conditions: (i) The conditional demand feature is an eligible security or a first tier security; and (ii) the underlying security (or its guarantee) has received either a short-term rating or a long-term rating, as the case may be, within the highest two categories from the requisite NRSROs or is a comparable unrated security.[94] The rule currently requires this analysis of both the short-term and long-term credit aspects of the demand instrument because a security subject to a conditional demand feature combines both short-term and long-term credit risks.[95]

The Commission's proposal would have required a similar analysis, but consistent with Section 939A of the Dodd-Frank Act, it would have removed the requirement in the rule that the fund board (or its delegate) consider credit ratings of underlying securities.[96] Under

territory of the United States. *Id.* A conduit security does not include a security that is: (i) Fully and unconditionally guaranteed by a municipal issuer; (ii) payable from the general revenues of the municipal issuer or other municipal issuers (other than those revenues derived from an agreement or arrangement with a person who is not a municipal issuer that provides for or secures repayment of the security issued by the municipal issuer); (iii) related to a project owned and operated by a municipal issuer; or (iv) related to a facility leased to and under the control of an industrial or commercial enterprise that is part of a public project which, as a whole, is owned and under the control of a municipal issuer. *Id.*

[83] *See* OCC Guidance, *supra* note 81 (OCC credit risk factors for revenue bonds include consideration of the obligor's financial condition and reserve levels).

[84] *See* Money Market Fund Reform, Investment Company Act Release No. 29132 (Feb. 23, 2010) [75 FR 10060 (Mar. 4, 2010)] (''2010 Money Market Fund Adopting Release'') at section II.A.3 (citing Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 21837 (Mar. 21, 1996) [61 FR 13956 (Mar. 28, 1996)] (''1996 Money Market Fund Adopting Release'') at section II.E.4).

[85] A variable rate demand obligation (''VRDO'') (which includes variable rate demand notes) is a security for which the interest rate resets on a periodic basis and holders are able to liquidate their security through a ''put'' or ''tender'' feature, at par. To ensure that the securities are able to be ''put'' or ''tendered'' by a holder in the event that a remarketing agent is unable to remarket the security, a VRDO typically operates with a liquidity facility—a Letter of Credit or Standby Bond Purchase Agreement—that ensures that an investor is able to liquidate its position. *See* Electronic Municipal Market Access, Understanding Variable Rate Demand Obligations, *available at http://emma.msrb.org/EducationCenter/UnderstandingVRDOs.aspx.*

[86] A tender option bond is an obligation that grants the bondholder the right to require the issuer or specified third party acting as agent for the issuer (*e.g.,* a tender agent) to purchase the bonds, usually at par, at a certain time or times prior to maturity or upon the occurrence of specified events or conditions. *See* Municipal Securities Rulemaking Board, Glossary of Municipal Securities Terms, Tender Option Bond, *available at http://www.msrb.org/glossary/definition/tender-option-bond.aspx.* Tender option bonds are synthetically created by a bond dealer or other owner of a long-term municipal obligation purchased in either the primary or secondary markets, or already in a portfolio.

[87] An extendible bond is a long-term debt security with an embedded option for either the investor or the issuer to extend its maturity date. To qualify as an eligible security under rule 2a–7, the issuer must not have the right to extend the maturity of the bond so that it is more than 397 days to maturity at any time. Typically, if an extendible bond is of the type that qualifies as an eligible security under rule 2a–7, a money market fund will have the option to either extend the maturity of the bond to no more than 397 days in the future, or elect not to extend, in which case the bond's maturity must be no longer than 397 days at that time.

[88] A ''step up'' security pays an initial interest rate for the first period, and then a higher rate for the following periods.

[89] *See* OCC Guidance, *supra* note 81 (OCC credit risk factors for structured securities include evaluation and understanding of specific aspects of the legal structure including loss allocation rules, potential impact of performance and market value triggers, support provided by credit and liquidity enhancements, and adequacy of structural subordination).

[90] As discussed in the 2014 Proposing Release, *supra* note 3, money market fund boards of directors typically delegate minimal credit risk determinations to the fund's adviser, as provided for in rule 2a–7(j).

[91] *See infra* section II.C.; rule 2a–7(h)(3).

[92] *See* current rule 2a–7(a)(12).

[93] A conditional demand feature is a demand feature that a fund may be precluded from exercising because of the occurrence of a condition. *See* rule 2a–7(a)(6) (defining ''conditional demand feature'' as a demand feature that is not an unconditional demand feature); rule 2a–7(a)(30) and proposed rule 2a–7(a)(25) (defining ''unconditional demand feature'' as a demand feature that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security). For purposes of rule 2a–7, a demand feature allows the security holder to receive, upon exercise, the approximate amortized cost of the security, plus accrued interest, if any, at the later of the time of exercise or the settlement of the transaction, paid within 397 calendar days of exercise. Current rule 2a–7(a)(9).

[94] Current rule 2a–7(d)(2)(iv). Although underlying securities are generally long-term securities when issued originally, they become short-term securities when the remaining time to maturity is 397 days or less.

[95] The quality of a conditional demand instrument depends both on the ability of the issuer of the underlying security to meet scheduled payments of principal and interest and upon the availability of sufficient liquidity to allow a holder of the instrument to recover the principal amount and accrued interest upon exercise of the demand feature. *See* Acquisition and Valuation of Certain Portfolio Instruments by Registered Investment Companies, Investment Company Act Release No. 14607 (Jul. 1, 1985) [50 FR 27982 (Jul. 9, 1985)], at n.33. The current rule permits the determination of whether a security subject to an unconditional demand feature is an eligible or first tier security to be based solely on whether the unconditional demand feature is an eligible or first tier security because credit and liquidity support will be provided even in the event of default of the underlying security. *See* current rule 2a–7(d)(2)(iii).

[96] In a conforming change, the Commission proposed to remove two provisions in current rule 2a–7 that reference credit ratings in connection with securities subject to a demand feature or guarantee of the same issuer that are second tier securities: Rule 2a–7(d)(3)(i)(C) (limiting a fund's investments in securities subject to a demand feature or guarantee of the same issuer that are

the proposal, a fund would have had to determine, as with any short-term security, that the conditional demand feature is an eligible security.[97] In addition, a fund's board of directors (or its delegate) would have had to evaluate the long-term risk of the underlying security and determine that it (or its guarantor) ''has a very strong capacity for payment of its financial commitments.'' [98] We proposed this standard because it was similar to those articulated by credit rating agencies for long-term securities assigned the second highest rating.[99] Because the conditional demand feature could be terminated by a ratings downgrade, we believed that the underlying security should present only limited credit risk.[100]

The commenters who addressed this section generally opposed the proposed approach of requiring a different ''very strong'' standard for conditional demand features as compared to the proposed ''exceptionally strong'' standard for all other eligible securities. Instead, most commenters that addressed this issue suggested that the Commission adopt a single uniform standard for both eligible securities and conditional demand features as such a uniform standard would eliminate any potential inconsistences and confusion. We agree, and therefore the final amendments do not include the proposed ''very strong'' standard for conditional demand features, but instead apply the single uniform minimal credit risk standard (including an analysis of relevant factors) for all eligible security determinations, including conditional demand features.

Most commenters' discussion of the credit analysis of securities subject to conditional demand features focused on aligning the credit quality standard for these securities with the standard used to identify eligible securities generally.[101] One commenter stated that employing the same standard would minimize confusion among investors.[102] Another commenter argued that the termination of a conditional demand feature has much the same effect as a default on other securities, and thus the degree of risk permitted with respect to the termination of a conditional demand feature should be equivalent to the risk of default with respect to other eligible securities.[103] Commenters were split in their opinions about what uniform standard to use, if the same credit quality standard were to be employed for eligible securities and securities subject to a conditional demand feature. Some argued that the ''very strong'' capacity standard should be used in both contexts.[104] Commenters who advised that the minimal credit risk standard should stand alone, without an additional ''exceptionally strong capacity'' finding (or similar finding), maintained that this stand-alone minimal credit risk standard should apply equally to eligible securities and securities subject to a conditional demand feature.[105]

We agree with these commenters' concerns and are adopting the rule amendments without the proposed ''very strong capacity'' standard.[106] Instead, the final amendments require application of a single uniform ''minimal credit risk'' standard that will apply to all securities purchased by money market funds, pursuant to the revised eligible security definition as discussed above.[107] We agree with commenters' reasoning that a uniform credit quality standard would be appropriate given the similar degree of risk presented by the termination of a conditional demand feature and the default of a portfolio security. We also agree with commenters that the difference between the terms ''very strong'' and ''exceptionally strong'' is not readily apparent and that a uniform minimal credit risk standard will thus reduce confusion, and still preserve a similar degree of credit quality to that currently present in fund portfolios. Therefore, under the uniform standard that we are adopting today for conditional demand features, a fund's board (or its delegate) must determine that both the conditional demand feature and the underlying security (or guarantee) are eligible securities.[108]

As noted in the Proposing Release and reiterated here, we do not believe that securities that are rated by NRSROs in the third-highest category for long-term ratings (or comparable unrated securities) would satisfy the standard that underlying securities present minimal credit risks to the fund. We also note that funds currently can invest exclusively in underlying securities rated in the second-highest category if the instrument meets the other conditions for eligibility.[109] We estimate that most underlying securities held by money market funds (77 percent) are rated in the second-highest long-term category, and a smaller portion (23 percent) are rated in the highest long-term category.[110] For these reasons, we do not currently anticipate that funds are likely to increase the portion of their underlying securities that are rated in the second-highest long-term category as a result of the adopted amendments (since these funds do not currently invest in these securities to the extent permitted under existing rules).

C. Monitoring Minimal Credit Risks

Currently, rule 2a–7 requires a money market fund board (or its delegate) to promptly reassess whether a security that has been downgraded by an NRSRO continues to present minimal credit risks, and to take such action as it determines is in the best interests of the

second tier securities to 2.5% of the fund's total assets); rule 2a–7(f)(1)(iii) (providing that if, as a result of a downgrade, more than 2.5% of a fund's total assets are invested in securities issued by or subject to demand features from a single institution that are second tier securities, a fund must reduce its investments in these securities to no more than 2.5% of total assets by exercising the demand feature at the next succeeding exercise date(s)). In other conforming changes, the Commission proposed to amend two rules under the Act that reference the definition of ''demand feature'' and ''guarantee'' under rule 2a–7, which references would have changed under the proposed amendments. Specifically, the Commission proposed to amend: (i) Rule 12d3–1(d)(7)(v), to replace the references to ''rule 2a–7(a)(8)'' and ''rule 2a–7(a)(15)'' with ''§ 270.2a–7(a)(9)'' and ''§ 270.2a–7(a)(16)''; and (ii) rule 31a–1(b)(1), to replace the phrase ''(as defined in § 270.2a–7(a)(8) or § 270.2a–7(a)(15) respectively)'' with ''(as defined in § 270.2a–7(a)(9) or § 270.2a–7(a)(16) respectively.)'' We are adopting these changes as proposed.

[97] *See* proposed rule 2a–7(d)(2)(iii)(A). The Proposing Release also reiterated the existing monitoring and substitutability requirements for conditional demand features in rule 2a–7, and noted that the Commission believed it would be prudent for a money market fund to avoid investing in securities whose eligibility as portfolio securities depended on a conditional demand feature that may be terminated if the underlying portfolio security is downgraded a single ratings category. *See* Proposing Release, *supra* note 3, at n.90 and accompanying and preceding text.

[98] Proposed rule 2a–7(d)(2)(iii)(C). An underlying security that is a short-term security (because its remaining maturity is less than 397 days, although its original maturity may have been longer) also would have had to meet the proposed standard.

[99] *See* Proposing Release, *supra* note 3, at n.83 and accompanying text.

[100] *Id,* at n.89 and accompanying text.

[101] Dreyfus Comment Letter; ICI Comment Letter; IDC Comment Letter; Schwab Comment Letter.

[102] IDC Comment Letter.

[103] ICI Comment Letter. *See also supra* note 93.

[104] ICI Comment Letter; Schwab Comment Letter.

[105] Dreyfus Comment Letter; Fidelity Comment Letter.

[106] Rule 2a–7(d)(2)(iii).

[107] Rule 2a–7(a)(11).

[108] The credit risk standard that is being adopted for conditional demand features aligns the credit quality standard for these securities with the standard used to identify eligible securities by requiring the fund's board (or its delegate) to determine that these securities are eligible securities. We note that such a determination, by expressly incorporating the definition of eligible securities, will also incorporate the requirement of a fund to consider, to the extent appropriate, the general credit analysis factors discussed above. Rule 2a–7(a)(11); *see supra* section II.A.2 (''Codified Factors'').

[109] Current rule 2a–7(d)(2)(iv).

[110] *See infra* note 258 and accompanying text.

fund and its shareholders.[111] In the Proposing Release, the Commission proposed to eliminate this requirement and instead require each money market fund to adopt written procedures that would require the fund adviser to provide an ongoing review of the credit quality of each portfolio security to determine that the security continues to present minimal credit risks.[112]

As discussed in the Proposing Release, such ongoing monitoring of minimal credit risks would include the determination of whether the issuer of the portfolio security, and the guarantor or provider of a demand feature, to the extent relied upon by the fund to determine portfolio quality, maturity or liquidity, continues to have the capacity to repay its financial obligations such that the security presents minimal credit risks. The review would typically update the information that was used to make the initial minimal credit risk determination and would have to be based on, among other things, financial data of the issuer or provider of the guarantee or demand feature.[113] The Commission noted that funds could continue to consider external factors, including credit ratings, as part of the ongoing monitoring process.[114]

All of the commenters who addressed the ongoing monitoring provision supported the proposed requirement.[115] Commenters agreed with the Commission's belief that most fund advisers currently engage in similar types of ongoing monitoring and that an explicit monitoring requirement would not significantly change current fund practices,[116] nor would it impose significant extra costs.[117] Commenters also stated that the ongoing monitoring requirement would assist funds to better position themselves to quickly identify potential risks of credit events that could impact portfolio security prices.[118] Accordingly, as discussed in more detail below, we are now adopting these amendments as proposed.[119]

1. Frequency of Monitoring

Three commenters requested more specificity regarding the frequency of the monitoring requirement.[120] One of these commenters requested that the Commission adopt a specific periodic basis for the ongoing review, so that the process would occur with a minimum frequency.[121] The other two commenters requested that the Commission make clear that ''ongoing'' monitoring does not necessarily mean a constant or daily evaluation.

We are not specifying a periodic basis for the ongoing monitoring requirement adopted today. As a preliminary matter, doing so would conflict with the intent of an explicit ongoing monitoring requirement. Specifying a periodic frequency for monitoring might suggest that regular awareness of the credit profile of portfolio securities is not required, and might also interfere with the discretion of fund managers to react to changing market conditions. In addition, as discussed above, specifying the frequency of monitoring would be inconsistent with our understanding of how a majority of the industry currently evaluates minimal credit risk.[122]

Although we are not codifying a specific frequency upon which monitoring must occur, we expect that for purposes of the rule, ongoing monitoring would mean that monitoring efforts should occur on a regular and frequent basis. We understand that many funds today engage in daily monitoring of changes in the markets or conditions relating to issuers that may affect their credit evaluation of portfolio holdings, and do so even on an hourly basis if there are rapidly changing events. We believe that this type of monitoring is consistent with the ongoing monitoring requirement adopted today.

One commenter who requested a specific periodic basis for minimal credit risk evaluations also suggested that the Commission require that the fund's board be notified when a portfolio security no longer meets the minimal credit risk standard (and thus, the definition of an eligible security).[123] As a general matter, the Commission expects, as explained in the Proposing Release, that a fund board generally will establish procedures for the adviser to notify the board when a security no longer meets the minimal credit risk standard, and thus expect that a board would be notified as the commenter suggested. We also note that under current rule 2a–7 and the final rule, a fund must dispose of a security that is no longer an eligible security, unless the board makes a finding that it would not be in the interests of the fund to do so.[124] Therefore, if a fund chooses not to dispose of a security that is no longer an ''eligible security,'' the fund's board will already have had the notice sought by this commenter, and thus we do not believe that further specific notification requirements are necessary.

2. Recordkeeping

Today, funds are required to retain a written record of the determination that a portfolio security is an eligible security, including the determination that it presents minimal credit risks. If the proposed requirement to conduct an ongoing review of the credit quality of a fund's portfolio securities were adopted, rule 2a–7's current recordkeeping requirement could have been understood to require the fund to provide for an ongoing documentation of the adviser's ongoing review, which could prove burdensome. Accordingly, we had proposed to make conforming amendments to the recordkeeping provision, requiring the fund to maintain and preserve a written record of the determination that a portfolio security presents minimal credit risks at

[111] Rule 2a–7(f)(1)(i)(A). This current reassessment is not required, however, if the downgraded security is disposed of or matures within five business days of the specified event and in the case of certain events (specified in rule 2a–7(f)(1)(i)(B)), the board is subsequently notified of the adviser's actions. Rule 2a–7(f)(1)(ii). In addition, rule 2a–7 requires ongoing review of the minimal credit risks associated with securities for which maturity is determined by reference to a demand feature. Rule 2a–7(g)(3).

[112] Proposing Release, *supra* note 3, at 47994–47996; proposed rule 2a–7(g)(3). The Commission proposed to remove current rule 2a–7(f)(1)(i) (downgrades) and 2a–7(g)(3) (securities for which maturity is determined by reference to demand features). Proposed rule 2a–7 included a new paragraph (g)(3), which would contain the required procedures for the ongoing review of credit risks.

[113] *See* proposed rule 2a–7(g)(3)(ii).

[114] We note that a fund adviser's obligation to monitor risks to which the fund is exposed will, as a practical matter, require the adviser to monitor for downgrades by relevant credit rating agencies because such a downgrade would likely affect the security's market value.

[115] *See* Barnard Comment Letter; BlackRock Comment Letter; CFA Institute Comment Letter; Dreyfus Comment Letter; Fidelity Comment Letter; ICI Comment Letter; IDC Comment Letter; Invesco Comment Letter; Schwab Comment Letter; Vanguard Comment Letter.

[116] All commenters that specifically addressed this issue agreed with the Commission's understanding of current practices. *See* BlackRock Comment Letter; Fidelity Comment Letter; Barnard Comment Letter; Schwab Comment Letter. Although the NYC Bar Comment Letter did not specifically answer this question, it suggested that the Proposing Release had not presented a sufficiently detailed description of those current practices. This comment is discussed further below.

[117] The only commenter to address the question about costs stated that it did not believe that most funds would experience additional costs beyond the initial adoption and implementation. *See* Schwab Comment Letter.

[118] Fidelity Comment Letter; Schwab Comment Letter; Barnard Comment Letter.

[119] Rule 2a–7(g)(3).

[120] Better Markets Comment Letter; NYC Bar Comment Letter; SIFMA Comment Letter.

[121] Better Markets Comment Letter.

[122] Similarly, in response to the Commission's query as to whether the rule should include specific objective events that would require a reevaluation of minimal credit risks, the only commenter to address the question stated that such a change might cause fund managers to limit their reviews to those triggering events, rather than truly evaluating risk on an ongoing basis. Schwab Comment Letter. We agree, and are not requiring specific events that would trigger a reevaluation.

[123] Better Markets Comment Letter.

[124] Current rule 2a–7(f)(2)(ii).

the time the fund acquires the security, or at such later times (or upon such events) that the board of directors determines that the investment adviser must reassess whether the security presents minimal credit risks.[125]

One commenter objected to the way the recordkeeping provision was phrased, stating that the rule was not clear as to the extent of the monitoring and whether and when recordkeeping was required.[126] However, another commenter expressed support for how the Commission proposed the new recordkeeping requirement.[127] We are adopting the amendments as proposed and reiterate that the recordkeeping amendments require recordkeeping of the minimal credit risk determination only when the security is first acquired or during periodic or event-driven reassessments, as determined by the board (or its delegate).

3. Other Issues

Three commenters objected to the nature of the standard to be applied in determining minimal credit risks through ongoing monitoring.[128] Two of these commenters objected to the need to determine on an ongoing basis that the capacity to repay short-term financial obligations is ''exceptionally strong.'' The other commenter requested that the standard be made clearer and stronger by inclusion of the specific factors to be considered in determining whether a security presents minimal credit risks. We note that the final amended definition of ''eligible security'' addresses these comments by eliminating the ''exceptionally strong'' standard and also codifying general credit analysis factors.[129]

The proposed amendments specified that government securities would not be subject to the initial minimal credit risk determination or the ongoing monitoring requirement. One commenter suggested that money market funds held in the fund's portfolio, which also would not be subject to the initial minimal credit risk determination, should be treated the same and carved out of the ongoing monitoring requirement as well.[130] We are not making such a change to the rule because we believe there are significant differences between the risk profile of government securities and shares of money market funds, as was evident in the recent financial crisis, that make ongoing monitoring prudent for shares of money market funds.[131] Nonetheless, the difference in risk profiles between shares of money market funds and other portfolio securities may influence the specific written ongoing monitoring procedures adopted by the board pursuant to this final rule.[132]

We believe that explicitly requiring that funds perform ongoing monitoring of credit risks will help to ensure that funds are better positioned to quickly identify potential risks of credit events that could impact portfolio security prices and ultimately, for certain funds, the ability of the fund to maintain its stable net asset value.[133] Accordingly, we are adopting these amendments largely as proposed.

D. Stress Testing

Money market funds currently must adopt written procedures for stress testing their portfolios and perform stress tests according to these procedures on a periodic basis.[134] These required tests include consideration of certain hypothetical events, including the downgrade of particular portfolio security positions.[135] In the Proposing Release, the Commission proposed to replace this reference to ratings downgrades in the stress testing requirement with a hypothetical event that is designed to have a similar impact on a money market fund's portfolio, namely an ''event indicating or evidencing credit deterioration'' of particular portfolio security positions.[136] Thus, under the proposed amendments, funds could continue to test their portfolios against a potential downgrade or default in addition to any other indication or evidence of credit deterioration they determine appropriate.

All commenters addressing the stress testing amendment supported it.[137] One commenter suggested that allowing a choice of hypothetical events to be used would improve disclosure by increasing variation in the testing.[138] Another commenter stated that it would prefer retaining the original reference to a downgrade, but that the proposed change was appropriate.[139] We continue to believe that amending the stress testing provision as proposed will continue to promote effective stress testing while implementing Section 939A of the Dodd-Frank Act. Accordingly, we are adopting the amendment as proposed.

E. Form N–MFP

As part of the money market fund reforms adopted in 2010, money market funds must provide to the Commission a monthly electronic filing of portfolio holdings information on Form N–MFP.[140] The information that money market funds must disclose with respect to each portfolio security (and any guarantee, demand feature, or other enhancement associated with the portfolio security) includes the name of each designated NRSRO for the portfolio security and the rating assigned to the security.[141] Our staff, however, issued a

[125] *See* proposed rule 2a–7(h)(3).

[126] NYC Bar Comment Letter.

[127] ICI Comment Letter.

[128] Dreyfus Comment Letter; BlackRock Comment Letter; Better Markets Comment Letter.

[129] Rule 2a–7(a)(11). *See supra* section II.A.

[130] ICI Comment Letter. (The Vanguard Comment Letter expressed support for the ICI comments.) The ICI Comment Letter also suggested two technical corrections to the ongoing monitoring provision, which the Commission is adopting. First, the language of clause (i) of 2a–7(g)(3) has been made consistent with the language of clause (ii) and now includes reference to the financial data of a provider of a guarantee or demand feature in addition to the financial data of an issuer of a security. Also, an erroneous citation in 2a–7(g)(3)(ii) has been corrected.

[131] For example, in the 2014 Money Market Fund Adopting Release, we discussed how investor money flowed out of institutional prime money market funds and into government money market funds (and government securities) during the financial crisis following the Reserve Primary Fund's ''breaking the buck.'' See 2014 Money Market Fund Adopting Release, *supra* note 6, at sections II.B and D.

[132] For example, a fund may decide to use different outside sources to assist it in evaluating the ongoing credit quality of portfolio securities it determines present a heightened credit risk profile (as compared with other portfolio securities held by the fund).

[133] As under the current rule and discussed in the proposal, the process undertaken by the fund's board (or adviser) for establishing credit quality and the records documenting that process would be subject to review in regulatory examinations by Commission staff. *See* 2014 Proposing Release, *supra* note 3. In the context of such an examination, a fund should be able to support each minimal credit risk determination it makes with appropriate documentation to reflect that process and determination. A fund that acquires portfolio securities without having adopted, maintained, or implemented written policies and procedures reasonably designed to assess minimal credit risk, as required under rules 2a–7 and 38a–1, could be subject to disciplinary action for failure to comply with those rules. *See id. See also* Ambassador Capital Management LLC, *et al.,* Investment Company Act Release No. 30809 (Nov. 26, 2013).

[134] *See* current rule 2a–7(g)(8).

[135] *See* current rule 2a–7(g)(8)(i).

[136] Proposing Release, *supra* note 3, at 47996–47997; proposed rule 2a–7(g)(8)(i)(B) (the proposal would require stress testing for an event indicating or evidencing the credit deterioration, such as a downgrade or default, of a portfolio security position representing various portions of the fund's portfolio (with varying assumptions about the resulting loss in the value of the security), in combination with various levels of an increase in shareholder redemptions).

[137] ICI Comment Letter; Barnard Comment Letter; BlackRock Comment Letter; CFA Institute Comment Letter; MFDF Comment Letter; Vanguard Comment Letter.

[138] CFA Institute Comment Letter.

[139] MFDF Comment Letter.

[140] *See* rule 30b1–7; *see also* 2010 Money Market Fund Adopting Release, *supra* note 84, at 10082–10086.

[141] *See* current Form N–MFP Items 34 (requiring disclosure of each designated NRSRO for a portfolio security and the credit rating given by the

Continued

no-action letter in response to the passage of Section 939A of the Dodd-Frank Act indicating that, among other things, they would not object if a fund did not ''designate NRSROs and [did] not make related disclosures in its statement of additional information before the Commission has completed the review of rule 2a–7 required by the [Dodd-Frank Act] and has made any modifications to the rule.'' [142] Notwithstanding the staff's position, many funds are already reporting this information on Form N–MFP.

Instead of disclosure of designated NRSRO ratings, the Commission's Proposing Release would have required that each money market fund disclose, for each portfolio security, (i) each rating assigned by any NRSRO if the fund or its adviser subscribes to that NRSRO's services, as well as the name of the agency providing the rating, and (ii) any other NRSRO rating that the fund's board of directors (or its delegate) considered in making its minimal credit risk determination, as well as the name of the agency providing the rating.[143]

Most commenters addressing the proposed provision supported the Commission's proposal to require disclosure of NRSRO ratings, though many commenters suggested changes, in particular related to the subscription requirements, as discussed below.[144] As suggested by commenters, we are not adopting the proposed requirement that a fund disclose the ratings of the NRSROs to which it subscribes. We are, however, adopting as proposed, a requirement that funds disclose those NRSRO ratings that the fund's board of directors (or its delegate) considered, if any, in making its minimal credit risk determination for a given security, along with the name of the agency that provided the rating.

1. Use of Subscriptions

Many commenters stated that requiring funds to disclose each rating assigned by any NRSRO that a fund or its adviser subscribes to would create unnecessary cost burdens for money market funds, as well as cause other problems.[145] These commenters explained that funds do not consider every rating of every NRSRO they subscribe to when determining the credit profile of a given security. They stated that subscriptions are often used for many other reasons, such as evaluating pricing levels, monitoring market activity and context, and assessing other securities. These commenters also suggested that such disclosures would be unhelpful or even misleading to investors, since the ratings disclosed would often be unrelated to the determinations of minimal credit risks. One commenter stated that the required disclosure of every rating of a portfolio security for which the fund has a subscription would discourage subscriptions, and potentially interfere with the NRSRO market.[146] Another commenter suggested that any usefulness of receiving this information on Form N–MFP for purposes of Commission monitoring was minimal because the information is readily available elsewhere.[147] In addition, one commenter suggested that NRSROs may decide that inclusion of ratings information on Form N–MFP constitutes publication of the ratings and therefore assess extra fees associated with publication.[148] In regard to the general requirement of disclosing any NRSRO ratings on Form N–MFP, one commenter objected that the proposed provision conflicts with Section 939A of the Dodd-Frank Act.[149]

After considering the comments received, we are persuaded by those commenters who argued, as discussed above, that requiring disclosure of each rating assigned by any NRSRO if the fund or its adviser subscribes to that NRSRO's services, as well as the name of the agency providing the rating, is unnecessary and potentially misleading. Except as discussed elsewhere in the section, these commenters did not oppose general disclosure of ratings information on Form N–MFP, provided the requirement is not based on subscribing to an NRSRO's service.[150] Consequently, the final rule requires that funds disclose on Form N–MFP any NRSRO rating that the fund's board of directors (or its delegate) considered in making its minimal credit risk determination for that particular security, as well as the name of the agency providing the rating. This requirement will provide meaningful and concise information to investors and the SEC regarding the process by which a fund evaluates its securities. If a fund's adviser has considered more than one NRSRO rating in making a minimal credit risk determination for a particular portfolio security, the Form N–MFP disclosure will need to reflect each rating considered. We believe this information on ratings will be useful both to the Commission and to investors to monitor credit ratings that funds use in evaluating the credit quality of portfolio securities and to evaluate risks that fund managers take. Moreover, we believe this requirement is consistent with many funds' current Form N–MFP disclosure practices.[151] Disclosures of individual portfolio securities ratings will provide investors, Commission staff, and others with a snapshot of potential trends in a fund's overall risk profile, which can in turn impose discipline on the industry to continually research and evaluate whether that profile is changing.

In regard to the comment that requiring disclosure might trigger the charging of publication fees by the NRSROs, numerous money market funds currently voluntarily report ratings on Form N–MFP, and we are not aware of the imposition of such fees on funds. In regard to the comment suggesting that requiring disclosure of ratings on Form N–MFP conflicts with Section 939A of the Dodd-Frank Act, we believe that requiring disclosure of the NRSRO ratings *considered* satisfies the requirements of Section 939A. We do not believe that requiring disclosure of credit ratings considered by funds as part of their minimal credit risk determinations conflicts with Section 939A, which requires federal agencies to ''remove any reference to or requirement of *reliance* on credit ratings. . . .''

designated NRSRO for each portfolio security); 37b–c (requiring disclosure of each designated NRSRO and the credit rating given by the designated NRSRO for each portfolio security demand feature); 38b–c (requiring disclosure of each designated NRSRO and the credit rating given by the designated NRSRO for each portfolio security guarantee); and 39c–d (requiring disclosure of each designated NRSRO and the credit rating given by the designated NRSRO for each portfolio security enhancement).

[142] Letter to Karrie McMillan, General Counsel, Investment Company Institute from Robert E. Plaze, Associate Director, Division of Investment Management, SEC (Aug. 19, 2010). Because the requirements of this rule supersede the staff letter, the letter is withdrawn as of the compliance date of this rule.

[143] *See* proposed Form N–MFP Item C.10. In a conforming change, the proposal would have also amended Form N–MFP Item C.9 to require disclosure of whether the portfolio security is an eligible security. We did not receive any comments on this provision. This conforming change is now adopted in the final rule.

[144] *See* Consumer Federation of America Comment Letter; Better Markets Comment Letter; MFDF Comment Letter; BlackRock Comment Letter; Schwab Comment Letter.

[145] MFDF Comment Letter; BlackRock Comment Letter; ICI Comment Letter; Vanguard Comment Letter; SIFMA Comment Letter; Fidelity Comment Letter.

[146] ICI Comment Letter.

[147] SIFMA Comment Letter.

[148] Schwab Comment Letter.

[149] SIFMA Comment Letter.

[150] Commenters did not specifically object to our proposed disclosure requirement based on a fund board's (or its delegate's) ''consideration'' of such ratings in making minimal credit risk determinations.

[151] *See* Proposing Release, *supra* note 3, at section II.B.

2. Other Issues

Some commenters suggested that fund Web site disclosure of NRSRO ratings would be more useful and effective than disclosure on Form N–MFP.[152] These commenters stated that such Web site disclosure could be made clearer and more understandable for investors than the proposed disclosure. Although we appreciate the benefits associated with Web site disclosure, we expect that the ready public availability of the information on Form N–MFP should achieve many of the same benefits. We also note that the 2014 money market reforms eliminated the 60-day delay on public availability of the information filed on Form N–MFP (making such information public immediately upon filing). Accordingly, we are not adopting a fund Web site disclosure requirement for NRSRO ratings at this time. We note, however, that nothing in our final rule prohibits money market funds from making such disclosure on fund Web sites.

One commenter suggested another approach that we did not propose, namely that the Commission require disclosure on Form N–MFP of the factors that a fund considers when determining whether a security presents minimal credit risks and the details of that determination.[153] The commenter stated that this expanded disclosure would enhance investors' and regulators' understanding of risks in money market fund portfolios. We believe that expanding disclosures in this way is unlikely to provide additional useful information because all funds will be required to use the codified general factors that we had initially proposed as guidance. All funds will now have to apply the specific factors the Commission is requiring in the rule and retain records of the specifics of the determination made for possible review by the Commission. Although public disclosure of the details of the reasoning behind the funds evaluation of each factor and overall minimal credit risk determination would provide additional information to investors, we currently do not believe that many investors would be likely to benefit from this potentially voluminous disclosure for each security held. Such a disclosure requirement would also effectively require funds to publicly disclose their entire credit risk evaluation process, which may include proprietary data. On balance, it is not clear that the potential benefits of this particular disclosure would justify the potentially significant costs. Therefore, we are not adopting such a disclosure requirement at this time.

Finally, one commenter stated that government money market funds should not have to disclose ratings information.[154] We note that no money market funds, including government money market funds, are required by the final rule to disclose ratings information if that information is not considered in evaluating a particular security. Accordingly, to the extent that government money market funds do not consider ratings in selecting portfolio securities, any burden should be minimal.

3. Technical Amendments

In addition to the substantive amendments to Form N–MFP, the Commission is also making a technical change to one of the definitions of ''money market fund'' on Form N–MFP.[155] We are also making a technical change to the definition of ''collateralized fully'' in rule 2a–7.[156]

F. Exclusion From the Issuer Diversification Requirement

We are amending the rule 2a–7 diversification provision as proposed.[157] Under the current rule, in addition to the provisions regarding credit quality discussed above, rule 2a–7's risk limiting conditions require a money market fund's portfolio to be diversified, both as to the issuers of the securities it acquires and providers of guarantees (and demand features)[158] related to those securities.[159] These diversification provisions were designed to diversify the risks to which money market funds may be exposed and thereby reduce the impact of any single issuer's or guarantor's (or demand feature provider's) financial distress on a fund.[160] Generally, money market funds must today limit their investments in the securities of any one issuer of a first tier security to no more than 5 percent of total assets, other than with respect to government securities and securities subject to a guarantee by a non-controlled person.[161] A single state money market fund, however, may also currently invest up to 25 percent of its total assets in the securities of any single issuer.[162] In addition to the issuer diversification provisions, money market funds must generally limit their investments in securities subject to a guarantee (or demand feature) to no more than 10 percent of total assets from any one provider.[163] A money market

[152] Schwab Comment Letter; ICI Comment Letter; Fidelity Comment Letter.

[153] Better Markets Comment Letter.

[154] ICI Comment Letter.

[155] The definition in the heading of the Instructions did not match the version in the Definitions section. For consistency and clarity, we are now adopting the heading definition in both places, as well as on Form N–1A.

[156] *See* rule 2a–7(a)(5). We are eliminating from the definition of ''collateralized fully'' in rule 2a–7(a)(5) an erroneous cross reference to rule 5b–3(c)(1)(iv)(D) (which has since been removed). See 2013 Ratings Removal Adopting Release, *supra* note 5.

[157] We are also adopting several technical amendments to the portfolio diversification provisions of rule 2a–7, as described below in this section.

[158] A ''demand feature'' means a feature permitting the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the later of the time of exercise or the settlement of the transaction, paid within 397 calendar days of exercise. Rule 2a–7(a)(9) (definition of demand feature). A ''guarantee'' as defined in rule 2a–7 includes an unconditional demand feature. *See* rule 2a–7(a)(18) (definition of guarantee). An ''unconditional demand feature'' means a demand feature that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security or securities. Rule 2a–7(a)(30) (definition of unconditional demand feature).

[159] *See* current rule 2a–7(d)(3). The diversification requirements of rule 2a–7 differ in significant respects from the requirements for diversified management investment companies under section 5(b)(1) of the Investment Company Act. A money market fund that satisfies the applicable diversification requirements of paragraphs (d)(3) and (e) of rule 2a–7 is deemed to have satisfied the requirements of section 5(b)(1). Rule 2a–7(d)(3)(v). Subchapter M of the Internal Revenue Code contains other diversification requirements for a money market fund to be a ''regulated investment company'' for federal income tax purposes. 26 U.S.C. 851 *et seq.*

[160] *See* Money Market Fund Reform, Investment Company Act Release No 28807 (Jun. 30, 2009) [74 FR 32688 (Jul. 8, 2009)] (''2009 Money Market Fund Proposing Release'') at n.220 and accompanying text; Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 17589 (Jul. 17, 1990) [55 FR 30239 (Jul. 25, 1990)], at text accompanying n.23 (''Diversification limits investment risk to a fund by spreading the risk of loss among a number of securities.'').

[161] Current rule 2a–7(d)(3)(i)(A) and (B). A fund also may invest no more than 0.5 percent of fund assets in any one issuer of a second tier security. Current rule 2a–7(d)(3)(i)(C). The rule provides a safe harbor under which a taxable or national tax-exempt fund may invest up to 25 percent of its total assets in the first tier securities of a single issuer for a period of up to three business days after acquisition (but a fund may use this exception for only one issuer at a time). Current rule 2a–7(d)(3)(i)(A). Because the amendments we are adopting today eliminate the distinction between first and second tier securities, the issuer diversification requirements and the safe harbor, as amended, will not refer to or rely on a portfolio security's rating.

[162] Current rule 2a–7(d)(3)(i)(B).

[163] Rule 2a–7 also provides a ''fifteen percent basket'' for tax-exempt (including single state) money market funds, under which as much as 15 percent of the value of securities held in a tax-exempt fund's portfolio may be subject to guarantees or demand features from a single institution. *See* rule 2a–7(d)(3)(iii)(B). The tax-exempt fund, however, may only use the 15 percent basket to invest in demand features or guarantees issued by non-controlled persons that are first tier securities. *See* rule 2a–7(d)(3)(iii). Under the

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fund is permitted to take on greater indirect exposure to a guarantor because rather than looking solely to the issuer, the money market fund would have two potential sources of repayment—the issuer whose securities are subject to the guarantees and the providers of those guarantees if the issuer defaults. Most recently, the Commission adopted amendments to certain provisions of these diversification requirements as part of the 2014 money market fund reforms.[164]

Notwithstanding the 5 percent issuer diversification provision, rule 2a–7 currently does not require a money market fund to be diversified with respect to issuers of securities that are subject to a guarantee by a non-controlled person.[165] This exclusion could allow, for example, a fund to invest a significant portion or all of the value of its portfolio in securities issued by the same entity if the securities were guaranteed by different non-controlled person guarantors and none of the guaranteed securities had a value exceeding 10 percent of the fund's total assets. We continue to be concerned that a fund that relies on this issuer diversification exclusion could have a highly concentrated portfolio and would be subject to substantial risk if the single issuer in whose securities it had such a significant investment were to come under stress or default.

The diversification amendments that we adopt today will remove the current exclusion to the issuer diversification requirement for securities subject to a guarantee issued by a non-controlled person. That is, under this amendment, each money market fund that invests in securities subject to a guarantee (whether or not the guarantor is a non-controlled person) will have to comply with both the 10 percent diversification requirement for the guarantor as well as the 5 percent diversification requirement for the issuer.[166]

One commenter supported the proposed issuer diversification amendment.[167] Another commenter did not specifically oppose the proposal but questioned the additive value of the proposed amendment.[168] The majority of commenters, however, that discussed the diversification proposal opposed it, for a variety of reasons as further discussed below.[169]

1. Credit Quality of the Guarantor and Two Sources of Repayment

In cases where a money market fund invests in a security subject to a guarantee, the guarantor assumes the credit risks presented by a particular issuer by agreeing to provide principal and interest payments in the event the issuer of the underlying security is unable to do so. Accordingly, rule 2a–7 allows a money market fund to look to the credit quality of the guarantor as opposed to the issuer to meet rule 2a–7's portfolio quality provisions.[170] Several commenters emphasized a money market fund's ability to rely on the credit quality of the guarantor in this case, arguing that it is appropriate to direct the minimal credit risk determination to the guarantor as opposed to refocusing the analysis on issuer concentration risk.[171] One of these commenters also suggested that securities subject to a guarantee in many cases trade on the basis of the credit quality of the provider of that guarantee, and thus exposure to the underlying security issuer may not be relevant to a money market fund's ability to maintain a stable net asset value in these cases.[172] Another commenter suggested that complying with the proposed requirement for guaranteed securities could be construed to require the manager to also conduct a credit review and on-going monitoring of the issuer.[173] We are not amending the provision in rule 2a–7 that permits money market funds to look to the credit quality of the guarantor as opposed to the issuer to meet rule 2a–7's portfolio quality provisions.

As we discussed in the Proposing Release, by permitting money market funds a higher 10 percent limit on their indirect exposures to a single provider of a guarantee than the 5 percent limit on direct investments in any one issuer, rule 2a–7 permits a money market fund to take on greater indirect exposures to providers of guarantees. As we previously discussed, and as acknowledged by commenters, a money market fund is permitted to take on greater indirect exposure because, rather than looking solely to the issuer, the money market fund would have two potential sources of repayment—the issuer whose securities are subject to the guarantees and the providers of those guarantees if the issuer defaults.[174] Both the issuer and the guarantor would have to default at the same time for the money market fund to suffer a loss. And if a guarantor were to come under stress, the issuer may be able to obtain a replacement.[175]

By diversifying solely against the guarantor, as is the case under the current issuer diversification exclusion, a fund could rely on the guarantors' credit quality or repayment ability, not the issuer's. Thus, in addition to looking to the credit quality of the guarantor as opposed to the issuer to meet rule 2a–7's portfolio quality provisions, the fund would also effectively substitute the credit of the guarantor for that of the issuer for diversification purposes, without imposing the tighter 5 percent requirement that rule 2a–7 generally applies for issuer diversification. This means that a fund could have a highly concentrated portfolio and could be subject to substantial risk if it has a significant investment in securities of a

amendments we are adopting today, the 15 percent basket will be available with respect to any demand feature or guarantee issued by a non-controlled person without regard to the rating of the security, guarantee or demand feature.

[164] *See* 2014 Money Market Fund Adopting Release, *supra* note 6. Among other things, the 2014 money market fund amendments require that money market funds treat certain entities that are affiliated with each other as single issuers when applying the 5 percent issuer diversification provision of rule 2a–7 and treat the sponsors of asset-backed securities as guarantors subject to the 10 percent diversification provision of rule 2a–7 applicable to guarantees and demand features, unless the fund's board makes certain findings. These amendments were intended to increase the resiliency of and reduce risk in money market funds by limiting their ability to concentrate investments in a single economic enterprise.

[165] *See* current rule 2a–7(d)(3). A guarantee issued by a non-controlled person means a guarantee issued by a person that, directly or indirectly, does not control, and is not controlled by or under common control with the issuer of the security subject to the guarantee (*control* means ''control'' as defined in section 2(a)(9) of the Act) (15 U.S.C. 80a–2(a)(9)), or a sponsor of a special purpose entity (''SPE'') with respect to an asset-backed security. Rule 2a–7(a)(17).

[166] *But see* rule 2a–7(e). If the fund's board of directors has determined that the fund is not relying on a guarantee to determine the quality, maturity or liquidity of a portfolio security and maintains a record of this determination, then the fund need not comply with the 10 percent guarantor diversification requirement with respect to such guarantee.

[167] *See* Better Markets Comment Letter. This commenter also opined that there was no rationale for setting a more generous limit for guarantors of the securities than for issuers and that accordingly, the Commission should strengthen the diversification requirements by preventing any one guarantor from guaranteeing more than 5 percent of a fund's assets as opposed to 10 percent.

[168] *See* Schwab Comment Letter.

[169] *See* BlackRock Comment Letter; Dreyfus Comment Letter; ICI Comment Letter; SFIG Comment Letter; SIFMA Comment Letter; Vanguard Comment Letter.

[170] *See* rule 2a–7(d)(2)(iii).

[171] *See* Dreyfus Comment Letter; Schwab Comment Letter; SIFMA Comment Letter.

[172] *See* SIFMA Comment Letter.

[173] *See* Schwab Comment Letter.

[174] *See* BlackRock Comment Letter; SFIG Comment Letter.

[175] *See, e.g.,* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 19959 (Dec. 17, 1993) [58 FR 68585 (Dec. 28, 1993)] at n.83 and accompanying text (observing that, if the guarantor of one of the money market fund's securities comes under stress, ''issuers or investors generally can either put the instrument back on short notice or persuade the issuer to obtain a substitute for the downgraded institution'').

single issuer, and such issuer were to come under stress or default. As we stated in the Proposing Release, we are concerned that a money market fund relying on the exclusion from the issuer diversification provision need only comply with the 10 percent guarantor diversification requirement, notwithstanding the credit substitution discussed above. In consideration of our reform goal of limiting concentrated exposure of money market funds to particular economic enterprises, we continue to believe that ignoring a fund's exposure to the issuer in these circumstances is not appropriate.[176]

In the Proposing Release, we requested comment as to whether commenters agreed with our proposed approach to treat securities subject to a guarantee by a non-controlled person similar to other securities with a guarantee under rule 2a–7, or whether we should instead require that a guarantor be treated as the issuer and subject to a 5 percent diversification requirement when a money market fund is relying exclusively on the credit quality of the guarantor or when the security need not meet the issuer diversification requirements. We also asked in the 2013 Money Market Fund Proposing Release more generally whether we should continue to distinguish between a fund's exposure to guarantors and issuers by providing different diversification requirements for these exposures.[177] We explained that rule 2a–7 permits a money market fund, when determining if a security subject to a guarantee satisfies the credit quality standards, to rely exclusively on the credit quality of the guarantor.[178] As in the Proposing Release, we also specifically asked whether the guarantor should be treated as the issuer and subject to a 5 percent diversification requirement whenever the money market fund is relying exclusively on the credit quality of the guarantor. Although most commenters did not specifically address this issue, one commenter argued that guarantors and demand feature providers should generally be subject to the same 5 percent issuer diversification requirements instead of a higher 10 percent limit.[179] We continue to believe, however, that the approach we are adopting today is preferable to making both the guarantor and issuer subject to a 5 percent diversification requirement because, among other things, the approach we are adopting today would treat securities subject to a guarantee by a non-controlled person similarly to other securities with a guarantee under rule 2a–7.

As discussed further in the economic analysis section below, we believe that the potential costs of requiring both the guarantor and issuer to be subject to a 5 percent diversification requirement would likely be more significant than the costs of the amendment we are adopting today. As of the end of April 2015, we estimate that approximately 110 (of 214) prime money market funds had total exposure to a single entity (including directly issued, asset-backed commercial paper sponsorship, and provision of guarantees and demand features) in excess of 5 percent. If we adopted an amendment that both the guarantor and issuer are subject to a 5 percent diversification requirement, any fund that had exposure to an entity greater than 5 percent when those assets matured would have to reinvest the proceeds of the securities creating that exposure in different securities or securities with a different guarantor. Those changes may or may not require those funds to invest in alternative securities, and those securities might present greater risk if they offered lower yields, lower liquidity, or lower credit quality. In addition, we believe the approach we take today is preferable to making both the guarantor and issuer subject to a 5 percent diversification requirement because unlike a security that is not subject to a guarantee, a security that is subject to a guarantee would continue to have two sources of repayment.

Another commenter stated that the Commission has provided for the higher 10 percent limit on indirect exposure of money market funds to guarantors in part because of the ''double-barreled'' protection, as discussed above, and suggested that the same logic should apply in imposing an issuer diversification limit on guaranteed securities.[180] This commenter recommended that a 10 percent issuer diversification limit be applied under the rule for securities of an issuer that are guaranteed by a non-controlled person.[181] Rather than subject these issuers to a unique 10 percent requirement, however, we continue to believe that a better approach would be to restrict risk exposures to all issuers of securities subject to a guarantee or demand feature under rule 2a–7 in the same way. As noted above, a money market fund is permitted to take on greater exposure to guarantees because rather than solely looking to the issuer, the money market fund would have two sources of repayment. We believe that this rationale applies to all securities equally (whether the security is subject to a guarantee by a controlled person or a non-controlled person), and that if a money market fund is permitted to take on a greater exposure to a guarantor, then it must also comply with the underlying 5 percent issuer diversification provision. Therefore, under these amendments, each money market fund that invests in securities subject to a guarantee (whether or not the guarantor is a non-controlled person) will have to comply with both the 10 percent diversification requirement for the guarantor as well as the 5 percent diversification requirement for the issuer. As a result, except for the special provisions regarding single state money market funds, no money market fund non-government portfolio security would be excluded from rule 2a–7's limits on issuer concentration. [182]

2. Tax-Exempt Funds

Several commenters argued that the proposed issuer diversification amendment should not be applied to tax-exempt money market funds in particular.[183] A couple of these commenters stated that the Commission has previously recognized that tax-exempt money market funds should have unique treatment in certain instances due to the particular characteristics of tax-exempt money market funds, including the more constrained supply of investable securities as opposed to other types of money market funds.[184] Several

[176] *See* 2014 Money Market Fund Adopting Release, *supra* note 6, at text following n.1600 and accompanying n.1601. The exclusion from the 5 percent issuer diversification requirement for certain guaranteed securities was adopted in the 1996 money market fund amendments to provide flexibility in municipal investments, and was premised on the ability of a money market fund to rely on the guarantee if an issuer became distressed. *See* 1996 Money Market Fund Adopting Release, *supra* note 84.

[177] *See* 2013 Money Market Fund Proposing Release, *supra* note 16, at sections III.J.1–2.

[178] Rule 2a–7(d)(2)(iii). As noted above, a money market fund is permitted to take on greater indirect exposure because the fund has two potential sources of repayment. However, the fact that a money market fund has both the issuer and guarantor as sources of repayment may not fully reduce the risks of the investment in all cases because in the event that both the issuer and guarantor default at the same time the fund could suffer a loss. Additionally, the issuer of the guaranteed securities need not satisfy rule 2a–7's credit quality requirements.

[179] *See* Better Markets Comment Letter.

[180] *See* SFIG Comment Letter.

[181] *See id.*

[182] *See* rule 2a–7(d)(3)(i)(B) (issuer diversification requirements for single state money market funds).

[183] *See* Dreyfus Comment Letter; Fidelity Comment Letter; ICI Comment Letter.

[184] *See* ICI Comment Letter; Fidelity Comment Letter.

commenters argued that removing the issuer diversification exclusion would cause greater supply challenges, particularly in the tax-exempt market.[185] One of these commenters stated that the proposed amendment would be particularly difficult for single state money market funds due to the limited supply of eligible securities, but these commenters did not acknowledge that the 5 percent issuer diversification limit for single state funds applies to only 75 percent of a single state fund's total assets.[186] Another commenter stated that the proposal assumes a ready supply of securities supported by the same guarantor with different issuers so that a fund could comply with the issuer diversification requirement without reducing its holdings of the guarantor's securities, but that this is not the case, particularly in the tax-exempt market.[187]

One commenter suggested that tax-exempt money market funds regularly rely on the exclusion for securities guaranteed by non-controlled persons to exceed the 5 percent diversification limit.[188] In the Proposing Release, staff believed that based on an analysis of February 2014 Form N–MFP data, only 8 out of 559 money market funds, the majority of which were tax-exempt money market funds, held securities with a guarantee issued by a non-controlled person that exceeded the 5 percent diversification requirement for issuers. A couple commenters suggested that Commission staff review a broader sample of data from Form N–MFP to determine the magnitude of funds that rely on the issuer diversification exclusion.[189] One of these commenters also suggested that Commission staff confirm that for any given fund the staff are aggregating an issuer's securities subject to guarantees by non-controlled persons with the issuer's securities subject to guarantees by control persons and the issuer's securities that are not guaranteed, in order to determine whether a fund is potentially relying on the issuer diversification exclusion by exceeding the 5 percent issuer diversification limit.[190]

In order to obtain a greater sample, and in response to commenters, the staff supplemented its analysis using October 2014 and April 2015 Form N–MFP data to review the number of funds that exceeded the 5 percent issuer diversification limit, which would indicate that such funds were potentially relying on the 5 percent issuer diversification exclusion.[191] As discussed further in the economic analysis section below, the staff's analysis shows that for October 2014, 60 money market funds out of 553 total money market funds, or approximately 10.8 percent of all money market funds, were potentially relying on the 5 percent issuer diversification exclusion. In addition, staff analysis shows that as of October 2014, only 0.0482 percent of total money market fund assets were above the 5 percent issuer diversification threshold.[192] For April 2015, staff analysis shows that 63 money market funds out of 542 total money market funds, or approximately 11.6 percent of all money market funds, were potentially relying on the 5 percent issuer diversification exclusion. In addition, staff analysis shows that as of April 2015, only 0.0624 percent of total money market fund assets were above the 5 percent issuer diversification threshold.[193]

Based on their updated analysis, Commission staff believes that only tax-exempt money market funds appeared to be relying on the 5 percent issuer diversification exclusion. For October 2014, staff analysis shows that 16 national tax-exempt money market funds out of 72 total national tax-exempt money market funds were potentially relying on the 5 percent issuer diversification exclusion. In addition, staff analysis shows that as of October 2014, only 0.1 percent of national tax-exempt money market fund assets were above the 5 percent issuer diversification threshold.[194] For April 2015, staff analysis shows that 25 national tax-exempt money market funds out of 71 total national tax-exempt money market funds were potentially relying on the 5 percent issuer diversification exclusion. In addition, staff analysis shows that as of April 2015, only 0.5 percent of national tax-exempt money market fund assets were above the 5 percent issuer diversification threshold.[195]

One commenter argued that the proposed amendment would particularly affect single state money market funds.[196] In response to this commenter, and because a single state fund may currently invest up to 25 percent of its total assets in the first tier securities of any single issuer, Commission staff also separately identified the number of single state money market funds that appear to be relying on the issuer diversification exclusion. For October 2014, staff analysis shows that 44 single state money market funds out of 97 total single state money market funds were potentially relying on the 5 percent issuer diversification exclusion. In addition, staff analysis shows that as of October 2014, only 1.7 percent of single state money market fund assets were above the 5 percent issuer diversification threshold (while taking into account the 25 percent issuer diversification basket).[197] For April 2015, staff analysis shows that 38 single state money market funds out of 90 total single state money market funds were potentially relying on the 5 percent issuer diversification exclusion. In addition, staff analysis shows that as of April 2015, only 1.3 percent of single state money market fund assets were above the 5 percent issuer diversification threshold (while taking into account the 25 percent issuer diversification basket).[198]

These updated analyses confirm the Commission's initial assumption that overall, few money market funds would be affected by the issuer diversification amendment. As indicated by the staff's analysis above, and as discussed further in the economic analysis section below, we continue to believe a small number of all money market funds rely on the 5 percent issuer diversification exclusion and therefore believe the amendment's effect on funds, including the available supply of investable securities, would be minimal. We recognize that although overall few money market funds are relying on the 5 percent issuer exclusion, the amendment to remove such exclusion would disproportionately affect tax-exempt money market funds and single

[185] *See* Dreyfus Comment Letter; Fidelity Comment Letter; ICI Comment Letter.

[186] *See* Dreyfus Comment Letter. *See also* rule 2a–7(d)(3)(i)(B).

[187] *See* ICI Comment Letter.

[188] *See id.*

[189] *See* Dreyfus Comment Letter; ICI Comment Letter.

[190] *See* ICI Comment Letter.

[191] In calculating funds' issuer concentrations, staff made assumptions about the relationships among issuers. Such assumptions may have caused the number of funds that appear to be relying on the 5 percent issuer diversification exclusion to be overstated. To be conservative, staff assumed, for example, that a position in a tender option bond that is over 5 percent of the fund's assets is exposure to a single issuer, even though tender option bond trusts may have more than one issuer as the underlying obligor. We expect that funds' analysts, portfolio managers and counsel can make these determinations based on specific facts that were not available to the staff.

[192] This percentage amount corresponds to $1,447,300,000 in assets.

[193] This percentage amount corresponds to $1,833,000,000 in assets.

[194] This percentage amount corresponds to $198,500,000 in assets.

[195] This percentage amount corresponds to $893,400,000 in assets.

[196] *See* Dreyfus Comment Letter.

[197] This percentage amount corresponds to $1,248,800,000 in assets.

[198] This percentage amount corresponds to $939,600,000 in assets.

state money market funds. However, we believe that our staff's analysis of the percentage of assets in excess of the 5 percent issuer diversification threshold provides an accurate reflection of the potential impact that the elimination of the 5 percent issuer diversification exclusion would have on money market funds. We also believe that looking to the percentage of assets in addition to the number of funds (which shows only absolute numbers), comprehensively shows the corresponding level of assets that will need to be reinvested. The above data shows that for October 2014 and April 2015, approximately 99.95 percent and 99.94 percent, respectively, of total money market fund assets are not above the 5 percent issuer diversification threshold. Thus, because most money market funds are not using the exclusion and because a very high percentage of money market fund assets are not above the threshold, we continue to believe any negative effects for money market funds will generally be minimal.

We also note that money market funds will not be required to sell any of their portfolio securities as a result of our diversification amendment because rule 2a–7's diversification limits are measured at acquisition, and they may therefore retain these assets until they mature. Although we understand that national tax-exempt money market funds and single state money market funds may have made greater use of the 5 percent issuer exclusion in the past (and might do so in the future if we retained the 5 percent issuer diversification exclusion), we remain concerned that funds were previously exposed to concentrated risks inconsistent with the purposes of rule 2a–7's diversification requirements. As discussed above, we also continue to believe that restricting risk exposures to all issuers of securities subject to a guarantee or demand feature in the same way will appropriately limit the concentration of exposure that a money market fund could otherwise have to a particular issuer. Accordingly, we continue to believe that removing the exclusion to the 5 percent issuer diversification provision furthers our reform goal of limiting concentrated exposure of money market funds to particular economic enterprises.

3. Technical Amendments

The Commission is also making technical amendments to certain diversification provisions in rule 2a–7.[199] First, the Commission is amending rule 2a–7(d)(3)(i)(A)(*2*) to clarify that a tax-exempt fund (other than a single state fund) is required to comply with rule 2a–7(d)(3)(i)(A)(*2*) with respect to only 85 percent of its total assets.[200]

Second, the Commission is clarifying the use of the three-day safe harbor as it pertains to issuer diversification. The current three-day safe harbor provides that a money market fund may invest up to 25 percent of its total assets in first tier securities of a single issuer for a period of three business days after the acquisition thereof.[201] Specifically, rule 2a–7(d)(3)(i)(A)(*1*) generally prohibits a money market fund (other than a single state fund) from investing more than 5 percent of its total assets in an issuer's first tier securities, provided that such a fund may invest up to 25 percent of its total assets in the first tier securities of a single issuer for a period of up to three business days after the acquisition thereof. In addition, rule 2a–7(d)(3)(i)(A)(*2*) prohibits, at the time of any acquisition, investment of more than ten percent of a money market fund's total assets in securities issued by *or* subject to demand features or guarantees from the institution that issued the demand feature or guarantee, without making reference to the three-day safe harbor. Because the three-day safe harbor is referenced solely in subparagraph (*1*) of rule 2a–7(d)(3)(i)(A) and not in subparagraph (*2*) of rule 2a–7(d)(3)(i)(A), it may have been unclear as to whether a money market fund (other than a single state fund) could invest up to 25 percent of its total assets in a single issuer's securities for a period of up to three business days if some of the money market fund's securities were subject to guarantees or demand features provided by such issuer. In order to clarify that a money market fund (other than a single state fund) can invest up to 25 percent of its total assets in a single issuer's securities for a period of up to three business days if some of the money market fund's securities are subject to guarantees or demand features provided by such issuer, the Commission is amending rule 2a–7(d)(3)(i)(A) to clarify that the three-day safe harbor for issuer diversification should be read to apply to both subparagraphs (*1*) and (*2*).[202]

Last, the Commission is amending rule 2a–7(d)(3)(i)(B)(*2*) to clarify that a single state fund is required to comply with the diversification limitations of rule 2a–7(d)(3)(i)(B)(*2*) with respect to only 75 percent of its total assets, so long as not more than 15 percent of its total assets are invested in securities subject to guarantees or demand features provided by an institution as provided for in rule 2a–7(d)(iii)(B).[203] These amendments are intended only to clarify the diversification amendments that the Commission adopted as part of the 2014 money market reform.

III. Compliance Period for the Final Rule and Form Amendments

In the Proposing Release, we proposed a compliance date for the final amendments to rule 2a–7 and Form N–MFP that would coordinate compliance with the rule 2a–7 amendments relating to diversification, stress testing, and Form N–MFP, adopted in the 2014 Money Market Fund Adopting Release. We solicited comments on this compliance period in the Proposing Release, and one commenter addressed the issue, suggesting that the date be pushed back so that funds will have at least one full year to comply.[204]

In response to this comment, we are now adopting October 14, 2016 as the compliance date for this final rule. This date will give funds more than a full year to comply, which we agree is appropriate, and will also coordinate with the floating net asset value, liquidity fee, and redemption gate

[199] *See* rule 2a–7(d)(3)(i) (issuer diversification) and rule 2a–7(d)(3)(iii) (diversification rules for demand features and guarantees).

[200] *See* rule 2a–7(d)(3)(i)(A)(*2*). Current rule 2a–7(d)(3)(i)(A)(*2*) could be read to suggest that a tax-exempt money market fund must not invest more than 10 percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee. However, the 2014 money market fund reform amendments provided that as much as 15 percent of the value of securities held in a tax-exempt money market fund's portfolio may be subject to guarantees or demand features from a single institution. The technical amendment incorporates and reflects these 2014 money market fund reform amendments and clarifies that a tax-exempt fund need only comply with this provision with respect to 85 percent of its total assets, and not with respect to all of its total assets.

[201] *See supra* note 161. In the amendments we are adopting today, the three-day safe harbor will not refer to investments in first-tier securities.

[202] *See* rule 2a–7(d)(3)(i)(A).

[203] *See* rule 2a–7(d)(3)(i)(B)(*2*). Current rule 2a–7(d)(3)(i)(B)(*2*) could be read to suggest that a single state fund must not invest more than 10 percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee. However, a single state fund may invest up to 25 percent of its total assets in securities of any single issuer. In addition, the 2014 money market fund reform amendments provided that as much as 15 percent of the value of securities held in a single state fund's portfolio may be subject to guarantees or demand features from a single institution. The technical amendment incorporates and reflects these provisions and clarifies that a single state fund need only comply with this provision with respect to 75 percent of its total assets, and not with respect to all of its total assets.

[204] Schwab Comment Letter.

provisions in the 2014 Money Market Fund Adopting Release. We believe that this compliance date will provide an adequate period of time for money market funds to review and revise their policies and procedures for complying with amended rule 2a–7.[205] Although this compliance date will not coincide with the compliance date for the rule 2a–7 amendments relating to diversification, stress testing, and Form N–MFP adopted in the 2014 Money Market Fund Adopting Release, we believe that coordinating the compliance date of these amendments with the compliance date of the floating net asset value amendments adopted in the 2014 Money Market Fund Adopting Release should reduce costs by consolidating changes to be made to a fund's policies and procedures at that time, while also providing more than a year for implementation of these amendments.

IV. Paperwork Reduction Act Analysis

Certain provisions of this final rule contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[206] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The titles and control numbers for the existing collections of information that are affected by the rule amendments are: (1) ''Rule 2a–7 under the Investment Company Act of 1940, Money market funds'' (OMB Control No. 3235–0268); (2) ''Rule 30b1–7 under the Investment Company Act of 1940, Monthly report for money market funds'' (OMB Control No. 3235–0657); and (3) ''Form N–MFP under the Investment Company Act of 1940, Monthly schedule of portfolio holdings of money market funds'' (OMB Control No. 3235–0657). This final rule contains no new collections of information not present in the proposed rule. The Commission published notice soliciting comments on the collection of information requirements in the Proposing Release and submitted the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. We did not receive any comments on the collection of information requirements.

A. Rule 2a–7

As discussed above, we are removing references to credit ratings in rule 2a–7, which affect five elements of the rule: (i) Determination of whether a security is an eligible security; (ii) determination of whether a security is a first tier security; (iii) credit quality standards for securities with a conditional demand feature; (iv) requirements for monitoring securities for ratings downgrades and other credit events; and (v) stress testing. These amendments involve collections of information, and the respondents to the collections of information are money market funds. This collection of information will be mandatory for money market funds that rely on rule 2a–7, and to the extent that the Commission receives confidential information pursuant to the collection of information, such information will be kept confidential, subject to the provisions of applicable law.[207]

1. Eligible Security Determinations for Money Market Fund Portfolio Securities, Including Securities That Are Subject to a Conditional Demand Feature

Rule 2a–7 limits a money market fund's portfolio investments to ''eligible securities,'' which are currently defined as securities that have received credit ratings from a requisite NRSRO in one of the two highest short-term rating categories, or comparable unrated securities.[208] The rule also restricts money market fund investments to securities that the fund's board, or its delegate, determines present minimal credit risks, and requires a fund to adopt policies and procedures regarding minimal credit risk determinations.[209] As discussed above, we are adopting amendments to rule 2a–7 that will remove any reference to, or requirement of reliance on, credit ratings in rule 2a–7 and modify the credit quality standard to be used in determining the eligibility of a money market fund's portfolio securities, including securities that are subject to a conditional demand feature. Specifically, the amendments will eliminate the current requirement that an eligible security be rated in one of the two highest short-term rating categories by an NRSRO or be of comparable quality, and will combine the current ''first tier'' and ''second tier'' credit risk categories into a single standard, which will be included as part of rule 2a–7's definition of eligible security. A security will be an eligible security only if the money market fund's board of directors (or its delegate) determines that it presents minimal credit risks, which determination will involve consideration of specified credit analysis factors that are listed in the rule.[210] The amendments also require that, with respect to a security (or its guarantee) subject to a conditional demand feature, the underlying security (or its guarantee) must meet the same minimal credit risks standard.[211]

Money market funds are required to have written policies and procedures regarding minimal credit risk determinations.[212] Thus, each money market fund complex will incur one-time costs to comply with these amendments. Specifically, each fund complex will incur costs to review the amended provisions of rule 2a–7 and, as it determines appropriate in light of the amendments, revise its policies and procedures to incorporate the amended credit quality standards to be used in determining the eligibility of a money market fund's portfolio securities. As discussed below, we anticipate that many funds are likely to retain their investment policies as currently required under rule 2a–7, which incorporate NRSRO ratings and which will be permitted under the rule amendments.[213] Some funds, on the other hand, may choose to revise their investment policies to remove references to NRSRO ratings and to incorporate the standards provided in the rule. Even if funds choose to eliminate references to ratings in their investment policies, funds' investment policies may not change substantially, as funds are already required to assess credit quality apart from ratings as part of their minimal credit risk determinations.[214] As we noted in the discussion above, based on staff observations in examinations and prior staff guidance, we believe that most

[205] *See infra* section V.A.2.v.

[206] 44 U.S.C. 3501–3520.

[207] *See, e.g.,* 5 U.S.C. 552 (Exemption 4 of the Freedom of Information Act provides an exemption for ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are ''contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.'' 5 U.S.C. 552(b)(8)).

[208] *See* current rule 2a–7(a)(12).

[209] *See* rules 2a–7(d)(2)(i); 2a–7(j)(1); 38a–1.

[210] Rule 2a–7(a)(11); *see supra* section II.A.

[211] Rule 2a–7(d)(2)(iii)(C); *see supra* section II.B. The proposal included a further finding that the issuer of the demand feature would have a very strong capacity for payment of its financial commitments. See proposed rule 2a–7(d)(2)(iii)(C). As discussed below, because the minimal credit risk standard, as proposed, remains in the amendments we are adopting today, and, because the strong capacity standard, as commenters noted, would be generally superfluous and subsumed by the overriding minimal credit risk determination, we are not revising our burden estimate from the proposal.

[212] *See* rule 2a–7(j)(1).

[213] *See infra* section V.A.

[214] *See* current rule 2a–7(d)(2)(i).

money market fund managers currently take the codified credit analysis factors into account, as appropriate, when they determine that a portfolio security presents minimal credit risks.

The Proposing Release provided the credit analysis factors as guidance, rather than in rule text, and required that the fund make a finding that the issuer of a security had an ''exceptionally strong capacity'' to meet its short-term financial obligations.[215] Because the final rule is merely codifying the analysis that staff believes money market fund managers currently take into account, we do not believe that the burden associated with the final rule will be different from that estimated for the proposed rule. The estimates associated with the analysis for the proposal assumed use of the credit analysis factors presented as guidance, thus providing the fund sufficient information to make the minimal credit risk and ''exceptionally strong capacity'' findings. Therefore, we believe that codifying the factors and eliminating the ''exceptionally strong capacity'' finding will have no effect on the burden estimates, because use of the factors was already assumed in those estimates and the ''exceptionally strong capacity'' finding was assumed to be built into that analysis, creating no additional burden. Similarly, the proposal included a further finding that the issuer of a conditional demand feature would have a ''very strong capacity'' for payment of its financial commitments.[216] As with the ''exceptionally strong capacity'' finding, this ''very strong capacity'' finding was assumed to be built into the credit analysis, and we do not believe that removal of this finding will change the estimated burden associated with this requirement.

While we cannot predict with precision the extent to which funds may revise their policies and procedures for determining minimal credit risk, we estimate that each money market fund complex on average will incur a one-time burden of 9 hours,[217] at a cost of $2,838,[218] to review and revise, as appropriate, its policies and procedures. Using an estimate of 103 money market fund complexes,[219] we estimate that money market funds would incur, in aggregate, a total one-time burden of 927 hours,[220] at a cost of $292,314,[221] to comply with the amended provisions of rule 2a–7 modifying the credit quality standard to be used in determining the eligibility of a fund's portfolio securities. Amortizing these hourly and cost burdens over three years results in an average annual increased burden for all money market fund complexes of 309 hours [222] at a cost of $97,438.[223] We do not believe that funds would newly implement or change any annual review of policies and procedures that they currently perform as a result of the adopted amendments. There will be no external costs associated with this collection of information.

2. Monitoring Minimal Credit Risks

Rule 2a–7 currently requires a money market fund board (or its delegate) to promptly reassess whether a security that has been downgraded by an NRSRO continues to present minimal credit risks.[224] As discussed above, we are adopting as proposed amendments to rule 2a–7 that will eliminate the current use of credit ratings in the rule's downgrade and default provisions. Rule 2a–7 instead will require a money market fund to adopt written procedures requiring the fund adviser, or any person to whom the fund's board of directors has delegated portfolio management responsibilities, to provide ongoing review of each portfolio security to determine that the issuer continues to present minimal credit risks.[225] To comply with these amendments, a fund complex will incur one-time costs to review the amended provisions of rule 2a–7 and adopt policies and procedures providing for ongoing review to determine whether a money market fund's portfolio securities continue to present minimal credit risks. Money market funds are not currently required to maintain policies and procedures that specifically address ongoing minimal credit risk monitoring. Although we understand, based on staff experience, that most money market funds currently monitor portfolio securities for minimal credit risk on an ongoing basis,[226] we are assuming that all money market fund complexes would need to adopt new written policies and procedures to provide for this ongoing review in order to comply with the amended provisions of rule 2a–7.

We estimate that each money market fund complex on average would incur a one-time burden of 5 hours,[227] at a cost of $3,619,[228] to adopt policies and

[215] *See* proposed rule 2a–7(a)(11).

[216] *See* proposed rule 2a–7(d)(2)(iii)(C).

[217] We estimate that the lower range of the one-time hour burden for a money market fund complex to review and revise, as appropriate, its policies and procedures for determining minimal credit risk would be 6 hours (4 hours by a compliance manager, and 2 hours by an attorney). We estimate that the upper range of the one-time hour burden for a money market fund complex to review and revise, as appropriate, its policies and procedures for determining minimal credit risk would be 12 hours (8 hours by a compliance manager, and 4 hours by an attorney). For purposes of our estimates for the PRA analysis, we have taken the mid-point of this range (mid-point of 6 hours and 12 hours = 9 hours (6 hours by a compliance manager, and 3 hours by an attorney)).

[218] This estimate is based on the following calculation: (6 hours (mid-point of 4 hours and 8 hours incurred by a compliance manager) × $283 (rate for a compliance manager) = $1,698) + (3 hours (mid-point of 2 hours and 4 hours incurred by an attorney) × $380 (rate for an attorney) = $1,140) = $2,838. All estimated wage figures discussed here and throughout this release are based on published rates that have been taken from SIFMA's Management & Professional Earnings in the Securities Industry 2013, *available at http://www.sifma.org/research/item.aspx?id=8589940603,* modified by Commission staff to account for an 1800 hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[219] Based on data from Form N–MFP and iMoneyNet as of April 30, 2015. The Proposing Release PRA statement was based on data as of February 28, 2014. We have updated the estimates used in this final PRA to reflect more current data as of April 30, 2015.

[220] This estimate is based on the following calculation: 9 hours × 103 money market fund complexes = 927 hours.

[221] This estimate is based on the following calculation: $2,838 × 103 money market fund complexes = $292,314.

[222] This estimate is based on the following calculation: 927 hours ÷ 3 years = 309 hours.

[223] This estimate is based on the following calculation: $292,314 ÷ 3 years = $97,438.

[224] *See* current rule 2a–7(f)(1)(i).

[225] Rule 2a–7(g)(3); *see supra* section II.C.

[226] *See supra* note 116 and accompanying text.

[227] These hour estimates assume that the process of adopting written policies and procedures will consist primarily of transcribing and reviewing any existing policies and procedures that funds currently use when monitoring minimal credit risk on an ongoing basis. Because we cannot predict the extent to which funds may need to develop these policies and procedures to comply with the amended provisions of rule 2a–7, or may need to transcribe and review any existing policies and procedures, we have taken, as an estimated average burden, the mid-point of a range of hour estimates discussed below in the following paragraph for purposes of our PRA analysis.

We estimate that the lower range of the one-time hour burden for a money market fund complex to adopt policies and procedures for ongoing review to determine whether a money market fund's portfolio securities continue to present minimal credit risks would be 3.5 hours (2 hours by a compliance manager and 1 hour by an attorney to develop and review policies and procedures (or transcribe and review pre-existing policies and procedures) + 0.5 hours for the fund's board to adopt the policies and procedures). We estimate that the upper range of the one-time hour burden for a money market fund complex to adopt such policies and procedures would be 6.5 hours (4 hours by a compliance manager and 2 hours by an attorney to develop and review policies and procedures (or transcribe and review pre-existing policies and procedures) + 0.5 hours for the fund's board to adopt the policies and procedures). The mid-point of the lower range estimate and the upper range estimate is 5 hours.

[228] This estimate is based on the following calculation: (3 hours (mid-point of 2 hours and 4 hours incurred by a compliance manager) × $283 (rate for a compliance manager) = $849) + (1.5 hours (mid-point of 1 hour and 2 hours incurred by an attorney) × $380 (rate for an attorney) = $570) + (0.5

Continued

procedures for ongoing review of minimal credit risks. Using an estimate of 103 money market fund complexes,[229] we estimate that money market funds will incur, in aggregate, a total one-time burden of 515 hours,[230] at a cost of $372,757,[231] to comply with the amended provisions of rule 2a–7. Amortizing these hourly and cost burdens over three years results in an average annual increased burden for all money market fund complexes of 172 hours[232] at a cost of $124,252.[233] There will be no external costs associated with this collection of information.

3. Stress Testing

Rule 2a–7 currently requires money market funds to adopt written stress testing procedures and to perform stress tests according to these procedures on a periodic basis.[234] We are adopting as proposed amendments to rule 2a–7 that would replace the reference to ratings downgrades in the rule's stress testing provisions with a hypothetical event that is designed to have a similar impact on a money market fund's portfolio.[235] The amendment is designed to retain a similar standard for stress testing as under current rule 2a–7. Specifically, while rule 2a–7 currently requires a fund to stress test its portfolio based on certain hypothetical events, including a downgrade of portfolio securities, the adopted amendment will require a fund to stress test for an event indicating or evidencing credit deterioration in a portfolio security, and will include a downgrade or default as examples of that type of event. As discussed below, we recognize that a money market fund could use its current policies and procedures to comply with the amendment, and could continue to use credit quality evaluations prepared by outside sources, including NRSRO downgrades, in stress tests.[236] Because the rule currently requires testing for a downgrade as a hypothetical event, we do not believe that funds will take any additional time to review and revise their policies and procedures with respect to the continued use of downgrades in stress testing. Accordingly, we do not expect the amendments will significantly change current collection of information burden estimates for rule 2a–7.[237]

Total Burden for Rule 2a–7. The current approved collection of information for rule 2a–7 is 632,244 annual aggregate hours. The aggregate additional burden hours associated with the adopted amendments to rule 2a–7 increase the burden estimate to 632,725 hours annually for all funds.[238]

B. Rule 30b1–7 and Form N–MFP

Rule 30b1–7 requires money market funds to file a monthly report electronically on Form N–MFP within five business days after the end of each month. The information required by the form must be data–tagged in XML format and filed through EDGAR. Preparing Form N–MFP is a collection of information under the PRA.[239] The respondents to this collection of information are money market funds. A fund must comply with the requirement to prepare Form N–MFP in order to hold itself out to investors as a money market fund or the equivalent of a money market fund in reliance on rule 2a–7. This collection of information is mandatory for money market funds that rely on rule 2a–7, and responses to the disclosure requirements of Form N–MFP are not kept confidential.

Money market funds are currently required to disclose on Form N–MFP, with respect to each portfolio security, whether the security is a first or second tier security or is unrated, as well as the ''designated NRSROs'' for each security (and for each demand feature, guarantee, or credit enhancement).[240] As discussed above, the adopted amendments will require that each money market fund disclose on Form N–MFP, for each portfolio security, any rating assigned by an NRSRO that the fund's board of directors (or its delegate) considered in determining that the security presents minimal credit risks (together with the name of the assigning NRSRO).[241] Because we believe that the majority of funds will continue to refer to credit ratings in making minimal credit risk determinations, we do not believe the amendments to Form N–MFP will result in material changes to the ongoing burden for most funds.[242] However, we believe that funds will incur one-time costs to re-program their filing software to reflect the new requirements of Form N–MFP.

We estimate that each fund will incur a one-time burden of 3 hours,[243] at a cost of $943 per fund,[244] to comply with the amended disclosure requirements of Form N–MFP. Using an estimate of 537 money market funds that are required to file reports on Form N–MFP,[245] we estimate that money market funds will incur, in the aggregate, a total one-time burden of 1,611 hours,[246] at a cost of $506,391,[247] to comply with the amended disclosure requirements of Form N–MFP. Amortizing these hourly and cost burdens over three years results in an average annual increased burden for all money market funds of 537 hours[248] at a cost of $168,797.[249]

hours × $4,400 per hour for a board of 8 directors = $2,200) = $3,619. The staff previously estimated in 2009 that the average cost of board of director time was $4,000 per hour for the board as a whole, based on information received from funds and their counsel. Adjusting for inflation, the staff estimates that the current average cost of board of director time is approximately $4,400 per hour.

[229] Based on data from Form N–MFP and iMoneyNet as of April 30, 2015. The Proposing Release PRA statement was based on data as of February 28, 2014. We have updated the estimates used in this final PRA to reflect more current data as of April 30, 2015.

[230] This estimate is based on the following calculation: 5 hours × 103 money market fund complexes = 515 hours.

[231] This estimate is based on the following calculation: $3,619 × 103 money market fund complexes = $372,757.

[232] This estimate is based on the following calculation: 515 hours ÷ 3 years = 172 hours.

[233] This estimate is based on the following calculation: $372,757 ÷ 3 years = $124,252.

[234] *See* current rule 2a–7(g)(8).

[235] Rule 2a–7(g)(8)(i)(B); *see supra* section II.D.

[236] *See infra* text surrounding note 288.

[237] *See id.*

[238] This estimate is based on the following calculation: 632,244 hours (current approved burden) + 309 hours (eligible security determinations for money market fund portfolio securities, including securities that are subject to a conditional demand feature) + 172 hours (monitoring minimal credit risks) = 632,725 hours.

[239] For purposes of the PRA analysis, the current burden associated with the requirements of rule 30b1–7 is included in the collection of information requirements of Form N–MFP.

[240] *See* Form N–MFP Items C.9, C.10, C.14.b–c, C.15.b–c, C.16.c–d.

[241] *See* Form N–MFP Items C.9, C.10, C.14.e, C.15.c, C.16.d; *supra* section II.E. The proposal also would have required disclosure of any rating assigned by an NRSRO to whose services the fund or its adviser subscribes (together with the name of the assigning NRSRO). Because the estimated burden assigned to the form amendments is only the one-time re-programming cost, which will not be affected by the change from the proposal to the adopting release, the burden estimate above has not been reduced to reflect the removal of this requirement.

[242] *See supra* note 114.

[243] We estimate that the one-time hour burden for a money market fund to re-program its Form N–MFP filing software to reflect the new requirements of Form N–MFP would be 3 hours (1 hour by a senior systems analyst, 1 hour by a senior programmer, and 1 hour by an attorney).

[244] This estimate is based on the following calculation: (1 hour × $260 (rate for a senior systems analyst) = $260) + (1 hour × $303 (rate for a senior programmer) = $303) + (1 hour × $380 (rate for an attorney) = $380) = $943.

[245] This estimate is based on a review of reports on Form N–MFP filed with the Commission for the month ended April 30, 2015. The Proposing Release PRA statement was based on data as of February 28, 2014. We have updated the estimates used in this final PRA to reflect more current data as of April 30, 2015.

[246] This estimate is based on the following calculation: 3 hours × 537 money market funds = 1,611 hours.

[247] This estimate is based on the following calculation: $943 × 537 money market funds = $506,391.

[248] This estimate is based on the following calculation: 1,611 hours ÷ 3 years = 537 hours.

[249] This estimate is based on the following calculation: $506,391 ÷ 3 years = $168,797.

There will be no external costs associated with complying with the amended disclosure requirements of Form N–MFP.[250]

The current approved collection of information for Form N–MFP is 83,412 annual aggregate hours and $4,780,736 in external costs. The aggregate additional hours associated with the amendments to Form N–MFP increase the burden estimate to 83,949 hours annually for all funds.[251] Because we estimate no external costs associated with complying with the amended Form N–MFP disclosure requirements, the annual external costs associated with the Form N–MFP collection of information would remain $4,780,736.

V. Economic Analysis

As discussed above, we are adopting amendments to rule 2a–7 and Form N–MFP under the Investment Company Act to implement Section 939A of the Dodd-Frank Act, which requires the Commission, to ''review any regulation issued by [the Commission] that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and any references to or requirements in such regulations regarding credit ratings.'' [252] That section further provides that the Commission shall ''modify any such regulations identified by the review . . . to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as [the Commission] shall determine as appropriate for such regulations.'' [253]

We are also amending rule 2a–7 to eliminate the exclusion to the issuer diversification requirement for securities subject to a guarantee issued by a non-controlled person. As a result, most non-government securities subject to a guarantee (including an asset-backed security with a presumed sponsor guarantee) will have to comply with both the 5 percent diversification requirement for issuers (including SPE issuers) and the 10 percent diversification requirement for guarantors and providers of demand features.[254]

The economic baseline for our economic analysis is the regulatory framework as it exists immediately before the adoption of these amendments, that is, the regulatory framework after the amendments to rule 2a–7 were adopted in the 2014 Money Market Fund Adopting Release. As discussed in more detail below, that release makes material changes to rule 2a–7 that we believe may result in material changes to the money market fund industry. Because there is an extended compliance period for those amendments, and we are not aware of any funds that are already complying with all of the amendments, we do not know how market participants, including money market fund managers selecting portfolio securities, may react as a result. Thus, we are not able to provide quantitative estimates for the incremental effects of this rule's amendments. For example, under the baseline, institutional prime money market funds have floating NAVs and maintain the distinction between first and second tier securities. We are unable to estimate how institutional prime funds will choose to allocate their portfolios among first and second tier securities under our amendments when they have floating NAVs and no commenters provided any estimates. We discuss potential economic effects of complying with the amendments to the rule, but without knowing how fund portfolio allocations may change we cannot quantify these potential effects. For the remainder of our economic analysis, we discuss separately the rule 2a–7 amendments to remove and replace ratings references, Form N–MFP amendments, and the amendments to rule 2a–7's issuer diversification provision.

A. Rule 2a–7: Ratings Removal and Related Amendments

The amendments to rule 2a–7 will affect five elements of the current rule. These are: (i) Determination of whether a security is an eligible security; (ii) determination of whether a security is a first tier security; (iii) credit quality standards for securities with a conditional demand feature; (iv) requirements for monitoring securities for ratings downgrades and other credit events; and (v) stress testing.[255] The amendments are designed to remove any requirement of reliance on credit ratings and to substitute standards of creditworthiness that we believe are appropriate.

1. Economic Baseline

As discussed above, the current credit risk limitations in rule 2a–7 require that money market funds undertake a two-step analysis before acquiring a portfolio security.[256] First, funds must determine whether a security has received credit ratings from the ''requisite NRSROs'' in one of the two highest short-term rating categories or, if the security is unrated, determine that it is of comparable quality. A money market fund must currently invest at least 97 percent of its portfolio in first tier securities, which are eligible securities that have received a rating from the requisite NRSROs in the highest short-term rating category for debt obligations, or unrated securities of comparable quality. Second, the fund's board of directors (or its delegate) must determine that the security presents minimal credit risks, based on factors pertaining to credit quality in addition to any rating assigned to such securities by a designated NRSRO. In addition, under current rule 2a–7, a security subject to a conditional demand feature may be determined to be an eligible security or a first tier security if, among other conditions: (i) The conditional demand feature is an eligible security or a first tier security, and (ii) the underlying security (or its guarantee) has received either a short-term rating or a long-term

[250] We understand that a certain percentage of money market funds that report information on Form N–MFP license a software solution from a third party that is used to assist the funds to prepare and file the required information, and that a certain percentage of money market funds retain the services of a third party to provide data aggregation and validation services as part of the preparation and filing of reports on Form N–MFP. *See* 2014 Money Market Fund Adopting Release, *supra* note 6, at text accompanying nn.2334–2336.

We recognize that, in general, software service providers that modify their software may incur additional external costs, which they may pass on to money market funds in the form of higher annual licensing fees. *See id.* at text accompanying n. 2340. However, on account of the relatively low per-fund one-time hour burden that we estimate in connection with the amended disclosure requirements of Form N–MFP, we expect that any increase in licensing fees will be insignificant, and thus we estimate that there are no external costs associated with the amended Form N–MFP disclosure requirements.

[251] This estimate is based on the following calculation: 83,412 hours (current approved burden) + 537 hours = 83,949 hours.

[252] Public Law 111–203, Sec. 939A(a)(1)–(2). Section 939A of the Dodd-Frank Act applies to all federal agencies.

[253] Public Law 111–203, Sec. 939A(b). Section 939A of the Dodd Frank Act provides that agencies shall seek to establish, to the extent feasible, uniform standards of creditworthiness, taking into account the entities the agencies regulate and the purposes for which those entities would rely on such standards.

[254] As discussed above, the asset-backed security presumed guarantee is counted toward the 10% limitation on guarantees and demand features provided by the same institution. Up to 15% of the value of securities held in a tax-exempt money market fund's portfolio may be subject to guarantees or demand features from a single institution, and up to 25% of the value of securities held in a single state money market fund portfolio may be issued by any single issuer. *See supra* section II.F.

[255] The final rule will also make conforming amendments to rule 2a–7's recordkeeping and reporting requirements. *See* rule 2a–7(h)(3).

[256] *See supra* note 25 and accompanying and preceding text. The credit risk limitations of current rule 2a–7, as well as the other specific provisions of current rule 2a–7 that reference credit ratings, were not changed by the adoption of the amendments discussed in the 2014 Money Market Fund Adopting Release.

rating, as the case may be, within the highest two categories from the requisite NRSROs or is a comparable unrated security.

Based on Form N–MFP filings from April 30, 2015, the Commission estimates that 98.26 percent of aggregate money market fund assets are in first tier securities, 0.14 percent of aggregate money market fund assets are in second tier securities, and 1.6 percent of aggregate money market fund assets are in unrated securities. Among the 537 funds that filed Form N–MFP that month, 412 funds reported that they held only first tier securities, 477 funds reported that they held no second tier securities, and 447 funds reported that they held no unrated securities. In addition, less than 4 percent of all money market funds held the maximum amount of second tier securities permitted under current rule 2a–7. Using additional data from the Federal Reserve Board, we estimate that money market fund holdings of second tier commercial paper represent 0.9 percent of the outstanding issues of second tier commercial paper.[257]

Securities subject to a conditional demand feature are typically variable rate demand notes issued by municipalities that have a conditional demand feature issued by a bank. Based on Form N–MFP filings as of April 30, 2015, the Commission estimates that 9.3 percent of money market fund assets are invested in securities with a demand feature. We estimate further that securities with conditional demand features represent 3.9 percent of securities with demand features and 0.4 percent of all securities held by money market funds. We further estimate that 77 percent of those underlying securities (or their issuers or guarantors) have received an NRSRO rating in the second-highest long-term rating category, while 23 percent have received an NRSRO rating in the highest long-term category.[258]

Rule 2a–7 currently requires a money market fund board (or its delegate) to promptly reassess whether a security that has been downgraded by an NRSRO continues to present minimal credit risks.[259] We understand that downgrades are rare among money market fund portfolio securities.[260] As discussed above, we believe, based on staff experience, that most, if not all, money market funds currently monitor portfolio securities for minimal credit risk on an ongoing basis.[261] We assume for purposes of this analysis, however, that these funds do not have written policies and procedures that specifically address ongoing minimal credit risk monitoring.

Finally, rule 2a–7 currently requires money market funds to stress test their portfolios.[262] Under the rule, a money market fund's board of directors must adopt written procedures to test the ability of a fund to maintain at least 10 percent of its total assets in weekly liquid assets and minimize principal volatility (and, in the case of a money market fund using the amortized cost method of valuation or penny rounding method of pricing, the fund's ability to maintain a stable price per share) based on certain hypothetical events, including a downgrade or default of particular portfolio security positions, each representing various portions of the fund's portfolio. We believe that funds stress test at least monthly.[263]

2. Economic Analysis

The amendments to rule 2a–7 will assist in further implementing Section 939A of the Dodd-Frank Act. They are designed to establish credit quality standards similar to those currently in the rule. By replacing references to credit ratings, the amendments will, particularly when considered together with other amendments the Commission has adopted that remove credit ratings references in other rules and forms under the federal securities laws, contribute to the Dodd-Frank Act goals of reducing perceived government endorsement of NRSROs and over-reliance on credit ratings by market participants.[264]

i. Eligible Securities

Under the final rule, a money market fund board (or its delegate) will be required to determine minimal credit risk by applying certain credit quality factors. Because the application of these factors may differ among fund boards and their advisers, the possible range of securities available for investment may differ from that under the current rule. However, inclusion of the credit analysis factors in the rule, as opposed to the more subjective standard in the proposed rule, should limit this range by helping to make compliance more uniform across money market funds. The final rule also clarifies that, when making minimal credit risk determinations, the fund's board (or its delegate) should consider the contribution of the security to aggregate credit risks and not just evaluate the security in isolation. In particular, a potential addition to the portfolio that has low risk by itself might increase portfolio risk to unacceptable levels if it is sufficiently correlated with the overall portfolio. For example, a security that has a very low probability of default might be inappropriate for the fund if that security is likely to default at the same time as other securities in the fund's portfolio.

In addition, we believe that fund managers are generally unlikely to increase exposure of their funds to riskier second tier securities in light of both current market practices and amendments to rule 2a–7 adopted in the 2014 Money Market Fund Adopting Release.[265] First, we anticipate that many money market funds, particularly those that are themselves rated, are likely to retain their current investment policies, which incorporate NRSRO ratings and would be permitted under the rule amendments. Indeed, we understand that many funds today have investment policies that are more restrictive than rule 2a–7 requires, including policies that, for example, limit investments to first tier securities.[266] As a result, we do not

[257] This data is based on the Federal Reserve Board's statistics on outstanding volume of commercial paper as of April 30, 2015. *See* Commercial Paper Outstanding by special categories, *available at http://www.federalreserve.gov/releases/cp/outstanding.htm.* The Proposing Release used earlier data from this Web site. We have updated the figures used in this final rule analysis to reflect more current data as of April 30, 2015.

[258] An underlying long-term security would become a short-term security when its remaining time to maturity is less than 397 days. *See supra* note 94. These estimates are based on a random sample of 10% of the securities that have demand features that were reported in April 2015 Form N–MFP filings.

[259] *See supra* note 111 and accompanying text.

[260] *See, e.g.,* Response to Questions Posed by Commissioners Aguilar, Paredes, and Gallagher, a report by staff of the Division of Risk, Strategy, and Financial Innovation (Nov. 30, 2012), *available at http://www.sec.gov/news/studies/2012/money-market-funds-memo-2012.pdf,* at 14–16 (discussing events such as credit rating downgrades that have led money market fund sponsors to choose to provide support to the fund or to seek staff no-action assurances permitting such support). Staff continues to monitor credit rating downgrades among portfolio securities and other issues concerning money market funds through the monthly information provided on Form N–MFP.

[261] *See supra* note 116 and accompanying text.

[262] Current rule 2a–7(g)(8).

[263] *See* 2014 Money Market Fund Adopting Release, *supra* note 6, at section IV.A.5.

[264] *See* 2014 Money Market Fund Adopting Release, *supra* note 6, at n.202 and accompanying text.

[265] *See, e.g.,* 2010 Money Market Fund Adopting Release, *supra* note 84, at section II.A.1 (discussing tradeoff between risk and yield for second tier securities). We do not believe fund managers are likely to invest in securities rated below the second highest short-term rating category of an NRSRO (or comparable unrated securities) because those securities would not satisfy the standard for eligible securities that the security present minimal credit risks to the fund. See discussion *infra* section V.2.ii.

[266] As of February 2014, 179 money market funds, representing approximately 59% of all money

expect that these money market funds will change current policies and procedures they have adopted that limit their investments to those assigned the highest NRSRO ratings. We also noted above that according to Form N–MFP filings from April 30, 2015, fund assets in second tier securities represented 0.14 percent of total money market fund assets and that 18 funds (out of a total of 537) currently hold the maximum amount of second tier securities permissible under current rule 2a–7. We do not anticipate that money market funds representing the significant majority of assets under management are likely to increase substantially their investments in riskier securities as a result of our rule because these funds do not currently invest in second tier securities to the extent permitted now.

Second, as discussed above, the 2014 amendments to rule 2a–7 should reduce the potential that funds will invest in riskier securities. Under the 2014 reforms, money market funds other than government money market funds are allowed to impose fees and gates, while institutional prime money market funds will be required to transact at a floating NAV.[267] We believe that those reforms may encourage non-government funds to more closely monitor fund liquidity and hold more liquid securities to increase the level of daily and weekly liquid assets in the fund to lessen the likelihood of needing to impose a fee or gate. These newly adopted money market fund reforms also require each fund to disclose daily its market value rounded to four decimal points (or an equivalent level of accuracy for a fund using a share price other than $1.0000[268]) and to depict historical information about its daily NAV for the previous six months. These disclosures may increase informational efficiency by allowing investors to see variations in share value that are not apparent in the current share price and compare the volatility of share values among funds over time. As a result, to the extent that institutional investors continue to value price stability and can see these variations in share value, we believe that institutional prime funds will endeavor to reduce NAV fluctuations.

Third, under the final rule funds are permitted to refer to credit ratings while making their minimal credit risk determinations. A credit rating in the top short-term credit quality category by an NRSRO might help support the fund's determination that the security is an eligible security, while a credit rating in a lower category might not support the same determination. Thus, fund managers may have to perform additional credit research and analysis on the issuers of second tier securities in order to determine whether the investment is permitted under the adopted amendments. We believe that many fund managers may not wish to invest in the additional resources necessary to make this assessment with respect to second tier securities unless the fund believes that the expected risk-adjusted return of doing so would be greater than the expected costs. Thus, the demand for securities rated second tier will likely be lower.

The final rule would eliminate the current limitations on fund investments in second tier securities.[269] As a result, funds may increase their holdings of second tier securities despite the considerations discussed above. Commenters on the 2014 Proposing Release were mixed in their opinions as to whether the proposed changes would have this effect. Some believed that the standard proposed would appropriately limit funds' purchases of riskier securities,[270] while others thought that it would not.[271] The Commission believes that the changes to the proposed standard made in this final rule should reduce the likelihood of increased credit risk because funds will have to perform a rigorous analysis using the codified factors and consider a security's potential addition to the aggregate risk of the portfolio. We also believe that, to the extent money market funds increase investments in riskier securities, institutional prime funds are more likely than stable-NAV funds to do so because stable-NAV funds will need to maintain stability to avoid falling below $1 per share. Although some shareholders may continue to value price stability more than yield from institutional prime funds, if enough shareholders value yield more than price stability, institutional prime funds will be incentivized to increase their investments in second tier securities. Allocative efficiency may improve if such preferences result in relatively riskier securities moving from the portfolios of stable NAV funds to the portfolios of institutional prime funds, allowing money market fund shareholders to choose funds that better match their preferences for risk and return. We do not, however, know whether institutional prime funds with floating NAVs, which will have to compete with other money market funds, including stable-NAV government funds, will focus on maintaining comparatively stable NAVs or on generating comparatively high yields.

If we were to assume that money market funds increase their relative holdings of second tier securities with the adoption of the amendments, the effects on competition and capital formation would depend, in part, on whether the increased demand for second tier investments comes from new assets that investors bring to money market funds, which are then disproportionately invested in second tier securities, or whether the increased second tier investments would come from a shift of existing money market fund assets from first tier securities to second tier securities. If the former, the effects on competition between issuers of first and second tier securities might be small, and capital formation might improve in the second tier market as the size of the new investment increases. If the latter, an increase in capital formation from issuers of second tier securities may result in a corresponding decrease in capital formation from issuers of first tier securities, which, in turn, may lead to increased competition between issuers of first and second tier securities. We are unable to estimate these effects because we do not know how shareholders and funds will respond to the elimination of the current limitation on fund investments in second tier securities and no commenters provided any estimates.

The amendments to Form N–MFP, which are discussed in more detail below, may make it easier for fund shareholders and other third parties to

market fund assets (88% of all institutional money market fund assets) were themselves rated by credit rating agencies, and approximately 98% of rated money market funds were rated in the top credit quality category by an NRSRO. For a money market fund to receive this top rating, credit rating agencies generally require the fund to limit its portfolio securities to first tier securities. *See, e.g.,* FitchRatings, Global Money Market Fund Rating Criteria (Mar. 26, 2013), *available at http://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=704145* (registration required) (stating that its ''AAAmmf'' top rating requires that a money market fund have 100% of its portfolio securities rated first tier (''F1+'' or ''F1'')); Standard & Poor's, Methodology: Principal Stability Fund Ratings (Jun. 8, 2011), *available at https://www.sbafla.com/prime/portals/8/RiskMan_Oversight/FundProfile/201106_SPPrincipalStabilityFundRatingsMethodology.pdf* (stating that ''[i]n order for a fund to be eligible for an investment-grade rating, all investments should carry a Standard & Poor's short-term rating of 'A–1+' or 'A–1' (or SP–1+ or SP–1), or Standard & Poor's will consider all of the investments to be of equivalent credit quality'').

[267] Rule 2a–7(a)(14) defines a government money market fund as a money market fund that invests 99.5% or more of its total assets in cash, government securities, and/or repurchase agreements that are collateralized fully.

[268] Rule 2a–7(h)(10)(iii).

[269] *See supra* note 30 and accompanying text and note 62.

[270] *See, e.g.,* Invesco Comment Letter; MFDF Comment Letter.

[271] *See, e.g.,* BlackRock Comment Letter; CFA Comment Letter; Vanguard Comment Letter.

monitor the level of credit risk borne by funds that use credit ratings. As a result, this increased transparency may reduce the likelihood that fund boards (or managers) increase significantly fund investments in second tier securities. We are requiring each money market fund to disclose on Form N–MFP those NRSRO ratings the fund's board (or its delegate) has considered, if any, in determining whether a security presents minimal credit risks.[272] The disclosure to investors of these ratings may have the effect of reducing the demand for funds that assume a level of risk that is different from that which is desired by their shareholders.

As discussed above, the vast majority of money market funds held no second tier securities on April 30, 2015, and few funds held the maximum permissible 3 percent. We therefore believe that a reduction or even elimination of second tier securities from the money market fund industry's aggregate portfolio will not likely have a material effect on issuers of either first or second tier securities. However, removing second tier securities from the portfolios of individual money market funds may negatively affect yields in certain funds, especially during periods when second tier securities offer substantially higher yields than the yields offered by first tier securities.

We believe that most money market funds are not likely to change their current investment policies in response to the adopted amendments. Nevertheless, we recognize that some fund boards might choose not to consider NRSRO ratings in their credit assessments or as noted above, fewer securities may be rated. If, as a result, the demand for NRSRO ratings were significantly reduced, NRSROs might invest less in producing quality ratings. The importance attached to NRSRO ratings currently as a result of the history of their use in regulatory requirements may impart franchise value to the NRSRO rating business. By eliminating references to NRSRO ratings in federal regulations, Section 939A of the Dodd-Frank Act could reduce these franchise values and reduce NRSROs' incentives to produce credible and reliable ratings. If the quality and accuracy of NRSRO ratings were adversely affected, yet the ratings continued to be used by enough other parties, the capital allocation process and economic efficiency might be impaired as investors make investment decisions using lower-quality information.

Conversely, the removal of ratings requirements in Commission rules may enhance incentives for NRSROs to produce credible and reliable ratings, in order to remain competitive, maintain revenue, and protect franchise value. In addition, certain industry commenters on the 2014 Proposing Release expressed support for the continued use of ratings as a tool in determining creditworthiness.[273] Thus, we believe that a large majority of institutional money market funds will continue to consider credit ratings in their evaluation of securities, at least as a screening measure, and will continue to be rated themselves. To the extent that funds continue to use ratings, which we believe most will, investors would be able to determine the ratings, and the extent to which funds are considering those ratings, of fund portfolio securities from the disclosures required under the amendments to Form N–MFP. Consequently, we believe it is unlikely that the capital allocation process and economic efficiency will be materially impaired.

The Proposing Release provided the credit analysis factors as guidance, rather than in rule text, and required that the fund make a finding that the issuer of a security had an ''exceptionally strong capacity'' to meet its short-term financial obligations.[274] Because the final rule is largely codifying the analysis that the staff believes money market fund managers currently take into account, as discussed above,[275] the economic analysis for this final rule is similar to that of the proposed rule. In this adopting release, we have incorporated into the rule credit analysis factors, as well as providing asset-specific factors as guidance. As we noted in the discussion above, based on staff observations in examinations and prior staff guidance, we believe that most money market fund managers currently take these factors into account, as appropriate, when they determine that a portfolio security presents minimal credit risks. Moreover, the factors listed in the rule are to be considered ''to the extent appropriate'' [276] and are not intended to rigidly define the parameters of an appropriate credit quality assessment; that is for the fund's board and its adviser to determine with respect to each particular security and the fund's overall risk profile. Thus, we do not anticipate that the rule's inclusion of factors that a fund manager should consider will significantly change the process for evaluating credit quality or that consideration of the factors listed in the rule and discussed in the release will significantly affect the holdings in money market fund portfolios. For these reasons, we continue to believe that the factors will not have a material effect on efficiency, competition, or capital formation. Funds may, however, consider whether their policies and procedures for credit quality assessment should be revised in light of the factors as codified, and, as a result, may need to update them.

Finally, we note that Commission staff engages in ongoing monitoring of money market fund risks and operations, through review of Form N–MFP filings, examinations, and other outreach efforts, and provides regular updates to the Commission about relevant issues. As part of these ongoing monitoring efforts, the staff also will undertake to study and report to the Commission no later than 3 years following the adoption of these amendments to rule 2a–7 and Form N–MFP the impact of these amendments on capital formation and investor protection. The study will include, but not be limited to, a review of any changes in the risk profile of money market fund portfolio security investments during the period studied and whether any additional measures, including further investor protections, may be necessary.

ii. Conditional Demand Feature

The final rule provides the same credit quality standard for securities with a conditional demand feature as for other portfolio securities. The fund's board (or its delegate) must determine that a security with a conditional demand feature presents minimal credit risks to the fund. We do not believe that fund managers will likely interpret this standard in a manner that results in funds increasing the risk profiles of their underlying securities. First, as discussed above, we do not believe that securities that are rated by NRSROs in the third-highest category for long-term ratings (or comparable unrated securities) would satisfy the standard that underlying securities present minimal credit risks to the fund. We also note that funds currently can invest exclusively in underlying securities rated in the second-highest category if the instrument meets the other

[272] Because the fund may only choose to consider one or two ratings, the specific rating or ratings disclosed by a fund on Form N–MFP may not always be indicative of the overall universe of ratings for that security. However, investors who wish to have a larger sample may choose to subscribe to other ratings themselves.

[273] *See* IDC Comment Letter; Invesco Comment Letter; MFDF Comment Letter.

[274] *See* proposed rule 2a–7(a)(11).

[275] *See supra* section IV.A.1.

[276] Rule 2a–7(a)(11).

conditions for eligibility.[277] We estimate that most underlying securities held by money market funds (77 percent) are rated in the second-highest long-term category, and a smaller portion (23 percent) are rated in the highest long-term category.[278] For these reasons, we do not currently anticipate that funds are likely to increase the portion of their underlying securities that are rated in the second-highest long-term category as a result of the adopted amendments since these funds do not currently invest in these securities to the extent permitted under existing rules.

For the reasons explained above, and because the minimal credit risk standard is largely the same as what we understand that many funds apply now, and also the same as will be required for all eligible portfolio securities, we believe that our rule will result in only small changes to the practices of funds with respect to investments in securities with conditional demand features. In addition, the elimination of the ''very strong capacity'' standard presented in the proposal should result in little or no change to this analysis, as discussed above.[279] Thus, we continue to believe that the conditional demand feature provision will result in little or no effect on efficiency, competition, or capital formation for either funds or issuers.

As discussed above, we believe that the amendments to rule 2a–7 will cause money market fund complexes to incur certain costs in reviewing and updating their policies and procedures. Specifically, each complex is likely to review the amendments to the credit quality standards in rule 2a–7 and, as it determines appropriate in light of the amendments, revise its policies and procedures to incorporate the amended credit quality evaluation method to be used in determining the eligibility of a money market fund's portfolio securities, including securities that are subject to a conditional demand feature.

iii. Ongoing Monitoring of Minimal Credit Risk

The Commission is adopting the ongoing monitoring provision as proposed. As discussed above, we believe that the requirement that each money market fund adopt written policies and procedures for ongoing monitoring of minimal credit risks for each portfolio security essentially codifies the current practices of fund managers.[280] Although based on staff experience we believe that most, if not all, money market funds currently monitor portfolio securities for minimal credit risk on an ongoing basis (as rule 2a–7 requires [281]), we note that money market funds are not currently required to maintain written policies and procedures that specifically address monitoring. We believe that to the extent that some money market funds may not have written procedures to regularly monitor minimal credit risks, our provision to require such procedures is designed to ensure that funds are better positioned to identify quickly potential risks of credit impairment that could impact portfolio security prices. The costs associated with the minimal credit risk monitoring requirement, as discussed above, will vary based on the extent to which funds' existing procedures need to be transcribed and reviewed.[282] We continue to believe that the requirement for written procedures in the final rule will not materially affect efficiency, competition, or capital formation because we expect no material changes in how funds invest.

iv. Stress Testing

The Commission is adopting the stress testing provision as proposed. As discussed above, the amendments are designed to retain similar standards for stress testing as under current rule 2a–7. Specifically, the amendments will remove the current reference to ratings downgrades in the rule 2a–7 stress testing requirement, and instead require funds to test for an event indicating or evidencing credit deterioration of particular portfolio security positions, with a downgrade or default provided as examples of such an event. Consequently, we recognize that a money market fund could use its current policies and procedures for stress testing, including testing for a downgrade, to comply with the amendments. We believe that funds will do so because a downgrade by a relevant NRSRO may impact the price of a portfolio security.[283] Commenters on the stress testing provision of the Proposing Release were uniformly supportive of this approach,[284] and one specifically stated that the amendments would not significantly change the substance of current stress tests.[285] We believe this provision thus provides a clear benefit by reducing any perceived endorsement of NRSRO ratings. Because we believe that funds will not change their stress testing policies and procedures in response to these amendments, we also believe there will be little or no costs associated with them.[286] Thus we do not anticipate that these amendments are likely to affect efficiency, competition, or capital formation.

v. Policies and Procedures

As discussed above, money market funds have written policies and procedures for complying with rule 2a–7, including policies and procedures for determining and reassessing minimal credit risk and for stress testing the portfolio.[287] Although our final rule should not require changes to these policies and procedures for most money market funds, we anticipate that funds will likely review them and may revise them in consideration of the uniform credit quality standard provided in the rule. We also anticipate that after such a review, many fund boards and advisers will retain investment policies that reference NRSRO ratings.[288] Although we cannot predict the number of funds that will review and revise their policies and procedures or the extent to which funds may do so, we estimate that each fund will incur, at a minimum, the collection of information costs discussed in the Paperwork Reduction Act section for a total average one-time cost of approximately $2,838 per fund complex.[289] These minimum costs assume that a fund will review its policies and procedures in consideration of the amendments and make minor changes to conform with the revised rule text, but will not change significantly the policies and procedures relating to the fund's credit quality assessments, monitoring for minimal credit risk or stress testing,

[277] Current rule 2a–7(d)(2)(iv).

[278] *See supra* note 258 and accompanying text.

[279] *See supra* section IV.A.1.

[280] *See supra* section II.C.

[281] *See id.*

[282] *See supra* note 226 and accompanying text.

[283] *See* Comment Letter of Investment Company Institute (Apr. 25, 2011) on the 2011 Proposing Release.

[284] *See* Barnard Comment Letter; BlackRock Comment Letter; ICI Comment Letter; Vanguard Comment Letter; CFA Institute Comment Letter; MFDF Comment Letter.

[285] *See* MFDF Comment Letter.

[286] *See supra* note 236 and accompanying text.

[287] *See* rule 38a–1(a); rule 2a–7.

[288] *See supra* note 213 and accompanying text. We also note that most commenters on the 2011 proposal supported permitting funds to continue to use ratings, and some asked us to clarify that ratings continue to be a permissible factor for boards or their delegates to consider in making credit quality determinations. *See, e.g.,* 2011 Comment Letter of BlackRock Inc. (Apr. 25, 2011) (''2011 BlackRock Comment Letter''); Comment Letter of the Independent Directors' Council (Apr. 25, 2011). Commenters on the 2014 proposal continued to stress the usefulness of credit ratings. *See* IDC Comment Letter; Invesco Comment Letter; MFDF Comment Letter. Our amendments to Form N–MFP, discussed above, reflect our clarification that ratings continue to be a permissible tool to use in making credit quality determinations.

[289] *See supra* note 218.

which currently include consideration of NRSRO ratings.

As noted above, we believe that while funds currently monitor for minimal credit risks on an ongoing basis, we assume that funds do not have written policies and procedures to address monitoring.[290] We estimate the average one-time costs to adopt those written policies will be $3,619 per fund.[291] Because we anticipate that our rule is not likely to change these fund policies significantly, we believe it is not likely to have a significant impact on efficiency, competition, or capital formation.

3. Alternatives

The Commission chose not to adopt certain credit quality standards and requirements from the Proposing Release. First, the proposed rule would have required that a portfolio security not only present minimal credit risks, but also that its issuer has an ''exceptionally strong capacity'' to meet its short-term financial obligations.[292] As many commenters suggested,[293] we now believe that this determination could create an unclear standard for determining eligible securities that might change the current credit quality profile of money market funds, possibly creating risk profiles in money market funds that are even more stringent than the current rule provides for, as the discussion above details.[294] We believe that the rulemaking goal associated with this aspect of the proposal of ensuring that only very high quality securities are purchased by money market funds is more effectively carried out instead by the second change we have made from the proposed rule, the codification of the general credit analysis factors.[295]

The Proposing Release provided two lists of credit analysis factors for use in determining whether a security presented only minimal credit risks to a fund.[296] The first was a list of general factors for use with any security, and the second was an asset-specific list. The final rule incorporates the list of general factors into the rule text, and we discuss in this release the asset-specific list as guidance.[297] As discussed above,[298] we believe that codifying the general factors will help provide a uniform and objective check on credit risk that can be verified by our examiners. We also believe that incorporating these factors into the rule text will further promote effective and uniform application of the risk standard. These two changes together, elimination of the ''exceptionally strong capacity'' language and codification of the factors, should help to ensure that the rule will maintain the current risk characteristics of money market funds and thus is not likely to have a significant effect on efficiency, competition, or capital formation.

In addition to the changes to the primary risk standard, the final rule also changed the risk standard for securities with conditional demand features.[299] The proposed rule would have required that the issuer of the underlying security or the provider of a conditional demand feature have a ''very strong'' capacity to meet its financial obligations.[300] As with the proposed ''exceptionally strong capacity'' standard, some commenters felt that this standard could be interpreted very differently by different funds.[301] In order to reduce confusion and preserve a similar degree of credit quality to that currently present in fund portfolios, the Commission determined instead to require that the issuer of the underlying security and the provider of the conditional demand feature meet the same ''minimal credit risks'' standard.

In developing this final rule, we also considered changes consistent with the amendments we proposed in 2011. The 2011 proposal would have required fund boards first to determine whether securities are eligible securities based on minimal credit risks, and second to distinguish between first and second tier securities based on subjective standards similar to those the ratings agencies have developed to describe their ratings. However, we were persuaded by the concerns some commenters expressed on the 2011 proposal,[302] and did not adopt these alternatives. In particular, as several commenters noted, a two-tier approach could be confusing without reference to objective standards, and fund advisers are likely to make many of the same considerations in evaluating first and second tier securities.[303] In addition, we believe that the adopted single standard will better reflect the risk limitation in the current rule. The 2011 proposal described the standard for second tier securities in language similar to the descriptions NRSROs use for second tier securities, which fund managers might interpret as permitting funds to invest in riskier second tier securities to a greater extent than under our final rule, which is designed to limit investments to very high quality second tier securities. Such increased investments in riskier second tier securities would have had the potential to increase the risk profile of money market funds.

The two industry commenters on the 2014 proposal who discussed the elimination of the first and second tier distinction supported it.[304] However, two other commenters expressed concern that removal of the distinction and the limit on second tier securities could lead to funds purchasing more risky securities.[305] As discussed above,[306] we believe that the codification of the credit analysis factors in the final rule, combined with market discipline and staff oversight of required N–MFP disclosures, should reduce this possibility.

The two-tier approach discussed above could have had different effects on competition and capital formation than the effects on competition and capital formation stemming from the adopted approach, as a result of ensuing increased or decreased investments in second tier securities. However, we are unable to estimate the relative effects on competition or capital formation because we do not know how shareholders and funds would respond to this approach as compared to the final rule, and no commenters provided any estimates.

With respect to replacing the reference to ratings in determining the eligibility of underlying securities (*i.e.,* those that are subject to a conditional demand feature), we considered a qualitative standard that NRSROs use to articulate long-term securities in the highest rating category. We note generally that few issuers or guarantors have received long-term ratings in the highest category.[307] Moreover, issuers

[290] *See supra* notes 116 and 226 and accompanying text.

[291] *See supra* note 228.

[292] Proposed rule 2a–7(a)(11).

[293] *See, e.g.,* Dreyfus Comment Letter; NYC Bar Comment Letter; Schwab Comment Letter.

[294] *See supra* section II.A.

[295] Rule 2a–7(a)(11).

[296] Proposing Release, *supra* note 3, at 47991–47993.

[297] The general factors have also been amended based on comments received, with one new factor added. *See* rule 2a–7(a)(11). We chose not to codify the asset-specific factors. *See supra* section II.A.2.

[298] *See supra* section II.A.2.

[299] *See* rule 2a–7(d)(2)(iii).

[300] *See* proposed rule 2a–7(d)(2)(iii).

[301] *See, e.g.,* Dreyfus Comment Letter; Fidelity Comment Letter. Some commenters also felt that the need to apply two different standards would add to compliance costs without providing benefits in improving credit quality. *See, e.g.,* Dreyfus Comment Letter; ICI Comment Letter; IDC Comment Letter.

[302] *See* Proposing Release, *supra* note 3, at 47988–47989.

[303] *See id.*

[304] *See* Fidelity Comment Letter; MFDF Comment Letter.

[305] *See* Better Markets Comment Letter; CFA Comment Letter.

[306] *See supra* section II.A.2.

[307] *See* Vipal Monga & Mike Cherney, *CFO Journal: Lose your Triple-A Rating? Who Cares?,* Wall St. J. (Apr. 29, 2014) (noting the decline in companies with triple A long-term ratings).

assigned a short-term credit rating in the top category by an NRSRO may have received a long-term rating in the second-highest (or lower) category.[308] Because of the limited NRSRO assignments of the highest long-term ratings to issuers, managers might have interpreted this alternative to preclude fund investments in a security subject to a conditional demand feature (that is itself an eligible security) if the underlying security's issuer or guarantor is rated in the second-highest category. Such an interpretation could significantly deviate from the credit quality standards in the current rule, which was not our intent. It also would likely reduce money market fund investments in these securities.

In choosing to eliminate the current reference to ratings downgrades in the monitoring standard of rule 2a–7, we considered the rule 2a–7 amendments that we proposed in 2011.[309] These proposed amendments would have required that, in the event the money market fund adviser (or any person to whom the board has delegated portfolio management responsibilities) becomes aware of any credible information about a portfolio security or an issuer of a portfolio security that suggests that the security is no longer a first tier security or a second tier security, as the case may be, the board or its delegate would have to promptly reassess whether the security continues to present minimal credit risks.[310] Most of those who commented on this proposed amendment objected to it as an inefficient method of notifying funds if a portfolio security is potentially impaired. We were persuaded by these commenters' concerns.[311]

Finally, we also considered removing the current reference to ratings downgrades in the stress testing provisions of rule 2a–7 and replacing this reference with the requirement that money market funds stress test their portfolios for an adverse change in the ability of a portfolio security issuer to meet its short-term credit obligations. We had proposed this alternative in 2011, and commenters on the 2011 proposal who addressed this issue uniformly advocated against removing the reference to a downgrade in the stress testing conditions.[312] We believe that the 2011 proposed standard, as compared to the standard we are adopting today, was less clear and that it would lead to more burdensome monitoring and greater inefficiencies in developing hypothetical events for stress testing. In light of these commenters' concerns, we thus decided to adopt stress testing provisions in rule 2a–7 that would permit funds to continue to test their portfolios against a potential downgrade or default, as discussed in more detail above.[313] As also discussed above, commenters uniformly supported this provision.[314]

Form N–MFP

The final rule's amendments to Form N–MFP will require money market funds to disclose NRSRO ratings that they use in their evaluations of portfolio securities. Specifically, a fund will have to disclose for each portfolio security any NRSRO rating that the fund's board of directors (or its delegate) considered in making its minimal credit risk determination, as well as the name of the agency providing the rating. NRSRO ratings provide one indicator of credit risk of a fund's portfolio securities and, as discussed above, we anticipate that they will continue to be considered by many money market fund managers in performing credit quality assessments. We believe this ratings information will be useful to the Commission, to investors, and to various third parties as they monitor and evaluate the risks that fund managers take in both stable-NAV and institutional prime funds.

1. Economic Baseline

Under the economic baseline outlined above, money market funds are required to disclose in Form N–MFP the credit ratings for each portfolio security.[315] More specifically, funds are currently required to identify whether a portfolio security is a first or second tier security or is unrated, and to identify the ''designated NRSROs'' for each security (and for each demand feature, guarantee, or other credit enhancement). This disclosure requirement was not changed by the 2014 Money Market Fund Adopting Release.

As noted above, based on Form N–MFP filings from April 30, 2015, the Commission estimates that 98.26 percent of aggregate money market fund assets are invested in first tier securities, 0.14 percent of aggregate money market fund assets are invested in second tier securities, and 1.6 percent of aggregate money market fund assets are invested in unrated securities. Among the 537 funds that filed that month, 412 funds reported that they held only first tier securities, 477 funds reported that they held no second tier securities, and 447 funds reported that they held no unrated securities.

2. Economic Analysis

We anticipate that our amendments are likely to have two primary benefits. First, they should reduce perceived government endorsement of NRSROs, particularly when considered together with other amendments the Commission has adopted that remove credit ratings references in this rule and other rules and forms under the federal securities laws. Second, they will provide transparency on whether or not specific funds use credit ratings when making investment decisions, and might make it easier, if ratings are used, for shareholders and other interested parties to also use those ratings as part of their own risk assessments.

We anticipate that our amendments are likely to have two primary costs. First, they may impose administrative costs on funds that need to re-program their Form N–MFP filing software.[316] Second, because only funds that choose to consider credit ratings in assessing minimal credit risk will be permitted to disclose NRSRO ratings on Form N–MFP, our final rule may reduce transparency into one measure of the credit risk associated with securities purchased by funds that do not choose

[308] *See* Moody's Investors Service, Rating Symbols and Definitions, Apr. 2014, *https://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_79004,* at 6 (showing the linkage between short-term and long-term ratings when such long-term ratings exist and indicating that long-term ratings of ''A3'' or higher are compatible with the highest short-term rating of ''P–1''); Standard &Poor's, About Credit Ratings (2012), *http://www.standardandpoors.com/aboutcreditratings/RatingsManual_PrintGuide.html* (each short-term rating corresponds to a band of long-term ratings. ''For instance, the A–1 short-term rating generally corresponds to the long-term ratings of 'A+,' 'A,' and 'A-'.''); FitchRatings, Ratings Definitions (2014), *https://www.fitchratings.com/jsp/general/RatingsDefinitions.faces?context=5&detail=507&context_ln=5&detail_ln=500* (indicating the relationship between short-term and long-term ratings with a table and acknowledging that ''lower relative short-term default risk, perhaps through factors that lend the issuer's profile temporary support, may coexist with higher medium-or longer term default risk'').

[309] *See* 2011 Proposing Release, *supra* note 4, at section II.A.3.

[310] *Id.*

[311] *See* 2014 Proposing Release, *supra* note 3, at section II.A.3.

[312] We had proposed this alternative in 2011 and received comments on it at that time. *See id,* section II.A.4.

[313] *See supra* section V.A.2.iv.

[314] *See supra* notes 284–285 and accompanying text.

[315] Although some money market funds voluntarily disclose security credit ratings, money market funds often rely on a staff no-action letter in not disclosing security credit ratings and ''designated NRSROs.'' *See supra* note 142 and accompanying text.

[316] *See supra* notes 243–244 and accompanying text (discussion of re-programming costs in PRA analysis).

to consider credit ratings. This loss of transparency could create additional servicing costs for such funds if shareholders demanded new communications regarding the credit quality of the portfolio,[317] though this problem may be mitigated by the fact that sophisticated shareholders will often be aware of the ratings and other measures of credit risk, even if they are not disclosed on Form N–MFP.

The net effect of the amendments to Form N–MFP is that funds will not be required or permitted to disclose credit ratings if credit ratings are not considered in determining whether a security is eligible for the portfolio. However, as discussed above, we believe that our amendments will not result in any material changes for the majority of funds because they will, we believe, continue to refer to credit ratings. We believe, therefore, that the amendments' effects on efficiency, competition, and capital formation will likely be negligible. To the extent that money market funds continue to consider NRSRO ratings in making their minimal credit risk determinations, the amendments to Form N–MFP may reduce the potential that fund managers will increase significantly fund investments in riskier second tier securities; a fund will be required to disclose ratings considered in those credit determinations, and the ratings will reflect that increased risk. As a result, the disclosure to investors of these risk indicators may have the effect of penalizing funds that assume more risk.

Although this final rule reflects a change from the proposal by not requiring disclosure of every rating that a fund subscribes to, we believe that it will have a negligible impact on the overall costs and benefits of these amendments to Form N–MFP. Just as in the proposed rule, funds will still have to report the ratings they considered, and adjust their compliance programs to ensure such reporting. The extra reporting that would have been required under the proposed rule would likely only have caused a very small burden on funds because funds would incur the same reprogramming costs under either approach.

3. Alternatives

In the 2014 Proposing Release, the Commission presented an alternative to the now adopted amendments to Form N–MFP that would have required greater disclosure of credit ratings. Specifically, a fund would have had to disclose not only the ratings that it considered in evaluating a security and the name of the NRSRO providing the rating, but also each rating assigned by any NRSRO if the fund or its adviser subscribed to that NRSRO's services, and the name of that NRSRO. Several commenters on the proposed rule objected strongly to this requirement, stating that it would be costly, onerous and that mere subscription to an NRSRO's services was not a good indication that a particular rating was part of the evaluation of a particular security.[318] In developing this final rule, we were persuaded by these commenters and now believe that requiring this level of disclosure is unnecessary. In addition, as noted by commenters, requiring disclosure based on subscription might have increased costs and therefore created a financial disincentive to the use of ratings subscriptions by funds. As a result, this alternative might have decreased the amount of information used by fund managers to monitor risk in the market. For all of these reasons, we believe that the alternative chosen in the final rule is less likely than the other alternatives to impair efficiency, competition, and capital formation.

In developing this final rule, we also considered the 2011 proposal to completely eliminate the following two form items: the item that requires a fund to identify whether a portfolio security is a first tier security, a second tier security, or an unrated security; and the item that requires the fund to identify the ''requisite NRSROs'' for each security (and for each demand feature, guarantee, or other credit enhancement). Although we have eliminated the terminology ''requisite NRSRO'', we did not adopt this alternative because we now believe that completely eliminating such disclosure requirements masks not only the credit ratings but also information on whether or not the fund uses credit ratings when making its investment decisions.

We also considered not removing the current disclosure requirement as recommended by several commenters to the 2011 Proposing Release.[319] We elected not to leave the current disclosure requirements as is, but instead to adopt the required disclosure of NRSRO ratings only in certain circumstances, with the final rule narrowing those circumstances to situations where the fund actually uses the rating in its evaluation of credit quality. We believe these final amendments are more in keeping with Congressional intent underlying Section 939A of the Dodd-Frank Act to reduce perceived government endorsement of credit ratings.

B. Exclusion From the Issuer Diversification Requirement

1. Economic Baseline

As discussed above, most money market fund portfolio securities that are subject to a guarantee by a non-controlled person are currently subject to a 10 percent diversification requirement on guarantors but no diversification requirement on issuers, while non-government securities with guarantors that do not qualify as non-controlled persons are generally subject to both a 5 percent diversification requirement with respect to issuers and a 10 percent diversification requirement with respect to guarantors.[320] In July 2014, we adopted amendments to rule 2a–7 that deem sponsors of asset-backed securities to be guarantors of the asset-backed security (unless the fund's board rebuts the presumption).[321] As a result, under rule 2a–7's definition of a guarantee issued by a non-controlled person, both non-asset-backed securities and asset-backed securities subject to such a guarantee (including asset-backed securities with a presumed sponsor guarantee) are excluded from the rule's issuer diversification requirement. That is, non-asset-backed securities and asset-backed securities subject to a guarantee by a non-controlled person are subject to a 10 percent diversification requirement on guarantors, but they are not subject to a 5 percent issuer diversification requirement on the issuer.[322] This forms

[317] *See* Comment Letter of the Dreyfus Corporation (Apr. 25, 2011) (''2011 Dreyfus Comment Letter'') (opposing the elimination of credit ratings disclosures in Form N–MFP because of the potential that the fund would bear increased shareholder servicing costs to provide additional communications regarding the credit quality of the portfolio).

[318] *See, e.g.,* SIFMA Comment Letter; BlackRock Comment Letter.

[319] *See* 2011 BlackRock Comment Letter; 2011 Dreyfus Comment Letter; Comment Letter of Federated Investors, Inc. (Apr. 25, 2011); Comment Letter of the Securities Industry and Financial Markets Association (Apr. 18, 2011).

[320] We note that single state funds may invest up to 25 percent of fund assets in securities of any single issuer, and tax-exempt funds may have as much as 15 percent of the value of portfolio securities invested in securities subject to guarantees or demand features issued by a single provider that is a non-controlled person. Rule 2a–7(d)(3)(i)(B); rule 2a–7(d)(3)(iii)(B).

[321] We also adopted an amendment to rule 2a–7's diversification provisions to provide that money market funds limit their exposure to affiliated groups, rather than to discrete issuers. *See* rule 2a–7(d)(3)(ii)(F).

[322] *See* current rule 2a–7(a)(18) (definition of guarantee); current rule 2a–7(a)(19) (definition of

the economic baseline for the new diversification amendments that we are adopting today.

2. Economic Analysis

We believe that a small number of money market funds rely on the issuer diversification exclusion for securities subject to a guarantee by a non-controlled person. In the Proposing Release, staff's analysis of February 2014 Form N–MFP data showed that only 8 out of 559 money market funds held securities with a guarantee by a non-controlled person that exceeded the 5 percent diversification requirement for issuers. We stated in the Proposing Release that we believed that these funds in February 2014 relied on the exclusion from the 5 percent issuer diversification requirement with respect to issuers of securities that are subject to a guarantee issued by a non-controlled person.

In response to commenters, staff supplemented its analysis using October 2014 and April 2015 Form N–MFP data to review the number of funds that exceeded the 5 percent diversification limit.[323] Staff found, as discussed above, that as of October 2014 and April 2015, only 0.0482 percent and 0.0624 percent, respectively, of total money market fund assets were above the 5 percent issuer diversification threshold. As noted above, Commission staff found that only tax-exempt money market funds appeared to be relying on the 5 percent issuer diversification exclusion in October 2014 and April 2015. For October 2014 and April 2015, staff found that only 0.1 percent and 0.5 percent, respectively, of national tax-exempt money market fund assets were exposed to issuers above the 5 percent threshold.

Commission staff also separately analyzed the number of single state money market funds that appear to be relying on the issuer diversification exclusion.[324] Because single state funds have a 25 percent issuer diversification basket, staff analyzed issuer exposure above this 25 percent limit, which would suggest that the fund may be relying on the 5 percent issuer diversification exclusion in order to obtain additional issuer exposure. In their analysis, staff recognized that a single state money market fund could be relying on the issuer diversification exclusion even when a fund's exposure to a single issuer is below 25 percent. For example, using the 25 percent issuer basket, a single state fund technically could have a 10 percent exposure to Issuer A and a 15 percent exposure to Issuer B, while having an additional 7 percent exposure to Issuer B using the 5 percent issuer diversification exclusion. In this scenario the total amount of exposure to Issuer B is less than 25 percent, but the money market fund is nonetheless relying on the issuer diversification exclusion. Staff analysis suggests that for October 2014, 44 single state money market funds out of 97 total single state money market funds were potentially relying on the 5 percent issuer diversification exclusion, and for April 2015, 38 single state money market funds out of 90 total single state money market funds were potentially relying on the 5 percent issuer diversification exclusion. However, for October 2014 and April 2015, staff found that only 1.7 percent and 1.3 percent, respectively, of single state money market fund assets were above the 5 percent issuer diversification threshold (while taking into account the 25 percent issuer diversification basket). Therefore, while a number of single state money market funds may be affected by the amended rule, a very small portion of their assets will be affected.

We recognize that changes in fund assets could mask which funds rely on the issuer diversification exclusion at acquisition: A fund might be above the 5 percent limit today solely due to a decline in fund assets after acquisition, and a fund might be below the 5 percent limit today solely due to an increase in fund assets after acquisition.[325] Whatever the cause, a money market fund that has invested more than 5 percent of its assets in an issuer of securities subject to a guarantee issued by a non-controlled person in reliance on the exclusion under current rule 2a–7 would, when those investments mature, have to reinvest the proceeds over 5 percent elsewhere. Based on the additional analysis of Form N–MFP filings, we believe that a small percentage of all money market funds (including a higher proportion of single state funds) would have to make changes to their portfolios to bring them into compliance with the amendments. These changes may or may not require the funds to invest in alternative securities, and the alternative securities may or may not be inferior because they offer, for example, lower yields, lower liquidity, or lower credit quality.

In response to commenters' suggestion that the Commission consider a broader sample of data, as discussed above, and to assess the amendment's effect on yield, our staff examined whether the 7-day gross yields of funds that use the 5 percent issuer diversification exclusion were higher than the 7-day gross yields for funds that do not. Our staff found: (i) For national tax-exempt money market funds in October 2014, the average yield for funds using the 5 percent issuer diversification exclusion was 0.10 percent as compared to the average yield for funds that did not use the 5 percent issuer diversification exclusion of 0.08 percent; (ii) for national tax-exempt money market funds in April 2015, the average yield for funds using the 5 percent issuer diversification exclusion was 0.12 percent as compared to the average yield for funds that did not use the 5 percent issuer exclusion of 0.11 percent; (iii) for single state money market funds in October 2014, the average yield for funds using the 5 percent issuer diversification exclusion was 0.10 percent as compared to the average yield for funds that did not use the 5 percent issuer exclusion of 0.08 percent; and (iv) for single state money market funds in April 2015, the average yield for funds using the 5 percent issuer diversification exclusion was 0.12 percent as compared to the average yield for funds that did not use the 5 percent issuer exclusion of 0.07 percent. Although we do not believe the above differences in yield are material, we do recognize that funds that appear to be relying on the exclusion have, on average, a higher yield than money market funds that do not rely on the exclusion. In addition, we acknowledge that the current low-interest rate environment may cause the yield spread in each comparison above to be less than if we were measuring the yield spreads in a higher interest rate environment.

It appears that the elimination of the exclusion would affect the 63 money market funds out of a total of 542 money market funds (or approximately 11.6 percent of all money market funds) that exceeded the 5 percent issuer diversification limit as of April 2015, and would affect the 0.0624 percent of total money market fund assets that were above the 5 percent issuer diversification threshold, such that

guarantee issued by a non-controlled person); current rule 2a–7(d)(3)(i) (issuer diversification).

[323] *See supra* note 191 and accompanying text.

[324] As noted above, rule 2a–7 currently permits a single state fund to invest up to 25 percent of its assets in any single issuer. *See supra* note 161 and accompanying text.

[325] All of rule 2a–7's diversification limits are applied at the time of acquisition. For example, a fund may not invest in a particular issuer if, after acquisition, the fund's aggregate investments in the issuer would exceed 5 percent of fund assets. But if the fund's aggregate exposure after making the investment was less than 5 percent, the fund would not be required to later sell the securities if the fund's assets decreased and the fund's investment in the issuer came to represent more than 5 percent of the fund's assets.

when those investments mature, the affected funds would have to reinvest the proceeds over 5 percent elsewhere. Because of the minimal amount of money market fund assets that would be affected by our amendment, we believe that the potential lower yields, less liquidity or increased risks associated with the amendment will be small for the affected funds.[326]

A couple commenters expressed concern regarding the amendment's impact on the supply of available securities for all money market funds.[327] One of these commenters suggested that imposing further diversification limits could artificially lower the supply of available issuers.[328] The second commenter suggested that the amendment would unnecessarily restrict the amount of asset-backed securities, and particularly asset-backed commercial paper, available for purchase by money market funds.[329] In addition, a couple of commenters argued that the proposed amendment would cause certain issuers to experience decreased demand and increased financing costs.[330] Another commenter argued that removing the issuer diversification exclusion may increase the number of guarantors held in a fund's portfolio, some of which may present marginally greater credit risks.[331] This commenter further argued that repealing the exclusion to increase diversification may actually diminish the percentage of the portfolio subject to credit enhancement as well as the overall credit quality of the guarantors.[332]

We recognize that the removal of the issuer diversification exclusion and tightening of issuer diversification requirements for securities subject to a guarantee by a non-controlled person may impact issuers of these securities and the fund's risk profile. We also recognize that the amendment may occasionally prevent some issuers from selling securities to a money market fund that would otherwise invest in the issuer's securities above the 5 percent diversification requirement, but we believe, as discussed below, that the effect on such issuers would be negligible. In addition, while we recognize that removing the exclusion may cause some money market funds to invest in securities with higher credit risk, we note that a money market fund's portfolio securities must meet certain credit quality requirements, such as posing minimal credit risks, as discussed above.[333] We therefore continue to believe that the substantial risk limiting provisions of rule 2a–7 would mitigate the potential that these money market funds would significantly increase their investments in securities with higher credit risk. We also continue to believe that eliminating this exclusion would more appropriately limit money market fund risk exposures by limiting the concentration of exposure that a money market fund could have otherwise had to a particular issuer. We assume that all funds will incur costs associated with updating their systems to reflect the amendment, as well as the associated compliance costs, if their systems already incorporate this issuer diversification exclusion. We requested comment on operational costs that funds would incur in connection with the amendment. No commenters specifically addressed operational costs associated with the amendment. Accordingly, we continue to believe that these costs will be small for all funds because we believe that all funds currently have the ability to monitor issuer diversification to comply with rule 2a–7's limits on issuer concentration.

Our diversification amendment offers two primary benefits. First, by requiring greater issuer diversification for those funds that rely on the exclusion, the amendment will reduce concentration risk in those funds and may make it easier for funds to maintain or generate liquidity during periods when they impose fees and/or gates. Second, the amendment simplifies rule 2a–7's diversification requirements by eliminating the exclusion for securities with a guarantee issued by a non-controlled person, which should lower certain compliance and operational costs to the extent that funds no longer have to keep track of the securities that have such guarantees and would be eligible for the exclusion.

Because we believe that the universe of affected funds and issuers is small, we continue to believe that our amendment will have only negligible effects on efficiency, competition, and capital formation. Although we recognize that this amendment may constrain more funds (and issuers) in the future that otherwise would have less issuer diversification, we estimate, based on our staff's analysis of data from April 2015, that it will affect 63 funds, or approximately 11.6 percent of all money market funds today. Based on our staff's analysis we also estimate that, as of April 2015, our amendment will affect the 0.0624 percent of total money market fund assets that were above the 5 percent issuer diversification threshold. Based on staff analysis of Form N–MFP data and the amount of high quality securities available to tax-exempt money market funds, we continue to believe that the affected funds will find comparable alternative securities for the amount that exceeds 5 percent, and we believe that the affected issuers, to the extent applicable, will find other investors willing to buy the amount that exceeds the 5 percent for a comparable price.

3. Alternatives

As an alternative to eliminating the exclusion from issuer diversification for securities with a guarantee issued by a non-controlled person, at the proposal stage we considered requiring money market funds to be more diversified by lowering a fund's permitted exposure to any guarantor or provider of a demand feature from 10 percent to 5 percent of total assets. We discussed potential benefits and costs of this alternative approach, and we requested comment on it in the 2013 Money Market Fund Proposing Release.[334] As discussed in

[326] Consider, for example, how reducing a position from 7 percent to 5 percent might affect fund yields. The effect could be as small as 0 percent if the 2 percent of assets are reinvested in securities that offer the same yield as the original 7 percent of assets. On the other hand, the portfolio change could decrease fund yields by as much as approximately 29 percent if all of the portfolio yield came from the 7 percent security. We believe that funds will choose alternative securities that have similar yields as the securities replaced.

[327] As discussed above, some commenters also voiced supply concerns specifically with respect to tax-exempt money market funds.

[328] *See* BlackRock Comment Letter. This commenter suggested that many changes to the money market fund market may occur as a result of both the 2014 money market fund amendments and the 2014 proposed amendments relating to NRSRO ratings removal and suggested that the Commission wait to see the effects of those amendments before adopting additional diversification amendments.

[329] *See* SFIG Comment Letter. SFIG stated that, as of June 30, 2014, money market funds held over $89 billion of asset-backed commercial paper, representing approximately 36 percent of the overall asset-backed commercial paper market. SFIG also argued that the creditworthiness of any single obligor of an asset-backed security would be less significant if that security was guaranteed and suggested that an obligor of an asset-backed security only be treated as an issuer of that security if its obligations constitute 20 percent of the obligations of that security rather than apply the 10 percent obligor provision under rule 2a–7(d)(3)(B).

[330] *See* Fidelity Comment Letter; SIFMA Comment Letter.

[331] *See* ICI Comment Letter.

[332] *See id.*

[333] *See* rule 2a–7(d)(2) (portfolio quality); *see supra* section II.A.

[334] *See* 2013 Money Market Fund Proposing Release, *supra* note 16, at section III.J.4. We received no comments on this alternative approach. We also requested comment in 2009 on whether to reduce rule 2a–7's current diversification limits. *See* 2009 Money Market Fund Proposing Release, *supra* note 160, at section II.D. Most commenters opposed these reforms because, among other reasons, the reductions could increase risks to

more detail above, we decided that the current requirements for diversification of guarantors and providers of demand features together with the issuer diversification requirement if applied generally to all securities, as under the adopted amendment, appropriately address our concerns relating to money market fund risk exposures.[335] We also believe that the potential costs of this alternative approach would likely be more significant than the costs of our adopted amendment. As of the end of April 2015, we estimate that approximately 110 (of 214) prime money market funds had total exposure to a single entity (including directly issued, asset-backed commercial paper sponsorship, and provision of guarantees and demand features) in excess of 5 percent. Under the alternative, any fund that had exposure to an entity greater than 5 percent when those assets matured would have to reinvest the proceeds of the securities creating that exposure in different securities or securities with a different guarantor. Those changes may or may not require those funds to invest in alternative securities, and those securities might present greater risk if they offered lower yields, lower liquidity, or lower credit quality. The alternative approach would appear to affect many more funds than would the amendment we are adopting today. As a result, we continue to believe that a better approach to achieving our reform goal would be to restrict risk exposures to all non-government issuers of securities subject to a guarantee in the same way, and to require money market funds (other than tax-exempt and single state funds as described above) that invest in non-government securities subject to a guarantee to comply with the 5 percent issuer diversification requirement and the 10 percent diversification requirement on guarantors.

4. Technical Amendments

As discussed above, we are making technical amendments to certain diversification provisions in rule 2a–7. Due to the nature of these amendments, we believe that the amendments will have no effect on efficiency, competition, or capital formation.

VI. Regulatory Flexibility Act Certification

The Commission certified, pursuant to section 605(b) of the Regulatory Flexibility Act of 1980[336] that the proposed amendments to rule 2a–7 and form N–MFP under the Investment Company Act, if adopted, would not have a significant economic impact on a substantial number of small entities.[337] We included this certification in Section VI of the Proposing Release. Although we encouraged written comments regarding this certification, no commenters responded to this request.

Statutory Authority

The Commission is adopting amendments to rule 2a–7 under the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–37(a)] and Section 939A of the Dodd-Frank Act. The Commission is adopting amendments to Form N–MFP under the authority set forth in sections 8(b), 30(b), 31(a) and 38(a) of the Investment Company Act [15 U.S.C. 80a–8(b), 80a–29(b), 80a–30(a) and 80a–37(a)] and Section 939A of the Dodd-Frank Act.

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

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

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 2. Section 270.2a–7 is amended by:
■ a. In paragraph (a)(5), removing the words ''and (D)'';
■ b. Removing paragraph (a)(11);
■ c. Redesignating paragraphs (a)(12) and (13) as paragraphs (a)(11) and (12);
■ d. Revising newly designated paragraph (a)(11);
■ e. Removing paragraph (a)(14);
■ f. Redesignating paragraphs (a)(15) through (21) as paragraphs (a)(13) through (19);
■ g. In newly designated paragraph (a)(16)(ii), removing the references ''(a)(12)(iii)'' and ''(d)(2)(iii)'' and adding in their places ''(a)(11)'' and ''(d)(2)(ii)'', respectively.
■ h. Removing paragraph (a)(22);
■ i. Redesignating paragraph (a)(23) as paragraph (a)(20);
■ j. Removing paragraph (a)(24);
■ k. Redesignating paragraph (a)(25) as paragraph (a)(21);
■ l. Removing paragraph (a)(26);
■ m. Redesignating paragraphs (a)(27) through (31) as paragraphs (a)(22) through (26);
■ n. Removing paragraph (a)(32);
■ o. Redesignating paragraphs (a)(33) and (34) as paragraphs (a)(27) and (28);
■ p. In paragraph (c)(2)(i), removing the reference to ''(c)(i)(A)'' and adding in its place ''(c)(2)(i)(A)''.
■ q. Revising paragraph (d)(2);
■ r. Revising paragraph (d)(3)(i);
■ s. In paragraph (d)(3)(iii) introductory text, removing the words ''paragraphs (d)(3)(iii) and (d)(3)(iv)'' and adding in their place ''paragraphs (d)(3)(i), (iii), and (iv)'';
■ t. In paragraph (d)(3)(iii)(A), removing the words ''paragraphs (d)(3)(iii)(B) and (d)(3)(iii)(C)'' and adding in their place ''paragraphs (d)(3)(i) and (d)(3)(iii)(B)'';
■ u. Removing paragraph (d)(3)(iii)(C);
■ v. Revising paragraph (f);
■ w. Revising paragraph (g)(3);
■ x. In paragraph (g)(8)(i)(B), at the beginning of the paragraph removing the word ''A'' and adding in its place ''An event indicating or evidencing credit deterioration, such as a'';
■ y. Revising paragraph (h)(3); and
■ z. Revising paragraph (j).

The revisions read as follows:

§ 270.2a–7 Money market funds.

(a) * * *

(11) *Eligible security* means a security:

(i) With a remaining maturity of 397 calendar days or less that the fund's board of directors determines presents minimal credit risks to the fund, which determination must include an analysis of the capacity of the security's issuer or guarantor (including for this paragraph (a)(11)(i) the provider of a conditional demand feature, when applicable) to meet its financial obligations, and such analysis must include, to the extent appropriate, consideration of the following factors with respect to the security's issuer or guarantor:

(A) Financial condition;

(B) Sources of liquidity;

(C) Ability to react to future market-wide and issuer- or guarantor-specific events, including ability to repay debt in a highly adverse situation; and

(D) Strength of the issuer or guarantor's industry within the

funds by requiring the funds to invest in relatively lower quality securities. *See id.* at n.909.

[335] *See supra* text preceding and accompanying note 182.

[336] 5 U.S.C. 603(b).

[337] Under the Investment Company Act, an investment company is considered a small business or small organization if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year. *See* 17 CFR 270.0–10.

economy and relative to economic trends, and issuer or guarantor's competitive position within its industry.

(ii) That is issued by a registered investment company that is a money market fund; or

(iii) That is a government security.

Note to paragraph (a)(11): For a discussion of additional factors that may be relevant in evaluating certain specific asset types see Investment Company Act Release No. IC–31828 (9/16/15).

* * * * *

(d) * * *

(2) *Portfolio quality*—(i) *General.* The money market fund must limit its portfolio investments to those United States dollar-denominated securities that at the time of acquisition are eligible securities.

(ii) *Securities subject to guarantees.* A security that is subject to a guarantee may be determined to be an eligible security based solely on whether the guarantee is an eligible security, provided however, that the issuer of the guarantee, or another institution, has undertaken to promptly notify the holder of the security in the event the guarantee is substituted with another guarantee (if such substitution is permissible under the terms of the guarantee).

(iii) *Securities subject to conditional demand features.* A security that is subject to a conditional demand feature (''underlying security'') may be determined to be an eligible security only if:

(A) The conditional demand feature is an eligible security;

(B) The underlying security or any guarantee of such security is an eligible security, except that the underlying security or guarantee may have a remaining maturity of more than 397 calendar days.

(C) At the time of the acquisition of the underlying security, the money market fund's board of directors has determined that there is minimal risk that the circumstances that would result in the conditional demand feature not being exercisable will occur; and

(*1*) The conditions limiting exercise either can be monitored readily by the fund or relate to the taxability, under federal, state or local law, of the interest payments on the security; or

(*2*) The terms of the conditional demand feature require that the fund will receive notice of the occurrence of the condition and the opportunity to exercise the demand feature in accordance with its terms; and

(D) The issuer of the conditional demand feature, or another institution, has undertaken to promptly notify the holder of the security in the event the conditional demand feature is substituted with another conditional demand feature (if such substitution is permissible under the terms of the conditional demand feature).

(3) * * *

(i) *Issuer diversification.* The money market fund must be diversified with respect to issuers of securities acquired by the fund as provided in paragraphs (d)(3)(i) and (ii) of this section, other than with respect to government securities.

(A) *Taxable and national funds.* Immediately after the acquisition of any security, a money market fund other than a single state fund must not have invested more than:

(*1*) Five percent of its total assets in securities issued by the issuer of the security, provided, however, that with respect to paragraph (d)(3)(i)(A) of this section, such a fund may invest up to twenty-five percent of its total assets in the securities of a single issuer for a period of up to three business days after the acquisition thereof; provided, further, that the fund may not invest in the securities of more than one issuer in accordance with the foregoing proviso in this paragraph (d)(3)(i)(A)(*1*) at any time; and

(*2*) Ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee, provided, however, that a tax exempt fund need only comply with this paragraph (d)(3)(i)(A)(*2*) with respect to eighty-five percent of its total assets, subject to paragraph (d)(3)(iii) of this section.

(B) *Single state funds.* Immediately after the acquisition of any security, a single state fund must not have invested:

(*1*) With respect to seventy-five percent of its total assets, more than five percent of its total assets in securities issued by the issuer of the security; and

(*2*) With respect to seventy-five percent of its total assets, more than ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee, subject to paragraph (d)(3)(iii) of this section.

* * * * *

(f) *Defaults and other events*—(1) *Adverse events.* Upon the occurrence of any of the events specified in paragraphs (f)(1)(i) through (iii) of this section with respect to a portfolio security, the money market fund shall dispose of such security as soon as practicable consistent with achieving an orderly disposition of the security, by sale, exercise of any demand feature or otherwise, absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund (which determination may take into account, among other factors, market conditions that could affect the orderly disposition of the portfolio security):

(i) The default with respect to a portfolio security (other than an immaterial default unrelated to the financial condition of the issuer);

(ii) A portfolio security ceases to be an eligible security (*e.g.,* no longer presents minimal credit risks); or

(iii) An event of insolvency occurs with respect to the issuer of a portfolio security or the provider of any demand feature or guarantee.

(2) *Notice to the Commission.* The money market fund must notify the Commission of the occurrence of certain material events, as specified in Form N–CR (§ 274.222 of this chapter).

(3) *Defaults for purposes of paragraphs (f)(1) and (2) of this section.* For purposes of paragraphs (f)(1) and (2) of this section, an instrument subject to a demand feature or guarantee shall not be deemed to be in default (and an event of insolvency with respect to the security shall not be deemed to have occurred) if:

(i) In the case of an instrument subject to a demand feature, the demand feature has been exercised and the fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest;

(ii) The provider of the guarantee is continuing, without protest, to make payments as due on the instrument; or

(iii) The provider of a guarantee with respect to an asset-backed security pursuant to paragraph (a)(16)(ii) of this section is continuing, without protest, to provide credit, liquidity or other support as necessary to permit the asset-backed security to make payments as due.

(g) * * *

(3) *Ongoing Review of Credit Risks.* The written procedures must require the adviser to provide ongoing review of whether each security (other than a government security) continues to present minimal credit risks. The review must:

(i) Include an assessment of each security's credit quality, including the capacity of the issuer or guarantor (including conditional demand feature provider, when applicable) to meet its financial obligations; and

(ii) Be based on, among other things, financial data of the issuer of the portfolio security or provider of the

guarantee or demand feature, as the case may be, and in the case of a security subject to a conditional demand feature, the issuer of the security whose financial condition must be monitored under paragraph (d)(2)(iii) of this section, whether such data is publicly available or provided under the terms of the security's governing documents.

* * * * *

(h) * * *

(3) *Credit risk analysis.* For a period of not less than three years from the date that the credit risks of a portfolio security were most recently reviewed, a written record must be maintained and preserved in an easily accessible place of the determination that a portfolio security is an eligible security, including the determination that it presents minimal credit risks at the time the fund acquires the security, or at such later times (or upon such events) that the board of directors determines that the investment adviser must reassess whether the security presents minimal credit risks.

* * * * *

(j) *Delegation.* The money market fund's board of directors may delegate to the fund's investment adviser or officers the responsibility to make any determination required to be made by the board of directors under this section other than the determinations required by paragraphs (c)(1) (board findings), (c)(2)(i) and (ii) (determinations related to liquidity fees and temporary suspensions of redemptions), (f)(1) (adverse events), (g)(1) and (2) (amortized cost and penny rounding procedures), and (g)(8) (stress testing procedures) of this section.

(1) *Written guidelines.* The board of directors must establish and periodically review written guidelines (including guidelines for determining whether securities present minimal credit risks as required in paragraphs (d)(2) and (g)(3) of this section) and procedures under which the delegate makes such determinations.

(2) *Oversight.* The board of directors must take any measures reasonably necessary (through periodic reviews of fund investments and the delegate's procedures in connection with investment decisions and prompt review of the adviser's actions in the event of the default of a security or event of insolvency with respect to the issuer of the security or any guarantee or demand feature to which it is subject that requires notification of the Commission under paragraph (f)(2) of this section by reference to Form N–CR (§ 274.222 of this chapter)) to assure that the guidelines and procedures are being followed.

§ 270.12d3–1 [Amended]

■ 3. Section 270.12d3–1(d)(7)(v) is amended by removing the reference to ''270.2a–7(a)(18)'' and adding in its place the phrase ''270.2a–7(a)(16)''.

§ 270.31a–1 [Amended]

■ 4. Section 270.31a–1(b)(1) is amended by removing the phrase ''(as defined in § 270.2a–7(a)(9) or § 270.2a–7(a)(18) respectively)'' and adding in its place the phrase ''(as defined in § 270.2a–7(a)(9) or § 270.2a–7(a)(16) respectively)''.

■ 5.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 5. The authority citation for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, 80a–29, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 6. Form N–1A (referenced in § 274.11A) is amended by revising the definition of ''Money Market Fund'' in General Instructions—A. Definitions to read as follows:

Note: The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–1A

* * * * *

''Money Market Fund'' means a registered open-end management investment company, or series thereof, that is regulated as a money market fund pursuant to rule 2a–7 (17 CFR 270.2a–7) under the Investment Company Act of 1940.

■ 7. Form N–MFP (referenced in § 274.201) is amended by:

■ a. Revising Item C.9;
■ b. Revising Item C.10;
■ c. Removing Items C.14.b and C.14.c;
■ d. Redesignating Items C.14.d through C.14.f as Items C.14.b through C.14 d;
■ e. Adding new Item C.14.e;
■ f. Removing Items C.15.b and C.15.c;
■ g. Redesignating Item C.15.d as Item C.15.b;
■ h. Adding new Item C.15.c;
■ i. Removing Items C.16.c and C.16.d;
■ j. Redesignating Item C.16.e as Item C.16.c; and
■ k. Adding new Item C.16.d.
■ l. Revising the definition of ''Money Market Fund'' in General Instructions—E. Definitions.

The additions and revisions read as follows:

Note: The text of Form N–MFP does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–MFP

* * * * *

Item C.9 Is the security an Eligible Security? [Y/N]

Item C.10 Security rating(s) considered. Provide each rating assigned by any NRSRO that the fund's board of directors (or its delegate) considered in determining that the security presents minimal credit risks (together with the name of the assigning NRSRO). If none, leave blank.

* * * * *

Item C.14 * * *

e. Rating(s) considered. Provide each rating assigned to the demand feature(s) or demand feature provider(s) by any NRSRO that the board of directors (or its delegate) considered in evaluating the quality, maturity or liquidity of the security (together with the name of the assigning NRSRO). If none, leave blank.

* * * * *

Item C.15 * * *

c. Rating(s) considered. Provide each rating assigned to the guarantee(s) or guarantor(s) by any NRSRO that the board of directors (or its delegate) considered in evaluating the quality, maturity or liquidity of the security (together with the name of the assigning NRSRO). If none, leave blank.

Item C.16 * * *

d. Rating(s) considered. Provide each rating assigned to the enhancement(s) or enhancement provider(s) by any NRSRO that the board of directors (or its delegate) considered in evaluating the quality, maturity or liquidity of the security (together with the name of the assigning NRSRO). If none, leave blank.

* * * * *

E. Definitions * * *

''Money Market Fund'' means a registered open-end management investment company, or series thereof, that is regulated as a money market fund pursuant to rule 2a–7 (17 CFR 270.2a–7) under the Investment Company Act of 1940.

* * * * *

By the Commission.
Dated: September 16, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–24015 Filed 9–24–15; 8:45 am]

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Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2015–16 Late Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ– MB–2014–0064; FF09M21200–156–FXMB1231099BPP0]

RIN 1018–BA67

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2015–16 Late Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special late-season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 26, 2015.

ADDRESSES: You may inspect comments received on the special hunting regulations and Tribal proposals during normal business hours at U.S. Fish and Wildlife Headquarters, 5275 Leesburg Pike, Falls Church, VA 22041–3803, or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0064.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1967.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act of July 3, 1918 (16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the August 4, 2015, **Federal Register** (80 FR 46218), we proposed special migratory bird hunting regulations for the 2015–16 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the April 13, 2015, **Federal Register** (80 FR 19852), we requested that tribes desiring special hunting regulations in the 2015–16 hunting season submit a proposal including details on:

(1) Harvest anticipated under the requested regulations;

(2) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(3) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(4) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the August 4 proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the late-season proposals. Early-season proposals were addressed in a final rule published in the September 1, 2015, **Federal Register** (80 FR 52663). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about September 24 or later each year and have a primary emphasis on waterfowl. All the regulations contained in this final rule were either submitted by the tribes or approved by the tribes and follow our proposals in the August 4 proposed rule.

Status of Populations

Information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds, including detailed information on methodologies and results, is available at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Comments and Issues Concerning Tribal Proposals

For the 2015–16 migratory bird hunting season, we proposed regulations for 31 tribes or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with late-season proposals are included in this final rulemaking; 10 tribes have proposals with late seasons. We also noted in the August 4 proposed rule (80 FR 46218) that we were proposing seasons for seven Tribes who have submitted proposals in past years but from whom we had not yet received proposals this year. We did not receive proposals from five of those Tribes and, therefore, have not included them in this final rule.

The comment period for the August 4 proposed rule closed on August 14, 2015. We received three comments on our August 4 proposed rule, which announced proposed seasons for migratory bird hunting by American Indian Tribes. We responded to all three comments in the September 1, 2015, final rule.

National Environmental Policy Act (NEPA)

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection

Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2015–16,'' with its corresponding August 2015 finding of no significant impact. In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the person indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. . . . .'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final rule reflects any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it would have an annual effect of $100 million or more on the economy.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An updated economic analysis was prepared for the 2013–14 season. This analysis was based on data from the newly released 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section, below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives were: (1) Issue restrictive regulations allowing fewer days than those issued during the 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $317.8–$416.8 million. For the 2015–16 season, we have also chosen alternative 3. We also chose alternative 3 for the 2009–10, the 2010–11, the 2011–12, the 2012–13, and the 2014–15 seasons. The 2013–14 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0064.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, and 2013. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2013 Analysis was based on the 2011 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.5 billion at small businesses in 2013. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0064.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we are not deferring the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This final rule does not contain any new information collection requirements that require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018–0019—North American Woodcock Singing Ground Survey (expires 5/31/2018).
- 1018–0023—Migratory Bird Surveys (expires 6/30/2017). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking

will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule allows hunters to exercise otherwise unavailable privileges and, therefore, reduces restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 13, 2015, **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2015–16 migratory bird hunting season. The resulting proposals were contained in a separate August 4, 2015, proposed rule (80 FR 46218). By virtue of these actions, we have consulted with affected Tribes.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, Tribes would have insufficient time to publicize the necessary regulations and procedures to their hunters. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this rule will, therefore, take effect less than 30 days after the date of publication.

Accordingly, with each participating Tribe having had an opportunity to participate in selecting the hunting seasons desired for its reservation or ceded territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulations Promulgation

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

(**Note:** The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.)

■ 2. Further amend § 20.110, as published on September 1, 2015 (80 FR 52663), by revising paragraphs (a), (b), (f), (l), (o), (t), (x), (y), (aa), and (dd) to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

* * * * *

(a) *Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal Hunters).*

Doves

Season Dates: Open September 1 through 15, 2015; then open November 7 through December 20, 2015.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 15 mourning doves. Possession limits are twice the daily bag limits after the first day of the season.

Ducks (Including Mergansers)

Season Dates: Open October 17, 2015, through January 25, 2016.

Daily Bag and Possession Limits: Seven ducks, including two hen mallards, two redheads, two Mexican ducks, two goldeneye, two cinnamon teal, three scaup, one canvasback, and

one pintail. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and common moorhens, singly or in the aggregate. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open October 18, 2015, through January 19, 2016.

Daily Bag and Possession Limits: Three dark (Canada and white-fronted) geese and three white (snow, blue, Ross's) geese. The possession limit is six dark geese and six white geese.

General Conditions: All persons 14 years and older must be in possession of a valid Colorado River Indian Reservation hunting permit before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona. The early season will be open from one-half hour before sunrise until noon. For the late season, shooting hours are from one-half hour before sunrise to sunset.

(b) *Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Members and Nontribal Hunters).*

Tribal Members Only

Ducks (Including Mergansers)

Season Dates: Open September 2, 2015, through March 9, 2016.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Nontribal Hunters

Ducks (Including Mergansers)

Season Dates: Open September 26, 2015, through January 10, 2016.

Scaup

Season Dates: September 26, 2015, through December 20, 2015.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, three scaup (when open), two canvasback, and two redheads. The possession limit is three times the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 and 75, respectively.

Geese

Dark Geese

Season Dates: Open September 26, 2015, through January 10, 2016.

Daily Bag and Possession Limits: 4 and 12 geese, respectively.

Light Geese

Season Dates: Open September 26, 2015, through January 10, 2016.

Daily Bag and Possession Limits: 20 and 60 geese, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are one-half hour before sunrise to one-half hour after sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

* * * * *

(f) *Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters).*

Ducks (Including Mergansers)

Season Dates: Open October 10 through November 30, 2015.

Daily Bag and Possession Limits: The daily bag limit is seven, including no more than two hen mallards, two pintail, two redheads, two canvasback, and three scaup. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open October 10 through November 30, 2015.

Daily Bag and Possession Limits: Two and six, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

* * * * *

(l) *Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters).*

Tribal Members

Ducks, Mergansers, and Coots

Season Dates: Open September 1, 2015, through March 10, 2016.

Daily Bag and Possession Limits: Six ducks, including no more five mallards (only two of which may be hens), three scaup, one mottled duck, two redheads, three wood ducks, two canvasback, and two pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded mergansers. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open September 1, 2015, through March 10, 2016.

Daily Bag and Possession Limits: 6 and 18, respectively.

White-fronted Geese

Season Dates: Open September 1, 2015, through March 10, 2016.

Daily Bag and Possession Limits: Two and six, respectively.

Light Geese

Season Dates: Open September 1, 2015, through March 10, 2016.

Daily Bag Limit: 20.

Nontribal Hunters

Ducks (Including Mergansers and Coots)

Season Dates: Open October 10, 2015, through January 14, 2016.

Daily Bag and Possession Limits: Six ducks, including five mallards (no more of which can be two hen mallard), three scaup, two canvasback, two redheads, three wood ducks, one mottled duck, and two pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded mergansers. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open October 31, 2015, through February 14, 2016.

Daily Bag and Possession Limits: 6 and 18, respectively.

White-fronted Geese

Season Dates: Open October 31, 2015, through January 26, 2016.

Daily Bag and Possession Limits: Two and six, respectively.

Light Geese

Season Dates: Open October 31, 2015, through February 14, 2016.

Daily Bag and Possession Limits: 50 and no possession limit.

General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot and shooting hours. Nontribal hunters must possess a validated Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the Tribe.

* * * * *

(o) *Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters).*

Band-tailed Pigeons

Season Dates: Open September 1 through 30, 2015.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1 through 30, 2015.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (including Mergansers and Coots)

Season Dates: Open September 27, 2015, through January 10, 2016.

Scaup

Season Dates: Open September 27 through December 20, 2015.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one mottled duck, two canvasback, three scaup (when open), two redheads, and two pintail. Coot daily bag limit is 25. Merganser daily bag limit is seven. The possession limit is three times the daily bag limit.

Canada Geese

Season Dates: Open September 27, 2015, through January 10, 2016.

Daily Bag and Possession Limits: 4 and 12, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

* * * * *

(t) *Shoshone–Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters).*

Ducks including Scaup

Duck Season Dates: Open October 3, 2015, through January 19, 2016.

Scaup Season Dates: Open October 3, 2015, through December 27, 2015.

Daily Bag and Possession Limits: Seven ducks and mergansers, including no more than two hen mallards, two pintail, three scaup, two canvasback, and two redheads. The possession limit is three times the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots. The possession limit is three times the daily bag limit.

Common Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 8 and 24 snipe, respectively.

Canada Geese

Season Dates: Open October 3, 2015, through January 19, 2016.

Daily Bag and Possession Limits: 4 and 12, respectively.

White-fronted Geese

Season Dates: Open October 3, 2015, through January 19, 2016.

Daily Bag and Possession Limits: 10 and 30, respectively.

Light Geese

Season Dates: Open October 3, 2015, through January 19, 2016.

Daily Bag and Possession Limits: 20 and 60, respectively

General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone–Bannock Tribes also apply on the reservation.

* * * * *

(x) *Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only).*

Common Snipe

Season Dates: Open October 1, 2015, through March 10, 2016.

Daily Bag and Possession Limits: 10 and 30, respectively.

Ducks

Season Dates: Open October 1, 2015, through March 10, 2016.

Daily Bag and Possession Limits: 10 ducks. The possession limit is three times the daily bag limit.

Coots

Season Dates: Open October 1, 2015, through March 10, 2016.

Daily Bag and Possession Limits: 25 coots. The possession limit is three times the daily bag limit.

Geese

Season Dates: Open October 1, 2015, through March 10, 2016.

Daily Bag and Possession Limits: 6 and 18, respectively. The season on brant is closed.

Tribal members hunting on lands will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

(y) *Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only).*

Ceded Territory

Ducks and Mergansers

Season Dates: Open September 26, 2015, through March 1, 2016.

Daily Bag and Possession Limits: Fourteen ducks and mergansers, including no more than four hen mallards, four pintail, six scaup, four canvasback, one harlequin per season, and four redheads. Possession limit is three times the daily bag limit (except for harlequin).

Canada Geese

Season Dates: Open September 26, 2015, through March 1, 2016.

Daily Bag and Possession Limits: 8 and 24 geese, respectively.

Brant

Season Dates: Open September 26, 2015, through February 23, 2016.

Daily Bag and Possession Limits: 4 and 12 brant, respectively.

Coots

Season Dates: Open September 21, 2015, through February 26, 2016.

Daily Bag and Possession Limits: 50 and 150 coots, respectively.

Swinomish Reservation

Ducks and Mergansers

Season Dates: Open September 26, 2015, through March 9, 2016.

Daily Bag and Possession Limits: Fourteen ducks and mergansers, including no more than four hen mallards, four pintail, six scaup, four canvasback, one harlequin per season,

and four redheads. Possession limit is three times the daily bag limit (except for harlequin).

Canada Geese

Season Dates: Open September 26, 2015, through March 9, 2016.

Daily Bag and Possession Limits: Eight geese. Possession limit is three times the daily bag limit.

Brant

Season Dates: Open September 26, 2015, through March 9, 2016.

Daily Bag and Possession Limits: 4 and 12 brant, respectively.

Coots

Season Dates: Open September 26, 2015, through March 9, 2016.

Daily Bag and Possession Limits: 50 and 150 coots, respectively.

* * * * *

(aa) *Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only).*

Mourning Doves

Season Dates: Open September 1 through December 31, 2015.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

Ducks

Season Dates: Open October 1, 2015, through February 28, 2016.

Daily Bag and Possession Limits: 15 and 20, respectively.

Coots

Season Dates: Open October 1, 2015, through February 15, 2016.

Daily Bag and Possession Limits: 20 and 30, respectively.

Geese

Season Dates: Open October 1, 2015, through February 28, 2016.

Daily Bag and Possession Limits: 7 and 10 geese, respectively.

Brant

Season Dates: Open November 1 through 10, 2015.

Daily Bag and Possession Limits: Two and two, respectively.

General Conditions: Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be 15 minutes before official sunrise to 15 minutes after official sunset.

* * * * *

(dd) *White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters).*

Band-tailed Pigeons (Wildlife Management Unit 10 and Areas South of Y–70 and Y–10 in Wildlife Management Unit 7, only)

Season Dates: Open September 1 through 15, 2015.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and Areas South of Y–70 and Y–10 in Wildlife Management Unit 7, only)

Season Dates: Open September 1 through 15, 2015.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks and Mergansers

Season Dates: Open October 17, 2015, through January 24, 2016.

Daily Bag Limits: Seven, including no more than two female mallards and two redhead. The season on scaup is closed.

Possession Limits: Twice the daily bag limit.

Pintail and Canvasback

Season Dates: Open October 17 through November 29, 2015.

Daily Bag Limits: Two pintail and one canvasback.

Possession Limits: Twice the daily bag limit.

Coots

Season Dates: Open October 17, 2015, through January 24, 2016.

Daily Bag and Possession Limits: 25 and 50, respectively.

Canada Geese

Season Dates: Open October 18, 2015, through January 24, 2016.

Daily Bag and Possession Limits: Three and six Canada geese, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking.

* * * * *

Dated: September 4, 2015.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015–24162 Filed 9–24–15; 8:45 am]

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Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2014–0064; FF09M21200–156–FXMB1231099BPP0]

RIN 1018–BA67

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits the taking of designated species during the 2015–16 season.

DATES: This rule is effective on September 26, 2015.

ADDRESSES: You may inspect comments received on the migratory bird hunting regulations during normal business hours at the Service's office at 5275 Leesburg Pike, Falls Church, Virginia. You may obtain copies of referenced reports from the street address above, or from the Division of Migratory Bird Management's Web site at *http://www.fws.gov/migratorybirds/*, or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0064.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2015

On April 13, 2015, we published in the **Federal Register** (80 FR 19852) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2015–16 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 13 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings and that subsequent documents refer only to numbered items requiring attention. Therefore, it is important to note that we omit those items requiring no attention, and remaining numbered items appear discontinuous and incomplete.

On June 11, 2015, we published in the **Federal Register** (80 FR 33223) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 11 supplement also provided detailed information on the proposed 2015–16 regulatory schedule and announced the Service Regulations Committee (SRC) and Flyway Council meetings.

On June 24–25, 2015, we held open meetings with the Flyway Council Consultants, at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2015–16 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2015–16 regular waterfowl seasons. On July 21, 2015, we published in the **Federal Register** (80 FR 43266) a third document specifically dealing with the proposed frameworks for early-season regulations.

On July 29–30, 2015, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2015–16 regulations for these species.

On August 21, 2015, we published in the **Federal Register** (80 FR 51090) a final rule which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. Subsequently, on September 1, 2015, we published a final rule in the **Federal Register** (80 FR 52645) amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On August 25, 2015, we published in the **Federal Register** (80 FR 51658) the proposed frameworks for the 2015–16 late-season migratory bird hunting regulations. We published final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 2015–16 in a late September 2015, **Federal Register**.

The final rule described here is the final in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations for 2015–16 and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for species subject to late-season regulations and those for early seasons that States previously deferred.

This final rule is the culmination of the rulemaking process for the migratory game bird hunting seasons, which started with the April 13 proposed rule. As discussed elsewhere in this document, we supplemented that proposal on June 11 and August 25, and published final late season frameworks in a late September **Federal Register** that provided the season selection criteria from which the States selected these seasons. This final rule sets the migratory game bird late hunting seasons based on that input from the States. We previously addressed all comments pertaining to late season issues in that late September **Federal Register**.

National Environmental Policy Act (NEPA)

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2015–16,'' with its corresponding August 2015 finding of no significant impact. In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the person indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final regulations reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available at the address indicated under **ADDRESSES**.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it would have an annual effect of $100 million or more on the economy. Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An updated economic analysis was prepared for the 2013–14 season. This analysis was based on data from the newly released 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives were: (1) Issue restrictive regulations allowing fewer days than those issued during the 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $317.8–$416.8 million. For the 2015–16 season, we have also chosen alternative 3. We also chose alternative 3 for the 2009–10, the 2010–11, the 2011–12, the 2012–13, and the 2014–15 seasons. The 2013–14 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0064.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, and 2013. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2013 Analysis was based on the 2011 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.5 billion at small businesses in 2013. Copies of the Analysis are available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0064.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we are not deferring the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This final rule does not contain any new information collection that requires approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018–0019—North American Woodcock Singing Ground Survey (expires 5/31/2018).
- 1018–0023—Migratory Bird Surveys (expires 6/30/2017). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule allows hunters to exercise otherwise unavailable privileges and, therefore, reduces restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Thus, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 13 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2015–16 migratory bird hunting season. The resulting proposals were contained in a separate August 4, 2015, proposed rule (80 FR 46218). By virtue of these actions, we have consulted with Tribes.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Review of Public Comments

The preliminary proposed rulemaking (April 13 **Federal Register**) opened the public comment period for 2015–16 migratory game bird hunting regulations. We previously addressed all comments pertaining to late season issues in a late September 2015, **Federal Register**.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that, when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), these regulations will take effect less than 30 days after publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 16, 2015.

Michael J. Bean,

Principal Assistant Deputy Secretary for Fish and Wildlife and Parks.

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a-j; Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

Note: The following annual regulations provided for by §§ 20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Futher amend § 20.104, as published on September 1, 2015 (80 FR 52645), by:

■ a. Revising the introductory paragraphs;

■ b. Adding entries for the following States in alphabetical order to the table;

■ c. Revising footnotes (1), (2), and (6) following the table;

■ d. Removing footnote (16) following the table; and

■ e. Adding footnotes (20), (21), and (22) following the table.

The revisions and additions read as follows:

§ 20.104 Seasons, limits, and shooting hours for rails, woodcock, and snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one–half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 21, 2015 (80 FR 51090) and August 25, 2015 (80 FR 51658), **Federal Register**.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

Note: The following seasons are in addition to the seasons published previously in the September 1, 2015, **Federal Register** (80 FR 52645).

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	75 (1)	45 (2)	9	24
ATLANTIC FLYWAY				
*	*	*	*	*
Massachusetts (6)	Sept. 1–Nov. 7	Closed	Oct. 7–Oct. 24 & Oct. 26–Nov. 21.	Sept. 1–Dec. 16
*	*	*	*	*
MISSISSIPPI FLYWAY				
*	*	*	*	*
Louisiana				
West Zone	Sept. 12–Sept. 27 & Nov. 7–Dec. 30.	Sept. 12–Sept. 27 & Nov. 7–Dec. 30.	Dec. 18–Jan. 31	Nov. 2-Dec. 6 & Dec. 19–Feb. 28
East Zone	Sept. 12–Sept. 27 & Nov. 7–Dec. 30.	Sept. 12–Sept. 27 & Nov. 7–Dec. 30.	Dec. 18–Jan. 31	Nov. 2-Dec. 6 & Dec. 19–Feb. 28
Coastal Zone	Sept. 12–Sept. 27 & Nov. 7–Dec. 30.	Sept. 12–Sept. 27 & Nov. 7–Dec. 30.	Dec. 18–Jan. 31	Nov. 2–Dec. 6 & Dec. 19–Feb. 28
* *	*	*	*	* ** * * * * * *
Tennessee				
Reelfoot Zone	Nov. 14–Nov. 15 & Dec. 5–Jan. 31.	Closed	Oct. 31–Dec. 14	Nov. 15–Feb. 29
State Zone	Nov. 28– Nov. 29 & Dec. 5–Jan. 31.	Closed	Oct. 31–Dec. 14	Nov. 15-Feb. 29
Wisconsin (20)				
North Zone	Sept. 26–Nov. 24	Closed	Sept. 19–Nov. 2	Sept. 26–Nov. 24
South Zone	Oct. 3–Oct. 11 & Oct. 17–Dec. 6.	Closed	Sept. 19–Nov. 2	Oct. 3–Oct. 11 & Oct. 17–Dec. 6
Miss. River Zone	Oct. 3–Oct. 9 & Oct. 17–Dec. 8.	Closed	Sept. 19–Nov. 2	Oct. 3–Oct. 9 & Oct. 17–Dec. 8
*	*	*	*	*
PACIFIC FLYWAY				
Arizona (21)				
North Zone	Closed	Closed	Closed	Oct. 2–Jan. 10
South Zone	Closed	Closed	Closed	Oct. 16-Jan. 24
*	*	*	*	*
Idaho				
Zone 1	Closed	Closed	Closed	Oct. 3–Jan. 15
Zone 2	Closed	Closed	Closed	Oct. 17–Jan. 29
Zone 3	Closed	Closed	Closed	Oct. 17–Jan. 29
Nevada				
Northeast Zone	Closed	Closed	Closed	Sept. 26–Oct. 25 & Oct. 28–Jan. 10
Northwest Zone	Closed	Closed	Closed	Oct. 10-Oct. 25 & Oct. 28–Jan. 24
South Zone (22)	Closed	Closed	Closed	Oct. 10-Oct. 25 & Oct. 28–Jan. 24
*	*	*	*	*
Utah	Closed	Closed	Closed	Oct. 3–Jan. 16
Washington				
East Zone	Closed	Closed	Closed	Oct. 17-Oct. 21 & Oct. 24–Jan. 31
West Zone	Closed	Closed	Closed	Oct. 17–Oct. 21 & Oct. 24–Jan. 31
*	*	*	*	*

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In *Connecticut, Delaware, Maryland,* and *New Jersey,* the limits for clapper and king rails are 10 daily and 30 in possession.

* * * * *

(6) In *Massachusetts,* the sora rail limits are 5 daily and 15 in possession; the Virginia rail limits are 10 daily and 30 in possession.

* * * * *

(20) In *Wisconsin,* the possession limit for snipe is 16.

(21) In *Arizona,* Ashurst Lake in Unit 5B is closed to snipe hunting.

(22) In *Nevada,* the snipe season in that portion of the South Zone including the Moapa Valley to the confluence of the Muddy and Virgin rivers is only open November 1 through January 25.

■ 3. Further amend § 20.105, as published on September 1, 2015 (80 FR 52645), by:

■ a. Revising the introductory paragraphs;

■ b. In paragraph (a), revising the introductory text, adding entries for the following States in alphabetical order to the table, and revising footnote (2) following the table;

■ c. In paragraph (b), revising the introductory text, adding entries for the following States in alphabetical order to the table, revising the note following the table, and adding footnotes (4) and (5) following the table;

■ d. Revising paragraph (e); and

■ e. In paragraph (f), revising the introductory text, adding entries for the following States in alphabetical order to the table, revising footnotes (1) and (4) following the table, and adding footnotes (9), (10), (11), and (12) following the table.

The revisions and additions read as follows:

§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations.

Area descriptions were published in the August 21, 2015 (80 FR 51090) and August 25, 2015 (80 FR 51658), **Federal Register**.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

(a) *Common Moorhens and Purple Gallinules. (Atlantic, Mississippi, and Central Flyways)*

Note: The following seasons are in addition to the seasons published previously in the September 1, 2015, **Federal Register** (80 FR 52645). The zones named in this paragraph are the same as those used for setting duck seasons.

	Season dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
* * *	* *	*	*
Georgia	Nov. 21–Nov. 29 &	15	45
	Dec. 12–Jan. 31	15	45
* * *	* *	*	*
West Virginia	Oct. 1–Oct. 10 &	15	30
	Dec. 2–Jan. 30	15	30
MISSISSIPPI FLYWAY			
* * *	* *	*	*
Louisiana	Sept. 12–Sept. 27 &	15	45
	Nov. 7–Dec. 30	15	45
* * *	* *	*	*
Minnesota (2).			
North Zone	Sept. 26–Nov. 24	15	45
Central Zone	Sept. 26–Oct. 4 &	15	45
	Oct. 10–Nov. 29	15	45
South Zone	Sept. 26–Oct. 4 &	15	45
	Oct. 15–Dec. 4	15	45
* * *	* *	*	*
Tennessee.			
Reelfoot Zone	Nov. 14–Nov. 15 &	15	45
	Dec. 5–Jan. 31	15	45
State Zone	Nov. 28–Nov. 29 &	15	45
	Dec. 5–Jan. 31	15	45
Wisconsin.			
North Zone	Sept. 26–Nov. 24	15	30
South Zone	Oct. 3–Oct. 11 &	15	30
	Oct. 17–Dec. 6	15	30
Mississippi River Zone	Oct. 3–Oct. 9 &	15	30
	Oct. 17–Dec. 8	15	30
* * *	* *	*	*
PACIFIC FLYWAY			
All States	Seasons are in aggregate with coots and listed in paragraph (e).		

* * * * *

(2) In *Minnesota,* the daily bag limit is 15 and the possession limit is 45 coots and moorhens in the aggregate.

(b) *Sea Ducks* (scoter, eider, and long-tailed ducks in Atlantic Flyway).

Note: The following seasons are in addition to the seasons published previously in the September 1, 2015, **Federal Register** (80 FR 52645).

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and long-tailed ducks of which no more than

4 may be scoters. Possession limits are three times the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season dates	Limits	
		Bag	Possession
* * *	* *	*	*
Georgia	Nov. 21–Nov. 29 &	7	21
	Dec. 12–Jan. 31	7	21
* * *	* *	*	*
Maryland	Oct. 3–Jan. 30	5	15
Massachusetts (4)	Oct. 3–Jan. 30	7	21
* * *	* *	*	*
New York	Oct. 17–Jan. 31	6	18
North Carolina	Oct. 1–Jan. 30	7	21
* * *	* *	*	*
South Carolina	Oct. 17–Jan. 31	7	21
Virginia	Oct. 17–Jan. 31	7	21

Note: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in *Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, South Carolina,* and *Virginia* in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

* * * * *

(4) In *Massachusetts,* the daily bag limit may include no more than 4 eiders (only 1 of which may be a hen) and 4 long-tailed ducks.

(5) In *New York,* during the Special Sea Duck Season, only scoters, eiders, and long-tailed ducks may be taken, with a daily limit of 6 and may include no more than 4 scoters, 4 eiders, or 4 long-tailed ducks. Whenever the regular duck season is open, sea ducks count towards the total daily duck limit of 6 as described above regardless of waterfowl hunting zone.

* * * * *

(e) *Waterfowl, Coots, and Pacific-Flyway Seasons for Common Moorhens.*

Definitions

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross's geese.

Dark Geese: Includes Canada geese, white-fronted geese, emperor geese, brant (except in California, Oregon, Washington, and the Atlantic Flyway), and all other geese except light geese.

ATLANTIC FLYWAY

Flyway-Wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (2 hen mallards), 2 scaup, 1 black duck, 2 pintails, 2 canvasbacks, 1 mottled duck, 3 wood ducks, 2 redheads, 4 scoters, and 1 fulvous tree duck. The possession limit is three times the daily bag limit.

Harlequin Ducks: All areas of the Flyway are closed to harlequin duck hunting.

Merganser Limits: The daily bag limit is 5 mergansers and may include no more than 2 hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 may be hooded mergansers. The possession limit is three times the daily bag limit.

	Season dates	Limits	
		Bag	Possession
Connecticut			
Ducks and Mergansers		6	18
North Zone	Oct. 7–Oct. 17 & Nov. 13–Jan. 9.		
South Zone	Oct. 7–Oct. 10 & Nov. 17–Jan. 20.		
Coots	Same as for Ducks	15	45
Canada Geese:			

	Season dates	Limits	
		Bag	Possession
AFRP Unit	Oct. 13–Oct. 17 &	5	15
	Nov. 19–Feb. 13	5	15
NAP H–Unit	Oct. 7–Oct. 17 &	3	9
	Nov. 16–Jan. 23	3	9
AP Unit	Oct. 13–Oct. 17 &	3	9
	Nov. 19–Jan. 9	3	9
Special Season	Jan. 25–Feb. 13	5	15
Light Geese:			
North Zone	Oct. 1–Jan. 15 &	25	
	Feb. 23–Mar. 10	25	
South Zone	Oct. 1–Nov. 28 &	25	
	Jan. 6–Mar. 10	25	
Brant:			
North Zone	Dec. 7–Jan. 9	1	3
South Zone	Dec. 17–Jan. 20	1	3
Delaware			
Ducks	Oct. 23–Nov. 3 &	6	18
	Nov. 23–Dec. 5 &	6	18
	Dec. 18–Jan. 30	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Nov. 23–Dec. 5 &	2	6
	Dec. 18–Jan. 30	2	6
Light Geese (1)	Oct. 1–Jan. 30	25	
	Feb. 6	25	
Brant	Dec. 22–Jan. 2 &	1	3
	Jan. 9–Jan. 30	1	3
Florida			
Ducks	Nov. 21–Nov. 29 &	6	18
	Dec. 12–Jan. 31	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Nov. 21–Nov. 29 &	5	15
	Dec. 1–Jan. 30	5	15
Light Geese	Same as for Ducks	15	
Georgia			
Ducks	Nov. 21–Nov. 29 &	6	18
	Dec. 12–Jan. 31	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Oct. 10–Oct. 25 &	5	15
	Nov. 21–Nov. 29 &	5	15
	Dec. 12–Jan. 31	5	15
Light Geese	Same as for Canada Geese	5	15
Brant	Closed.		
Maine			
Ducks (2)		6	18
North Zone	Sept. 28–Dec. 5.		
South Zone	Oct. 1–Oct. 17 & Oct. 31–Dec. 22.		
Coastal Zone	Oct. 1–Oct. 17 & Nov. 14–Jan. 5.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	5	15
Canada Geese:			
North Zone	Oct. 1–Dec. 21	3	9
South Zone	Oct. 1–Oct. 29 &	3	9
	Nov. 14–Jan. 5	3	9
Coastal Zone	Oct. 1–Oct. 29 &	3	9
	Nov. 14–Jan. 5	3	9
Light Geese	Oct. 1–Jan. 30	25	
Brant:			
North Zone	Oct. 1–Nov. 4	1	3
South Zone	Oct. 1–Oct. 17 &	1	3
	Oct. 31–Nov. 17	1	3
Coastal Zone	Oct. 1–Oct. 17 &	1	3
	Nov. 14–Dec. 1	1	3
Maryland			
Ducks and Mergansers (3)	Oct. 10–Oct. 17 &	6	18
	Nov. 14–Nov. 27 &	6	18
	Dec. 15–Jan. 30	6	18
Coots	Same as for Ducks	15	45

	Season dates	Limits	
		Bag	Possession
Canada Geese:			
RP Zone	Nov. 21–Nov. 27 &	5	15
	Dec. 15–Mar. 9	5	15
AP Zone	Nov. 21–Nov. 27 &	2	6
	Dec. 15–Feb. 3	2	6
Light Geese	Oct. 3–Nov. 27 &	25	
	Dec. 14–Feb. 6	25	
Brant	Dec. 28–Jan. 30	1	3
Massachusetts			
Ducks (4)		6	18
Western Zone	Oct. 12–Nov. 28 & Dec. 7–Dec. 26.		
Central Zone	Oct. 13–Nov. 28 & Dec. 14–Jan. 4.		
Coastal Zone	Oct. 16–Oct. 24 & Nov. 11–Jan. 9.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
NAP Zone:			
Central Zone	Oct. 13–Nov. 28 &	3	9
	Dec. 14–Jan. 15	3	9
(Special season)	Jan. 16–Feb. 6	5	15
Coastal Zone	Oct. 16–Oct. 24 &	3	9
	Nov. 11–Jan. 21	3	9
(Special season) (5)	Jan. 23–Feb. 13	5	15
AP Zone	Oct. 12–Nov. 28 &	3	9
	Dec. 7–Dec. 15	3	9
Light Geese:			
Western Zone	Same as for Ducks	15	45
Central Zone	Oct. 13–Nov. 28 &	15	45
	Dec. 7–Dec. 26 &	15	45
	Jan. 16–Feb. 6	15	45
Coastal Zone (5)	Same as for Ducks &	15	45
	Jan. 23–Feb. 13	15	45
Brant:			
Western & Central Zone	Closed.		
Coastal Zone	Dec. 28–Jan. 30	1	3
New Hampshire			
Ducks		6	18
Northern Zone	Oct. 2–Nov. 30.		
Inland Zone	Oct. 6–Nov. 5 & Nov. 15–Dec. 13.		
Coastal Zone	Oct. 7–Oct. 16 & Nov. 15–Jan. 3.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Northern Zone	Oct. 2–Dec. 10	3	9
Inland Zone	Oct. 6–Nov. 5 &	3	9
	Nov. 15–Dec. 23	3	9
Coastal Zone	Oct. 7–Oct. 26 &	3	9
	Nov. 15–Jan. 3	3	9
Light Geese:			
Northern Zone	Oct. 2–Dec. 23	25	
Inland Zone	Oct. 6–Dec. 27	25	
Coastal Zone	Oct. 7–Jan. 3	25	
Brant:			
Northern Zone	Oct. 2–Oct. 31	1	3
Inland Zone	Oct. 6–Nov. 4	1	3
Coastal Zone	Oct. 7–Nov. 5	1	3
New Jersey			
Ducks		6	18
North Zone	Oct. 10–Oct. 22 & Nov. 14–Jan. 9.		
South Zone	Oct. 17–Oct. 24 & Nov. 14–Jan. 14.		
Coastal Zone	Oct. 31–Nov. 3 & Nov. 28–Jan. 30.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada and White-fronted Geese:			

	Season dates	Limits	
		Bag	Possession
North Zone	Nov. 14–Nov. 28 &	3	9
	Dec. 12–Jan. 23 &	3	9
South Zone	Nov. 14–Nov. 28 &	3	9
	Dec. 12–Jan. 23 &	3	9
Coastal Zone	Oct. 31–Nov. 3 &	5	15
	Nov. 26–Feb. 15	5	15
Special Season Zone	Jan. 25–Feb. 15	5	15
Light Geese:			
North Zone	Oct. 17–Feb. 15	25	
South Zone	Oct. 17–Feb. 15	25	
Coastal Zone	Oct. 17–Feb. 15	25	
Brant:			
North Zone	Nov. 14–Nov. 28 &	1	3
	Dec. 22–Jan. 9	1	3
South Zone	Oct. 17–Oct. 24 &	1	3
	Nov. 14–Dec. 10	1	3
Coastal Zone	Nov. 26–Dec. 5 &	1	3
	Dec. 19–Jan. 12	1	3
New York			
Ducks and Mergansers (6)		6	18
Long Island Zone	Nov. 26–Nov. 29 & Dec. 7–Jan. 31.		
Lake Champlain Zone	Oct. 10–Oct. 14 & Oct. 24–Dec. 17.		
Northeastern Zone	Oct. 3–Oct. 11 & Oct. 24—Dec. 13.		
Southeastern Zone	Oct. 10–Oct. 18 & Nov. 7–Dec. 27.		
Western Zone	Oct. 24–Dec. 6 & Dec. 26–Jan. 10.		
Coots	Same as for Ducks	15	45
Canada Geese:			
Western Long Island (AFRP)	Oct. 10–Oct. 25 &	8	24
	Nov. 26–Nov. 29 &	8	24
	Dec. 7–Feb. 29	8	24
Central Long Island (NAP–L)	Nov. 26–Nov. 29 &	3	9
	Dec. 7–Feb. 10	3	9
Special season	Feb. 11–Feb. 15	5	15
Eastern Long Island (NAP–H)	Nov. 26–Feb. 3	3	9
Lake Champlain (AP) Zone	Oct. 10–Nov. 28	3	9
Northeast (AP) Zone	Oct. 24–Nov. 15 &	3	9
	Nov. 17–Dec. 13	3	9
East Central (AP) Zone	Oct. 24–Nov. 20 &	3	9
	Nov. 28–Dec. 19	3	9
Hudson Valley (AP) Zone	Oct. 31–Nov. 15 &	3	9
	Nov. 28–Dec. 31	3	9
West Central (AP) Zone	Oct. 24–Nov. 26 &	3	9
	Dec. 26–Jan. 10	3	9
South (AFRP)	Oct. 24–Dec. 20 &	5	15
	Dec. 26–Jan. 10 &	5	15
	Mar. 5–Mar. 10	5	15
Light Geese (7):			
Long Island Zone	Nov. 25–Mar. 10	25	
Lake Champlain Zone	Oct. 1–Dec. 29	25	
Northeastern Zone	Oct. 1–Jan. 15	25	
Southeastern Zone	Oct. 1–Jan. 15	25	
Western Zone	Oct. 1–Jan. 15	25	
Brant:			
Long Island Zone	Nov. 26–Nov. 29 &	1	3
	Jan. 6–Jan. 31	1	3
Lake Champlain Zone	Oct. 10–Nov. 8	1	3
Northeastern Zone	Oct. 3–Nov. 1	1	3
Southeastern Zone	Oct. 10–Nov. 8	1	3
Western Zone	Oct. 10–Nov. 8	1	3
North Carolina			
Ducks (8)	Oct. 7–Oct. 10 &	6	18
	Nov. 14–Dec. 5 &	6	18
	Dec. 19–Jan. 30	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
RP Hunt Zone	Oct. 7–Oct. 17 &	5	15

	Season dates	Limits	
		Bag	Possession
	Nov. 14–Dec. 5 &	5	15
	Dec. 19–Feb. 13	5	15
SJBP Hunt Zone	Oct. 7–Nov. 9 &	5	15
	Nov. 14–Dec. 31	5	15
Northeast Hunt Zone (9)	Jan. 15–Jan. 30	1	3
Light Geese	Oct. 13–Feb. 13	25	
Brant	Dec. 28–Jan. 30	1	3
Pennsylvania			
Ducks		6	18
North Zone	Oct. 10–Nov. 28 & Dec. 19–Jan. 7.		
South Zone	Oct. 17–Oct. 24 & Nov. 14–Jan. 14.		
Northwest Zone	Oct. 10–Dec. 12. Dec. 29–Jan. 2.		
Lake Erie Zone	Oct. 26–Jan. 2.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Eastern (AP) Zone	Nov. 14–Nov. 28 &	3	9
	Dec. 19–Jan. 30	3	9
SJBP Zone	Oct. 10–Nov. 28 &	3	9
	Dec. 14–Jan. 22	3	9
Resident (RP) Zone	Oct. 24–Nov. 28 &	5	15
	Dec. 18–Jan. 14 &	5	15
	Feb. 1–Feb. 29	5	15
Light Geese:			
Eastern (AP) Zone	Oct. 1–Jan. 30	25	
SJBP Zone	Oct. 1–Jan. 22	25	
Resident (RP) Zone	Oct. 28–Feb. 29	25	
Brant	Oct. 17–Nov. 20	1	3
Rhode Island			
Ducks	Oct. 9–Oct. 12 &	6	18
	Nov. 25–Nov. 29 &	6	18
	Dec. 5–Jan. 24	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Nov. 21–Nov. 29 &	3	9
	Dec. 5–Feb. 1	3	9
Special season	Feb. 8–Feb. 14	5	15
Light Geese	Oct. 10–Jan. 24	25	
Brant	Dec. 26–Jan. 24	1	3
South Carolina			
Ducks (10)(11)	Nov. 14 &	6	18
	Nov. 21–Nov. 28 &	6	18
	Dec. 12–Jan. 31	6	18
Mergansers (12)	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada and White-fronted Geese (13)	Nov. 21–Nov. 28 &	5	15
	Dec. 12–Jan. 31 &	5	15
	Feb. 14–Feb. 29	5	15
Light Geese	Nov. 21–Nov. 28 &	25	
	Dec. 12–Jan. 31	25	
Brant	Jan. 2–Jan. 31	1	3
Vermont			
Ducks		6	18
Lake Champlain Zone	Oct. 10–Oct 14 & Oct. 24–Dec. 17.		
Interior Zone	Oct. 10–Dec. 8.		
Connecticut River Zone	Oct. 6–Nov. 5 & Nov. 15–Dec. 13.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Lake Champlain Zone	Oct. 10–Nov. 28	3	9
Interior Zone	Oct. 10–Nov. 28	3	9
Connecticut River Zone	Oct. 6–Nov. 5 &	3	9
	Nov. 15–Dec. 23	3	9
Light Geese:			
Lake Champlain Zone	Oct. 1–Dec. 29	25	
Interior Zone	Oct. 1–Dec. 29	25	
Connecticut River Zone	Oct. 6–Dec. 27	25	

	Season dates	Limits	
		Bag	Possession
Brant:			
Lake Champlain Zone	Oct. 10–Nov. 8	1	3
Interior Zone	Oct. 10–Nov. 8	1	3
Connecticut River Zone	Oct. 6–Nov. 4	1	3
Virginia			
Ducks (14)	Oct. 9–Oct. 12 &	6	18
	Nov. 18–Nov. 29 &	6	18
	Dec. 19–Jan. 31	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Eastern (AP) Zone	Nov. 24–Nov. 29 &	2	6
	Dec. 19–Jan. 31	2	6
Western (SJBP) Zone	Nov. 18–Nov. 29 &	3	9
	Dec. 19–Jan. 14 &	3	9
(Special season)	Jan. 15–Feb. 15	5	15
Western (RP) Zone	Nov. 18–Nov. 29 &	5	15
	Dec. 19–Feb. 24	5	15
Light Geese	Oct. 17–Jan. 31	25	
Brant	Jan. 2–Jan. 31	1	3
West Virginia			
Ducks (15)	Oct. 1–Oct. 10 &	6	18
	Nov. 9–Nov. 14 &	6	18
	Dec. 18–Jan. 30	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	30
Canada Geese	Oct. 1–Oct. 17 &	5	15
	Nov. 9–Nov. 14 &	5	15
	Dec. 5–Jan. 30	5	15
Light Geese	Same as for Canada Geese	5	15
Brant	Jan. 1–Jan. 30	1	3

(1) In *Delaware,* the Bombay Hook National Wildlife Refuge (NWR) snow goose season is open Mondays, Wednesdays, and Fridays only.
(2) In *Maine,* the daily bag limit may include no more than 4 of any species, with no more than 12 of any one species in possession. The season for Barrow's goldeneye is closed.
(3) In *Maryland,* the black duck season is closed October 10 through October 17.
(4) In *Massachusetts,* the daily bag limit may include no more than 4 of any single species in addition to the flyway-wide bag restrictions.
(5) In *Massachusetts,* the January 23 to February 13 portion of the season in the Coastal Zone is restricted to that portion of the Coastal Zone north of the Cape Cod Canal.
(6) In *New York,* in addition to Flyway-wide bag restrictions, the daily bag and possession limits may include no more than 4 eiders or 4 long-tailed ducks and 12 eiders or 12 long-tailed ducks, respectively.
(7) In *New York,* the use of electronic calls and shotguns capable of holding more than 3 shotshells are allowed for hunting of light geese on any day when all other waterfowl hunting seasons are closed.
(8) In *North Carolina,* the season is closed for black ducks October 7 through October 10 and November 14 through November 20. The daily bag limit for black and mottled ducks is combined with no more than 1 allowed in the daily bag.
(9) In *North Carolina,* a permit is required to hunt Canada geese in the Northeast Hunt Zone.
(10) In *South Carolina,* the daily bag limit of 6 may not exceed 1 black-bellied whistling duck, and either 1 black duck or 1 mottled duck in the aggregate.
(11) In *South Carolina,* on November 14, only hunters 17 years of age or younger can hunt ducks, coots, and mergansers. The youth must be accompanied by a person at least 21 years of age who is properly licensed, including State and Federal waterfowl stamps. Youth who are 16 or 17 years of age who hunt on this day are not required to have a State license or State waterfowl stamp but must possess a Federal waterfowl stamp and migratory bird permit.
(12) In *South Carolina,* the daily bag limit for mergansers may include no more than 1 hooded merganser.
(13) In *South Carolina,* the daily bag limit may include no more than 2 white-fronted geese.
(14) In *Virginia,* the season is closed for black ducks October 9 through October 12.
(17) In *West Virginia,* the daily bag limit may include no more than 4 long-tailed ducks, and the season is closed for eiders, whistling ducks, and mottled ducks.

MISSISSIPPI FLYWAY

Flyway-Wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (no more than 2 of which may be females), 1 mottled duck, 1 black duck, 2 pintails, 2 canvasbacks, 2 redheads, 3 scaup, and 3 wood ducks. The possession limit is three times the daily bag limit.

Merganser Limits: The daily bag limit is 5 mergansers and may include no more than 2 hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 may be hooded mergansers. The possession limit is three times the daily bag limit.

	Season dates	Limits	
		Bag	Possession
Alabama			
Ducks		6	18
North Zone	Nov. 27–Nov. 28 &		

	Season dates	Limits	
		Bag	Possession
	Dec. 5–Jan. 31		
South Zone	Same as North Zone		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese (1):			
North Zone:			
SJBP Zone	Sept. 26–Oct. 13 &	5	15
	Nov. 27–Nov. 28 &	5	15
	Dec. 5–Jan. 31	5	15
Rest of North Zone	Same as SJBP Zone	5	15
South Zone	Same as Rest of North Zone	5	15
Light Geese:			
North Zone:			
Monroe and Escambia Counties	Same as for Dark Geese	5	15
SJBP Zone	Same as for Dark Geese	5	15
Rest of North Zone	Same as for Dark Geese	5	15
South Zone	Same as for Dark Geese	5	15
Arkansas			
Ducks	Nov. 21-Nov. 29 &	6	18
	Dec. 10–Dec. 23 &	6	18
	Dec. 26–Jan. 31	6	18
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	5	10
Canada Geese:			
Northwest Zone	Sept. 19–Sept. 28 &	3	9
	Nov. 18–Dec. 4 &	3	9
	Dec. 6–Jan. 31	3	9
Remainder of State	Nov. 18–Dec. 4 &	3	9
	Dec. 6–Jan. 31	3	9
White-fronted Geese		3	9
Northwest Zone	Nov. 18–Dec. 4 &	3	9
	Dec. 6–Jan. 31	3	9
Remainder of State	Same as the Northwest Zone	3	9
Brant	Closed		
Light Geese	Same as for White-fronted Geese	20	
Illinois			
Ducks		6	18
North Zone	Oct. 17–Dec. 15		
Central Zone	Oct. 24–Dec. 22		
South Central Zone	Nov. 14–Jan. 12		
South Zone	Nov. 26–Jan. 24		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
North Zone	Oct. 17–Jan. 14	2	6
Central Zone	Oct. 24–Nov. 15 &	2	6
	Nov. 26–Jan. 31	2	6
South Central Zone	Nov. 14–Jan. 31	2	6
South Zone	Nov. 26–Jan. 31	2	6
White-fronted Geese:			
North Zone	Oct. 19–Jan. 14	2	6
Central Zone	Nov. 5–Jan. 31	2	6
South Central Zone	Nov. 14–Jan. 31	2	6
South Zone	Nov. 26–Jan. 31	2	6
Light Geese:			
North Zone	Oct. 17–Jan. 14	20	
Central Zone	Oct. 24–Jan. 31	20	
South Central Zone	Nov. 14–Jan. 31	20	
South Zone	Nov. 26–Jan. 31	20	
Brant	Same as for Light Geese	1	3
Indiana			
Ducks		6	18
North Zone	Oct. 24–Dec. 13 &		
	Dec. 19–Dec. 27		
Central Zone	Oct. 31–Nov. 8 &		
	Nov. 21–Jan. 10		
South Zone	Oct. 31–Nov. 8 &		
	Nov. 28–Jan. 17		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese (1):			
North Zone	Oct. 24–Nov. 22 &	5	15

	Season dates	Limits	
		Bag	Possession
	Dec. 12–Jan. 24	5	15
Central Zone	Oct. 31–Nov. 8 &	5	15
	Nov. 21–Jan. 24	5	15
South Zone	Oct. 31–Nov. 8 &	5	15
	Nov. 28–Jan. 31	5	15
Late Season Zone (2)	Feb. 1–Feb. 15	5	15
Light Geese:			
North Zone	Same as for Dark Geese	20	
Central Zone	Same as for Dark Geese	20	
South Zone	Same as for Dark geese	20	
Iowa			
Ducks		6	18
North Zone	Oct. 3-Oct. 18 &		
	Oct. 24–Dec. 6		
Missouri River Zone	Oct. 3–Oct. 7 &		
	Oct. 24–Dec 17		
South Zone	Oct. 3–Oct. 7 &		
	Oct. 17–Dec 10		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese (3):			
North Zone	Sept. 26–Oct. 31 &	5	15
	Nov. 1–Jan. 1	5	15
Missouri River Zone	Oct. 10–Oct. 31 &	5	15
	Nov. 1–Jan. 15	5	15
South Zone	Oct. 3–Oct. 31 &	5	15
	Nov. 1–Jan. 8	5	15
Light Geese:			
North Zone	Sept. 26–Jan. 10	20	
Missouri River Zone	Oct. 10–Jan. 15	20	
South Zone	Oct. 3–Jan. 15	20	
Kentucky			
Ducks		6	18
West Zone	Nov. 26–Nov. 29 &		
	Dec. 7–Jan. 31		
East Zone	Same as West Zone		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Nov. 26–Jan. 31	3	9
White-fronted Geese	Nov. 26–Jan. 31	2	6
Brant	Nov. 26–Jan. 31	1	3
Light Geese	Nov. 26–Jan. 31	20	60
Louisiana			
Ducks		6	18
West Zone	Nov. 14–Dec. 6 &		
	Dec. 19–Jan. 24		
East Zone (including Catahoula Lake)	Nov. 21–Dec. 6 &		
	Dec. 19–Jan. 31		
Coastal Zone	Nov. 7–Dec. 6 &		
	Dec. 19–Jan. 17		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
West Zone	Nov. 14–Dec. 6 &	1	3
	Dec. 19–Jan. 31	1	3
East Zone	Nov. 7–Dec. 6 &	1	3
	Dec. 19–Jan. 31	1	3
Coastal Zone	Nov. 7–Dec. 6 &	1	3
	Dec. 19–Jan. 31	1	3
White-fronted:			
West Zone	Nov. 7–Dec. 6 &	2	6
	Dec. 19–Feb. 7	2	6
East Zone	Nov. 7–Dec. 6 &	2	6
	Dec. 19–Feb. 7	2	6
Coastal Zone	Nov. 7–Dec. 6 &	2	6
	Dec. 19–Feb. 7	2	6
Brant	Closed		
Light Geese:			
West Zone	Same as for White-fronted	20	
East Zone	Same as for White-fronted	20	
Coastal Zone	Same as for White-fronted	20	
Michigan			

	Season dates	Limits	
		Bag	Possession
Ducks		6	18
North Zone	Sept. 26–Nov. 22 &		
	Nov. 28–Nov. 29		
Middle Zone	Oct. 3–Nov. 29 &		
	Dec. 12–Dec. 13		
South Zone	Oct. 10–Dec. 6 &		
	Dec. 26–Dec. 27		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
North Zone	Sept. 11–Dec. 11	2	6
Middle Zone	Sept. 19–Dec. 19	2	6
South Zone:			
Muskegon Waste- water GMU	Oct. 17–Nov. 14 &	2	6
	Dec. 1–Dec. 22	2	6
Allegan County GMU	Oct. 31–Jan. 30	2	6
Saginaw County GMU	Sept. 19–Sept. 27 &	2	6
	Oct. 10–Dec. 6 &	2	6
	Dec. 26–Jan. 19	2	6
Tuscola/Huron GMU	Sept. 19–Sept. 27 &	2	6
	Oct. 10–Dec. 6 &	2	6
	Dec. 26–Jan. 19	2	6
Remainder of South Zone	Sept. 19–Sept. 27 &	2	6
	Oct. 10–Dec. 6 &	2	6
	Dec. 26–Dec. 27	2	6
Southern MI Late Season (4)	Jan. 23–Feb. 14	5	15
White-fronted Geese:			
North Zone	Same as for Canada geese	1	3
Middle Zone	Same as for Canada geese	1	3
South Zone:			
Muskegon Wastewater GMU	Same as for Canada geese	1	3
Allegan County GMU	Same as for Canada geese	1	3
Saginaw County GMU	Same as for Canada geese	1	3
Tuscola/Huron GMU	Same as for Canada geese	1	3
Remainder of South Zone	Same as for Canada geese	1	3
Light Geese:			
North Zone	Same as for Canada geese	20	
Middle Zone	Same as for Canada geese	20	
South Zone:			
Muskegon Wastewater GMU	Same as for Canada geese	20	
Allegan County GMU	Same as for Canada geese	20	
Saginaw County GMU	Same as for Canada geese	20	
Tuscola/Huron GMU	Same as for Canada geese	20	
Remainder of South Zone	Oct. 10–Dec. 6 &	20	
	Dec. 26–Dec. 27 &	20	
	Jan. 23–Feb. 14	20	
Brant:			
North Zone	Same as for White-fronted Geese	1	3
Middle Zone	Same as for White-fronted geese	1	3
South Zone	Same as for White-fronted geese	1	3
Minnesota			
Ducks		6	18
North Zone	Sept. 26–Nov. 24		
Central Zone	Sept. 26–Oct. 4 &		
	Oct. 10–Nov. 29		
South Zone	Sept. 26–Oct. 4 &		
	Oct. 15–Dec. 4		
Mergansers	Same as for Ducks	5	15
Coots (5)	Same as for Ducks	15	45
Dark Geese:			
North Zone	Sept. 26–Dec. 23	3	9
Central Zone	Sept. 26–Oct. 4 &	3	9
	Oct. 10–Dec. 28	3	9
South Zone	Sept. 26–Oct. 4 &	3	9
	Oct. 15–Jan. 2	3	9
Light Geese:			
North Zone	Same as for Dark Geese	20	60
Central Zone	Same as for Dark Geese	20	60
South Zone	Same as for Dark Geese	20	60
Mississippi			
Ducks	Nov. 27–Nov. 29 &	6	18
	Dec. 4–Dec. 6 &	6	18

	Season dates	Limits	
		Bag	Possession
	Dec. 9–Jan. 31	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Nov. 19–Jan. 31	3	9
White-fronted	Nov. 19–Jan. 31	3	9
Brant	Same as for Canada geese	1	3
Light Geese	Same as for Canada geese	20	
Missouri			
Ducks and Mergansers		6	18
North Zone	Oct. 31–Dec. 29		
Middle Zone	Nov. 7–Jan. 5		
South Zone	Nov. 26–Jan. 24		
Coots	Same as for Ducks	15	45
Canada Geese and Brant:			
North Zone	Oct. 3–Oct. 11 &	3	9
	Nov. 26–Jan. 31	3	9
Middle Zone	Same as North Zone	3	9
South Zone	Same as North Zone	3	9
White-fronted Geese:			
North Zone	Nov. 7–Jan. 31	2	6
Middle Zone	Same as North Zone	2	6
South Zone	Same as North Zone	2	6
Light Geese:			
North Zone	Oct. 31–Jan. 31	20	
Middle Zone	Same as North Zone	20	
South Zone	Same as North Zone	20	
Ohio			
Ducks (6)		6	18
Lake Erie Marsh Zone	Oct. 17–Nov. 1 &		
	Nov. 14–Dec. 27		
North Zone	Oct. 24–Nov. 8 &		
	Nov. 21–Jan. 3		
South Zone	Oct. 24–Nov. 8 &		
	Dec. 19–Jan. 31		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Lake Erie Goose Zone	Oct. 17–Nov. 1 &	3	9
	Nov. 14–Dec. 27 &	3	9
	Jan. 14–Jan. 31	3	9
North Zone	Oct. 24–Nov. 8 &	3	9
	Nov. 21–Jan. 3 &	3	9
	Jan. 14–Jan. 31	3	9
South Zone	Oct. 24–Nov. 8 &	3	9
	Dec. 1–Jan. 31	3	9
White-fronted Geese	Same as for Canada geese	1	3
Brant	Same as for Canada geese	1	3
Light Geese	Same as for Canada geese	10	30
Tennessee			
Ducks		6	18
Reelfoot Zone	Nov. 14–Nov. 15 &		
	Dec. 5–Jan. 31		
State Zone	Nov. 28–Nov. 29 &		
	Dec. 5–Jan. 31		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Northwest Zone	Oct. 10–Oct. 14 &	3	9
	Nov. 14–Nov. 15 &	3	9
	Dec. 5–Feb. 13	3	9
Rest of State	Oct. 10–Oct. 27 &	3	9
	Nov. 28–Nov. 29 &	3	9
	Dec. 5–Jan. 31	3	9
White-fronted Geese:			
Northwest Zone	Nov. 28–Nov. 29 &	2	6
	Dec. 5–Feb. 13	2	6
Rest of State	Same as Northwest Zone	2	6
Brant:			
Northwest Zone	Nov. 23–Jan. 31	2	6
Rest of State	Same as Northwest Zone	2	6
Light Geese	Same as White-fronted Geese	20	
Wisconsin			

	Season dates	Limits	
		Bag	Possession
Ducks (6)		6	18
North Zone	Sept. 26–Nov. 24		
South Zone	Oct. 3–Oct. 11 &		
	Oct. 17–Dec. 6		
Mississippi River Zone	Oct. 3–Oct. 9 &		
	Oct. 17–Dec. 8		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
North Zone	Sept. 16–Dec. 16	2	6
South Zone	Sept. 16–Oct. 11 &	2	6
	Oct. 17–Dec. 21	2	6
Horicon Zone	Sept. 16–Dec. 16	2	6
Mississippi River Zone	Oct. 3–Oct. 9 &	2	6
	Oct. 17–Jan. 7	2	6
White-fronted Geese	Same as for Canada geese	1	3
Brant	Same as for Canada geese	1	3
Light Geese	Same as for Canada geese	20	

(1) In *Alabama* and *Indiana,* the dark goose daily bag limit is an aggregate daily bag limit for Canada geese, white-fronted geese, and brant. The daily bag limit may not include more than 3 Canada geese and 1 brant. The possession limit is three times the daily bag limit.
(2) In *Indiana,* in the Late Season Zone for dark geese, the daily bag limit may only include Canada geese.
(3) In *Iowa,* the dark goose daily bag limit is an aggregate daily bag limit for Canada geese, white-fronted geese, and brant. In the North Zone during September 26 through October 31, in the Missouri River Zone during October 10 through October 31, and in the South Zone during October 3 through 31, the daily bag limit may not include more than 2 Canada geese. During all other open season segments, the daily bag limit may not include more than 3 Canada geese. The possession limit is three times the daily bag limit.
(4) In *Michigan,* the Southern Michigan Late Canada goose season excludes the Goose Management Units (GMUs).
(5) In *Minnesota,* the daily bag limit is 15 and the possession limit is 45 coots and moorhens in the aggregate.
(6) In *Ohio* and *Wisconsin,* the daily bag limit may include no more than one hen mallard.

CENTRAL FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit is 6 ducks, which may include no more than 5 mallards (2 female mallards), 1 mottled duck, 2 pintails, 2 canvasbacks, 2 redheads, 3 scaup, and 3 wood ducks. The possession limit is three times the daily bag limit.

Merganser Limits: The daily bag limit is 5 mergansers and may include no more than 2 hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 may be hooded mergansers. The possession limit is three times the daily bag limit.

	Season dates	Limits	
		Bag	Possession
Colorado			
Ducks		6	18
Southeast Zone	Oct. 21–Jan. 24		
Northeast Zone	Oct. 10–Nov. 30 & Dec. 12–Jan. 24		
Mountain/Foothills Zone	Oct. 3–Nov. 30 & Dec. 19–Jan. 24		
Coots	Same as for Ducks	15	45
Mergansers	Same as for Ducks	5	15
Dark Geese:			
Northern Front Range Unit	Oct. 3–Oct. 21 &	5	15
	Nov. 21–Feb. 14	5	15
South Park/San Luis Valley Unit	Same as N. Front Range Unit	5	15
North Park Unit	Same as N. Front Range Unit	5	15
Rest of State in Central Flyway	Nov. 2–Feb. 14	5	15
Light Geese:			
Northern Front Range Unit	Oct. 31–Feb. 14	50	
South Park/San Luis Valley Unit	Same as N. Front Range Unit	50	
North Park Unit	Same as N. Front Range Unit	50	
Rest of State in Central Flyway	Same as N. Front Range Unit	50	
Kansas			
Ducks		6	18
High Plains	Oct. 10–Jan. 4 & Jan. 23–Jan. 31		
Low Plains:			
Early Zone	Oct. 10–Dec. 6 & Dec. 19–Jan. 3		
Late Zone	Oct. 31–Jan. 3 & Jan. 23–Jan. 31		
Southeast Zone	Nov. 14–Jan. 3 & Jan. 9–Jan. 31		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese (1)	Oct. 31–Nov. 1 &	6	18
	Nov. 4–Feb. 14	6	18
White-fronted Geese	Oct. 31–Jan. 3 &	2	6

	Season dates	Limits	
		Bag	Possession
	Jan. 23–Feb. 14	2	6
Light Geese	Oct. 31–Nov. 1 &	50	
	Nov. 4–Feb. 14	50	
Montana			
Ducks and Mergansers (2)		6	18
Zone 1	Oct. 3–Jan. 7		
Zone 2	Oct. 3–Oct. 11 &		
	Oct. 24–Jan. 19		
Coots	Same as for Ducks	15	45
Dark Geese:			
Zone N	Oct. 3–Jan. 10 &	5	15
	Jan. 16–Jan. 20	5	15
Zone S	Oct. 3–Oct. 11 &	5	15
	Oct. 24–Jan. 27	5	15
Light Geese:			
Zone N	Same as for Dark Geese	20	60
Zone S	Same as for Dark Geese	20	60
Nebraska			
Ducks		6	18
Zone 1	Oct. 10–Dec. 22		
Zone 2:			
Low Plains	Oct. 3–Dec. 15		
High Plains	Oct. 3–Dec. 15 & Jan. 6–Jan. 27		
Zone 3:			
Low Plains	Oct. 24–Jan. 5		
High Plains	Oct. 24–Jan. 5 & Jan. 6–Jan. 27		
Zone 4	Oct. 3–Dec. 15		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Niobrara Unit	Oct. 28–Feb. 9	5	15
East Unit	Oct. 28–Feb. 9	5	15
North Central Unit	Oct. 3–Jan. 15	5	15
Platte River Unit	Oct. 28–Feb. 9	5	15
Panhandle Unit	Oct. 28–Feb. 9	5	15
White-fronted Geese	Oct. 3–Dec. 4 &	3	9
	Jan. 30–Feb. 9	3	9
Light Geese	Oct. 3–Dec. 28 &	50	
	Jan. 23–Feb. 9	50	
New Mexico			
Ducks and Mergansers (3)		6	18
North Zone	Oct. 27–Jan. 31		
South Zone	Oct. 27–Jan. 31		
Coots	Same as for Ducks	15	45
Dark Geese (4):			
Middle Rio Grande Valley Unit (4)	Dec. 26–Jan. 19	2	2
Rest of State	Oct. 17–Jan. 31	5	15
Light Geese	Oct. 17–Jan. 31	50	
North Dakota			
Ducks (2)		6	18
High Plains	Sept. 26–Dec. 6 &		
	Dec. 12–Jan. 3		
Remainder of State	Sept. 26–Dec. 6		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese (5):			
Missouri River Zone	Sept. 26–Jan. 1	5	15
Rest of State	Sept. 26–Dec. 24	8	24
White-fronted Geese	Sept. 26–Dec. 6	3	9
Light Geese	Sept. 26–Jan. 3	50	
Oklahoma			
Ducks		6	18
High Plains	Oct. 17–Jan. 13		
Low Plains:			
Zone 1	Oct. 31–Nov. 29 & Dec. 12–Jan. 24		
Zone 2	Nov. 7–Nov. 29 & Dec. 12–Jan. 31		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Oct. 31–Nov. 29 &	8	24
	Dec. 12–Feb. 14	8	24
White-fronted Geese	Oct. 31–Nov. 29 &	2	6
	Dec. 12–Feb. 7	2	6

	Season dates	Limits	
		Bag	Possession
Light Geese	Oct. 31–Nov. 29 &	50	
	Dec. 12–Feb. 14	50	
South Dakota			
Ducks (2)		6	18
High Plains	Oct. 10–Dec. 22 & Dec. 23–Jan. 14		
Low Plains:			
North Zone	Sept. 26–Dec. 8		
Middle Zone	Same as for North Zone		
South Zone	Oct. 10–Dec. 22		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:			
Unit 1	Oct. 1–Dec. 16	8	24
Unit 2	Nov. 2–Feb. 14	4	12
Unit 3	Oct. 17–Dec. 20 &	4	12
	Jan. 9–Jan. 17	4	12
White-fronted Geese	Sept. 26–Dec. 20	2	6
Light Geese	Sept. 26–Dec. 20	50	
Texas			
Ducks (6)		6	18
High Plains	Oct. 31–Nov. 1 & Nov. 6–Jan. 31		
Low Plains:			
North Zone	Nov. 7–Nov. 29 & Dec. 12–Jan. 31		
South Zone	Oct. 31–Nov. 29 &		
	Dec. 12–Jan. 24		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese:			
East Tier:			
South Zone	Nov. 7–Jan. 31	5	15
North Zone	Same as South Zone	5	15
West Tier (7)	Oct. 31–Jan. 31	5	15
Light Geese:			
East Tier:			
South Zone	Nov. 7–Jan. 31	20	
North Zone	Same as South Zone	20	
West Tier	Same as for Dark Geese	20	
Wyoming			
Ducks (2)(8)		6	18
Zone C1	Oct. 3–Oct. 21 & Oct. 31–Jan. 16		
Zone C2	Sept. 26–Dec. 6 & Dec. 12–Jan. 5		
Zone C3	Same as Zone C2		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Dark Geese:			
Zone G1A (8)	Oct. 3–Oct. 21 &	2	6
	Nov. 21–Feb. 14	4	12
Zone G1	Oct. 3–Oct. 21 &	5	15
	Oct. 31–Nov. 29 &	5	15
	Dec. 5–Jan. 29	5	15
Zone G2	Sept. 26–Dec. 6 &	5	15
	Dec. 12–Jan. 13	5	15
Zone G3	Same as Zone G2	5	15
Light Geese	Oct. 3–Dec. 31 &	10	30
	Jan. 31–Feb. 14	10	30

(1) In *Kansas,* dark geese includes Canada geese, brant, and all other geese except white-fronted geese and light geese.

(2) In *Montana, North Dakota, South Dakota,* and *Wyoming,* during the first 16 days of the duck season, the daily bag and possession limit may include 2 and 6 additional blue-winged teal, respectively.

(3) In *New Mexico,* Mexican-like ducks are included in the aggregate with mallards.

(4) In *New Mexico,* the season for dark geese is closed in Bernalillo, Sandoval, Sierra, and Valencia Counties. In the Middle Rio Grande Valley Unit, a limited season is established. See State regulations for additional information.

(5) In *North Dakota,* see State regulations for additional shooting hour restrictions.

(6) In *Texas,* the daily bag limit is 6 ducks, which may include no more than 5 mallards (only 2 of which may be hens), 2 redheads, 3 wood ducks, 3 scaup, 2 canvasbacks, 2 pintails, and 1 dusky duck (mottled duck, Mexican-like duck, black duck and their hybrids). The season for dusky ducks is closed the first 5 days of the season in all zones. The possession limit is three times the daily bag limit.

(7) In *Texas,* the daily bag limit for dark geese is 5 in the aggregate and may include no more than 2 white-fronted geese. Possession limits are three times the daily bag limits.

(8) See State regulations for additional restrictions.

PACIFIC FLYWAY

Flyway-wide Restrictions

Duck and Merganser Limits: The daily bag limit of 7 ducks (including mergansers) may include no more than 2 female mallards, 2 pintails, 2 redheads, 3 scaup, and 2 canvasbacks. The possession limit is three times the daily bag limit.

Coot and Common Moorhen Limits: Daily bag and possession limits are in the aggregate for the two species.

	Season dates	Limits	
		Bag	Possession
Arizona			
Ducks (1)		7	21
North Zone:			
Scaup	Oct. 17–Jan. 10	3	9
Other Ducks	Oct. 2–Jan. 10	7	21
South Zone:			
Scaup	Oct. 31–Jan. 24	3	9
Other Ducks	Oct. 16–Jan. 24	7	21
Coots and Moorhens	Same as for Other Ducks	25	75
Dark Geese:			
North Zone	Oct. 2-Jan. 10	4	12
South Zone	Oct. 16–Jan. 24	4	12
Light Geese	Same as for Dark geese	10	30
California			
Ducks		7	21
Northeastern Zone:			
Scaup	Oct. 10–Dec. 6 &	3	9
	Dec. 26–Jan. 22	3	9
Other Ducks	Oct. 10–Jan. 22	7	21
Colorado River Zone:			
Scaup	Oct. 31–Jan. 24	3	9
Other Ducks	Oct. 16–Jan. 24	7	21
Southern Zone:			
Scaup	Nov. 7–Jan. 31	3	9
Other Ducks	Oct. 24–Jan. 31	7	21
Southern San Joaquin Valley Zone:			
Scaup	Nov. 7–Jan. 31	3	9
Other Ducks	Oct. 24–Jan. 31	7	21
Balance of State Zone:			
Scaup	Nov. 7–Jan. 31	3	9
Other Ducks	Oct. 24–Jan. 31	7	21
Coots and Moorhens	Same as for Other Ducks	25	25
Canada Geese (2)(3):			
Northeastern Zone (4)	Oct. 10–Jan. 17	10	30
Colorado River Zone	Oct. 16–Jan. 24	4	12
Southern Zone	Oct. 24–Jan. 31	3	9
Balance of State Zone	Oct. 3–Oct. 7 &	10	30
	Oct. 24–Jan. 31	10	30
North Coast Special Management Area	Nov. 8–Jan. 31 &	10	30
	Feb. 20–Mar. 10	10	30
White-fronted Geese (2):			
Northeastern Zone	Oct. 10–Jan. 17 &	10	30
	Mar. 6–Mar.10	10	30
Colorado River Zone	Oct. 16–Jan. 24	4	12
Southern Zone	Oct. 24–Jan. 31	3	9
Balance of State Zone	Oct. 24–Jan. 31 &	10	30
	Feb. 13–Feb. 17	10	30
Sacramento Valley Special Management Area	Oct. 24–Dec. 21	3	9
Light Geese:			
Northeastern Zone	Nov. 7–Jan. 17 &	15	45
	Feb. 7–Mar.10	15	45
Colorado River Zone	Oct. 16–Jan. 24	10	30
Southern Zone	Oct. 24–Jan. 31	15	45
Imperial County Special Management Area	Nov. 7–Jan. 31 &	15	45
	Feb. 6–Feb. 21	15	45
Balance of State Zone	Oct. 24–Jan. 31 &	15	45
	Feb. 13–Feb. 17	15	45
Brant:			
Northern Zone	Nov. 8–Dec. 14	2	6
Balance of State Zone	Nov. 9–Dec. 15	2	6
Colorado			
Ducks:		7	21
Scaup	Sept. 26–Oct. 14 &	3	9
	Oct. 31–Jan. 5	3	9
Other Ducks	Sept. 26–Oct. 14 &	7	21
	Oct. 31–Jan. 24	7	21

	Season dates	Limits	
		Bag	Possession
Coots	Same as for Other Ducks	25	75
Dark Geese	Sept. 26–Oct. 5 &	4	12
	Oct. 31–Jan. 24	4	12
Light Geese	Same as for Canada Geese	10	30
Idaho			
Ducks		7	21
Zone 1:			
Scaup	Oct. 24–Jan. 15	3	9
Other Ducks	Oct. 3–Jan. 15	7	21
Zone 2:			
Scaup	Nov. 7–Jan. 29	3	9
Other Ducks	Oct. 17–Jan. 29	7	21
Zone 3:			
Scaup	Nov. 7–Jan. 29	3	9
Other Ducks	Oct. 17–Jan. 29	7	21
Coots	Same as for Other Ducks	25	75
Canada Geese and Brant:			
Zone 1	Oct. 3–Jan. 15	4	12
Zone 2	Oct. 17–Jan. 29	4	12
Zone 3	Same as Zone 2	4	12
Zone 4	Oct. 17–Jan. 14	4	12
White-fronted Geese:			
Zone 1	Oct. 3–Jan. 15	10	30
Zone 2	Oct. 17–Jan. 29	10	30
Zone 3	Nov. 9–Feb. 21	10	30
Light Geese:			
Zone 1	Oct. 3–Jan. 15	20	60
Zone 2	Oct. 30–Jan. 15 &	20	60
	Feb. 13–Mar. 10	20	60
Zone 3	Nov. 27–Mar. 10	20	60
Zone 4 (5)	Oct. 17–Jan. 29	20	60
Montana			
Ducks		7	21
Scaup	Oct. 3–Dec. 27	3	9
Other Ducks	Oct. 3–Jan. 10 &	7	21
	Jan. 16–Jan. 20	7	21
Coots	Same as for Other Ducks	25	25
Dark Geese (6)	Oct. 3–Jan. 10 &	4	12
	Jan. 16–Jan. 20	4	12
Light Geese (6)	Same as for Dark Geese	20	60
Nevada			
Ducks		7	21
Northeast Zone:			
Scaup	Sept. 26–Oct. 25 &	3	9
	Oct. 28–Dec. 22	3	9
Other Ducks	Sept. 26–Oct. 25 &	7	21
	Oct. 28–Jan. 10	7	21
Northwest Zone:			
Scaup	Oct. 31–Jan. 24	3	9
Other Ducks	Oct. 10–Oct. 25 &	7	21
	Oct. 28–Jan. 24	7	21
South Zone (7):	Same as Northwest Zone	7	21
Coots and Moorhens	Same as for Other Ducks	25	75
Canada Geese and Brant:			
Northeast Zone	Same as for Other Ducks	4	12
Northwest Zone	Same as for Other Ducks	4	12
South Zone (7)	Same as for Other Ducks	4	12
White-fronted Geese:			
Northeast Zone	Same as for Canada Geese	10	30
Northwest Zone	Same as for Canada Geese	10	30
South Zone (7)	Same as for Canada Geese	10	30
Light Geese (8):			
Northeast Zone	Oct. 31–Jan. 24 &	20	60
	Feb. 20–Mar. 9	20	60
Northwest Zone	Oct. 31–Jan. 24 &	20	60
	Feb. 20–Mar. 9	20	60
South Zone (7)	Oct. 10–Oct. 25 &	20	60
	Oct. 28–Jan. 24	20	60
New Mexico			
Ducks		7	21
Scaup	Oct. 10–Jan. 3	3	9
Other Ducks	Oct. 10–Jan. 22	7	21

	Season dates	Limits	
		Bag	Possession
Coots and Moorhens	Same as for Other Ducks	25	75
Canada Geese and Brant:			
North Zone	Sept. 26–Oct. 11 &	3	9
	Oct. 24–Jan. 22	3	9
South Zone	Oct. 10–Jan. 24	3	9
White-fronted Geese:			
North Zone	Same as for Canada Geese	10	30
South Zone	Same as for Canada Geese	10	30
Light Geese:			
North Zone	Same as for Canada Geese	20	60
South Zone	Same as for Canada Geese	20	60
Oregon			
Ducks		7	21
Zone 1:			
Columbia Basin Unit:			
Scaup	Nov. 7–Jan. 31	3	9
Other Ducks	Oct. 17–Nov. 1 &	7	21
	Nov. 4–Jan. 31	7	21
Rest of Zone 1	Same as Columbia Basin Unit.		
Zone 2:			
Scaup	Oct. 10–Dec. 6 &	3	9
	Dec. 9–Jan. 5	3	9
Other Ducks	Oct. 10–Dec. 6 &	7	21
	Dec. 9–Jan. 24	7	21
Coots	Same as for Other Ducks	25	75
Canada Geese:			
Northwest Permit Zone (9) (10)	Oct. 24–Nov. 1 &	4	12
	Nov. 21–Jan. 12 &	4	12
	Feb. 6–Mar. 10	4	12
Tillamook County Management Area	Closed	—	—
Southwest Zone	Oct. 17–Nov. 1 &	4	12
	Nov. 8–Jan. 31	4	12
South Coast Zone	Oct. 3–Nov. 29 & Dec. 19–Jan. 14 & Feb. 20–Mar. 10.	6	18
Eastern Zone	Oct. 17–Nov. 1 &	4	12
	Nov. 8–Jan. 31	4	12
Klamath County Zone	Oct. 10–Dec. 6 &	4	12
	Dec. 20–Jan. 31	4	12
Harney and Lake County Zone	Oct. 10–Dec. 6 &	4	12
	Dec. 20–Jan. 31	4	12
Malheur County Zone	Oct. 10–Dec. 6 &	4	12
	Dec. 20–Jan. 31	4	12
White-fronted Geese:			
Northwest Permit Zone (9)	Same as for Canada Geese	10	30
Tillamook County Management Area	Closed		
Southwest Zone	Same as for Canada Geese	10	30
South Coast Zone	Same as for Canada Geese	10	30
Eastern Zone	Same as for Canada Geese	10	30
Klamath County Zone	Oct. 10–Dec. 6 &	10	30
	Jan. 24–Mar. 10	10	30
Harney and Lake County Zone:			
Lake County	Oct. 10–Dec. 6 &	1	3
	Jan. 24–Mar. 10	1	3
Harney County	Same as for Lake County	10	30
Malheur County Zone	Oct. 10–Dec. 6 &	10	30
	Jan. 24–Mar. 10	10	30
Light Geese:			
Northwest Permit Zone (9)	Same as for Canada Geese	6	18
Tillamook County Management Area	Closed	—	—
Southwest Zone	Same as for Canada Geese	6	18
South Coast Zone	Same as for Canada Geese	6	18
Eastern Zone	Same as for Canada Geese	6	18
Klamath County Zone (11)	Oct. 10–Dec. 6 &	6	18
	Jan. 24–Mar. 10	6	18
Harney and Lake County Zone (11)	Oct. 10–Dec. 6 &	6	18
	Jan. 24–Mar. 10	6	18
Malheur County Zone (11)	Oct. 10–Dec. 6 &	6	18
	Jan. 24–Mar. 10	6	18
Brant	Nov. 28–Dec. 13	2	6
Utah			
Ducks		7	21
Zone 1:			

	Season dates	Limits	
		Bag	Possession
Scaup	Oct. 3–Dec. 27	3	9
Other Ducks	Oct. 3–Jan. 16	7	21
Zone 2:			
Scaup	Same as Zone 1	3	9
Other Ducks	Same as Zone 1	7	21
Coots	Same as for Other Ducks	25	75
Canada Geese and Brant:			
Northern Zone	Oct. 3–Jan. 16	4	12
Wasatch Front Zone	Oct. 3–Oct. 15 &	4	12
	Nov. 7–Feb. 7	4	12
Washington County Zone	Oct. 3–Oct. 15 &	4	12
	Nov. 7–Feb. 7	4	12
Balance of State Zone	Oct. 3–Oct. 15 &	4	12
	Oct. 24–Jan. 24	4	12
White-fronted Geese:			
Northern Zone	Same as for Canada Geese	10	30
Wasatch Front Zone	Same as for Canada Geese	10	30
Washington County Zone	Same as for Canada Geese	10	30
Balance of State Zone	Same as for Canada Geese	10	30
Light Geese:			
Northern Zone	Oct. 24–Jan. 16 &	20	60
	Feb. 18–Mar. 10	20	60
Wasatch Front Zone	Nov. 3– Feb. 7 &	20	60
	Mar. 1–Mar. 10	20	60
Washington County Zone	Same as for Wasatch County Zone	20	60
Balance of State Zone	Same as for Wasatch County Zone	20	60
Washington			
Ducks		7	21
East Zone:			
Scaup	Nov. 7–Jan. 31	3	9
Other Ducks	Oct. 17–Oct 21 & Oct. 24–Jan. 31	7	21
		7	21
West Zone (12)	Same as East Zone.		
Coots	Same as for Other Ducks	25	75
Canada Geese (13):			
Management Area 1 (14)	Oct. 17–Oct. 29 &	4	12
	Nov. 7–Jan. 31	4	12
Management Area 2A (15) (16)	Nov. 14–Dec. 6 &	4	12
	Dec. 16–Jan. 31 &	4	12
	Feb. 10–Mar. 9	4	12
Management Area 2B (15) (16)	Oct. 17–Oct. 25 &	4	12
	Nov. 14–Jan. 10 &	4	12
	Feb. 14–Mar. 9	4	12
Management Area 3 (14)	Oct. 17–Oct. 29 &	4	12
	Nov. 7–Jan. 31	4	12
Management Area 4 (14)	Oct. 17–Oct. 18 &	4	12
	Oct. 21 &	4	12
	Oct. 24–Jan. 31	4	12
Management Area 5 (14)	Oct. 17–Oct. 19 &	4	12
	Oct. 24–Jan. 31	4	12
White-fronted Geese (13):			
Management Area 1 (14)	Oct. 17–Jan. 31	4	12
Management Area 2A (15)	Same as for Canada Geese	4	12
Management Area 2B (15)	Same as for Canada Geese	4	12
Management Areas 3 (14)	Same as for Canada Geese	4	12
Management Area 4 (14)	Same as for Canada Geese	4	12
Management Area 5 (14)	Same as for Canada Geese	4	12
Light Geese (13):			
Management Area 1 (14)	Oct. 17–Jan. 31	4	12
Management Area 2A (15)	Same as for Canada Geese	4	12
Management Area 2B (15)	Same as for Canada Geese	4	12
Management Areas 3 (14)	Same as for Canada Geese	4	12
Management Area 4 (14)	Same as for Canada Geese	4	12
Management Area 5 (14)	Same as for Canada Geese	4	12
Brant (17):			
Skagit County	Jan. 9–Jan. 24	2	6
Pacific County	Jan. 2–Jan. 17	2	6
Wyoming			
Ducks		7	21
Snake River Zone:			
Scaup	Sept. 26–Dec. 20	3	9
Other Ducks	Sept. 26–Jan. 8	7	21

	Season dates	Limits	
		Bag	Possession
Balance of State Zone:			
Scaup	Sept. 26–Dec. 20	3	9
Other Ducks	Sept. 26–Jan. 8	7	21
Coots	Same as for Other Ducks	15	45
Dark Geese	Sept. 26–Dec. 31	3	9
Light Geese	Closed		

(1) In *Arizona,* the daily bag limit may include no more than either 2 hen mallards or 2 Mexican-like ducks, or 1 of each; and not more than 6 hen mallards and Mexican-like ducks, in the aggregate, may be in possession.
(2) In *California,* the daily bag and possession limits for Canada geese and white-fronted geese are in the aggregate.
(3) In *California,* small Canada geese are Cackling and Aleutian Canada geese, and large Canada geese are Western and Lesser Canada geese.
(4) In *California,* in the Northeastern Zone, the daily bag limit may include no more than 2 large Canada geese.
(5) In *Idaho,* the season on light geese is closed in Fremont and Teton Counties.
(6) In *Montana,* check State regulations for special seasons and exceptions in Freezeout Lake WMA; Canyon Ferry; Flathead; and Deer Lodge County.
(7) In *Nevada,* the seasons for all ducks, geese, coots, and moorhens in that portion of the South Zone including the Moapa Valley to the confluence of the Muddy and Virgin rivers are only open October 31 through January 24. In addition, youth 15 years of age or younger are allowed to hunt on October 17 on the Moapa Valley portion of Overton Wildlife Management Area. Youth must be accompanied by an adult who is at least 18 years of age.
(8) In *Nevada,* there is no open season on light geese in Ruby Valley within Elko and White Pine Counties. In addition, the season is closed in Kirch WMA, Mason Valley WMA, and Scripps WMA and Washoe State Park from February 20 to March 9.
(9) In *Oregon,* in the Northwest Permit Zone, see State regulations for specific dates, times, and conditions of permit hunts and closures.
(10) In *Oregon,* in the Northwest Permit Zone, the season for Dusky Canada geese is closed.
(11) In *Oregon,* in the Klamath County, the Harney and Lake County, and the Malhuer County Zones, during February 1 through March 10, the daily bag limit for light geese is 20. The possession limit is three times the daily bag limit.
(12) In *Washington,* the daily bag limit in the West Zone may include no more than 2 scoters, 2 long-tailed ducks, and 2 goldeneyes, with the possession limit three times the daily bag limit. The daily bag and possession limit, and the season limit, for harlequins is 1.
(13) In *Washington,* the daily bag limit is 4 Canada geese, white-fronted geese, or light geese, singly or in the aggregate. Possession limit is three times the daily bag limit.
(14) In *Washington,* in State Management Area 4, hunting is allowed only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Management Areas 1, 3, and 5, hunting is allowed everyday. See State regulations for details, including shooting hours.
(15) In *Washington,* in Management Areas 2A and 2B, see State regulations for specific dates, times, and conditions of permit hunts and closures.
(16) In *Washington,* in Management Areas 2A and 2B, the season for Dusky Canada geese is closed.
(17) In *Washington,* brant may be hunted in Skagit and Pacific Counties only; see State regulations for specific dates.

(f) *Youth Waterfowl Hunting Days.*

The following seasons are open only to youth hunters. Youth hunters must be accompanied into the field by an adult at least 18 years of age. This adult cannot duck hunt but may participate in other open seasons.

Definition

Youth Hunters: Includes youths 15 years of age or younger.

Note: The following seasons are in addition to the seasons published previously in the September 1, 2015, **Federal Register** (80 FR 52645). Bag and possession limits will conform to those set for the regular season.

		Season dates
ATLANTIC FLYWAY		
Connecticut	Ducks, geese, mergansers, and coots	Oct. 3 & Oct. 31.
* * * * * * *		
Florida	Ducks, mergansers, coots, moorhens, and geese	Feb. 6 & 7.
* * * * * * *		
Maryland (1)(9)	Ducks, coots, light geese, Canada geese, sea ducks, and brant	Nov. 7 & Feb. 6.
Massachusetts	Ducks, mergansers, coots, and geese	Sept. 26 & Oct. 10.
* * * * * * *		
New Jersey	Ducks, geese, mergansers, coots, moorhens, and gallinules	
North Zone		Oct. 3 & Oct. 31.
South Zone		Oct. 10 & Nov. 7.
Coastal Zone		Nov. 7 & Feb. 13.
* * * * * * *		
North Carolina	Ducks, mergansers, geese (10), brant, tundra swans (11), and coots	Feb. 6 & Feb. 13.
Pennsylvania	Ducks, mergansers, Canada geese, coots, and moorhens	
North Zone		Sept. 19 & 26.
South Zone		Sept. 19 & Nov. 7.
Northwest Zone		Sept. 19 & 26.
Lake Erie Zone		Sept. 19 & Oct. 17.
* * * * * * *		
South Carolina	Ducks, geese, mergansers, and coots	Feb. 6 & 13.

		Season dates
* * * * * * *		
Virginia	Ducks, mergansers, coots, tundra swans (11), and Canada geese (12)	Oct. 24 & Feb. 6.
* * * * * * *		
MISSISSIPPI FLYWAY	.	
* * * * * * *		
Arkansas	Ducks, geese, mergansers, coots, moorhens, and gallinules	Dec. 5 & Feb. 6.
Illinois	Ducks, geese, mergansers, and coots	
North Zone		Oct. 10 & 11.
Central Zone		Oct. 17 & 18.
South Central Zone		Nov. 7 & 8.
South Zone		Nov. 14 & 15.
Indiana	Ducks, mergansers, coots, moorhens, gallinules, and geese	
North Zone		Oct. 17 & 18.
Central Zone		Oct. 24 & 25.
South Zone		Oct. 24 & 25.
Iowa	Ducks, geese, mergansers, coots	
North Zone		Sept. 26 & 27.
Missouri River Zone		Oct. 17 & 18.
South Zone		Oct. 10 & 11.
* * * * * * *		
Louisiana	Ducks, mergansers, coots, moorhens, gallinules, and geese	
West Zone		Nov. 7 & Jan. 30.
East Zone		Nov. 14 & Feb. 6.
Coastal Zone		Oct. 31 & Nov. 1.
* * * * * * *		
Mississippi	Ducks, mergansers, coots, moorhens, gallinules, and geese	Nov. 21 & Feb. 6.
Missouri	Ducks, coots, mergansers, moorhens, gallinules, and geese	
North Zone		Oct. 24 & 25.
Middle Zone		Oct. 31 & Nov. 1.
South Zone		Nov. 21 & 22.
Ohio	Ducks, mergansers, coots, moorhens, gallinules, and geese	
Lake Erie Marsh		Oct. 3 & 4.
North Zone		Oct. 3 & 4.
South Zone		Oct. 3 & 4.
Tennessee	Ducks, mergansers, coots, moorhens, gallinules, and geese	
Reelfoot Zone		Feb. 6 & 13.
Remainder of State		Feb. 6 & 13.
* * * * * * *		
CENTRAL FLYWAY		
* * * * * * *		
Kansas (4)	Ducks, geese, mergansers, and coots	
High Plains		Oct. 3 & 4.
Low Plains:		
Early Zone		Oct. 3 & 4.
Late Zone		Oct. 24 & 25.
Southeast Zone		Nov. 7 & 8.
* * * * * * *		
Nebraska	Ducks, geese, mergansers, and coots	
Zone 1		Oct. 3 & 4.
Zone 2		Sept. 26 & 27.
Zone 3		Oct. 17 & 18.
Zone 4		Sept. 26 & 27.
* * * * * * *		
Oklahoma	Ducks, mergansers, coots, and geese:	
High Plains		Oct. 10 & 11.
Low Plains:		
Zone 1		Oct. 24 & 25.
Zone 2		Oct. 31 & Nov. 1.
* * * * * * *		
Texas	Ducks, geese, mergansers, moorhens, gallinules, and coots	
High Plains		Oct. 24 & 25.
Low Plains:		
North Zone		Oct. 31 & Nov. 1.
South Zone		Oct. 24 & 25.

		Season dates
* * * * * * *		
PACIFIC FLYWAY	.	
Arizona	Ducks, geese, mergansers, coots, and moorhens	
North Zone		Sept. 26 & 27.
South Zone		Jan. 30 & 31.
* * * * * * *		
Idaho	Ducks, geese, mergansers, and coots	
Zone 1		Sept. 26 & 27.
Zones 2 & 3		Oct. 3 & 4.
* * * * * * *		
Nevada	Ducks, geese, mergansers, coots, and moorhens	
Northeast Zone		Sept. 12 & 13.
Northwest Zone		Sept. 26 & Feb. 6.
South Zone		Feb. 6 & 7.
* * * * * * *		

(1) In *Maryland,* youth hunter(s) must be accompanied by an adult at least 21 years old and who possesses a current Maryland hunting license or is exempt from the hunting license requirement. The adult accompanying the youth hunter(s) may not possess a hunting weapon and may not participate in other seasons that are open on the youth days.

* * * * * * *

(4) In *Kansas,* the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.

* * * * * * *

(9) In *Maryland,* the bag limit for Canada geese is 2 in the AP Zone and 5 in the RP Zone.
(10) In *North Carolina,* the daily bag limit in the Northeast Hunt Zone may not include dark geese except by permit.
(11) In *North Carolina* and *Virginia,* the daily bag limit may not include tundra swans except by permit.
(12) In *Virginia,* the daily bag limit for Canada geese is 2.

■ 4. Further amend § 20.106, as published on September 1, 2015 (80 FR 52645), by:
■ a. Revising the introductory paragraphs;
■ b. Adding entries for the following States in alphabetical order to the table;
■ c. Revising footnote (1) following the table; and
■ d. Adding footnote (7) following the table.

The revisions and additions read as follows:

§ 20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 28, 2014, **Federal Register** (79 FR 51402).

Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take sandhill cranes at the level allowed by the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

Note: The following seasons are in addition to the seasons published previously in the September 1, 2015, **Federal Register** (80 FR 52645).

	Season dates	Limits	
		Bag	Possession
MISSISSIPPI FLYWAY			
* * * * * * *			
Tennessee (1)(7)	Nov. 28–Jan. 1	3	3
CENTRAL FLYWAY			
* * * * * * *			
Oklahoma (1)	Oct. 24–Jan. 24	3	9
* * * * * * *			
Texas (1):			
Zone A	Oct. 31–Jan. 31	3	9
Zone B	Nov. 20–Jan. 31	3	9
Zone C	Dec. 19–Jan. 24	2	6

					Season dates	Limits	
						Bag	Possession
*	*	*	*	*	*	*	*

(1) Each person participating in the regular sandhill crane seasons must have a valid sandhill crane hunting permit and/or a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

*	*	*	*	*	*	*	*

(7) In *Tennessee,* the shooting hours are from sunrise to 3 p.m.

* * * * *

■ 5. Section 20.107 is revised to read as follows:

§ 20.107 Seasons, limits, and shooting hours for swans.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Hunting is by State permit only.

Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take swans at the level allowed by the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

Note: Successful permittees must immediately validate their harvest by that method required in State regulations.

	Season dates	Limits
ATLANTIC FLYWAY		
North Carolina	Nov. 7–Jan. 30	1 tundra swan per season.
Virginia	Nov. 18–Jan 31	1 tundra swan per season.
CENTRAL FLYWAY (1)		
Montana	Oct. 3–Jan. 7	1 tundra swan per season.
North Dakota	Oct. 3–Jan. 3	1 tundra swan per season.
South Dakota	Oct. 3–Dec. 20	1 tundra swan per permit.
PACIFIC FLYWAY (1)		
Montana (2)	Oct. 10–Dec. 1	1 swan per season.
Nevada (3)(4)	Oct. 10–Jan. 3	2 swans per season.
Utah (4)(5)	Oct. 3–Dec. 13	1 swan per season.

(1) See State regulations for description of area open to swan hunting.
(2) In *Montana,* all harvested swans must be reported by way of a bill measurement card within 3 days of harvest.
(3) In *Nevada,* all harvested swans and tags must be checked or registered within 5 days of harvest.
(4) Harvests of trumpeter swans are limited to 5 in Nevada and 10 in Utah. When it has been determined that the quota of trumpeter swans allotted to Nevada and Utah will have been filled, the season for taking of any swan species in the respective State will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.
(5) In *Utah,* all harvested swans and tags must be checked or registered within 3 days of harvest.

■ 6. Further amend § 20.109, as published on September 1, 2015 (80 FR 52645), by:

■ a. Revising the introductory paragraphs;

■ b. Adding entries for the following States in alphabetical order to the table;

■ c. Revising footnote (2) following the table; and

■ d. Adding footnotes (5), (6), and (7) following the table.

The revisions and additions read as follows:

§ 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations.

Area descriptions were published in the August 21, 2015 (80 FR 51090) and August 25, 2015 (80 FR 51658) **Federal Register**.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

Limits: The daily bag limit may include no more than 3 migratory game birds, singly or in the aggregate. The possession limit is three times the daily bag limit. These limits apply to falconry during both regular hunting seasons and extended falconry seasons, unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas.

Although many States permit falconry during the gun seasons, only extended falconry seasons are shown below. Please consult State regulations for details.

Note: The following seasons are in addition to the seasons published previously in the September 1, 2015, **Federal Register** (80 FR 52645).

	Extended falconry dates
ATLANTIC FLYWAY	
Delaware	
* * * * * * *	
Ducks, mergansers, and coots	Feb. 1–Mar. 5.
Brant	Nov. 23–Dec. 21 & Feb. 1–Mar. 5.
Florida	
* * * * * * *	
Ducks, mergansers, light geese, and coots	Nov. 3–Nov. 12 & Feb. 8–Mar. 4.
* * * * * * *	
Maine	
Ducks, mergansers, and coots (5):	
North Zone	Dec. 15–Feb. 4.
South & Coastal Zones	Jan. 8–Feb. 29.
Maryland	
* * * * * * *	
Ducks	Feb. 2–Mar. 10.
Brant	Feb. 1–Mar. 10.
Light Geese	Feb. 25–Mar. 10.
Massachusetts	
Ducks, mergansers, sea ducks, and coots	Feb. 1–Feb. 4.
New Hampshire	
Ducks, mergansers, and coots:	
Northern Zone	Dec. 11–Jan. 24.
Inland Zone	Nov. 2–Nov. 14 & Dec. 24–Jan. 24.
Coastal Zone	Jan. 26–Mar. 10.
New Jersey	
Woodcock:	
North Zone	Oct. 1–Oct. 16 & Nov. 22–Jan. 15.
South Zone	Oct. 1–Nov. 6 & Nov. 29–Dec. 18 & Jan. 2–Jan. 15.
Ducks, mergansers, coots, and brant:	
North Zone	Jan. 19–Mar. 10.
South Zone	Jan. 19–Mar. 10.
Coastal Zone	Jan. 31–Mar. 10.
New York	
Ducks, mergansers and coots:	
Long Island Zone	Nov. 1–Nov. 25 & Nov. 30–Dec. 6 & Feb. 1–Feb. 13.
Northeastern Zone	Oct. 1–Oct. 2 & Oct. 12–Oct. 23 & Dec. 14–Jan. 13.
Southeastern Zone	Oct. 1–Oct. 9 & Oct. 19–Nov. 6 & Dec. 28–Jan. 13.
Western Zone	Oct. 1–Oct. 23 & Dec. 7–Dec. 25 & Jan. 11–Jan. 13.
North Carolina	
* * * * * * *	
Ducks, mergansers and coots	Oct. 26–Nov. 7 & Feb. 1–Feb. 20.
Pennsylvania	
* * * * * * *	
Ducks, mergansers, and coots:	
North Zone	Nov. 30–Dec. 18 & Feb. 8–Mar. 10.
South Zone	Oct. 26–Nov. 13 & Feb. 8–Mar. 10.
Northwest Zone	Dec. 14–Dec. 28 & Feb. 3–Mar. 10.
Lake Erie Zone	Jan. 19–Mar. 10.
Canada Geese:	
SJBP Zone	Mar. 4–Mar. 10.
AP Zone	Feb. 1–Mar. 10.
RP Zone	Mar. 7–Mar. 10.
South Carolina	
Ducks, mergansers, and coots	Nov. 1–Nov. 20 & Feb. 1–Feb. 11.
Virginia	
* * * * * * *	
Ducks, mergansers, and coots	Nov. 30–Dec. 18 & Feb. 1–Feb. 12.
Canada Geese:	
Eastern (AP) Zone	Nov. 18–Nov. 23 & Feb. 1–Feb. 24.
Western (SJBP) Zone	Feb. 16–Feb. 24.
Brant	Oct. 17–Jan. 1.

	Extended falconry dates
MISSISSIPPI FLYWAY	
Arkansas	
Ducks, mergansers, and coots	Feb. 1–Feb. 15.
Illinois	
* * * * * * *	
Ducks, mergansers, and coots	Feb. 10–Mar. 10.
Indiana	
* * * * * * *	
Ducks, mergansers, and coots:	
North Zone	Sept. 27–Sept. 30 & Feb. 15–Mar. 10.
Central Zone	Oct. 24–Oct. 30 & Feb. 18–Mar. 10.
South Zone	Oct. 24–Oct. 30 & Feb. 18–Mar. 10.
Iowa	
Ducks, mergansers, and coots:	
North Zone	Dec. 15–Jan. 12.
Missouri River Zone	Dec. 19–Jan. 16.
South Zone	Dec. 15–Jan. 12.
Kentucky	
Ducks, mergansers, and coots	Nov. 5–Nov. 25 & Nov. 30–Dec. 6.
Canada geese, white-fronted geese, light geese, and brant	Nov. 5–Nov. 25.
Louisiana	
* * * * * * *	
Rails and moorhens	Nov. 4–Nov. 6 & Dec. 31–Jan. 31.
Ducks:	
West Zone	Nov. 4–Nov. 13 & Dec. 7–Dec. 18 & Jan. 25–Jan. 31.
East Zone	Nov. 4–Nov. 20 & Dec. 7–Dec. 18.
Coastal Zone	Nov. 4–Nov. 6 & Dec. 7–Dec. 18 & Jan. 18–Jan. 31.
Michigan	
Ducks, mergansers, coots, and moorhens	Dec. 28–Jan. 21 & Mar. 1–Mar. 10.
Minnesota	
* * * * * * *	
Ducks, mergansers, coots, moorhens, and gallinules	Dec. 12–Jan. 26.
Mississippi	
Doves	Nov. 16–Nov. 24 & Jan. 16–Jan. 23.
Ducks, mergansers and coots	Feb. 7–Mar. 6.
Missouri	
* * * * * * *	
Ducks, mergansers, and coots	Sept. 12–Sept. 27 & Feb. 11–Mar. 10.
Ohio	
Ducks, mergansers, and coots	Feb. 20–Mar. 5.
Geese	Feb. 20–Mar. 5.
* * * * * * *	
Wisconsin	
Rails, snipe, moorhens, and gallinules:	
North Zone	Sept. 1–Sept. 25 & Nov. 25–Dec. 16.
South Zone	Sept. 1–Oct. 2 & Oct. 12–Oct. 16 & Dec. 7–Dec. 16.
Mississippi River Zone	Sept. 1–Oct. 2 & Oct. 10–Oct. 16 & Dec. 9–Dec. 16.
Woodcock	Sept. 1–Sept. 18 & Nov. 3–Dec. 16.
Ducks, mergansers, and coots	Sept. 19–Sept. 20 & Jan. 8–Feb. 21.
CENTRAL FLYWAY	
Kansas	
Ducks, mergansers, and coots:	
Low Plains	Feb. 25–Mar. 10.
Montana (2)	
Ducks, mergansers, and coots	Sept. 23–Oct. 2.
Nebraska	
Ducks, mergansers, and coots:	
Zone 1	Sept. 5–Sept. 20 & Feb. 25–Mar. 10.
Zone 2:	
Low Plains	Sept. 5–Sept. 20 & Feb. 25–Mar. 10.
High Plains	Sept. 12–Sept. 20.
Zone 3:	
Low Plains	Sept. 5–Sept. 20 & Feb. 25–Mar. 10.
High Plains	Sept. 12–Sept. 20.

	Extended falconry dates
Zone 4	Sept. 5–Sept. 20 & Feb. 25–Mar. 10.
* * * * * * *	
Oklahoma	
Ducks, mergansers, and coots:	
Low Plains	Feb. 15–Feb. 29.
South Dakota	
Ducks, mergansers, and coots:	
High Plains	Oct. 2–Oct. 9.
Low Plains:	
North Zone	Sept. 1–Sept. 25 & Dec. 9–Dec. 16.
Middle Zone	Sept. 1–Sept. 25 & Dec. 9–Dec. 16.
South Zone	Sept. 15–Oct. 9 & Dec. 23–Dec. 30.
Texas	
* * * * * * *	
Ducks, mergansers, and coots:	
Low Plains	Feb. 1–Feb. 14.
* * * * * * *	
PACIFIC FLYWAY	
Arizona	
* * * * * * *	
Ducks and mergansers:	
North Zone	Jan. 24–Jan. 27.
South Zone	Sept. 27–Sept. 30.
California	
Ducks, mergansers, and coots:	
Colorado River Zone	Jan. 25–Jan. 28.
Southern Zone	Feb. 1–Feb. 5.
Canada Geese and White-fronted Geese:	
Northeastern Zone (6)	Jan. 18–Jan. 22.
Colorado River Zone	Jan. 25–Jan. 28.
Southern Zone (7)	Feb. 1–Feb. 5.
Light Geese:	
Colorado River Zone	Jan. 25–Jan. 28.
Southern Zone (7)	Feb. 1–Feb. 4.
* * * * * * *	

* * * * * * *

(2) In *Montana,* the bag limit is 2 and the possession limit is 6.

* * * * * * *

(5) In *Maine,* the daily bag and possession limits for black ducks are 1 and 3, respectively.
(6) In *California,* in the Northeastern Zone, there is no extended falconry season for white-fronted geese.
(7) In *California,* in the Imperial County Special Management Area, there is no extended falconry season.

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Federal Register

Vol. 80, No. 186

Friday, September 25, 2015

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

52605–52934 1
52935–53234 2
53235–53456 3
53457–53690 4
53691–54222 8
54223–54406 9
54407–54700 10
54701–55014 11
55015–55216 14
55217–55502 15
55503–55714 16
55715–56364 17
56365–56892 18
56893–57068 21
57069–57282 22
57283–57508 23
57509–57692 24
57693–58194 25

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

25 54407
200 54407
700 55721
910 ..... 53235, 57509
1800 54701
2000 54223
3187 56893
3374 55505
3603 57283

3 CFR

Proclamations:
9309 53443
9310 53445
9311 53447
9312 53449
9313 53451
9314 53453
9315 53455
9316 53695
9317 55213
9318 55217
9319 55219
9320 55717
9321 55719
9322 56363
9323 57067
9324 57279
9325 57505
9326 57507
9327 57691
Executive Orders:
13705 54405
13706 54697
13707 56365
Administrative Orders:
Memorandums:
Memorandum of August 28, 2015 55715
Notices:
Notice of September 10, 2015 55013
Notice of September 18, 2015 57281
Presidential Determinations:
No. 2015–11 of September 11, 2015 55503
No. 2015–12 of September 14, 2015 57063

5 CFR

410 57694
430 57693
534 57693
550 58094
551 58094
870 58094
890 55762
892 55762
1605 57069
1653 52605
2641 56893
2600 57070
2601 57070
2604 57070
5801 54223

6 CFR

Proposed Rules:
5 53019
46 53933

7 CFR

271 53240
272 54410
273 ..... 53240, 54410
274 53240
275 53240
301 53457
319 ..... 55015, 55016, 55739
1205 53243
1218 53257
1221 57698
1784 52606
1980 53457
3550 54713
Proposed Rules:
1c 53933
51 53021
340 57741
504 53021
959 56399
989 53022
1205 53265

9 CFR

Proposed Rules:
54 54460
79 54460
101 53475
116 53475
317 54442
327 56401

10 CFR

Ch. I 54223
72 53961
431 ..... 56894, 57438
1046 57080
Proposed Rules:
50 56820
51 53266
73 ..... 53478, 57106
429 ..... 52676, 55797
430 ..... 52850, 54443, 54444, 55038
431 ..... 52676, 55797
745 53933

12 CFR

704 57283
740 57284

741 57284
747 57284
791 57512
796 57284
1026 56895
1282 53392

13 CFR

127 55019

14 CFR

Ch. I 55742
23 ....54713, 57289, 57291
25 ....52615, 55221, 55226, 55228
39 ....52935, 52937, 52939, 52941, 52946, 52948, 52953, 52955, 55229, 55232, 55235, 55505, 55512, 55521, 55527, 57083, 57086
71 ....54417, 55741, 57517, 57518, 57519, 57521, 57522, 57523, 57524, 57699, 57700
95 55535
97 ....53694, 53696, 53700, 53702
193 57701
Proposed Rules:
21 57121
23 57312
39 ....53024, 53028, 53030, 53480, 55045, 55273, 55798, 56405, 56407, 56413, 57122, 57543, 57545, 57742, 57744, 57751, 57753
71 ....55049, 55275, 56935, 57755
73 54444
91 53033
1230 53933

15 CFR

730 52959
732 52959
734 52959
736 52959
738 52959
740 ....52959, 52962, 56898
742 52959
743 52959
744 ....52959, 52963
746 ....52959, 56898
747 52959
748 52959
750 52959
752 52959
754 52959
756 52959
758 52959
760 52959
762 52959
764 52959
766 52959
768 52959
770 52959
772 ....52959, 56898
774 ....52959, 56369
Proposed Rules:
27 53933
922 55801

16 CFR

Proposed Rules:
312 53482
315 53272
456 53274
1028 57548
1211 53036
1251 54417

17 CFR

170 55022
270 58124
274 58124
Proposed Rules:
23 57129
240 55182

18 CFR

40 ....57526, 57704
Proposed Rules:
40 57549
806 56936

19 CFR

133 56370
151 56370
207 52617
Proposed Rules:
201 57533
210 57533

20 CFR

Proposed Rules:
404 55050
416 55050
431 53933

21 CFR

1 ....55237, 55908
11 ....55908, 56170
16 ....55908, 56170
25 57531
106 55908
110 55908
114 55908
117 ....55908, 56170, 56358
120 55908
123 55908
129 55908
179 55908
211 55908
225 55908
500 56170
507 ....56170, 56360
520 53458
524 53458
558 53458
579 56170
886 57090
1308 54715
1403 57283
1404 57283
1405 57283
Proposed Rules:
1 ....55802, 57136
11 ....55564, 57136
15 54256
16 57136
101 ....54446, 55564
106 57136
108 57137
110 57136
114 57136
117 57136
120 57136
123 57136
129 57136
179 57136
201 57756
211 57136
225 57136
500 57136
507 57136
579 57136
801 57756
1100 57756
1308 55565

22 CFR

22 ....53704, 55242
Proposed Rules:
171 54256
205 53483
225 53933

23 CFR

Proposed Rules:
924 57564
1200 57564

24 CFR

960 53709
982 52619
3280 53712
3282 53712
3285 53712

26 CFR

1 ....52972, 52976, 53732, 54374, 55243, 55538, 55643, 56866, 56904
53 57709
54 54374
Proposed Rules:
1 ....52678, 53058, 53068, 55568, 55802, 56415
28 54447

27 CFR

24 55246
70 55246

28 CFR

2 52982
Proposed Rules:
46 53933

29 CFR

552 55029
4000 ....54980, 55742, 57717
4001 54980
4022 55249
4041A 55742, 57717
4043 54980
4044 55249
4204 54980
4206 54980
4231 54980
4281 ....55742, 57717
Proposed Rules:
21 53933
1904 57765

30 CFR

7 52984
18 52984
44 52984
46 52984
48 52984
49 52984
56 52984
57 52984
70 52984
71 52984
72 52984
74 52984
75 52984
90 52984
519 57092
550 57092
551 57092
553 57092
556 57092
560 57092
580 57092
581 57092
582 57092
585 57092
938 55746
Proposed Rules:
7 56416
75 ....53070, 56416

31 CFR

285 55751
515 56915
Proposed Rules:
Ch. X 52680

32 CFR

86 55752
199 55250
Proposed Rules:
219 53933

33 CFR

100 ....52620, 52993, 52996, 52999, 53463, 57717
117 ....52622, 52999, 53000, 53463, 53464, 54236, 55030, 55256, 55761, 55762, 55763, 56381, 57536, 57720, 57722
147 54718
154 54418
155 54418
156 54418
165 ....52622, 52625, 53263, 53465, 54721, 55257, 56384, 56386, 56388, 56926, 57098
Proposed Rules:
100 55277
165 ....53754, 55583
334 55052

34 CFR

Proposed Rules:
97 53933

36 CFR

7 55259

38 CFR

36 55763
17 55544
Proposed Rules:
16 53933

39 CFR

957 55766
961 54722
966 54722

40 CFR

9 ....53000, 57293
52 ....52627, 52630, 53001, 53467, 53735, 53739, 54237, 54723, 54725, 55030, 55266, 55267, 55545, 57272, 57302, 57537, 57538, 57540, 57722, 57725, 57727, 57729, 57730

62 .....55548, 56390, 57732
63.....54728, 56700
81.....57100
131.....57734
180 .....53469, 54242, 54248, 54729, 55768, 56393
228.....56395
271.....55032
721.....53000, 57293
Proposed Rules:
9.....53756
22.....53756
26.....53933
49.....56554, 56579
51.....54146, 56579
52 .....52701, 52710, 53086, 53484, 53757, 54468, 54471, 54739, 54744, 55055, 55279, 55281, 55586, 55805, 56418, 56579, 57141, 57766
60.....54146, 56593
61.....54146
62 .....55586, 56422, 57767
63.....54146
70.....55061, 56579
71.....56579
85.....53756
86.....53756
97.....55061
131.....55063
174.....54257
180.....54257
260.....57918
261.....57918, 58014
262.....57918, 58014
263.....57918
264.....57918
265.....57918
266.....57914
268.....57918, 58014
270.....57918
271.....55077
273.....57918, 58014
279.....57918
600.....53756
1033.....53756
1036.....53756
1037.....53756
1039.....53756
1042.....53756
1065.....53756
1066.....53756
1068.....53756

41 CFR

60–1.....54934
102–117.....57101
102–192.....57103

42 CFR

52i.....53739
Proposed Rules:
88.....54746
405.....55284
413.....53087
431.....55284
447.....55284
482.....55284
483.....55284
485.....55284
488.....55284

43 CFR

Proposed Rules:
3160.....54760
3170.....54760

44 CFR

64 .....52633, 55733, 57734
67.....53007
Proposed Rules:
67.....57767

45 CFR

1174.....55505
1180.....56893
1183.....56893
Proposed Rules:
46.....53933
92.....54172
690.....53933

46 CFR

35.....54418
39.....54418
502.....57305
503.....52637, 52638
Proposed Rules:
401.....54484
403.....54484
404.....54484

47 CFR

0.....53747
1.....55775, 56764
2.....53747
11.....53747
15.....53747
18.....53747
27.....55795, 56764
43.....52641
73.....53747
74.....53747, 55795
76.....53747, 54252
78.....53747
80.....53747
90.....53747
95.....53747
97.....53747
Proposed Rules:
0.....52714
1.....52714
2.....52714
15 .....52714, 52715, 56422
18.....52714
51.....57768
54.....53088, 53757
63.....57768
73.....52715, 56422
74.....56422
74.....52715

48 CFR

Ch. I.....53436, 53440
1.....53753
2.....53753
3.....53753
4.....53439, 53753
6.....53753
7.....53436, 53753
8.....53753
9.....53753
10.....53753
12.....53753
13.....53753
15.....53753
16.....53753
17.....53753
19.....53753
22.....53753
23.....53436
25.....53753
28.....53753
30.....53753
31.....53439
35.....53439
42.....53753
50.....53753
52 .....53436, 53439, 53753
53.....53753
204.....56929
211.....56398
212.....56929
213.....56929
215.....56398, 56929
216.....56929
217.....56929
219.....56929
225.....56929
237.....56398
239.....56929, 56930
252.....56929, 56930
1842.....52642
1852.....52642
Proposed Rules:
202.....56939
212.....56939
246.....56939
252.....56939

49 CFR

105.....54418
107.....54418
171.....54418
571.....54733
577.....55035
591.....53011
592.....53011
593.....55550
800.....57307
830.....54736
Proposed Rules:
11.....53933
271.....55285
512.....53756
523.....53756
534.....53756
535.....53756
537.....53756
578.....56944
583.....53756
1011.....53758
1034.....53758
1102.....53758
1104.....53758
1115.....53758

50 CFR

20 .....52645, 52663, 57664, 58158, 58166
600.....57737
622 .....53263, 53473, 56930, 56931, 56932
648 .....53015, 54737, 55561, 56933, 56934, 57103, 57104
660.....53015, 57738
679 .....52673, 54253, 54254, 54255, 54440, 54737, 55562, 57105
Proposed Rules:
17 .....52717, 55286, 55304, 56423
85.....55078
200.....56432
223.....57314
224.....57314
622.....55819, 55821
660.....53088, 54507

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 11, 2015

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