SUMMARY: The USDA Forest Service is implementing regulations under the Food, Conservation, and Energy Act of 2008 (hereinafter the “2008 Farm Bill”). This rule provides for the provision of trees, portions of trees, or forest products from National Forest System lands, free of charge, to federally recognized Indian tribes (Indian tribes) for traditional and cultural purposes. This rule implements section 8105 of the 2008 Farm Bill. This rule is effective October 26, 2016.

SUPPLEMENTARY INFORMATION:

I. Background

The Forest Service is issuing this final rule to implement section 8105 of the 2008 Farm Bill (section 8105). Section 8105 has also been codified in Title 25 of the U.S. Code, chapter 32A—Cultural and Heritage Cooperation Authority (25 U.S.C. 3055—Forest Products for Traditional and Cultural Purposes). Subject to certain statutory limitations, section 8105 allows the Secretary of Agriculture to provide Indian tribes with trees, portions of trees, or forest products for traditional and cultural purposes. In this preamble to the final rule, the term “forest products” is used as a shorthand for “trees, portions of trees, or forest products”. Specifically, section 8105(a) provides that the Secretary may provide free of charge to Indian tribes any trees, portions of trees, or forest products from National Forest System land for traditional and cultural purposes. However, pursuant to section 8105(b), Indian tribes are prohibited from using any trees, portions of trees, or forest products provided under section 8105(a) for commercial purposes. While the 2008 Farm Bill does not define commercial purposes, it does define Indian tribe and traditional and cultural purpose. Section 8102(5) defines Indian tribe as any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1). In addition, per section 8102(9), traditional and cultural purpose, with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.

On December 2, 2009, the Forest Service published an Interim Directive (ID) to the Forest Service Handbook (FSH) 2409.18 to implement section 8105 of the 2008 Farm Bill. The ID was reissuued, without change, four times (effective March 8, 2011 (ID 2409.18–2011–1), June 7, 2012 (ID 2409.18–2012–2), December 6, 2013 (ID 2409.18–2013–3), and May 14, 2015 (ID 2409.18–2015–1), and remains in effect until November 14, 2016. This final rule will replace the Interim Directive, which will be entered in FSH 2409.18, chapter 80, section 82.5.

The proposed rule was published in the Federal Register on July 31, 2014 (79 FR 44327), and a comment period ensued over a period of 60 days. The Forest Service received 12 written comments through 10 letters, and all were considered in the development of this final rule.

This rule establishes Forest Service policy for providing Indian tribes with trees, portions of trees, or forest products for traditional and cultural purposes. Based on the comments received on the ID during formal government-to-government consultation, and those received during the proposed rulemaking, as well as the Agency’s experience using the ID to implement section 8105 over the last 7 years, the Agency is now publishing this final rule.

This final rule adds § 223.15 to 36 CFR part 223, subpart A. Section 223.15(a) authorizes Regional Foresters or designated Forest Officers to provide trees, portions of trees, or forest products to Indian tribes free of charge for traditional and cultural purposes. Section 223.15(b) restates the 2008 Farm Bill’s statutory definitions of “Indian tribe” and “traditional and cultural purpose,” and includes the Forest Services’ regulatory definition of “tribal officials.”

Sections 223.15(c) and (d) describe who can request trees, portions of trees, or forest products for traditional and cultural purposes, and where those requests should be directed. Tribal officials should submit requests for trees, portions of trees, or forest products to their local Forest Service District Ranger’s office for routing to the appropriate designated authority. In addition, tribal officials are encouraged to explain their requests to the Regional Forester or designated Forest Officer, and if necessary, how the request fits a traditional and cultural purpose.

A designated Forest Officer is an individual whom the Regional Forester has granted written authority to provide products under § 223.15. Currently, there is no limitation on the number of requests or authorizations per unit of a forest product or the number of requests or authorizations per Indian tribe. There is currently no limitation on the amount of trees, portions of trees, or forest products that can be requested at any one time. However, Forest Officers cannot grant materials in excess of the value limitations at § 223.15(e) in any given fiscal year.

Section 223.15(f) explains that the Forest Service may condition or deny requests for trees, portions of trees, or forest products under § 223.15. Finally, § 223.15(g) provides that all decisions made under § 223.15 must comply with the National Forest Management Act, relevant land management plans, the
National Environmental Policy Act, the Endangered Species Act, and all other applicable laws and regulations, and are subject to tribal treaty and other reserved rights and the savings provisions of the Cultural and Heritage Cooperation Authority (25 U.S.C. 8107(b)). The Forest Service will do its best to process requests received in a reasonable period of time, in light of these statutory and regulatory requirements.

II. Formal Government-to-Government Consultation

After issuance of the December 2, 2009, Interim Directive (ID 2409.18–2009–2), the Forest Service formally entered into consultation with Indian tribes, with the Regional Foresters extending invitations to Indian tribes by May 1, 2010. This consultation was conducted under Executive Order (EO) 13175, Consultation and Coordination with Indian Tribal Governments. Indian tribes were provided the ID to FSH 2409.18, and were invited to consult on proposed changes to 36 CFR part 223. Government-to-government consultation occurred over a period of at least 120 days, through September 1, 2010.

Regional Foresters were directed to invite all federally recognized Indian tribes in their Region to consult. In addition, they were directed to invite any federally recognized Indian tribes who have expressed a historical connection to National Forest System lands in their Region, even if they no longer reside there. To make the consultation more effective, the Forest Service provided Indian tribes with a question and answer document describing the Interim Directive and Forest Services’ intent to implement section 8105 of the 2008 Farm Bill through proposed changes to 36 CFR part 223. Recommendations from the Indian tribes have been incorporated, as appropriate, into this final rule.

III. Summary of Comments and Responses

The Forest Service received 12 comments in response to the proposed rule, several of which were similar in scope and nature. A summary of the comments and the Agency’s responses and actions taken to the comments follow.

Savings Provisions comment: Three commenters expressed concern that the proposed rule did not incorporate the savings provisions at 25 U.S.C. 3057(b), which protect existing tribal treaty and other reserved rights, as well as agreements between the Forest Service and an Indian tribe. Section 8105 has been codified in 25 U.S.C. 3055—Forest Products for Traditional and Cultural Purposes. The savings provisions at 25 U.S.C. 3057(b) apply to forest products for traditional and cultural purposes. These savings provisions state that:

Nothing in the chapter—

(1) diminishes or expands the trust responsibility of the United States to Indian tribes, or any legal obligation or remedy resulting from that responsibility;

(2) alters, abridges, repeals, or affects any valid agreement between the Forest Service and an Indian tribe;

(3) alters, abridges, diminishes, repeals, or affects any reserved or other right of an Indian tribe; or

(4) alters, abridges, diminishes, repeals, or affects any other valid existing right relating to National Forest System land or other public land.

Savings Provisions response: The Forest Service has revised § 223.15(g) of the final rule to incorporate the savings provisions codified at 25 U.S.C. 3057(b). The revised § 223.15(g) states: All decisions made under this section must comply with the National Forest Management Act, relevant land management plans, the National Environmental Policy Act, the Endangered Species Act, all other applicable laws and regulations, and are subject to tribal treaty and other reserved rights and the savings provisions of the Cultural and Heritage Cooperation Authority (25 U.S.C. 3057(b)).

Additionally, the authority citation under part 223 now includes references to both 25 U.S.C. 3055 and 3057.

Prioritized Use and Access comment: One commenter proposed that the collection of forest products for traditional and cultural purposes be prioritized over other uses and that traditional gathering areas be closed to other uses. The commenter indicated that frequently the collection of forest materials occurs immediately preceding a traditional or religious ceremony and requested assurance that access to the traditional resources be prioritized and allowed, regardless of the situation or season.

Prioritized Use and Access response: Authorized timeframes for gathering, prioritization over other uses and needs, and access to specific gathering areas may vary by request. The Forest Service is responsible for balancing requests made under section 8105 of the 2008 Farm Bill with other planned, possible, and mandated uses in accordance with its mandate to manage the national forests for multiple uses (16 U.S.C. 528–531). This includes one path for collection of forest products, but prioritization of the various uses and purposes of forest products and access to National Forest System lands are outside the scope of this rule. Instead, the Forest Service determines how to balance competing demands for forest products and land use when revising or amending land management plans using the National Forest System Land Management Planning process (36 CFR part 219). The planning process requires responsible officials to actively engage stakeholders, the public, and federally recognized Indian tribes using collaborative processes where feasible and appropriate (36 CFR 219.4).

Proposed individual actions and projects subject to the NEPA requirements also require opportunities for public participation and comment (36 CFR 220.4).

Indian tribes are encouraged to participate in these processes and to work with and regularly communicate to local Forest Service Officials the location of forest products used for traditional and cultural purposes. Local Forest Service Officials will then be aware of potential gathering areas and times when planning projects to mitigate potential conflicting activities and requests. Information regarding the locations of resources shared with Forest Service officials are protected from sharing by the Prohibition on Disclosure (25 U.S.C. 3056). Assessment and determination for priority of use and access to areas will be made at the Regional, National Forest, or local Ranger District levels as appropriate based on local considerations, land management plans, needs, and consultation with local Indian tribes.

This rule does not designate gathering areas. Section 223.15(f) of the rule authorizes, however, denials of or the placing of conditions on requests for access to gather. The reasons for the denials or conditions include, but are not limited to:

(1) Protecting public health and safety;

(2) Preventing interference with Forest Service and/or commercial operations;

(3) Complying with Federal and State laws and regulations;

(4) Ensuring sustainability; or

(5) Otherwise protecting National Forest System land and resources.

Adoption of Region 5 Policy as the National Rule comment: One commenter represents an Indian Tribe within the State of California that has been using the existing Region 5 Traditional Gathering Policy. The Indian tribe is satisfied with the policy and has recommended that this policy be used as a model and applied nationwide. The policy referenced by
the commenter exists as a Regional Supplement to the Forest Service Manual (FS Region 5, FSM 1500, ch. 1560, Amendment No: 1500–2007–1) which sets out direction on traditional gathering policy within the Region to promote consistency between Forest Service and Bureau of Land Management in collaboration with local tribal communities.

Adoption of Region 5 Policy as the National Rule response: Regional Forest Service and tribal interests, needs, and agreements may vary by location, tradition, culture, and practice. Forest Service Regions have the opportunity to supplement this rule, consistent with the policy established herein, for best use in their area of administration. The Region 5 policy was developed through collaboration and interests specific to parties in the Region 5 area. Forest Service Region 9 also has a document for use that includes considerations and direction for application within FS Region 9 (Tribal Relations Strategic Framework for the Eastern Region, Northeastern Area State & Private Forestry, and Northern Research Station—2015). While the sharing of direction and guidance on this topic is appropriate between Regions, the Regions may implement this rule through supplements that are consistent with the rule and that meet the particular needs of a Region based on applicable laws, tribal treaty or other reserved rights, the parties involved, and other local needs. Any new supplements must be consistent with the rule. Any existing Regional supplements or policies should continue to be implemented in accordance with §223.15(g). The Region 5 Traditional Gathering Policy will not be adopted as Agency-wide direction in this rule.

Requests by Individuals comment: One commenter sought clarification as to whether this rule allows individual tribal members to request trees, portions of trees, or forest products for traditional and cultural purposes, or whether such requests must be submitted by tribal officials. Section 8105 of the 2008 Farm Bill states, “the Secretary may provide free of charge to Indian tribes any trees, portions of trees, or forest products from National Forest System land for traditional and cultural purposes.” Section 8102 expressly defines the terms “Indian” and “Indian Tribe” separately. The term “Indian” references an individual member of an Indian tribe. As defined in section 8102, the term “tribe” references a “tribe, band, nation, pueblo, village, or other community” which is included on the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1). Requests by Individuals response: For purposes of this rule, authorization is limited to government (Forest Service)-to-government (Indian tribe), rather than government-to-individual, provision of trees, portions of trees, or forest products. Tribal officials should submit requests on behalf of the Indian tribe. Individual members of federally recognized Indian tribes should coordinate requests through their tribal officials. Individual members of federally recognized Indian tribes may also use existing provisions at 36 CFR part 223, subpart A, which authorize free-use of trees, portions of trees, or forest products to individuals, subject to limitations or circumstances as stated in the regulations.

Scale of detail for requested material comment: One commenter sought clarification as to whether requests are required to include details as to the type and quantity of material being requested. The Bill does not specify a process for requesting materials authorized within section 8105.

Scale of detail for requested material response: It is important that the requests for trees, portions of trees, and forest products under this rule be complete, in order to prevent any misunderstandings, or delays in processing, and to provide for efficient field administration and gathering under authorized permits. The level of detail required for requests may vary by location and type of material due to the level of sensitivity and abundance of the item being requested, to insure that Forest Service Officers can maintain accountability and sustainable management of the forest products. Additionally, tribal officials are encouraged to explain their requests to Regional Foresters or designated Forest Service Officers, and if necessary, how the request fits a traditional and cultural purpose. Requests which do not include sufficient information for a Forest Service Officer to make an assessment that the request fits a traditional and cultural purpose and does not conflict with existing plans, or maintain sustainable levels and management of the material(s) requested, may be delayed or denied.

Levels for Authorizing Requests comment: One commenter requested that the delegations of authority limitations within the proposed rule (36 CFR 223.15(e)) be removed. Levels for Authorizing Requests response: Pursuant to this rule, the value of the forest products requested is greater than the value that may be locally granted, the request will be forwarded as follows—District Ranger (value limitation $25,000), Forest Supervisor, (value limitation $50,000), and Regional Forester (value limitation $100,000). Requests that exceed $100,000 in value will be reviewed and approved by the Chief of the Forest Service.

Definition of commercial purpose comment: One commenter requested clarification as to the definition for the term “commercial purposes”. Although the term “commercial purposes” was used in the 2008 Farm Bill (section 8105), a definition of the term was not included in the definitions at section 8102.

Definition of commercial purpose: In consideration of this request for clarification of the definition of the term “commercial purposes”, the Agency reviewed a number of existing definitions, consulted existing Regional policy, and considered defining the term within the final regulatory text. The Agency has decided, however, not to define the term “commercial purposes” in this rule for the reasons discussed herin. The term “commercial” is used in other subparts of 36 CFR part 223 without definition. The need to define this term, and a definition appropriate for application and administration, may vary by location and the accepted traditional and cultural practices of the Indian tribes involved. In particular, Regional Forest Service representatives expressed concern that defining the
the request fits a traditional and cultural practice. Regional Representatives requested that we leave a definition of this term to Regional discretion in order to best suit the partnerships and agreements developed in consultation with Indian tribes and used within the regions. Regions implementing this rule under the existing interim directive and supplemental Regional guidance, specific for the region, have not experienced issues to this point regarding what is or is not deemed commercial for purposes of this rule.

Based on the lack of a definition for “commercial purposes” in the 2008 Farm Bill, regular and undefined use of the term in other Forest Service documents, and Forest Service Regional Staff’s request that the term be left undefined, this final rule does not include a definition within the regulatory text.

Traditional barter and trade comment: One commenter requested clarification of whether barter and trade is permitted for materials obtained through this rule. Specifically, whether an Indian tribe may barter or trade materials obtained pursuant to this rule as a means of recouping the costs an Indian tribe incurs for planning, gathering, and processing such materials.

Traditional barter and trade response: Barter and trade is not expressly addressed in the regulatory text for this rule.

This rule derives from the authority and prohibitions within section 8105 of the 2008 Farm Bill. The Forest Service is authorized to provide trees, portions of trees, or forest products free-of-charge from National Forest System land to Indian tribes for traditional and cultural purposes, except when those purposes involve commercial use. According to the definition in section 8102 of the 2008 Farm Bill, the term “traditional and cultural purpose,” with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe. Barter and trade of materials obtained through requests made under this rule, which meet the definition for a traditional and cultural purpose and are not considered to be commercial, may be acceptable.

Tribal officials are encouraged to explain their requests to Regional Forests or Designated Forest Service Officers and, if necessary, describe how the request fits a traditional and cultural purpose. Requests that do not include enough information for a Forest Service Officer to make a reasonable assessment that the request fits a traditional and cultural purpose and will not be used for commercial purposes may be denied.

Similar to the term “commercial”, the need to address barter and trade may vary by location and the accepted traditional and cultural practices of the Indian tribe(s) involved. Regions implementing this rule under the existing interim directive and supplemental Regional guidance, specific for the region, have not experienced issues to this point regarding barter and trade for purposes of this rule. Authorization of barter and trade will be left to Regional discretion in order to best suit the partnerships and agreements developed in consultation with Indian tribes and used within the region. Any forms of barter and trade which are authorized in previous agreements, tribal treaty, or other reserved rights will not be affected by this rule.

General Comment (1): One commenter expressed direct support of the previously proposed rule.

General Comment (1) response: This comment is acknowledged but deemed outside of the scope of this rule. The Agency is adopting this rule for the reasons stated within including the rule’s consistency with section 8105 and it meets the Agency’s needs.

General Comment (2): One commenter offered to share information regarding an organization that funds forest associations.

General Comment (2) response: The comment is found to be outside the scope of this rule.

Summary of Additional Changes

Use of the term “noncommercial”—No comments were received in response to the proposed rule’s use of the term “noncommercial”. However, the term has been removed from both the title of section 223.15 as well as from section 223.15(d). Noncommercial was being used, in the proposed rule, as a reference to the Farm Bill’s prohibition on commercial purposes, but, because it was not used in the Farm Bill, the term has been removed from this final rule, to avoid any confusion and for clarification purposes.

Section 223.15(d)—Although no comments were received, a minor change was made to the wording in the last sentence, in section 223.15(d), describing how notification should take place when two or more National Forests made a single request. This was done to ensure clarity regarding the notification requirement.
on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary at this time.

Consultation With Tribal Governments

Pursuant to Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, the Forest Service entered into consultation with Indian tribes regarding this proposed rule. Beginning on or before May 1, 2010, Indian tribes were provided with the Forest Service's Interim Directive on section 8105 of the 2008 Farm Bill, and were invited to consult on changes to 36 CFR part 223. In addition, the Forest Service provided a question and answer document related to the Interim Directive and regulatory actions the Agency was considering to implement section 8105. Government-to-government consultation occurred over a period of at least 120 days, through September 1, 2010. The Forest Service received 88 comments as a result of consultation, including some received after September 1: all were considered in the development of the proposed rule.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that this action will not pose the risk of a taking of private property.

Controlling Paperwork Burdens on the Public

With this submission, and upon OMB approval, the addition of the collection requirements of Rule Identification Number 0596–AD00, OMB no. 0596–0233 for federally recognized Indian tribes wishing to request free use under the authority of section 8105 of the 2008 Farm Bill are being added to OMB control number 0596–0085 Forest Products Removal Permits and Contracts.

Title: Sale and Disposal of National Forest System Timber; Forest Products for Traditional and Cultural Purposes.

OMB Control Number: 0596–0233.

Abstract: The information collection associated with the proposed rule Sale and Disposal of National Forest System Timber; Forest Products for Traditional and Cultural Purposes was published in the Federal Register on July 31, 2014 (79 FR 44327) as OMB control number 0596–0085 Forest Products Removal Permits and Contracts. Regulatory Identification Number 0596–AD00. The information collection included updates made to charge permits and contracts as well as revisions made to accommodate requests from Indian tribes for free use under section 8105 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, 122 Stat. 1651) [hereinafter the “2008 Farm Bill”], per the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and implementing regulations at 5 CFR part 1320. No comments were received regarding the information collection during the proposed rule’s 60-day notice and comment period. However, OMB has requested the information collection requirements specific to the 2008 Farm Bill, be disclosed separately as OMB 0596–0233. Upon review and approval from OMB, the two information collections (OMB 0596–0223 and OMB 0596–0085) will be merged. Therefore, through this Federal Register notice, the Agency is providing an opportunity to comment on the information collection associated with the final rule during the 30-day period between the publication date and the effective date of the final rule.

As stated earlier in this final rule, section 8105 of the 2008 Farm Bill provides the Secretary of Agriculture with discretionary authority to provide trees, portions of trees, or forest products to Indian tribes free of charge for traditional and cultural purposes provided that the trees, portions of trees, or forest products are provided to tribal officials on behalf of an Indian tribe for traditional and cultural purposes; and the trees, portions of trees, or forest products will not be used for commercial purposes.

Indian tribes seeking products under the 2008 Farm Bill authority must make a request for free use. “Requests . . . must be submitted to the local Forest Service District Ranger’s Office(s) in writing. Requests may be made: (1) Directly by a tribal official(s) who has been authorized by the Indian tribe to make such requests; or (2) By providing a copy of a formal resolution approved by the tribal council or other governing body of the Indian tribe.” Additionally, “[t]ribal officials are encouraged to explain their requests to the Regional Forester or designated Forest Officer and, if necessary, describe how the request fits a traditional and cultural purpose. When an Indian tribe requests forest products located on two or more National Forests, authorized tribal officials should notify each of the affected Forest Service District Ranger’s Offices of the request made on other forests.” Under section 8105 of the 2008 Farm Bill, there is no stated maximum free use limitation for products requested by Indian tribes. Additionally, there is no limitation to the number of requests that each federally recognized Indian tribe may make under this final rule.

Should Indian tribes wish to obtain proof of possession, as may be required in some States, they could be issued a FS–2400–8 free use permit by the Forest Service. The FS–2400–8 form allows use of timber or forest products at no charge (36 CFR 223.5–223.13). No changes are being made to the free-use form as a result of the 2008 Farm Bill provision. Upon receiving the permit, the permittee must comply with its terms (36 CFR 261.6), which designate forest products that can be harvested and under what conditions, such as limiting harvest to a designated area or permitting harvest of only specifically designated material. Only the minimum information necessary to comply with Federal laws and regulations is collected. Agency personnel enter the information provided by Indian tribes into a computerized database to use for any subsequent requests made by the Indian tribe. The information is printed on paper, which the applicant signs and dates. Agency personnel discuss the terms and conditions of the permit or contract with the applicant. The data gathered is not available from other sources. The collected information will help the Forest Service oversee the approval and use of forest products under section 8105 of the 2008 Farm Bill. For example, the collected information will be used to ensure applicants meet the criteria for free use of timber or forest products authorized under section 8105 and to identify permittees in the field by Forest Service personnel.

The following summarizes the information collection associated with the final directive:

Estimate of burden: Reporting burden for the collection of information is estimated to average 5 minutes per response.


Estimated Number of Respondents:

1,132.

Estimated Number of Annual Responses per Respondent: 1.5.

Estimated Total Annual Responses: 2,123.

Estimated Total Annual Burden:

Hours: 241.

Comment is invited on (1) whether this information collection is necessary for the stated purposes and proper performance of the functions of the
For the reasons set forth in the preamble, the Forest Service, U.S. Department of Agriculture, amends 36 CFR part 223 as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER, SPECIAL FOREST PRODUCTS, AND FOREST BOTANICAL PRODUCTS

§ 223.15 Provision of trees, portions of trees, or forest products to Indian tribes for traditional and cultural purposes.

(a) Pursuant to section 8105 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, 122 Stat. 1651) [hereinafter the “2008 Farm Bill”), Regional Foresters or designated Forest Officers may, at their discretion, provide trees, portions of trees, or forest products to Indian tribes free of charge for traditional and cultural purposes provided that:

(1) The trees, portions of trees, or forest products are provided to tribal officials on behalf of an Indian tribe for traditional and cultural purposes; and

(2) The trees, portions of trees, or forest products will not be used for commercial purposes.

(b) The following definitions apply to this section:

Indian tribe. The term “Indian tribe” means any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1).

Traditional and cultural purpose. The term “traditional and cultural purpose,” with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.

Tribal officials: The term “tribal officials” means elected or duly appointed officials of Indian tribal governments.

(c) Requests for trees, portions of trees, or forest products made under this section must be submitted to the local Forest Service District Ranger’s Office(s) in writing. Requests may be made:

(1) Directly by a tribal official(s) who has been authorized by the Indian tribe to make such requests; or

(2) By providing a copy of a formal resolution approved by the tribal council or other governing body of the Indian tribe.

(d) Requests for trees, portions of trees, and forest products made under this section must be directed to the appropriate Forest Service District Ranger(s)’ Office from which the items are being requested. Tribal officials are encouraged to explain their requests to the Regional Forester or designated Forest Officer and, if necessary, describe how the request fits a traditional and cultural purpose. When an Indian tribe requests forest products located on two or more National Forests, authorized tribal officials should notify each of the affected Forest Service District Ranger’s Offices of the requests made on other forests.

(e) Agency Line Officers and managers (who have been authorized by name through official Forest Service correspondence) are authorized to provide trees, portions of trees, and forest products under this section subject to the following limitations:

(1) Directly by a tribal official(s) who

(2) Forest Supervisors may provide material not exceeding $50,000 in value in any one fiscal year to an Indian tribe;

(3) Regional Foresters may provide material not exceeding $100,000 in value in any one fiscal year to an Indian tribe;

(4) The Chief of the Forest Service may provide material exceeding $100,000 in value to an Indian tribe.

(f) A request for trees, portions of trees, or forest products under this section may be conditioned or denied for reasons including, but not limited to the following:

(1) Protecting public health and safety;

(2) Preventing interference with Forest Service and/or commercial operations;

(3) Complying with Federal and State laws and regulations;

(4) Ensuring sustainability; or

(5) Otherwise protecting National Forest System land and resources.

(g) All decisions made under this section must comply with the National Forest Management Act, relevant land management plans, the National Environmental Policy Act, the Endangered Species Act, all other applicable laws and regulations, and are subject to tribal treaty and other reserved rights and the savings
provisions of the Cultural and Heritage Cooperation Authority (25 U.S.C. 3057(b)).

Dated: July 29, 2016.

Thomas L. Tidwell,
Chief, Forest Service.

[FR Doc. 2016–22929 Filed 9–23–16; 8:45 am]

BILLING CODE 3411–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52


Approval of Air Quality Implementation Plans; Missouri State Implementation Plan for the 2008 Lead Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Missouri. This final action will approve Missouri’s SIP for the lead National Ambient Air Quality Standard (NAAQS) received by EPA on October 20, 2014. EPA proposed approval of this plan on February 29, 2016. The applicable standard addressed in this action is the lead NAAQS promulgated by EPA in 2008. EPA believes that the SIP submitted by the state satisfies the applicable requirements of the Clean Air Act (CAA) identified in EPA’s Final Rule published in the Federal Register on October 15, 2008, and will bring the area surrounding the Exide Technologies Canon Hollow facility in Holt County, Missouri. The applicable standard addressed in this action is the lead NAAQS promulgated by EPA in 2008.

II. Have the requirements for approval of a SIP revision been met?

The applicable requirements of the CAA identified in EPA’s Final Rule (73 FR 66964, October 15, 2008), and will bring the area into compliance with the 0.15 microgram per cubic meter (ug/m^3) lead NAAQS. EPA’s proposal containing the background information for this action can be found at 81 FR 10182, February 29, 2016.

III. EPA’s Response to Comments

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. EPA’s Response to Comments

The public comment period on EPA’s proposed rule opened February 29, 2016, the date of its publication in the Federal Register, and closed on March 30, 2016. During this period, EPA received two comments posted anonymously to the Regulations.gov Web site.

One comment pertains to mold in the area surrounding the Exide Technologies Canon Hollow facility in Forest City, Missouri, into attainment of the 0.15 microgram per cubic meter (ug/m^3) lead NAAQS. The NESHAP is related to the NAAQS in that the NESHAP requires attainment of the same 0.15 ug/m^3 standard for lead at the fence line. No change has been made to address this concern.

The second comment states that he/she is in agreement with EPA’s proposed action to address the SIP and the commenter offers two suggestions. The first suggestion is to estimate the cost of water washing to clean haul routes on the facility property and the second is a concern that limiting truck traffic on the facility property may reduce the resources purchased in the state of Missouri.

EPA’s response to the first suggestion regarding water washing to clean the on-site haul routes is that the use of water to remove lead from on-site roads was studied and determined to be a cost-effective and necessary strategy to control lead during the development of the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Secondary Lead Smelters, promulgated January 5, 2012 (77 FR 580). Because the Exide Canon Hollow facility is a secondary lead smelter, it must comply with the requirements of this rule, including, among other things, the requirement to conduct twice daily water washing of on-site haul routes. This cleaning is necessary to control lead-containing dust in order to meet the 2008 lead NAAQS. The NESHAP is related to the NAAQS in that the NESHAP requires attainment of the same 0.15 ug/m^3 standard for lead at the fence line. No change has been made to address this suggestion.

Regarding the concern that limiting truck traffic may reduce the resources purchased in the state of Missouri, the state and facility arrived at the limitations on truck traffic using EPA’s AERMOD computer-based modeling. Truck traffic along haul routes is known to increase the amount of lead-containing dust that becomes re-entrained in ambient air. Modeling was used to estimate the amount of truck traffic along facility haul routes that could be allowed without causing a NAAQS violation at the fence line. Thus, the limitations are necessary to safeguard the NAAQS level which EPA has determined to be protective of human health and the environment. It also should be noted that the restrictions on truck traffic that are required by the SIP only pertain to traffic on the facility property; there are no limitations on the amount of truck traffic on public roads. No change has been made to address this concern.

IV. What action is EPA taking?

EPA is taking final action to amend the Missouri SIP to approve the SIP...