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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 3

[Docket No. DHS–2009–0009]

RIN 1601–AA56

Petitions for Rulemaking, Amendment, or Repeal

AGENCY: Office of the Secretary, DHS.

ACTION: Final rule.

SUMMARY: Pursuant to the Administrative Procedure Act, the Department of Homeland Security (DHS or Department) is adopting a process under which interested persons may petition the Department to issue, amend, or repeal a rule.

DATES: This rule is effective December 28, 2016.

FOR FURTHER INFORMATION CONTACT: Danny Fischler, Office of the General Counsel, U.S. Department of Homeland Security, 202–282–9822.

SUPPLEMENTARY INFORMATION:

I. Background and Response to Comment

The Administrative Procedure Act (APA) requires that each agency give interested persons the right to petition the agency for the issuance, amendment, or repeal of a rule. 5 U.S.C. 553(e). Such a petition is known as a ''rulemaking petition.'' On July 21, 2016, DHS published an interim final rule describing its procedures for receiving and responding to rulemaking petitions.[1] 81 FR 47285. The interim final rule set forth specific formatting requirements, including a requirement to prominently mark a rulemaking petition as such; identified the only two mailing addresses at which DHS will accept rulemaking petitions; provided guidelines for the content of rulemaking petitions; and described the process by which DHS will respond to rulemaking petitions. DHS welcomed public comments on the interim final rule until September 19, 2016. DHS received two timely-filed public comments, only one of which was within the scope of the rulemaking.

The one in-scope comment stated general support for the interim final rule, but requested that DHS allow petitioners to submit rulemaking petitions online in addition to by physical mail. The commenter stated that online communication is more efficient. DHS agrees that in certain contexts online communication is more efficient than physical mail, but has decided to retain the requirement to submit rulemaking petitions by physical mail. In this context, DHS believes that physical mail is a more effective and appropriate means of submission to the agency. A properly filed rulemaking petition is a legal document giving rise to specific legal obligations on the part of the agency. *See* 5 U.S.C. 553(e), 555(e), 702, 706. DHS believes a more formal means of communication is therefore appropriate. In addition, DHS believes that physical mail imposes a minimal additional burden as compared to online communication.

DHS has determined that no changes to the interim final rule are necessary. Accordingly, this rule finalizes the interim final rule without change.[2]

II. Regulatory Analyses

A. Administrative Procedure Act

This rule, like the interim final rule that preceded it, is a rule of agency organization, procedure, or practice under the Administrative Procedure Act, 5 U.S.C. 553(b)(A). Although the Administrative Procedure Act did not require DHS to provide a period of advance notice and opportunity for public comment, DHS invited public comment on the interim final rule, and has responded to such comment in this final rule.

B. Executive Order 12866 Assessment (Regulatory Planning and Review)

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action for the purposes of Executive Order 12866, as amended, and therefore review by the Office of Management and Budget is not necessary.

This rule describes how to petition DHS to issue, amend, or repeal a rule. The rule's qualitative benefits include additional transparency and accountability for the public. The rule imposes no additional costs on the public or the government.

C. Regulatory Flexibility Act

This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

D. Paperwork Reduction Act

This rule does not contain or modify any collections of information under the Paperwork Reduction Act. *See* 44 U.S.C. 3501 *et seq.*

List of Subjects in 6 CFR Part 3

Administrative practice and procedure.

For the reasons set forth in the preamble, the interim final rule adding 6 CFR part 3, which was published at 81 FR 47285 on July 21, 2016, is adopted as a final rule without change.

Jeh Charles Johnson,

Secretary.

[FR Doc. 2016–28561 Filed 11–25–16; 8:45 am]

BILLING CODE 9110–9B–P

[1] As explained in the preamble to the interim final rule, two components of DHS have component-specific regulations governing rulemaking petitions. *See* 33 CFR 1.05–20 (U.S. Coast Guard); 44 CFR 1.17, 1.18 (Federal Emergency Management Agency). The interim final rule left those regulations in place. This rule continues to leave those regulations in place.

[2] DHS incorporates by reference the statement of basis and purpose accompanying the proposed rule. 81 FR 47285–47286.

FINANCIAL STABILITY OVERSIGHT COUNCIL

12 CFR Part 1301

Revision of Freedom of Information Act Regulations

AGENCY: Financial Stability Oversight Council.

ACTION: Interim final rule.

SUMMARY: This rule makes revisions to the regulations of the Financial Stability Oversight Council (the ''Council'') under the Freedom of Information Act (''FOIA'') as required by the FOIA Improvement Act of 2016.

DATES: *Effective date:* November 28, 2016.

Comment date: Written comments on the rule must be received on or before January 27, 2017.

FOR FURTHER INFORMATION CONTACT: Jonah Crane, Deputy Assistant Secretary, Financial Stability Oversight Council, U.S. Treasury Department, (202) 622–7811; Stephen Milligan, Attorney-Advisor, U.S. Treasury Department, (202) 622–4051.

ADDRESSES: Interested persons are invited to submit comments regarding this interim final rule according to the instructions below. All submissions must refer to the document title.

Electronic submission of comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Council to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Mail. Send comments to Financial Stability Oversight Council, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Public inspection of comments. All properly submitted comments will be available for inspection and downloading at *http://www.regulations.gov.*

Additional instructions. In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

SUPPLEMENTARY INFORMATION: On June 30, 2016, the President signed into law the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538 (2016). The revisions to the Council's FOIA regulations implement changes mandated by the statute, as described below.

The rule revises section 1301.2(a)(2) and sections 1301.4(a), (b), (d), and (e) to provide that materials required to be made available for public inspection will now be available in an electronic format. The rule revises section 1301.2(c)(2) to provide that the Council will withhold records or information under the FOIA only when it reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or when disclosure is prohibited by law. Revised section 1301.2(c)(2) also provides that whenever the Council determines that full disclosure of a requested record is not possible, the Council will consider whether partial disclosure is possible and will take reasonable steps to segregate and release nonexempt material.

The rule revises section 1301.7(e)(2) to provide that, in the event the Council requires additional time beyond a ten-day extension to process a request or appeal, the Council will make available its FOIA Public Liaison, who will assist in defining the desired scope of the request, and will notify the requester of the right to seek dispute resolution services from the Office of Government Information Services. Similarly, the rule revises sections 1301.8(b)(2), (3), and (4) to provide for the Council to advise requesters of their right to seek assistance from the FOIA Public Liaison and, in the case of a denied request or when no records can be found, to seek dispute resolution services offered by the Office of Government Information Services.

The rule also revises section 1301.11(b) to extend the deadline for seeking an appeal to 90 days of the date of the initial determination or the date of the letter transmitting the last records released, whichever is later and adds a new paragraph (f) to section 1301.11 to provide information as to how requesters may seek dispute resolution. Finally, the rule revises section 1301.12(e)(4) with respect to the circumstances under which the Council will waive fees if it does not comply with the time limits for responding to requests and appeals.

Procedural Matters

1. Administrative Procedure Act

The Council finds that good cause exists, pursuant to 5 U.S.C. 553(b), that notice and public comment on this rulemaking would be unnecessary and contrary to the public interest because the revisions to the Council's FOIA regulations are limited to those mandated by the FOIA Improvement Act of 2016 and the Council is not exercising any discretion in issuing these revisions. While the interim final rule is effective immediately upon publication, the Council is inviting public comment on the interim final rule during a sixty-day period and will consider all comments in developing a final rule.

2. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

3. Executive Order 12866

This rule is not a significant regulatory action as defined in section 3.f of Executive Order 12866.

List of Subjects in 12 CFR Part 1301

Freedom of Information.

Financial Stability Oversight Council

Authority and Issuance

■ For the reasons set forth in the preamble, the Financial Stability Oversight Council revises part 1301 to 12 CFR chapter XIII to read as follows:

PART 1301—FREEDOM OF INFORMATION

Sec.

1301.1 General.
1301.2 Information made available.
1301.3 Publication in the Federal Register.
1301.4 Public inspection.
1301.5 Requests for Council records.
1301.6 Responsibility for responding to requests for Council records.
1301.7 Timing of responses to requests for Council records.
1301.8 Responses to requests for Council records.
1301.9 Classified information.
1301.10 Requests for business information provided to the Council.
1301.11 Administrative appeals and dispute resolution.
1301.12 Fees for processing requests for Council records.

Authority: 12 U.S.C. 5322; 5 U.S.C. 552.

§ 1301.1 General.

This part contains the regulations of the Financial Stability Oversight Council (the ''Council'') implementing the Freedom of Information Act

(''FOIA''), 5 U.S.C. 552, as amended. These regulations set forth procedures for requesting access to records maintained by the Council. This part should be read together with the FOIA, which provides additional information about this topic.

§ 1301.2 Information made available.

(a) *General.* The FOIA provides for access to records developed or maintained by a Federal agency. The provisions of the FOIA are intended to assure the right of the public to information. Generally, this section divides agency records into three major categories and provides methods by which each category of records is to be made available to the public. The three major categories of records are as follows:

(1) Information required to be published in the **Federal Register** (see § 1301.3);

(2) Information required to be made available for public inspection in an electronic format or, in the alternative, to be published and offered for sale (see § 1301.4); and

(3) Information required to be made available to any member of the public upon specific request (see §§ 1301.5 through 1301.12).

(b) *Right of access.* Subject to the exemptions and exclusions set forth in the FOIA (5 U.S.C. 552(b) and (c)), and the regulations set forth in this subpart, any person shall be afforded access to records.

(c) *Exemptions.* (1) The disclosure requirements of 5 U.S.C. 552(a) do not apply to certain records which are exempt under 5 U.S.C. 552(b); nor do the disclosure requirements apply to certain records which are excluded under 5 U.S.C. 552(c).

(2) The Council shall withhold records or information under the FOIA only when it reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or when disclosure is prohibited by law. Whenever the Council determines that full disclosure of a requested record is not possible, the Council shall consider whether partial disclosure is possible and shall take reasonable steps to segregate and release nonexempt information. Nothing in this paragraph requires disclosure of information that is otherwise exempted from disclosure under 12 U.S.C. 552(b)(3).

§ 1301.3 Publication in the Federal Register.

Subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)) and subject to the limitations provided in 5 U.S.C. 552(a)(1), the Council shall state, publish and maintain current in the **Federal Register** for the guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Council; and

(e) Each amendment, revision, or repeal of matters referred to in paragraphs (a) through (d) of this section.

§ 1301.4 Public inspection.

(a) *In general.* Subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)), the Council shall, in conformance with 5 U.S.C. 552(a)(2), make available for public inspection in an electronic format, or, in the alternative, promptly publish and offer for sale:

(1) Final opinions, including concurring and dissenting opinions, and orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the Council but which are not published in the **Federal Register**;

(3) Its administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, that have been released previously to any person under 5 U.S.C. 552(a)(3) and §§ 1301.5 through 1301.12, and that the Council determines have become or are likely to become the subject of subsequent requests for substantially the same records. When the Council receives three (3) or more requests for substantially the same records, then the Council shall place those requests in front of any existing processing backlog and make the released records available in the Council's public reading room and in the electronic reading room on the Council's Web site.

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) *Information made available online.* For records required to be made available for public inspection in an electronic format pursuant to 5 U.S.C. 552(a)(2) and paragraphs (a)(1) through (4) of this section, the Council shall make such records available on its Web site as soon as practicable but in any case no later than one year after such records are created.

(c) *Redaction.* Based upon applicable exemptions in 5 U.S.C. 552(b), the Council may redact certain information contained in any matter described in paragraphs (a)(1) through (4) of this section before making such information available for inspection or publishing it. The justification for the redaction shall be explained in writing, and the extent of such redaction shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in 5 U.S.C. 552(b) under which the redaction is made. If technically feasible, the extent of the redaction shall be indicated at the place in the record where the redaction was made.

(d) *Public reading room.* The Council shall make available for public inspection in an electronic format, in a reading room or otherwise, the material described in paragraphs (a)(1) through (5) of this section. Fees for duplication shall be charged in accordance with § 1301.12. The location of the Council's reading room is the Department of the Treasury's Library. The Library is located in the Freedman's Bank Building (formerly the Treasury Annex), Room 1020, 1500 Pennsylvania Avenue NW., Washington, DC 20220. For building security purposes, visitors are required to make an appointment by calling (202) 622–0990.

(e) *Indices.* (1) The Council shall maintain and make available for public inspection in an electronic format current indices identifying any material described in paragraphs (a)(1) through (3) of this section. In addition, the Council shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplement unless the Council determines by order published in the **Federal Register** that the publication would be unnecessary and impractical, in which case the Council shall nonetheless provide copies of the index on request at a cost not to exceed the direct cost of duplication.

(2) The Council shall make the indices referred to in paragraph (a)(5)

and (e)(1) of this section available on its Web site.

§ 1301.5 Requests for Council records.

(a) *In general.* Except for records made available under 5 U.S.C. 552(a)(1) and (a)(2) and subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)), the Council shall promptly make its records available to any person pursuant to a request that conforms to the rules and procedures of this section.

(b) *Form and content of request.* A request for records of the Council shall be made as follows:

(1) The request for records shall be made in writing and submitted by mail or via the Internet and should state, both in the request itself and on any envelope that encloses it, that it comprises a FOIA request. A request that does not explicitly state that it is a FOIA request, but clearly indicates or implies that it is a request for records, may also be processed under the FOIA.

(2) If a request is sent by mail, it shall be addressed and submitted as follows: FOIA Request—Financial Stability Oversight Council, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. If a request is made via the Internet, it shall be submitted as set forth on the Council's Web site.

(3) In order to ensure the Council's ability to respond in a timely manner, a FOIA request must describe the records that the requester seeks in sufficient detail to enable Council personnel to locate them with a reasonable amount of effort. Whenever possible, the request must include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. If known, the requester must include any file designations or descriptions for the records requested. In general, a requester is encouraged to provide more specific information about the records or types of records sought to increase the likelihood that responsive records can be located.

(4) The request shall include the name of and contact information for the requester, including a mailing address, telephone number, and, if available, an email address at which the Council may contact the requester regarding the request.

(5) For the purpose of determining any fees that may apply to processing a request, a requester shall indicate in the request whether the requester is a commercial user, an educational institution, non-commercial scientific institution, representative of the news media, or ''other'' requester, as those terms are defined in § 1301.12(c), or in the alternative, state how the records released will be used. The Council shall use this information solely for the purpose of determining the appropriate fee category that applies to the requester and shall not use this information to determine whether to disclose a record in response to the request.

(6) If a requester seeks a waiver or reduction of fees associated with processing a request, then the request shall include a statement to that effect, pursuant to § 1301.12(f). Any request that does not seek a waiver or reduction of fees shall constitute an agreement of the requester to pay any and all fees (of up to $25) that may apply to the request, unless or until a request for waiver is sought and granted. The requester also may specify in the request an upper limit (of not less than $25) that the requester is willing to pay to process the request.

(i) Any request for waiver or reduction of fees should be filed together with or as part of the FOIA request, or at a later time prior to the Council incurring costs to process the request.

(ii) A waiver request submitted after the Council incurs costs will be considered in accordance with § 1301.12(f); however, the requester must agree in writing to pay the fees already incurred if the waiver is denied.

(7) If a requester seeks expedited processing of a request, then the request must include a statement to that effect as is required by § 1301.7(c).

(c) *Request receipt; effect of request deficiencies.* The Council shall deem itself to have received a request on the date that it receives a complete request containing the information required by paragraph (b) of this section. The Council need not accept a request, process a request, or be bound by any deadlines in this subpart for processing a request that fails materially to conform to the requirements of paragraph (b) of this section. If the Council determines that it cannot process a request because the request is deficient, then the Council shall return it to the requester and advise the requester in what respect the request is deficient. The requester may then resubmit the request, which the Council shall treat as a new request. A determination by the Council that a request is deficient in any respect is not a denial of a request for records, and such determinations are not subject to appeal.

(d) *Processing of request containing technical deficiency.* Notwithstanding paragraph (c) of this section, the Council shall not reject a request solely due to one or more technical deficiencies contained in the request. For the purposes of this paragraph, the term ''technical deficiency'' means an error or omission with respect to an item of information required by paragraph (b) of this section which, by itself, does not prevent that part of the request from conforming to the applicable requirement, and includes without limitation a non-material error relating to the contact information for the requester, or similar error or omission regarding the date, title or name, author, recipient, or subject matter of the record requested.

§ 1301.6 Responsibility for responding to requests for Council records.

(a) *In general.* In determining which records are responsive to a request, the Council ordinarily will include only information contained in records that the Council maintains, or are in its possession and control, as of the date the Council begins its search for responsive records. If any other date is used, the Council shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The records officer shall be authorized to make an initial determination to grant or deny, in whole or in part, a request for a record.

(c) *Referrals.* When the Council receives a request for a record or any portion of a record in its possession that originated with another agency, including but not limited to a constituent agency of the Council, it shall:

(1) In the case of a record originated by a federal agency subject to the FOIA, refer the responsibility for responding to the request regarding that record to the originating agency to determine whether to disclose it; and

(2) In the case of a record originated by a state agency, respond to the request after giving notice to the originating state agency and a reasonable opportunity to provide input or to assert any applicable privileges.

(d) *Notice of referral.* Whenever the Council refers all or any part of the responsibility for responding to a request to another agency, the Council shall notify the requester of the referral and inform the requester of the name of each agency to which the request has been referred and of the part of the request that has been referred.

§ 1301.7 Timing of responses to requests for Council records.

(a) *In general.* Except as set forth in paragraphs (b) through (d) of this section, the Council shall respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) The Council may establish tracks to process separately simple and complex requests. The Council may assign a request to the simple or complex track based on the amount of work and/or time needed to process the request. The Council shall process requests in each track according to the order of their receipt.

(2) The Council may provide a requester in its complex track with an opportunity to limit the scope of the request to qualify for faster processing within the specified limits of the simple track(s).

(c)(1) *Requests for expedited processing.* The Council shall respond to a request out of order and on an expedited basis whenever a requester demonstrates a compelling need for expedited processing in accordance with the requirements of this paragraph (c).

(2) *Form and content of a request for expedited processing.* A request for expedited processing shall be made as follows:

(i) A request for expedited processing shall be made in writing or via the Internet and submitted as part of the initial request for records. When a request for records includes a request for expedited processing, both the envelope and the request itself must be clearly marked ''Expedited Processing Requested.'' A request for expedited processing that is not clearly so marked, but satisfies the requirements in § 1301.7(c)(2)(ii) and (iii), may nevertheless be granted.

(ii) A request for expedited processing shall contain a statement that demonstrates a compelling need for the requester to obtain expedited processing of the requested records. A ''compelling need'' may be established under the standard in either paragraph (c)(2)(ii)(A) or (B) of this section by demonstrating that:

(A) Failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester shall fully explain the circumstances warranting such an expected threat so that the Council may make a reasoned determination that a delay in obtaining the requested records would pose such a threat; or

(B) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity. A person ''primarily engaged in disseminating information'' does not include individuals who are engaged only incidentally in the dissemination of information. The standard of ''urgency to inform'' requires that the records requested pertain to a matter of current exigency to the American general public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the American general public. The requester must adequately explain the matter or activity and why the records sought are necessary to be provided on an expedited basis.

(iii) The requester shall certify the written statement that purports to demonstrate a compelling need for expedited processing to be true and correct to the best of the requester's knowledge and belief. The certification must be in the form prescribed by 28 U.S.C. 1746: ''I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date].''

(3) *Determinations of requests for expedited processing.* Within ten (10) calendar days of its receipt of a request for expedited processing, the Council shall decide whether to grant the request and shall notify the requester of the determination in writing.

(4) *Effect of granting expedited processing.* If the Council grants a request for expedited processing, then the Council shall give the expedited request priority over non-expedited requests and shall process the expedited request as soon as practicable. The Council may assign expedited requests to their own simple and complex processing tracks based upon the amount of work and/or time needed to process them. Within each such track, an expedited request shall be processed in the order of its receipt.

(5) *Appeals of denials of requests for expedited processing.* If the Council denies a request for expedited processing, then the requester shall have the right to submit an appeal of the denial determination in accordance with § 1301.11. The Council shall communicate this appeal right as part of its written notification to the requester denying expedited processing. The requester shall clearly mark its appeal request and any envelope that encloses it with the words ''Appeal for Expedited Processing.''

(d) *Time period for responding to requests for records.* Ordinarily, the Council shall have twenty (20) days (excepting Saturdays, Sundays, and legal public holidays) from when a request that satisfies the requirements of § 1301.5(b) is received by the Council to determine whether to grant or deny a request for records. The twenty-day time period set forth in this paragraph shall not be tolled by the Council except that the Council may:

(1) Make one reasonable demand to the requester for clarifying information about the request and toll the twenty-day time period while it awaits the clarifying information; or

(2) Toll the twenty-day time period while awaiting receipt of the requester's response to the Council's request for clarification regarding the assessment of fees.

(e) *Unusual circumstances*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, if the Council determines that, due to unusual circumstances, it cannot respond either to a request within the time period set forth in paragraph (d) of this section or to an appeal within the time period set forth in § 1301.11, the Council may extend the applicable time periods by informing the requester in writing of the unusual circumstances and of the date by which the Council expects to complete its processing of the request or appeal. Any extension or extensions of time shall not cumulatively total more than ten (10) days (exclusive of Saturdays, Sundays, and legal public holidays).

(2) *Additional time.* If the Council determines that it needs additional time beyond a ten-day extension to process the request or appeal, then the Council shall notify the requester and provide the requester with an opportunity to limit the scope of the request or appeal or to arrange for an alternative time frame for processing the request or appeal or a modified request or appeal. The requester shall retain the right to define the desired scope of the request or appeal, as long as it meets the requirements contained in this part. To aid the requester, the Council shall make available its FOIA Public Liaison, who shall assist in defining the desired scope of the request, and shall notify the requester of the right to seek dispute resolution services from the Office of Government Information Services.

(3) *Unusual circumstances.* As used in this paragraph (e), ''unusual circumstances'' means, but only to the extent reasonably necessary to the proper processing of the particular requests:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components or component offices having substantial subject matter interest therein.

(4) *Multiple requests.* Where the Council reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated. The Council may disaggregate and treat as separate requests a single request that has multiple unrelated components. The Council shall notify the requester if a request is disaggregated.

§ 1301.8 Responses to requests for Council records.

(a) *Acknowledgement of requests.* Upon receipt of a request that meets the requirements of § 1301.5(b), the Council ordinarily shall assign to the request a unique tracking number and shall send an acknowledgement letter or email to the requester that contains the following information:

(1) A brief description of the request;

(2) The applicable request tracking number;

(3) The date of receipt of the request, as determined in accordance with § 1301.5(c); and

(4) A confirmation, with respect to any fees that may apply to the request pursuant to § 1301.12, that the requester has sought a waiver or reduction in such fees, has agreed to pay any and all applicable fees, or has specified an upper limit (of not less than $25) that the requester is willing to pay in fees to process the request.

(b) *Initial determination to grant or deny a request*—(1) *In general.* The Council records officer (as designated in § 1301.6(b)) shall make initial determinations to grant or to deny in whole or in part requests for records.

(2) *Granting of request.* If the request is granted in full or in part, the Council shall provide the requester with a copy of the releasable records, and shall do so in the format specified by the requester to the extent that the records are readily producible by the Council in the requested format. The Council also shall send the requester a statement of the applicable fees, broken down by search, review and duplication fees, either at the time of the determination or shortly thereafter. The Council shall also advise the requester of the right to seek assistance from the FOIA Public Liaison.

(3) *Denial of requests.* If the Council determines that the request for records should be denied in whole or in part, the Council shall notify the requester in writing. The notification shall:

(i) State the exemptions relied on in not granting the request;

(ii) If technically feasible, indicate the volume of information redacted (including the number of pages withheld in part and in full) and the exemptions under which the redaction is made at the place in the record where such redaction is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(iii) Set forth the name and title or position of the responsible official;

(iv) Advise the requester of the right to administrative appeal in accordance with § 1301.11 and specify the official or office to which such appeal shall be submitted; and

(v) Advise the requester of the right to seek assistance from the FOIA Public Liaison or seek dispute resolution services offered by the Office of Government Information Services.

(4) *No records found.* If it is determined, after an adequate search for records by the responsible official or his/her delegate, that no records could be located, the Council shall so notify the requester in writing. The notification letter shall advise the requester of the right to seek assistance from the FOIA Public Liaison, seek dispute resolution services offered by the Office of Government Information Services, and administratively appeal the Council's determination that no records could be located (*i.e.,* to challenge the adequacy of the Council's search for responsive records) in accordance with § 1301.11. The response shall specify the official to whom the appeal shall be submitted for review.

§ 1301.9 Classified information.

(a) *Referrals of requests for classified information.* Whenever a request is made for a record containing information that has been classified, or may be appropriate for classification, by another agency under Executive Order 13526 or any other executive order concerning the classification of records, the Council shall refer the responsibility for responding to the request regarding that information to the agency that classified the information, should consider the information for classification, or has the primary interest in it, as appropriate. Whenever a record contains information that has been derivatively classified by the Council because it contains information classified by another agency, the Council shall refer the responsibility for responding to the request regarding that information to the agency that classified the underlying information or shall consult with that agency prior to processing the record for disclosure or withholding.

(b) *Determination of continuing need for classification of information.* Requests for information classified pursuant to Executive Order 13526 require the Council to review the information to determine whether it continues to warrant classification. Information which no longer warrants classification under the Executive Order's criteria shall be declassified and made available to the requester, unless the information is otherwise exempt from disclosure.

§ 1301.10 Requests for business information provided to the Council.

(a) *In general.* Business information provided to the Council by a submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section.

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

(1) *Business information* means information from a submitter that is trade secrets or other commercial or financial information that may be protected from disclosure under Exemption 4.

(2) *Submitter* means any person or entity from whom the Council obtains business information, directly or indirectly. The term includes corporations, state, local, and tribal governments, and foreign governments.

(3) *Exemption 4* means Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(c) *Designation of business information.* A submitter of business information shall use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten (10) years after the date of the submission unless the submitter on his or her own initiative requests otherwise, and provides justification for, a longer designation period.

(d) *Notice to submitters.* The Council shall provide a submitter with prompt written notice of receipt of a request or appeal encompassing the business information of the submitter whenever required in accordance with paragraph (e) of this section. Such written notice

shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information. When a voluminous number of submitters must be notified, the Council may post or publish such notice in a place reasonably likely to accomplish such notification.

(e) *When notice is required.* The Council shall provide a submitter with notice of receipt of a request or appeal whenever:

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

(2) The Council has reason to believe that the information may be protected from disclosure under Exemption 4 because disclosure could reasonably be expected to cause substantial competitive harm to the submitter.

(f) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (d) of this section, the Council shall notify the submitter in writing that the submitter shall have ten (10) days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays) to provide the Council with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under Exemption 4, including a statement of why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. In the event that the submitter fails to respond to the notice within the time specified, the submitter shall be considered to have no objection to disclosure of the information. Information provided by a submitter pursuant to this paragraph (f) may itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, the Council shall advise the requester that such notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the Council shall invite the requester to agree to an extension of time so that the Council may review the submitter's objection to disclosure.

(g) *Notice of intent to disclose.* The Council shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information responsive to the request. If the Council decides to disclose business information over the objection of a submitter, the Council shall provide the submitter with a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

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

(3) A specified disclosure date which is not less than ten (10) days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of the final decision to release the requested information has been provided to the submitter. Except as otherwise prohibited by law, notice of the final decision to release the requested information shall be forwarded to the requester at the same time.

(h) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered in paragraph (c) of this section, the Council shall promptly notify the submitter.

(i) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The Council determines that the information shall not be disclosed;

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

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1987 Comp., p. 235).

§ 1301.11 Administrative appeals and dispute resolution.

(a) *Grounds for administrative appeals.* A requester may appeal an initial determination of the Council, including but not limited to a determination:

(1) To deny access to records in whole or in part (as provided in § 1301.8(b)(4));

(2) To assign a particular fee category to the requester (as provided in § 1301.12(c));

(3) To deny a request for a reduction or waiver of fees (as provided in § 1301.12(f)(7));

(4) That no records could be located that are responsive to the request (as provided in § 1301.8(b)(5)); or

(5) To deny a request for expedited processing (as provided in § 1301.7(c)(5)).

(b) *Time limits for filing administrative appeals.* An appeal, other than an appeal of a denial of expedited processing, must be submitted within ninety (90) days of the date of the initial determination or the date of the letter transmitting the last records released, whichever is later. An appeal of a denial of expedited processing must be made within ten (10) days of the date of the initial determination to deny expedited processing (see § 1301.7).

(c) *Form and content of administrative appeals.* The appeal shall—

(1) Be made in writing or, as set forth on the Council's Web site, via the Internet;

(2) Be clearly marked on the appeal request and any envelope that encloses it with the words ''Freedom of Information Act Appeal'' and addressed to Financial Stability Oversight Council, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington DC 20220;

(3) Set forth the name of and contact information for the requester, including a mailing address, telephone number, and, if available, an email address at which the Council may contact the requester regarding the appeal;

(4) Specify the date of the initial request and date of the letter of initial determination, and, where possible, enclose a copy of the initial request and the initial determination being appealed; and

(5) Set forth specific grounds for the appeal.

(d) *Processing of administrative appeals.* Appeals shall be stamped with the date of their receipt by the office to which addressed, and shall be processed in the approximate order of their receipt. The receipt of the appeal shall be acknowledged by the Council and the requester advised of the date the appeal was received and the expected date of response.

(e) *Determinations to grant or deny administrative appeals.* The Chairperson of the Council or his/her designee is authorized to and shall decide whether to affirm or reverse the initial determination (in whole or in part), and shall notify the requester of this decision in writing within twenty (20) days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal, unless extended pursuant to § 1301.7(e).

(1) If it is decided that the appeal is to be denied (in whole or in part) the requester shall be—

(i) Notified in writing of the denial;

(ii) Notified of the reasons for the denial, including the FOIA exemptions relied upon;

(iii) Notified of the name and title or position of the official responsible for the determination on appeal;

(iv) Provided with a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or the District of Columbia in accordance with 5 U.S.C. 552(a)(4)(B); and

(v) Provided with notification that mediation services may be available to the requester as a non-exclusive alternative to litigation through the Office of Government Information Services in accordance with 5 U.S.C. 552(h)(3).

(2) If the Council grants the appeal in its entirety, the Council shall so notify the requester and promptly process the request in accordance with the decision on appeal.

(f) *Dispute resolution.* Requesters may seek dispute resolution by contacting the FOIA Public Liaison or the Office of Government Information Services as set forth on the Council's Web site.

§ 1301.12 Fees for processing requests for Council records.

(a) *In general.* The Council shall charge the requester for processing a request under the FOIA in the amounts and for the services set forth in paragraphs (b) through (d) of this section, except if a waiver or reduction of fees is granted under paragraph (f) of this section, or if, pursuant to paragraph (e)(4) of this section, the failure of the Council to comply with certain time limits precludes it from assessing certain fees. No fees shall be charged if the amount of fees incurred in processing the request is below $25.

(b) *Fees chargeable for specific services.* The fees for services performed by the Council shall be imposed and collected as set forth in this paragraph (b).

(1) *Duplicating records.* The Council shall charge a requester fees for the cost of copying records as follows:

(i) $.15 per page, up to 8½ × 14″, made by photocopy or similar process.

(ii) Photographs, films, and other materials—actual cost of duplication.

(iii) Other types of duplication services not mentioned above—actual cost.

(iv) Material provided to a private contractor for copying shall be charged to the requester at the actual cost charged by the private contractor.

(2) *Search services.* The Council shall charge a requester for all time spent by its employees searching for records that are responsive to a request, including page-by-page or line-by-line identification of responsive information within records, even if no responsive records are found. The Council shall charge the requester fees for search time as follows:

(i) *Searches for other than electronic records.* The Council shall charge for search time at the salary rate(s) (basic pay plus sixteen (16) percent) of the employee(s) who conduct the search. This charge shall also include transportation of employees and records at actual cost. Fees may be charged for search time even if the search does not yield any responsive records, or if records are exempt from disclosure.

(ii) *Searches for electronic records.* The Council shall charge the requester for the actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output shall be the actual direct cost. For a requester in the ''other'' category, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search (*i.e.,* the operator), the charge for the computer search will begin.

(3) *Review of records.* The Council shall charge a requester for time spent by its employees examining responsive records to determine whether any portions of such record are withholdable from disclosure, pursuant to the FOIA exemptions of 5 U.S.C. 552(b). The Council shall also charge a requester for time spent by its employees redacting any such withholdable information from a record and preparing a record for release to the requester. The Council shall charge a requester for time spent reviewing records at the salary rate(s) (*i.e.,* basic pay plus sixteen (16) percent) of the employees who conduct the review. Fees may be charged for review time even if records ultimately are not disclosed.

(4) *Inspection of records in the reading room.* Fees for all services provided shall be charged whether or not copies are made available to the requester for inspection. However, no fee shall be charged for monitoring a requester's inspection of records.

(5) *Other services.* Other services and materials requested which are not covered by this part nor required by the FOIA are chargeable at the actual cost to the Council. Charges permitted under this paragraph may include:

(i) Certifying that records are true copies; and

(ii) Sending records by special methods (such as by express mail, etc.).

(c) *Fees applicable to various categories of requesters*—(1) *Generally.* The Council shall assess the fees set forth in paragraph (b) of this section in accordance with the requester fee categories set forth below.

(2) *Requester selection of fee category.* A requester shall identify, in the initial FOIA request, the purpose of the request in one of the following categories:

(i) *Commercial.* A commercial use request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. The Council may determine from the use specified in the request that the requester is a commercial user.

(ii) *Educational institution.* This refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. This category does not include requesters seeking records for use in meeting individual academic research or study requirements.

(iii) *Non-commercial scientific institution.* This refers to an institution that is not operated on a ''commercial'' basis, as that term is defined in paragraph (c)(2)(i) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(iv) *Representative of the news media.* This refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this paragraph (c)(2)(iv), the term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of ''news'') who make their products available for purchase by subscription or by free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news media entities. A freelance

journalist shall be regarded as working for a news media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Council may also consider the past publication record of the requester in making such a determination.

(v) *Other Requester.* This refers to a requester who does not fall within any of the categories described in paragraphs (c)(2)(i) through (iv) of this section.

(d) *Fees applicable to each category of requester.* The Council shall apply the fees set forth in this paragraph, for each category described in paragraph (c) of this section, to requests processed by the Council under the FOIA.

(1) *Commercial use.* A requester seeking records for commercial use shall be charged the full direct costs of searching for, reviewing, and duplicating the records they request as set forth in paragraph (b) of this section. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the Council is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The Council may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records or no records are located.

(2) *Educational and non-commercial scientific uses.* A requester seeking records for educational or non-commercial scientific use shall be charged only for the cost of duplicating the records they request, except that the Council shall provide the first one hundred (100) pages of duplication free of charge. To be eligible, the requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include a requester who seeks records for use in meeting individual academic research or study requirements.

(3) *News media uses.* A requester seeking records under the news media use category shall be charged only for the cost of duplicating the records they request, except that the Council shall provide the requester with the first one hundred (100) pages of duplication free of charge.

(4) *Other requests.* A requester seeking records for any other use shall be charged the full direct cost of searching for and duplicating records that are responsive to the request, as set forth in paragraph (b) of this section, except that the Council shall provide the first one hundred (100) pages of duplication and the first two hours of search time free of charge. The Council may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located.

(e) *Other circumstances when fees are not charged.* Notwithstanding paragraphs (b), (c), and (d) of this section, the Council may not charge a requester a fee for processing a FOIA request if—:

(1) Services were performed without charge;

(2) The cost of collecting a fee would be equal to or greater than the fee itself;

(3) The fees were waived or reduced in accordance with paragraph (f) of this section;

(4) The Council fails to comply with any time limit under § 1301.7 or § 1301.11; provided that:

(i) If unusual circumstances (as that term is defined in § 1301.7(e)) apply to the processing of the request and the Council has provided a timely notice to the requester in accordance with § 1301.7(e)(1), then a failure to comply with such time limit shall be excused for an additional ten days;

(ii) If unusual circumstances (as that term is defined in § 1301.7(e)) apply to the processing of the request, more than 5,000 pages are necessary to respond to the request, the Council has provided a timely written notice to the requester in accordance with § 1301.7(e)(2), and the Council has discussed with the requester via written mail, electronic mail, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with paragraph § 1301.7(e)(2), then the Council may charge a requester a fee; and

(iii) If a court has determined that exceptional circumstances exist, then a failure to comply with such time limit shall be excused for the length of time provided by the court order; or

(5) The requester is an educational or noncommercial scientific institution or a representative of the news media (as described in paragraphs (c)(2)(ii) through (iv) of this section), then the Council shall not assess the duplication fees.

(f) *Waiver or reduction of fees.* (1) A requester shall be entitled to receive from the Council a waiver or reduction in the fees otherwise applicable to a FOIA request whenever the requester:

(i) Requests such waiver or reduction of fees in writing and submits the written request to the Council together with or as part of the FOIA request, or at a later time consistent with § 1301.5(b)(7) to process the request; and

(ii) Demonstrates that the fee reduction or waiver request is in the public interest because:

(A) Furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government; and

(B) Furnishing the information is not primarily in the commercial interest of the requester.

(2) To determine whether the requester has satisfied the requirements of paragraph (f)(1)(ii)(A) of this section, the Council shall consider:

(i) The subject of the requested records must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated;

(ii) The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding;

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(3) To determine whether the requester satisfies the requirement of paragraph (f)(1)(ii)(B) of this section, the Council shall consider:

(i) Any commercial interest of the requester (with reference to the definition of ''commercial use'' in § 1301.12(c)(2)(i)), or of any person on whose behalf the requester may be

acting, that would be furthered by the requested disclosure. In the administrative process, a requester may provide explanatory information regarding this consideration; and

(ii) Whether the public interest is greater in magnitude than that of any identified commercial interest in disclosure. The Council ordinarily shall presume that, if a news media requester satisfies the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver or reduction of fees, a waiver or reduction shall be granted for those records.

(5) Determination of request to reduce or waive fees: The Council shall notify the requester in writing regarding its determinations to reduce or waive fees.

(6) Effect of denying request to reduce or waive fees: If the Council denies a request to reduce or waive fees, then the Council shall advise the requester, in the denial notification letter, that the requester may incur fees as a result of processing the request. In the denial notification letter, the Council shall advise the requester that the Council will not proceed to process the request further unless the requester, in writing, directs the Council to do so and either agrees to pay any fees that may apply to processing the request or specifies an upper limit (of not less than $25) that the requester is willing to pay to process the request. If the Council does not receive this written direction and agreement/specification within thirty (30) days of the date of the denial notification letter, then the Council shall deem the FOIA request to be withdrawn.

(7) Appeals of denials of requests to reduce or waive fees: If the Council denies a request to reduce or waive fees, then the requester shall have the right to submit an appeal of the denial determination in accordance with § 1301.11. The Council shall communicate this appeal right as part of its written notification to the requester denying the fee reduction or waiver request. The requester shall clearly mark its appeal request and any envelope that encloses it with the words ''Appeal for Fee Reduction/Waiver.''

(g) *Notice of estimated fees; advance payments.* (1) When the Council estimates the fees for processing a request will exceed the limit set by the requester, and that amount is less than $250, the Council shall notify the requester of the estimated costs, broken down by search, review and duplication fees. The requester must provide an agreement to pay the estimated costs, except that the requester may reformulate the request in an attempt to reduce the estimated fees.

(2) If the requester fails to state a limit and the costs are estimated to exceed $250, the requester shall be notified of the estimated costs, broken down by search, review and duplication fees, and must pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. Alternatively, the requester may reformulate the request in such a way as to constitute a request for responsive records at a reduced fee.

(3) The Council reserves the right to request advance payment after a request is processed and before records are released.

(4) If a requester previously has failed to pay a fee within thirty (30) calendar days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Council begins to process a new request or the pending request.

(5) When the Council acts under paragraphs (g)(1) through (4) of this section, the administrative time limits of twenty (20) days (excluding Saturdays, Sundays, and legal public holidays) from receipt of initial requests or appeals, plus extensions of these time limits, shall begin only after any applicable fees have been paid (in the case of paragraph (g)(2), (3), or (4)), a written agreement to pay fees has been provided (in the case of paragraph (g)(1)), or a request has been reformulated (in the case of paragraph (g)(1) or (2)).

(h) *Form of payment.* Payment may be made by check or money order paid to the Treasurer of the United States.

(i) *Charging interest.* The Council may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the Council. The Council will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(j) *Aggregating requests.* If the Council reasonably determines that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Council may aggregate those requests and charge accordingly. The Council may presume that multiple requests involving related matters submitted within a thirty (30) calendar day period have been made in order to avoid fees. The Council shall not aggregate multiple requests involving unrelated matters.

Dated: November 17, 2016.

Eric A. Froman,

Executive Director, Financial Stability Oversight Council.

[FR Doc. 2016–28413 Filed 11–25–16; 8:45 am]

BILLING CODE 4810–25–P–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0154; FRL–9955–58–Region 4]

Air Quality Plans; Tennessee; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the State Implementation Plan (SIP) submission, submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on March 13, 2014, for inclusion into the Tennessee SIP. This final action pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO_2) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure SIP submission.'' TDEC certified that the Tennessee SIP contains provisions that ensure the 2010 1-hour SO_2 NAAQS is implemented, enforced, and maintained in Tennessee. EPA has determined that portions of Tennessee's infrastructure SIP submission, provided to EPA on March 13, 2014, satisfy certain required infrastructure elements for the 2010 1-hour SO_2 NAAQS.

DATES: This rule will be effective December 28, 2016

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2015–0154. 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: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via electronic mail at *notarianni.michele@epa.gov* or via telephone at (404) 562–9031.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On June 2, 2010, (75 FR 35520, June 22, 2010), EPA promulgated a revised primary SO_2 NAAQS to an hourly standard of 75 parts per billion (ppb) based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour SO_2 NAAQS to EPA no later than June 2, 2013.[1]

EPA is acting upon the SIP submission from Tennessee that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 1-hour SO_2 NAAQS. In a proposed rulemaking published on March 10, 2016 (81 FR 12627), EPA proposed to approve portions of Tennessee's 2010 1-hour SO_2 NAAQS infrastructure SIP submission submitted on March 13, 2014. The details of Tennessee's submission and the rationale for EPA's actions are explained in the proposed rulemaking. Comments on the proposed rulemaking were due on or before April 11, 2016. EPA received adverse comments on the proposed action.

II. Response to Comments

EPA received one set of comments on the March 10, 2016, proposed rulemaking to approve portions of Tennessee's 2010 1-hour SO_2 NAAQS infrastructure SIP submission intended to meet the CAA requirements for the 2010 1-hour SO_2 NAAQS. A summary of the comments and EPA's responses are provided below.[2] A full set of these comments is provided in the docket for this final rulemaking action.

A. Comments on Infrastructure SIP Requirements for Enforceable Emission Limits

1. The Plain Language of the CAA

Comment 1: The Commenter contends that the plain language of section 110(a)(2)(A) of the CAA requires the inclusion of enforceable emission limits in an infrastructure SIP to prevent NAAQS exceedances in areas not designated nonattainment. In support, the Commenter quotes the language in section 110(a)(1) that requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS and the language in section 110(a)(2)(A) that requires SIPs to include enforceable emissions limitations as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA. The Commenter then states that applicable requirements of the CAA include requirements for the attainment and maintenance of the NAAQS, and that CAA section 110(a)(2)(A) requires infrastructure SIPs to include enforceable emission limits to prevent exceedances of the NAAQS. The Commenter claims that Tennessee's SIP submission does not meet this asserted requirement. Thus, the Commenter asserts that EPA must disapprove Tennessee's proposed SO_2 infrastructure SIP submission because it fails to include enforceable emission limitations necessary to ensure attainment and maintenance of the NAAQS as required by CAA section 110(a)(2)(A). The Commenter then contends that the Tennessee 2010 1-hour SO_2 infrastructure SIP submission fails to comport with CAA requirements for SIPs to establish enforceable emission limits that are adequate to prohibit NAAQS exceedances in areas not designated nonattainment.

Response 1: EPA disagrees that section 110 must be interpreted in the manner suggested by the Commenter in the context of infrastructure SIP submissions. Section 110 is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific SIP planning requirements of the CAA, EPA interprets the requirement in section 110(a)(1) that the plan provide for ''implementation, maintenance and enforcement'' in conjunction with the requirements in section 110(a)(2)(A) to mean that the infrastructure SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program.

With regard to the requirement for emission limitations in section 110(a)(2)(A), EPA has interpreted this to mean, for purposes of infrastructure SIP submissions, that the state may rely on measures already in place to address the pollutant at issue or any new control measures that the state may elect to impose as part of such SIP submission. As EPA stated in ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' dated September 13, 2013, (Infrastructure SIP Guidance), ''[t]he conceptual purpose of an infrastructure SIP submission is to

[1] In the proposed action, EPA incorrectly cited a date of June 22, 2013, for the due date of infrastructure SIPs for the 2010 1-hour SO_2 NAAQS. 80 FR 51158 (August 24, 2015).

[2] EPA's responses to these comments are consistent with actions taken on 2010 1-hour SO_2 NAAQS infrastructure SIP submissions for Virginia (80 FR 11557, March 4, 2015) at *https://www.gpo.gov/fdsys/pkg/FR-2015-03-04/pdf/2015-04377.pdf* and West Virginia (79 FR 62022, October 16, 2014) at *https://www.gpo.gov/fdsys/pkg/FR-2014-10-16/pdf/2014-24658.pdf.*

assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both. Overall, the infrastructure SIP submission process provides an opportunity . . . to review the basic structural requirements of the air agency's air quality management program in light of each new or revised NAAQS.'' Infrastructure SIP Guidance at pp. 1–2. Tennessee appropriately demonstrated that its SIP has SO_2 emissions limitations and the ''structural requirements'' to implement the 2010 1-hour SO_2 NAAQS in its infrastructure SIP submission.

The Commenter makes general allegations that Tennessee does not have sufficient protective measures to prevent SO_2 NAAQS exceedances. EPA addressed the adequacy of Tennessee's infrastructure SIP for 110(a)(2)(A) purposes in the proposed rule and explained why the SIP includes enforceable emission limitations and other control measures that aid in maintaining the 2010 1-hour SO_2 NAAQS throughout the State. These include State regulations which collectively establish enforceable emissions limitations and other control measures, means or techniques for activities that contribute to SO_2 concentrations in the ambient air, and provide authority for TDEC to establish such limits and measures as well as schedules for compliance through SIP-approved permits to meet the applicable requirements of the CAA. *See* 81 FR 12627, 12631 (March 10, 2016). As discussed in this rulemaking, EPA finds these provisions adequately address section 110(a)(2)(A) to aid in attaining and/or maintaining the 2010 1-hour SO_2 NAAQS and finds Tennessee demonstrated that it has the necessary tools to implement and enforce the 2010 1-hour SO_2 NAAQS.

2. The Legislative History of the CAA

Comment 2: The Commenter cites two excerpts from the legislative history of the 1970 CAA and claims that the ''the legislative history of Infrastructure SIPs provides that states must include enforceable emission limits in their Infrastructure SIPs sufficient to ensure the implementation, maintenance, and attainment of each NAAQS in all areas of the State.''

Response 2: As provided in the previous response, the CAA, as enacted in 1970, including its legislative history, cannot be interpreted in isolation from the later amendments that refined that structure and deleted relevant language from section 110 concerning attainment. In any event, the two excerpts of legislative history the Commenter cites merely provide that states should include enforceable emission limits in their SIPs and they do not mention or otherwise address whether states are required to impose additional emission limitations or control measures as part of the infrastructure SIP submission, as opposed to requirements for other types of SIP submissions such as attainment plans required under section 110(a)(2)(I). As provided in Response 1, the proposed rule explains why the SIP includes sufficient enforceable emissions limitations for purposes of the infrastructure SIP submission.

3. Case Law

Comment 3: The Commenter also discusses several court decisions concerning the CAA, which the Commenter claims support its contention that courts have been clear that section 110(a)(2)(A) requires enforceable emissions limits in infrastructure SIP submissions to prevent violations of the NAAQS. The Commenter first cites to language in *Train* v. *NRDC,* 421 U.S. 60, 78 (1975), addressing the requirement for ''emission limitations'' and stating that emission limitations ''are the specific rules to which operators of pollution sources are subject, and which if enforced should result in ambient air which meets the national standards.'' The Commenter also cites to *Pennsylvania Dept. of Envtl. Resources* v. *EPA,* 932 F.2d 269, 272 (3d Cir. 1991) for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS, and to *Mision Industrial, Inc.* v. *EPA,* 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the CAA of 1970. The Commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110, quoting *Alaska Dept. of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 470 (2004) which in turn quoted section 110(a)(2)(A) of the CAA and also stated that ''SIPs must include certain measures Congress specified'' to ensure attainment of the NAAQS. The Commenter also quotes several additional opinions in this vein. *Mont. Sulphur & Chem. Co.* v. *EPA,* 666 F.3d 1174, 1180 (9th Cir. 2012) (''[t]he Clean Air Act directs states to develop implementation plans—SIPs—that 'assure' attainment and maintenance of [NAAQS] through enforceable emissions limitations''); *Mich. Dept. of Envtl. Quality* v. *Browner,* 230 F.3d 181, 185 (6th Cir. 2000) (''EPA's deference to a state is conditioned on the state's submission of a plan 'which satisfies the standards of § 110(a)(2)' and which includes emission limitations that result in compliance with the NAAQS''; and *Hall* v. *EPA* 273 F.3d 1146 (9th Cir. 2001) for the proposition that EPA may not approve a SIP revision that does not demonstrate how the rules would not interfere with attainment and maintenance of the NAAQS.

Response 3: None of the cases the Commenter cites support the Commenter's contention that it is clear that section 110(a)(2)(A) requires infrastructure SIP submissions to include detailed plans providing for attainment and maintenance of the NAAQS in all areas of the state, nor do they shed light on how EPA may reasonably interpret section 110(a)(2)(A). With the exception of *Train,* none of the cases the Commenter cites specifically concerned the interpretation of CAA section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 Act). Rather, the other courts referenced section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background section of decisions involving challenges to EPA actions on revisions to SIPs that were required and approved under other provisions of the CAA or in the context of an enforcement action.

In *Train,* 421 U.S. 60, the Court was addressing a state revision to an attainment plan submission made pursuant to section 110 of the CAA, the primary statutory provision at that time addressing such submissions. The issue in that case was whether changes to requirements that would occur before attainment was required were variances that should be addressed pursuant to the provision governing SIP revisions or were ''postponements'' that must be addressed under section 110(f) of the CAA of 1970, which contained prescriptive criteria. The Court concluded that EPA reasonably interpreted section 110(f) not to restrict a state's choice of the mix of control measures needed to attain the NAAQS, so long as the state met other applicable requirements of the CAA, and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). Thus the issue was not whether the specific SIP at issue needs to provide for attainment or whether emissions limits are needed as part of the SIP; rather the issue was which statutory provision governed when the state wanted to revise the emission limits in its SIP if such revision would not impact attainment or maintenance of the NAAQS.

The decision in *Pennsylvania Dept. of Envtl. Resources* was also decided based on a pre-1990 provision of the CAA. At issue was whether EPA properly rejected a revision to an approved SIP where the inventories relied on by the state for the updated submission had gaps. The Court quoted section 110(a)(2)(B) of the pre-1990 CAA in support of EPA's disapproval, but did not provide any interpretation of that provision. This decision did not address the question at issue in this action, *i.e.,* what a state must include in an infrastructure SIP submission for purposes of section 110(a)(2)(A). Yet, even if the Court had interpreted that provision, EPA notes that it was modified by Congress in 1990; thus, this decision has little bearing on the issue here.

At issue in *Mision Industrial,* 547 F.2d 123, was the definition of ''emissions limitation'' not whether section 110 requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of their infrastructure SIPs. The language from the opinion the Commenter quotes does not interpret but rather merely describes section 110(a)(2)(A). The Commenter does not cite to this case to assert that the measures relied on by the state in the infrastructure SIP are not ''emissions limitations'' and the decision in this case has no bearing here. In *Mont. Sulphur & Chem. Co.,* 666 F.3d 1174, the Court was reviewing a Federal implementation plan (FIP) that EPA promulgated after a long history of the State failing to submit an adequate SIP in response to EPA's finding under section 110(k)(5) that the previously approved SIP was substantially inadequate to attain or maintain the NAAQS, which triggered the State's duty to submit a new SIP to show how it would remedy that deficiency and attain the NAAQS. The Court cited generally to sections 107 and 110(a)(2)(A) of the CAA for the proposition that SIPs should assure attainment and maintenance of NAAQS through emission limitations, but this language was not part of the Court's holding in the case, which focused instead on whether EPA's finding of SIP inadequacy and adoption of a remedial FIP were lawful. The Commenter suggests that *Alaska Dept. of Envtl. Conservation,* 540 U.S. 461, stands for the proposition that the 1990 CAA Amendments do not alter how courts interpret section 110. This claim is inaccurate. Rather, the Court quoted section 110(a)(2)(A), which, as noted previously, differs from the pre-1990 version of that provision and the court makes no mention of the changed language. Furthermore, the Commenter also quotes the Court's statement that ''SIPs must include certain measures Congress specified,'' but that statement specifically referenced the requirement in section 110(a)(2)(C), which requires an enforcement program and a program for the regulation of the modification and construction of new sources. Notably, at issue in that case was the State's ''new source'' permitting program, not what is required for purposes of an infrastructure SIP submission for purposes of section 110(a)(2)(A).

EPA does not believe any of these court decisions addressed required measures for infrastructure SIPs and believes nothing in the opinions addressed whether infrastructure SIP submissions must contain emission limitations or measures to ensure attainment and maintenance of the NAAQS.

4. EPA Regulations, Such as 40 CFR 51.112(a)

Comment 4: The Commenter cites to 40 CFR 51.112(a), providing that ''Each plan must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements.'' The Commenter relies on a statement in the preamble to the 1986 action restructuring and consolidating provisions in part 51, in which EPA stated that ''[i]t is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act . . .'' 51 FR 40656. Thus, the Commenter contends that ''the provisions of 40 CFR 51.112 are not limited to nonattainment SIPs; the regulation instead applies to infrastructure SIPs, which are required to attain and maintain the NAAQS in all areas of a state, including those not designated nonattainment.''

Response 4: The Commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits which ensure attainment and maintenance of the NAAQS is incorrect. It is clear on its face that 40 CFR 51.112 directly applies to state SIP submissions for control strategy SIPs, *i.e.,* plans that are specifically required to attain and/or maintain the NAAQS. These regulatory requirements apply when states are developing ''control strategy'' SIPs under other provisions of the CAA, such as attainment plans required for the various NAAQS in Part D and maintenance plans required in section 175A. The Commenter's suggestion that 40 CFR 51.112 must apply to all SIP submissions required by section 110 based on the preamble to EPA's action ''restructuring and consolidating'' provisions in part 51, is also incorrect.[3] EPA's action in 1986 was not to establish new substantive planning requirements, but rather was meant merely to consolidate and restructure provisions that had previously been promulgated.

Although EPA was explicit that it was not establishing requirements interpreting the provisions of new ''Part D'' of the CAA, it is clear that the regulations being restructured and consolidated were intended to address control strategy plans. In the preamble, EPA clearly stated that 40 CFR 51.112 was replacing 40 CFR 51.13 (''Control strategy: SO_X and PM (portion)''), 51.14 (''Control strategy: CO, HC, O_X and NO_2 (portion)''), 51.80 (''Demonstration of attainment: Pb (portion)''), and 51.82 (''Air quality data (portion)''). *Id.* at 40660. Thus, the present-day 40 CFR 51.112 contains consolidated provisions that are focused on control strategy SIPs, and the infrastructure SIP is not such a plan.

5. EPA Interpretations in Other Rulemakings

Comment 5: The Commenter also references a 2006 partial approval and partial disapproval of revisions to Missouri's existing plan addressing the SO_2 NAAQS and claims it was an action in which EPA relied on section 110(a)(2)(A) and 40 CFR 51.112 to reject an infrastructure SIP. Specifically, the Commenter asserts that in that action, EPA cited section 110(a)(2)(A) as a basis for disapproving a revision to the State plan on the basis that the State failed to demonstrate the SIP was sufficient to ensure attainment and maintenance of the SO_2 NAAQS after revision of an emission limit and cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the SO_2 NAAQS.

Response 5: EPA's partial approval and partial disapproval of revisions to restrictions on emissions of sulfur compounds for the Missouri SIP in 71 FR 12623 specifically addressed Missouri's attainment SIP submission —not Missouri's infrastructure SIP submission. It is clear from the final Missouri rule that EPA was not reviewing an initial infrastructure SIP submission, but rather reviewing

[3] EPA noted that it had already issued guidance addressing the new ''Part D'' attainment planning obligations. Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. *See* 51 FR 40657.

proposed SIP revisions that would make an already approved SIP designed to demonstrate attainment of the NAAQS less stringent. Therefore, EPA does not agree that the 2006 Missouri action referenced by the Commenter establishes how EPA reviews infrastructure SIP submissions for purpose of section 110(a)(2)(A).

As discussed in the proposed rule, EPA finds that the Tennessee 2010 1-hour SO_2 infrastructure SIP meets certain appropriate and relevant structural requirements of section 110(a)(2) of the CAA that will aid in attaining and/or maintaining the 2010 1-hour SO_2 NAAQS and that the State demonstrated that it has the necessary tools to implement and enforce the 2010 1-hour SO_2 NAAQS.[4]

B. Comments on Tennessee SIP SO_2 Emission Limits

Comment 6: The Commenter asserts that EPA may not approve the Tennessee SO_2 infrastructure SIP because it fails to include enforceable emission limitations with a 1-hour averaging time that applies at all times. The Commenter cites to CAA section 302(k) which requires that emission limits must limit the quantity, rate or concentration of emissions and must apply on a continuous basis. The Commenter states that ''Enforceable emission limitations contained in the I–SIP must, therefore, be accompanied by proper averaging times; otherwise an appropriate numerical emission limit could allow for peak emissions that exceed the NAAQS and yet still be permitted since they would be averaged with lower emissions at other times.'' The Commenter also cites to recommended averaging times in EPA guidance providing that SIP emissions limits, ''should not exceed the averaging time of the applicable NAAQS that the limit is intended to help attain.'' EPA Memorandum of Apr. 23, 2014, to Regional Air Division Directors, Regions 1–10, Guidance for 1-Hour SO_2 NAAQS Nonattainment Area SIP Submissions, at 22, available at *https://www.epa.gov/sites/production/files/2016–06/documents/20140423guidance_nonattainment_sip.pdf*. The Commenter also notes that this EPA guidance provides that '' 'any emissions limits based on averaging periods longer than 1 hour should be designed to have comparable stringency to a 1-hour average limit at the critical emission value.' '' The Commenter states that, ''. . . for Tennessee's Infrastructure SIP to rely on enforceable emission limitations for implementation of the SO_2 NAAQS which employ an averaging period longer than one-hour, the numerical emission limits must be ratcheted down to provide adequate assurance that the NAAQS will be met.'' Additionally, the Commenter notes that it disagrees with Tennessee's responses to public comments on this SIP submission regarding annual emissions data to demonstrate compliance with hourly emissions limits.

The Commenter also cites to a February 3, 2011, EPA Region 7 letter to the Kansas Department of Health and Environment regarding the need for 1-hour SO_2 emission limits in a prevention of significant deterioration (PSD) permit, an EPA Environmental Appeals Board decision rejecting use of a 3-hour averaging time for a SO_2 limit in a PSD permit,[5] and EPA's disapproval of a Missouri SIP which relied on annual averaging for SO_2 emission rates and claims EPA has stated that 1-hour averaging times are necessary for the 2010 1-hour SO_2 NAAQS. The Commenter states, ''Therefore, in order to ensure that Tennessee's Infrastructure SIP actually implements the SO_2 NAAQS in every area of the state, the I–SIP must contain necessary and appropriate enforceable emission limits with one-hour averaging times, monitored continuously, for large sources of SO_2.'' The Commenter asserts that EPA must disapprove Tennessee's infrastructure SIP because it fails to require emission limits with adequate averaging times.

Response 6: As explained in detail in previous responses, the purpose of the infrastructure SIP is to ensure that a state has the structural capability to implement and enforce the NAAQS and thus, additional SO_2 emission limitations to ensure attainment and maintenance of the NAAQS are not required for such infrastructure SIPs.[6] EPA disagrees that it must disapprove the proposed Tennessee infrastructure SIP submission merely because the SIP does not contain enforceable SO_2 emission limitations with 1-hour averaging periods that apply at all times, as this issue is not appropriate for resolution in this action in advance of EPA action on the State's submissions of other required SIP submissions including an attainment plan for one area which is designated nonattainment pursuant to section 107 of the CAA.[7] Therefore, because EPA finds Tennessee's SO_2 infrastructure SIP approvable without the additional SO_2 emission limitations showing attainment of the NAAQS, EPA finds the issue of appropriate averaging periods for such future limitations not relevant at this time.

Further, the Commenter's citation to a prior EPA discussion on emission limitations required in PSD permits (from EPA's Environmental Appeals Board decision and EPA's letter to Kansas' permitting authority) pursuant to part C of the CAA is neither relevant nor applicable to infrastructure SIP submissions under CAA section 110. In addition, and as previously discussed, the EPA disapproval of the 2006 Missouri SIP was a disapproval relating to an attainment plan SIP submission required pursuant to part D attainment planning and is likewise not relevant to the analysis of infrastructure SIP requirements. As for the Commenter's evaluation of TDEC's position regarding averaging times, as described in Response 7, this action is not the appropriate context to address the adequacy of various averaging periods for the 2010 1-hour SO_2 NAAQS.

Comment 7: Citing to section 110(a)(1) and (a)(2)(A) of the CAA, the Commenter contends that EPA may not approve Tennessee's infrastructure SIP because it does not include enforceable 1-hour emission limits for sources that the Commenter claims are currently contributing to NAAQS exceedances. The Commenter asserts that emission limits are especially important for meeting the 1-hour SO_2 NAAQS because SO_2 impacts are strongly source oriented. The Commenter states that

[4] EPA's final action does not address CAA section 110(a)(2)(D)(i)(I) because Tennessee has not made a submission for these elements.

[5] The Commenter cited to *In re: Mississippi Lime Co.,* PSD APPEAL 11–01, 2011 WL 3557194, at *26–27 (EPA Aug. 9, 2011) and 71 FR 12623, 12624 (March 13, 2006) (EPA disapproval of a control strategy SO_2 SIP).

[6] For a discussion on emission averaging times for emissions limitations for SO_2 attainment SIPs, see the April 23, 2014, *Guidance for 1-Hour SO Nonattainment Area SIP Submissions.* As noted by the Commenter, EPA explained that it is possible, in specific cases, for states to develop control strategies that account for variability in 1-hour emissions rates through emission limits with averaging times that are longer than 1-hour, using averaging times as long as 30-days, but still provide for attainment of the 2010 SO_2 NAAQS as long as the limits are of at least comparable stringency to a 1-hour limit at the critical emission value. EPA has not taken final action to approve any specific submission of such a limit that a state has relied upon to demonstrate NAAQS attainment, and Tennessee has not submitted such a limit for that purpose here, so it is premature at this time to evaluate whether any emission limit in Tennessee's SIP is in accordance with the April 23, 2014, guidance. If and when Tennessee submits an emission limitation that relies upon such a longer averaging time to demonstrate NAAQS attainment, EPA will evaluate it then.

[7] There is currently one area designated nonattainment pursuant to CAA section 107 for the 2010 1-hour SO_2 NAAQS in Tennessee. EPA believes the appropriate time for examining the necessity of 1-hour SO_2 emission limits on specific sources is within the attainment planning process.

''[d]espite the large contribution from coal-fired EGUs [electricity generating units] to the State's SO_2 pollution, Tennessee's I–SIP lacks enforceable emissions limitations applicable to its coal-fired EGUs sufficient to ensure the implementation, attainment, and maintenance of the 2010 SO_2 NAAQS.'' The Commenter refers to data from EPA's National Emissions Inventory (NEI) and states, ''In Tennessee, 77 percent (or 120,134 tons) of SO_2 emissions come from its coal electric generating units (''EGUs'').'' The Commenter also provides air dispersion modeling reports that it conducted for two power plants in Tennessee, the Tennessee Valley Authority (TVA) Allen and TVA Gallatin Power Plants. The Commenter summarizes its modeling results for the TVA Allen and TVA Gallatin Power Plants stating that the data predict exceedances of the standard. During the State's public comment period on its proposed SIP revision, the Commenter submitted comments stating, ''. . . in determining whether enforceable emission limitations in an I–SIP submittal are sufficient to implement the NAAQS, an agency may not ignore information put in front of it. The expert air dispersion modeling analyses for TVA Allen and Gallatin that [the Commenter] has provided to TDEC over the years demonstrate the inadequacy of the State's rules and regulations for SO_2 emissions—those which Tennessee has relied on in its I–SIP to attain and maintain the NAAQS throughout the State.'' The Commenter further contends that ''neither TDEC nor EPA may rely on the cited provisions already contained in Tennessee's I–SIP to satisfy section 110(a)(2)(A) for the 2010 SO_2 NAAQS, *see* 81 FR at 12631, without first addressing and rectifying the insufficiencies of the SO_2 emission limitations in the state's I–SIP certification that have been identified and demonstrated through the various modeling analyses provided to the agency by [the Commenter].'' Thus, the Commenter asserts that EPA must disapprove Tennessee's SIP submission, and must establish a FIP ''which incorporates necessary and appropriate source-specific enforceable emission limitations (preferably informed by modeling) on TVA Allen Plant and TVA Gallatin Plant, as well as any other major source of SO_2 pollution in the State which has modeled exceedances of the NAAQS.'' Further, the Commenter states that ''For TVA Allen and TVA Gallatin, enforceable emission limitations must be at least as stringent as the modeling-based limits [provided by the Commenter] in order to protect the one-hour SO_2 NAAQS and implement, maintain, and enforce the standard in Tennessee.''

Response 7: As stated previously, EPA believes that the proper inquiry is whether Tennessee has met the basic, structural SIP requirements appropriate at the point in time EPA is acting upon the infrastructure submissions. Emissions limitations and other control measures, whether on coal-fired EGUs or other SO_2 sources, that may be needed to attain and maintain the NAAQS in areas designated nonattainment for that NAAQS are due on a different schedule from the section 110 infrastructure SIP submission. A state, like Tennessee, may reference pre-existing SIP emission limits or other rules contained in part D plans for previous NAAQS in an infrastructure SIP submission for purposes of section 110(a)(2)(A). For example, Tennessee submitted a list of existing emission reduction measures in the SIP that control emissions of SO_2 as discussed above in response to a prior comment and discussed in the proposed rulemaking on Tennessee's SO_2 infrastructure SIP. These provisions have the ability to reduce SO_2 overall. Although the Tennessee SIP relies on measures and programs used to implement previous SO_2 NAAQS, these provisions are not limited to reducing SO_2 levels to meet one specific NAAQS and will continue to provide benefits for the 2010 1-hour SO_2 NAAQS.

Regarding the air dispersion modeling conducted by the Commenter pursuant to AERMOD for the TVA Allen and TVA Gallatin Power Plants, EPA is not in this action making a determination regarding the air quality status in the area where these EGUs are located, and is not evaluating whether emissions applicable to these EGUs are adequate to attain and maintain the NAAQS. Consequently, the EPA does not find the modeling information relevant for review of an infrastructure SIP for purposes of section 110(a)(2)(A). When additional areas in Tennessee are designated under the 2010 1-hour SO_2 NAAQS, and if any additional areas in Tennessee are designated nonattainment in the future, any potential future modeling submitted by the State with designations or attainment demonstrations would need to account for any new emissions limitations Tennessee develops to support such designation or demonstration, which at this point is unknown. While EPA has extensively discussed the use of modeling for attainment demonstration purposes and for designations,[8] EPA has recommended that such modeling was not needed for the SO_2 infrastructure SIPs for the 2010 1-hour SO_2 NAAQS for purposes of section 110(a)(2)(A), which are not actions in which EPA makes determinations regarding current air quality status. *See* April 12, 2012, letters to states and 2012 Draft White Paper.[9]

In conclusion, EPA disagrees with the Commenter's statements that EPA must disapprove Tennessee's infrastructure SIP submission because it does not establish specific enforceable SO_2 emission limits, either on coal-fired EGUs or other large SO_2 sources, in order to demonstrate attainment and maintenance with the 2010 1-hour SO_2 NAAQS at this time.

Comment 8: The Commenter alleges that the proposed SO_2 infrastructure SIP does not include a submittal that addresses sources significantly contributing to nonattainment or interfering with maintenance of the 2010 1-hour SO_2 NAAQS in other states as required by section 110(a)(2)(D)(i)(I) of the CAA, and asserts EPA must therefore disapprove the infrastructure SIP and impose a FIP. The Commenter states that ''Tennessee's submittal improperly cites to the D.C. Circuit Court's 2012 opinion in *EME Homer City Generation* v. *EPA,* 696 F.3d 7, 31 (D.C. Cir. 2012), as concluding that a 110(a)(2)(D)(i)(I) SIP submission cannot be considered a 'required' SIP submission until EPA has defined a state's obligations pursuant to that section; incorrectly assuming that no action was required until EPA quantified the Good Neighbor obligation.'' The Commenter explains that the Supreme Court disapproved the view that states cannot address section 110(a)(2)(D)(i) until EPA resolves issues related to the Clean Air Interstate Rule (CAIR) or CSAPR, and that EPA is not required to provide any implementation guidance before states' interstate transport obligation can be addressed, citing to Order on Petition Number VI–2014–04 (July 29, 2015), at 10 (*citing EPA* v. *EME Homer City Generation,* 134 S.Ct. 1584, 1601 (2014)) and also 81 FR 12630. The Commenter notes that regardless of whether Tennessee submitted a SIP revision to address CAA

[8] *See for example,* EPA's discussion of modeling for characterizing air quality in the Agency's August 21, 2015, final rule at 80 FR 51052 and for nonattainment planning in the April 23, 2014, *Guidance for 1-Hour* SO_2 *Nonattainment Area SIP Submissions.*

[9] *Implementation of the 2010 Primary 1-Hour* SO_2 *NAAQS, Draft White Paper for Discussion,* May 2012 (2012 Draft White Paper) and a sample April 12, 2012, letter from EPA to states are available in the docket for this action.

section 110(a)(2)(D)(i)(I), the State ''long since passed the June 2013 deadline to submit such provisions; rather than await some potential future submission, Tennessee's failure to satisfy its Good Neighbor obligations must be rectified now.''

Response 8: This action does not address whether sources in Tennessee are significantly contributing to nonattainment or interfering with maintenance of the 2010 1-hour SO_2 NAAQS in another state as required by section 110(a)(2)(D)(i)(I) of the CAA (the good neighbor provision). Thus, EPA disagrees with the Commenter's statement that EPA must disapprove the submitted 2010 1-hour SO_2 infrastructure SIP due to Tennessee's failure to address section 110(a)(2)(D)(i)(I). In EPA's rulemaking proposing to approve Tennessee's infrastructure SIP for the 2010 1-hour SO_2 NAAQS, EPA clearly stated that it was not taking any action with respect to the good neighbor provision in section 110(a)(2)(D)(i)(I). Tennessee did not make a submission to address the requirements of section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS, and thus there is no such submission upon which EPA proposed to take action on under section 110(k) of the CAA. Similarly, EPA disagrees with the Commenter's assertion that EPA cannot approve other elements of an infrastructure SIP submission without the good neighbor provision. There is no basis for the contention that EPA has triggered its obligation to issue a FIP to address the good neighbor obligation under section 110(c), as EPA has neither found that Tennessee failed to timely submit a required 110(a)(2)(D)(i)(I) SIP submission for the 2010 1-hour SO_2 NAAQS or found that such a submission was incomplete, nor has EPA disapproved a SIP submission addressing 110(a)(2)(D)(i)(I) with respect to the 2010 1-hour SO_2 NAAQS.

EPA acknowledges the Commenter's concern for the interstate transport of air pollutants and agrees in general with the Commenter that sections 110(a)(1) and (a)(2) of the CAA generally require states to submit, within three years of promulgation of a new or revised NAAQS, a plan which addresses cross-state air pollution under section 110(a)(2)(D)(i)(I). However, EPA disagrees with the Commenter's argument that EPA cannot approve an infrastructure SIP submission without the good neighbor provision. Section 110(k)(3) of the CAA authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve state SIP revisions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that EPA could not approve individual measures in a plan submission without either approving or disapproving the plan as a whole. *See* S. Rep. No. 101–228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz* v. *EPA,* 832 F.2d 1071 (9th Cir. 1987)).

EPA interprets its authority under section 110(k)(3) of the CAA, as affording EPA the discretion to approve, or conditionally approve, individual elements of Tennessee's infrastructure SIP submissions for the 2010 1-hour SO_2 NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) of the CAA with respect to that NAAQS. EPA views discrete infrastructure SIP requirements, such as the requirements of 110(a)(2)(D)(i)(I), as severable from the other infrastructure elements and interprets section 110(k)(3) as allowing it to act on individual severable measures in a plan submission. In short, EPA believes that even if Tennessee had made a SIP submission for section 110(a)(2)(D)(i)(I) of the CAA for the 2010 1-hour SO_2 NAAQS, which to date it has not, EPA would still have discretion under section 110(k) of the CAA to act upon the various individual elements of the State's infrastructure SIP submission, separately or together, as appropriate.

The Commenter raises no compelling legal or environmental rationale for an alternate interpretation. Nothing in the Supreme Court's April 2014 decision in *EME Homer City* alters EPA's interpretation that EPA may act on individual severable measures, including the requirements of section 110(a)(2)(D)(i)(I), in a SIP submission. *See EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (affirming a state's obligation to submit a SIP revision addressing section 110(a)(2)(D)(i)(I) independent of EPA's action finding significant contribution or interference with maintenance). In sum, the concerns raised by the Commenter do not establish that it is inappropriate or unreasonable for EPA to approve the portions of Tennessee's infrastructure SIP submission for the 2010 1-hour SO_2 NAAQS.

EPA has no obligation at this time to issue a FIP pursuant to 110(c)(1) to address Tennessee's obligations under section 110(a)(2)(D)(i)(I) until EPA first either finds Tennessee failed to make a required submission addressing the element or the State has made such a submission but it is incomplete, or EPA disapproves a SIP submission addressing that element. Until either occurs, EPA does not have the obligation to issue a FIP pursuant to section 110(c) with respect to the good neighbor provision. Therefore, EPA disagrees with the Commenter's contention that it must issue a FIP for Tennessee to address 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS at this time.

III. Final Action

With the exception of the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), EPA is taking final action to approve Tennessee's infrastructure submission submitted on March 13, 2014, for the 2010 1-hour SO_2 NAAQS for the above described infrastructure SIP requirements. EPA is taking final action to approve Tennessee's infrastructure SIP submission for the 2010 1-hour SO_2 NAAQS for the above described infrastructure SIP requirements because the submission is consistent with section 110 of the CAA.

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).

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 January 27, 2017. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 7, 2016.

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 RR—Tennessee

■ 2. In § 52.2220, the table in paragraph (e) is amended by adding the entry ''110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO_2 NAAQS'' at the end of the table to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or non-attainment area	State effective date	EPA approval date	Explanation
*	*	*	*	*
110 (a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO_2 NAAQS.	Tennessee	03/13/2014	11/28/16, [insert **Federal Register** citation].	With the exception of interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4).

[FR Doc. 2016–28429 Filed 11–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2015–0174; FRL–9955–40–OW]

RIN 2040–AF56

Revision of Certain Federal Water Quality Criteria Applicable to Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 14, 2015, the Environmental Protection Agency (EPA) proposed revisions to the federal Clean Water Act (CWA) human health criteria applicable to waters under the State of Washington's jurisdiction to ensure that the criteria are set at levels that will adequately protect Washington residents, including tribes with treaty-reserved rights, from exposure to toxic pollutants. EPA promulgated Washington's previous criteria for the protection of human health in 1992 as part of the National Toxics Rule (NTR) (amended in 1999 for Polychlorinated Biphenyls (PCBs)), using the Agency's recommended criteria values at the time. EPA derived those previously applicable criteria using a fish consumption rate (FCR) of 6.5 grams per day (g/day) based on national surveys. The best available data now demonstrate that fish consumers in Washington consume much more fish than 6.5 g/day. There are also new data and scientific information available to update the toxicity and exposure parameters used to calculate human health criteria. On August 1, 2016, the State of Washington adopted and submitted human health criteria for certain pollutants, reflecting some of these new data and information. Concurrent with this final rule, EPA is taking action under CWA 303(c) to approve in part, and disapprove in part, the human health criteria submitted by Washington. For those criteria that EPA disapproved, EPA is finalizing federal human health criteria in this final rule.

EPA is not finalizing criteria in this final rule for those state-adopted criteria that EPA approved, or for certain criteria that EPA has determined involve scientific uncertainty, as explained below.

DATES: This final rule is effective on December 28, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2015–0174. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Erica Fleisig, Office of Water, Standards and Health Protection Division (4305T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–1057; email address: *fleisig.erica@epa.gov.*

SUPPLEMENTARY INFORMATION: This final rule is organized as follows:

I. General Information
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B. How did EPA develop this final rule?
II. Background
A. Statutory and Regulatory Background
B. EPA's CWA 303(c) Action on Washington's Human Health Criteria
C. General Recommended Approach for Deriving Human Health Criteria
III. Derivation of Human Health Criteria for Washington
A. Scope of Pollutants and Waters Covered by This Final Rule
B. Washington's Designated Uses and Tribal Reserved Fishing Rights
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IV. Economic Analysis
A. Identifying Affected Entities
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A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)
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E. Executive Order 13132 (Federalism)
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G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)
H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)
I. National Technology Transfer and Advancement Act of 1995
J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)
K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Entities such as industries, stormwater management districts, or publicly owned treatment works (POTWs) that discharge pollutants to waters of the United States under the State of Washington's jurisdiction could be indirectly affected by this rulemaking, because federal water quality standards (WQS) promulgated by EPA are applicable to CWA regulatory programs, such as National Pollutant Discharge Elimination System (NPDES) permitting. Citizens concerned with water quality in Washington could also be interested in this rulemaking. Categories and entities that could potentially be affected include the following:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to waters of the United States in Washington.
Municipalities	Publicly owned treatment works or other facilities discharging pollutants to waters of the United States in Washington.
Stormwater Management Districts	Entities responsible for managing stormwater runoff in the State of Washington.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that could be indirectly affected by this action. Any parties or entities who depend upon or contribute to the water quality of Washington's waters could be indirectly affected by this rule. To determine whether your facility or activities could be indirectly affected by this action, you should carefully examine this rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How did EPA develop this final rule?

In developing this final rule, EPA carefully considered the public comments and feedback received from interested parties. EPA originally provided a 60-day public comment period after publishing the proposed rule in the **Federal Register** on September 14, 2015.[1] On October 28, 2015, in response to stakeholder requests,[2] EPA extended the public comment period for an additional 45 days.[3] In addition, EPA held two virtual public hearings on December 15th and 16th, 2015, to discuss the contents of the proposed rule and accept verbal public comments.

Over 60 organizations and individuals submitted comments on a range of issues. EPA also received over 400 letters from individuals associated with mass letter writing campaigns. Some comments addressed issues beyond the scope of the rulemaking, and thus EPA did not consider them in finalizing this rule. In each section of this preamble, EPA discusses certain public comments so that the public is aware of the Agency's position. For a full response to these and all other comments, see EPA's Response to Comments document in the official public docket.

II. Background

A. Statutory and Regulatory Background

CWA section 101(a)(2) establishes as a national goal ''water quality which provides for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water, wherever attainable.'' These are commonly referred to as the ''fishable/swimmable'' goals of the CWA. EPA

[1] See Revision of Certain Federal Water Quality Criteria Applicable to Washington: Proposed Rule, 80 FR 55063, September 14, 2015.

[2] EPA received requests from the Association of Washington Business—Washington State's Chamber of Commerce, Washington Public Ports Association (on behalf of the Association of Washington Cities and the Washington State Association of Counties), Western Wood Preservers Institute, ALCOA, American Forest and Paper Association, McFarland Cascade, Schnitzer Steel Industries, and Weyerhaeuser.

[3] See Extension of Public Comment Period for the Revision of Certain Federal Water Quality Criteria Applicable to Washington, 80 FR 65980, October 28, 2015.

interprets ''fishable'' uses to include, at a minimum, designated uses providing for the protection of aquatic communities and human health related to consumption of fish and shellfish.[4]

CWA section 303(c) (33 U.S.C. 1313(c)) directs states to adopt WQS for their waters subject to the CWA. CWA section 303(c)(2)(A) and EPA's implementing regulations at 40 CFR part 131 require, among other things, that a state's WQS specify appropriate designated uses of the waters, and water quality criteria that protect those uses. EPA's regulations at 40 CFR 131.11(a)(1) provide that ''[s]uch criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use.'' In addition, 40 CFR 131.10(b) provides that ''[i]n designating uses of a water body and the appropriate criteria for those uses, the state shall take into consideration the water quality standards of downstream waters and ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.''

States are required to review applicable WQS at least once every three years and, if appropriate, revise or adopt new standards (CWA section 303(c)(1)). Any new or revised WQS must be submitted to EPA for review and approval or disapproval (CWA section 303(c)(2)(A) and (c)(3)). If EPA disapproves a state's new or revised WQS, the CWA provides the state 90 days to adopt a revised WQS that meets CWA requirements, and if it fails to do so, EPA shall promptly propose and then within 90 days promulgate such standard unless EPA approves a state replacement WQS first (CWA section 303(c)(3) and (c)(4)(A)). CWA section 303(c)(4)(B) authorizes the Administrator to determine that a new or revised standard is needed to meet CWA requirements. Upon making such a determination, the CWA specifies that EPA shall promptly propose, and then within 90 days promulgate, any such new or revised standard unless prior to such promulgation, the state has adopted a revised or new WQS that EPA determines to be in accordance with the CWA.

Under CWA section 304(a), EPA periodically publishes criteria recommendations for states to consider when adopting water quality criteria for particular pollutants to protect the CWA section 101(a)(2) goal uses. In 2015, EPA updated its 304(a) recommended criteria for human health for 94 pollutants.[5] Where EPA has published recommended criteria, states should establish numeric water quality criteria based on EPA's CWA section 304(a) criteria, section 304(a) criteria modified to reflect site-specific conditions, or other scientifically defensible methods (40 CFR 131.11(b)(1)). In all cases criteria must be sufficient to protect the designated use and be based on sound scientific rationale (40 CFR 131.11(a)(1)). CWA section 303(c)(2)(B) requires states to adopt numeric criteria for all toxic pollutants listed pursuant to CWA section 307(a)(1) for which EPA has published 304(a) criteria, as necessary to support the states' designated uses.

In 1992, EPA promulgated the NTR at 40 CFR 131.36, establishing chemical-specific numeric criteria for 85 priority toxic pollutants for 14 states and territories (states), including Washington, that were not in compliance with the requirements of CWA section 303(c)(2)(B). When states covered by the NTR subsequently adopted their own criteria for toxic pollutants that EPA approved as consistent with the CWA and EPA's implementing regulations, EPA amended the NTR to remove those criteria for those states.

B. EPA's CWA 303(c) Action on Washington's Human Health Criteria

On September 14, 2015, EPA made a CWA 303(c)(4)(B) determination that new or revised WQS for the protection of human health in Washington were necessary to meet the requirements of the CWA, and proposed revised human health criteria for the state (see 80 FR 55063). At that time, Washington had not yet adopted its own criteria for the protection of human health.[6] On August 1, 2016, Washington adopted and submitted statewide human health criteria and new and revised implementation provisions. Concurrent with this final rule, EPA approved 45 and disapproved 143 of Washington's human health criteria under CWA 303(c). EPA is finalizing 144 human health criteria in this rule in accordance with CWA section 303(c)(3) and (c)(4) requirements.[7] After the effective date of this final rule, these federal criteria will be in effect for CWA purposes along with the human health criteria that Washington adopted and EPA approved.

Several commenters provided comments on the timing of EPA's rule, and the relationship between EPA's federal rulemaking and the state rulemaking process. These comments are now, for the most part, mooted by EPA's finalization of its federal rule and action on the state's submittal. For additional responses to specific comments, see EPA's Response to Comment document in the docket for this rule.

C. General Recommended Approach for Deriving Human Health Criteria

Human health criteria are designed to minimize the risk of adverse cancer and non-cancer effects occurring from lifetime exposure to pollutants through the ingestion of drinking water and consumption of fish and shellfish obtained from inland and nearshore waters (by nearshore waters, EPA refers to waters out to three miles from the coast). EPA's practice is to establish a human health 304(a) recommended criterion for both drinking water and consumption of fish and shellfish from inland and nearshore waters combined, and a separate human health criterion based only on ingestion of fish and shellfish from inland and nearshore waters. This latter criterion applies in cases where the designated uses of a waterbody include supporting fish and shellfish for human consumption but not drinking water supply sources (*e.g.,* in non-potable estuarine waters).

The criteria are based on two types of biological endpoints: (1) Carcinogenicity and (2) systemic toxicity (*i.e.,* all adverse effects other than cancer). EPA takes an integrated approach and considers both cancer and non-cancer effects when deriving human health criteria. Where sufficient data are available, EPA derives criteria using

[4] USEPA. 2000. Memorandum #WQSP–00–03. U.S. Environmental Protection Agency, Office of Water, Washington, DC *https://www.epa.gov/sites/production/files/2015-01/documents/standards-shellfish.pdf.*

[5] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

[6] Washington adopted criteria for the protection of aquatic life from toxic pollutants at WAC 173–201A–240.

[7] EPA is finalizing a different number of human health criteria (144) than it is disapproving (143) in Washington's 2016 submittal. Washington did not adopt organism-only criteria for methylmercury or water-plus-organism and organism-only criteria for bis(2-chloro-1-methylethyl) ether. These are priority pollutants listed pursuant to CWA section 307(a)(1) for which EPA has 304(a) recommended criteria, and, as such, CWA section 303(c)(2)(B) requires that states adopt numeric criteria for these pollutants, as necessary to support the states' designated uses. Therefore, EPA is including these three criteria in this final rule for Washington. This final rule, however, does not include revised water-plus-organism and organism-only criteria for arsenic, as explained below in section III.A, even though EPA is disapproving the arsenic criteria in Washington's submittal.

both carcinogenic and non-carcinogenic toxicity endpoints and recommends the lower value. Human health criteria for carcinogenic effects are calculated using the following input parameters: Cancer slope factor (CSF), cancer risk level, body weight, drinking water intake rate, fish consumption rate, and a bioaccumulation factor(s). Human health criteria for non-carcinogenic and nonlinear carcinogenic effects are calculated using a reference dose (RfD) in place of a CSF and cancer risk level, and a relative source contribution (RSC) factor, which is intended to ensure that an individual's total exposure to a given pollutant from all sources does not exceed the RfD. Each of these inputs is discussed in more detail below and in EPA's 2000 Human Health Methodology (hereafter referred to as EPA's ''2000 Methodology'').[8]

a. Cancer Risk Level

EPA's 304(a) national recommended human health criteria are typically based on the assumption that carcinogenicity is a ''non-threshold phenomenon,'' which means that there are no ''no-effect'' levels, because even extremely small doses are assumed to cause a finite increase in the incidence of cancer. Therefore, EPA calculates 304(a) human health criteria for carcinogenic effects as pollutant concentrations corresponding to lifetime increases in the risk of developing cancer.[9] EPA calculates its 304(a) human health criteria values at a 10^{-6} (one in one million) cancer risk level and recommends cancer risk levels of 10^{-6} or 10^{-5} (one in one hundred thousand) for the general population.[10] EPA notes that states and authorized tribes can also choose a more stringent risk level, such as 10^{-7} (one in ten million), when deriving human health criteria.

If the pollutant is not considered to have the potential for causing cancer in humans (*i.e.,* systemic toxicants), EPA assumes that the pollutant has a threshold (the RfD) below which a physiological mechanism exists to avoid or overcome the adverse effects of the pollutant.

b. Cancer Slope Factor and Reference Dose

A dose-response assessment is required to understand the quantitative relationships between exposure to a pollutant and the onset of human health effects. EPA evaluates dose-response relationships derived from animal toxicity and human epidemiological studies to derive dose-response metrics. For carcinogenic toxicological effects, EPA uses an oral CSF to derive human health criteria. The oral CSF is an upper bound, approximating a 95 percent confidence limit, on the increased cancer risk from a lifetime oral exposure to a stressor. For non-carcinogenic effects, EPA uses the RfD to calculate human health criteria. A RfD is an estimate of a daily oral exposure of an individual to a substance that is likely to be without an appreciable risk of deleterious effects during a lifetime. A RfD is typically derived from a laboratory animal dosing study in which a no-observed-adverse-effect level (NOAEL), lowest-observed-adverse-effect level (LOAEL), or benchmark dose can be obtained. Uncertainty factors are applied to reflect the limitations of the data. EPA's Integrated Risk Information System (IRIS)[11] was the primary source of toxicity values (*i.e.,* RfD and CSF) for EPA's 2015 updated 304(a) human health criteria.[12] For some pollutants, however, more recent peer-reviewed and publicly available toxicological data were available from other EPA program offices (*e.g.,* Office of Pesticide Programs, Office of Water, Office of Land and Emergency Management), other national and international programs, and state programs.

c. Exposure Assumptions

EPA's latest 304(a) national human health criteria use a default drinking water intake rate of 2.4 liters per day (L/day) and default rate of 22 g/day for consumption of fish and shellfish from inland and nearshore waters, multiplied by pollutant-specific bioaccumulation factors (BAFs) to account for the amount of the pollutant in the edible portions of the ingested species. EPA's 2000 Methodology for deriving human health criteria emphasizes using, when possible, measured or estimated BAFs, which account for chemical accumulation in aquatic organisms from all potential exposure routes.[13] In the 2015 national 304(a) human health criteria update, EPA primarily used field-measured BAFs, and laboratory-measured bioconcentration factors (BCFs) with applicable food chain multipliers available from peer-reviewed, publicly available databases, to develop national BAFs for three trophic levels of fish. If this information was not available, EPA selected octanol-water partition coefficients (K_{ow} values) from peer-reviewed sources for use in calculating national BAFs.[14]

EPA's national default drinking water intake rate of 2.4 L/day represents the per capita estimate of combined direct and indirect community water ingestion at the 90th percentile for adults ages 21 and older.[15] EPA's national default FCR of 22 g/day represents the 90th percentile consumption rate of fish and shellfish from inland and nearshore waters for the U.S. adult population 21 years of age and older, based on National Health and Nutrition Examination Survey (NHANES) data from 2003 to 2010.[16] [17] EPA calculates

[8] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–822–B–00–004. *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

[9] As noted above, EPA recommends the criterion derived for non-carcinogenic effects if it is more protective (lower) than that derived for carcinogenic effects.

[10] EPA's 2000 Methodology also states: ''Criteria based on a 10^{-5} risk level are acceptable for the general population as long as states and authorized tribes ensure that the risk to more highly exposed subgroups (sport fishers or subsistence fishers) does not exceed the 10^{-4} level.'' Since EPA is establishing final criteria to protect a target general population of tribes with reserved subsistence fishing rights in Washington waters, the applicable EPA-recommended cancer risk levels would relate to that target general population, as opposed to the general population of Washington residents overall. See section III for additional discussion.

[11] USEPA. Integrated Risk Information System (IRIS). U.S. Environmental Protection Agency, Office of Research and Development, Washington, DC *www.epa.gov/iris.*

[12] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

[13] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–822–B–00–004. *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

[14] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

[15] USEPA. 2011. EPA Exposure Factors Handbook. 2011 edition (EPA 600/R–090/052F). *http://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=236252.*

[16] USEPA. 2014. Estimated Fish Consumption Rates for the U.S. Population and Selected Subpopulations (NHANES 2003–2010). United States Environmental Protection Agency, Washington, DC EPA 820–R–14–002.

[17] EPA's national FCR is based on the total rate of consumption of fish and shellfish from inland and nearshore waters (including fish and shellfish from local, commercial, aquaculture, interstate, and international sources). This is consistent with a principle that each state does its share to protect people who consume fish and shellfish that originate from multiple jurisdictions. USEPA. January 2013. *Human Health Ambient Water Quality Criteria and Fish Consumption Rates: Frequently Asked Questions. https://www.epa.gov/wqc/human-health-ambient-water-quality-criteria-and-fish-consumption-rates-frequently-asked.*

human health criteria using a default body weight of 80 kilograms (kg), the average weight of a U.S. adult age 21 and older, based on NHANES data from 1999 to 2006.

Although EPA uses these default values to calculate national 304(a) recommended human health criteria, EPA's 2000 Methodology notes a preference for the use of local data to calculate human health criteria (*e.g.,* locally derived FCRs, drinking water intake rates and body weights, and waterbody-specific bioaccumulation rates) over national default values, where data are sufficient to do so, to better represent local conditions.[18] It is also important, where sufficient data are available, to select a FCR that reflects consumption that is not suppressed by concerns about the safety of available fish.[19] [20] Deriving human health criteria using an unsuppressed FCR furthers the restoration goals of the CWA and ensures protection of human health-related designated uses (as pollutant levels decrease, fish habitats are restored, and fish availability increases over time). See section III for additional discussion regarding use of an unsuppressed FCR to protect a subsistence or sustenance fishing use, especially where the subsistence or sustenance use is based in whole or in part on tribal treaty or other reserved fishing rights.[21]

d. Relative Source Contribution

When deriving human health criteria for non-carcinogens and nonlinear carcinogens, EPA recommends including a RSC factor to account for sources of exposure other than drinking water and fish and shellfish from inland and nearshore waters, so that the pollutant effect threshold (*i.e.,* RfD) is not apportioned to drinking water and fish consumption alone. The rationale for this approach is that for pollutants exhibiting threshold effects, the objective of the human health criteria is to ensure that an individual's total exposure from all sources does not exceed that threshold level. These other exposures include exposure to a particular pollutant from ocean fish and shellfish consumption (which is not included in EPA's default national FCR), non-fish food consumption (*e.g.,* fruits, vegetables, grains, meats, poultry), dermal exposure, and inhalation exposure. EPA's guidance includes a procedure for determining an appropriate RSC value ranging from 0.2 to 0.8 for a given pollutant.

III. Derivation of Human Health Criteria for Washington

A. Scope of Pollutants and Waters Covered by This Final Rule

In 1992, EPA did not establish human health criteria in the NTR for some priority toxic pollutants because, as stated in the preamble to the final rule at 57 FR 60848, December 22, 1992, EPA had no 304(a) recommendations for those pollutants at the time. EPA now has 304(a) recommendations for 99 priority toxic pollutants listed pursuant to CWA section 307(a)(1) (85 for which EPA established criteria in the NTR, plus 14 additional pollutants).

After consideration of all comments received on EPA's proposed rule, and EPA's CWA 303(c) action on Washington's submittal, EPA is finalizing 144 new and revised Washington-specific criteria for priority toxic pollutants in this rule. For arsenic, dioxin and thallium, EPA is not revising Washington's existing criteria from the NTR at this time, as explained below and in EPA's Response to Comments document in the docket for the final rule. For those priority pollutants for which EPA does not have 304(a) national recommended criteria, and are therefore not included in Washington's submittal or this final rule, EPA expects that Washington will continue to apply its existing narrative toxics criterion in the state's WQS at WAC 173–201A–260(2)(a).

Several commenters raised concerns about the scientific defensibility of EPA's proposed human health criteria for arsenic, and one commenter raised similar concerns about EPA's proposed criteria for 2,3,7,8–TCDD (dioxin). Additionally, after EPA proposed revised human health criteria for thallium in Washington, EPA further evaluated the scientific uncertainty around the appropriate RfD for thallium. EPA carefully considered all of these comments and information regarding these three pollutants, along with the comments that articulated it is important for Washington to have protective numeric criteria in place for priority toxic pollutants such as arsenic and dioxin. Given the scientific uncertainty regarding aspects of the science upon which the proposed human health criteria for arsenic, dioxin, and thallium were based, EPA is withdrawing its proposal of revised criteria for these three pollutants at this time and leaving the existing criteria from the NTR in effect for CWA purposes.[22] EPA did not update the 304(a) national recommended criteria for these three pollutants in 2015. As noted earlier, IRIS was the primary source of toxicity values (*i.e.,* RfD and CSF) for EPA's 2015 updated 304(a) human health criteria. For thallium, EPA's IRIS database does not currently contain an estimate of thallium's toxicity (*i.e.,* a RfD).[23] For dioxin, IRIS does not currently contain a measure of dioxin's cancer-causing ability (*i.e.,* a CSF).[24] Without such values, EPA has concluded that further analysis is necessary in order to promulgate scientifically sound revised criteria for these two pollutants. For arsenic, there is uncertainty surrounding the toxicological assessment with respect to human health effects. EPA's current plan for addressing the arsenic issues is described in the *Assessment Development Plan for the Integrated Risk Information System (IRIS) Toxicological Review of Inorganic Arsenic* (EPA/630/R–14/101, November 2015). EPA intends to reevaluate the existing federal arsenic, dioxin and thallium human health criteria for Washington by 2018, with particular consideration of any relevant toxicity and bioaccumulation information.

This rule revises the criteria that EPA promulgated for Washington in the NTR (with the exception of criteria for arsenic, dioxin, and thallium, and criteria that EPA approved in Washington's August 1, 2016 submittal), and establishes new human health criteria for 8 additional chemicals for which EPA now has 304(a) recommended criteria (and for which EPA did not approve Washington's submitted criteria): Selenium, Zinc, 1,2-Trans-Dichloroethylene, Acenaphthene, Butylbenzyl Phthalate, 2-Chloronaphthalene, 1,1,1-Trichloroethane, and 1,2,4-Trichlorobenzene. In 2001, EPA

[18] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–822–B–00–004. *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

[19] USEPA. January 2013. *Human Health Ambient Water Quality Criteria and Fish Consumption Rates: Frequently Asked Questions. https://www.epa.gov/wqc/human-health-ambient-water-quality-criteria-and-fish-consumption-rates-frequently-asked.*

[20] National Environmental Justice Advisory Council, *Fish Consumption and Environmental Justice,* p.44 (2002) *available at https://www.epa.gov/sites/production/files/2015-02/documents/fish-consump-report_1102.pdf.*

[21] The term ''subsistence'' is coterminous with ''sustenance'' in this context. Hereafter, the document uses the term ''subsistence.''

[22] EPA is moving Washington's existing arsenic, dioxin and thallium criteria from the NTR into 40 CFR 131.45 to have one comprehensive human health criteria rule for Washington.

[23] *http://cfpub.epa.gov/ncea/iris/index.cfm?fuseaction=iris.showQuickView&substance_nmbr=1012.*

[24] *http://cfpub.epa.gov/ncea/iris/index.cfm?fuseaction=iris.showQuickView&substance_nmbr=1024.*

replaced its 304(a) recommended human health criteria for total mercury with a fish tissue-based human health criterion for methylmercury.[25] Washington did not include human health criteria for mercury or methylmercury in its August 1, 2016 submittal. Therefore, with this final rule, EPA replaces the criteria for total mercury that EPA promulgated for Washington in the NTR with a methylmercury fish tissue criterion, based on EPA's 2001 304(a) recommendation but adjusted to incorporate the 175 g/day FCR that EPA used to derive revised human health criteria in Washington, as well as EPA's 2015 updated national default body weight of 80 kg.

A few commenters expressed concern that Washington would not have the data or implementation guidance to properly implement a fish tissue criterion for methylmercury, and requested that EPA leave the NTR total mercury criteria in effect in Washington. The fish tissue methylmercury criterion reflects EPA's 2000 Methodology, the best available science, and supersedes all previous 304(a) human health mercury criteria recommendations published by EPA (except for the waters of the Great Lakes System), including the 304(a) recommended criteria that served as the basis for the total mercury criteria that EPA promulgated for Washington in the NTR. EPA recommends a fish tissue water quality criterion for methylmercury for many reasons. A fish tissue water quality criterion integrates spatial and temporal complexity that occurs in aquatic systems and affects methylmercury bioaccumulation. For this pollutant, a fish tissue criterion is more closely tied to the goal of protecting human health because it is based directly on the dominant human exposure route for methylmercury in the U.S., which is consumption of fish and shellfish. The concentration of methylmercury is also generally easier to quantify in fish tissue than in water and is less variable in fish and shellfish tissue over the time periods in which WQS are typically implemented in water quality-based controls, such as NPDES permits. Finally, fish consumption advisories for mercury are also based on the amount of methylmercury in fish tissue.[26] While the purpose of a fish advisory is different from the purpose of a water quality criterion, it will be helpful to the public to have water quality criteria and fish consumption advisories for methylmercury expressed using the same terms. In response to comments regarding implementation of the methylmercury criterion, in 2010, EPA published the comprehensive *Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion* (EPA 823–R–10–001), to aid states in implementing the fish tissue-based methylmercury water quality criterion. EPA is confident that Washington will be able to implement the fish tissue criterion using the information contained in that document, and EPA remains available to offer assistance in doing so. Thus there is no need or requirement to leave the NTR total mercury criteria in place in Washington.

This final rule does not change or supersede any criteria that EPA previously promulgated for other states in the NTR, nor does it change any other elements of the NTR such as EPA's original basis for promulgation. For clarity in organization, EPA is withdrawing Washington from the NTR at 40 CFR 131.36 and incorporating the Washington-specific criteria in this rule (as well as the existing NTR criteria for arsenic, dioxin and thallium) into 40 CFR 131.45 so there is a single comprehensive set of federally promulgated criteria for Washington.

This rule applies to waters under the State of Washington's jurisdiction, and not to waters within Indian country,[27] unless otherwise specified in federal law. Some waters located within Indian country already have CWA-effective human health criteria, while others do not.[28] Several tribes are working with EPA to either revise their existing CWA-effective WQS, or obtain treatment in a similar manner as a state (TAS) status in order to adopt CWA-effective WQS in the near future. EPA will continue to work closely with tribes in Washington to ensure that they adopt human health criteria that are scientifically supported and protective of designated uses, in accordance with the CWA and EPA's regulations. In addition, on September 29, 2016, EPA published an Advanced Notice of Proposed Rulemaking in the **Federal Register** that seeks input on an approach that involves EPA promulgating baseline WQS for reservations that currently have no CWA-effective WQS, including such reservations within the State of Washington.[29]

B. Washington's Designated Uses and Tribal Reserved Fishing Rights

a. EPA's Consideration of Tribal Treaty Rights

Under the Supremacy Clause of the U.S. Constitution, federal treaties have the same legal force as federal statutes.[30] As such, the provisions of federal statutes should generally be read in harmony with treaties where they both apply. In certain instances, statutes may contain provisions indicating that they *must* be read in harmony with treaties. Such is the case with the CWA, which provides that the Act ''shall not be construed as . . . affecting or impairing the provisions of any treaty of the United States.'' [31]

In determining whether WQS satisfy the CWA and EPA's regulations, and when setting criteria for the protection of human health, it is necessary to consider other applicable laws, such as federal treaties (*e.g.,* U.S. Treaties with Indians). While treaties do not expand EPA's authority, they are binding on the federal government. As a result, EPA has an obligation to ensure that its actions do not conflict with tribal treaty rights.[32] For the foregoing reasons, and

[25] USEPA. 2001. Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–823–R–01–001. *https://www.epa.gov/wqc/guidance-implementing-january-2001-methylmercury-water-quality-criterion.*

[26] While both water quality criteria and fish consumption advisories are designed ultimately to protect human health, they represent very different values and goals. Water quality criteria express or establish a desired condition and must protect the designated use, such as subsistence fishing. Fish consumption advisories start with existing levels of fish contamination resulting from impaired water quality, and provide advice to populations consuming such fish on limiting levels of consumption in order to reduce risk from contamination.

[27] See 18 U.S.C. 1151 for the definition of Indian country.

[28] Indian country waters with CWA-effective WQS include those where (a) EPA has authorized a tribe to adopt WQS under the CWA for its reservation and the tribe has adopted standards that EPA has approved, and (b) EPA has promulgated federal WQS.

[29] For more information, see: *https://www.epa.gov/wqs-tech/advance-notice-proposed-rulemaking-federal-baseline-water-quality-standards-indian.*

[30] U.S. Const. art. IV, § 2: The ''Constitution . . . of the United States . . . and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.''

[31] CWA Section 511, 33 U.S.C. 1371.

[32] U.S. Const. art. IV, § 2; *see United States* v. *Forty-Three Gallons of Whiskey,* 93 U.S. 188, 196 (1833) (recognizing that ''the Constitution declares a treaty to be the supreme law of the land,'' and that ''a treaty is to be regarded . . . as equivalent to an act of the legislature'') and *Worcester* v. *Georgia,* 31 U.S. 515, 594 (1832) (''So long as . . . treaties exist, having been formed within the sphere of the federal powers, they must be respected and enforced by the appropriate organs of the federal government.''). *See also* EPA policies on considering treaty rights: *Working Effectively With Tribal Governments: Resource Guide* at pp. 49–52, 53 (August 1998) (explaining the key principles underlying the application of Indian treaty rights, and noting that ''[f]ederal, state, and local agencies need to refrain

as further explained below, it is therefore necessary and appropriate to consider tribal treaties to ensure that EPA's actions under the CWA are in harmony with such treaties. See also EPA's Response to Comment document in the docket for this rule.

b. Treaty-Reserved Subsistence Fishing Rights in Washington

The majority of waters under the jurisdiction of the State of Washington are subject to federal treaties with tribes.[33] There are eight Stevens-Palmer Treaties relevant to the State of Washington through which 24 tribes reserved for themselves identical or nearly identical fishing rights within the boundaries of present-day Washington; specifically, the treaty-reserved ''right of taking fish at usual and accustomed places, in common with all citizens of the Territory.'' [34] The right to take fish at usual and accustomed places extends to lands formerly ceded by the tribes to the U.S. as described in the treaties, as well as to all places beyond the boundaries of the ceded territories that tribal members regularly used at treaty time.[35]

The parties to the treaties all recognized the importance of the fishing right for the tribes' subsistence, ceremonial, as well as commercial purposes.[36] In *U.S. v Washington,* the district court made detailed findings of facts regarding the reserved fishing right, including the importance of subsistence fishing to the treaty tribes:

> At the treaty negotiations, a primary concern of the tribes, whose way of life was so heavily dependent upon harvesting anadromous fish, was that they have freedom to move about to gather food, particularly salmon, . . . at their usual and accustomed fishing places. . . . Subsequent to the execution of the treaties and in reliance thereon, the members of the [treaty tribes with reserved fishing rights in Washington] have continued to fish for subsistence, sport, and commercial purposes at their usual and accustomed places. Such fishing provided and still provides an important part of their livelihood, subsistence and cultural identity. The Indian cultural identification with fishing is primarily dietary, related to the subsistence fishery, and secondarily associated with religious ceremonies and commercial fishing.[37]

Relevant case law, including Supreme Court precedents, unequivocally confirms that the treaty-reserved right to take fish includes the right to take fish for subsistence purposes.[38] Historical and current evidence of tribal members' exercise of the treaty-reserved subsistence fishing right can be found in heritage FCR reports and contemporary FCR surveys (for tables of relevant FCRs, see EPA's Response to Comment document in the docket for this rule).

As explained above, the Stevens-Palmer Treaties provide tribes the right to exercise subsistence fishing practices on waters throughout the State of Washington. EPA concludes that the purpose for which tribes reserved such fishing rights through treaties with the U.S. has important implications for water quality regulation under the CWA. Fundamentally, the tribes' ability to take fish for their subsistence purposes under the treaties would be substantially affected or impaired if it were not supported by water quality sufficient under the CWA to ensure that tribal members can safely eat the fish for their own subsistence.

Many areas where treaty-reserved fishing rights are exercised cannot be directly protected or regulated by tribal governments to ensure adequate water quality, and therefore the responsibility falls to the federal government (and the states) to ensure their protection. It is therefore appropriate and necessary for EPA (and states) to consider the tribal reserved rights within the framework of the CWA, to ensure water quality protection for treaty-reserved subsistence fishing rights. EPA's consideration of treaty-reserved fishing rights within the framework of the CWA leads to the conclusion, as described below, that the human health fishing uses for waters in Washington include subsistence fishing, as informed by the tribes' legally protected right to continue to take fish for subsistence purposes.[39]

from taking actions that are not consistent with tribal rights wherever they exist''); *Commemorating the 30th Anniversary of the EPA's Indian Policy,* Memorandum from Gina McCarthy to All EPA Employees, p. 1 (December 1, 2014) (reiterating that ''EPA must ensure that its actions do not conflict with tribal treaty rights'' and stating that ''EPA programs should be implemented to enhance the protection of tribal treaty rights and treaty-covered resources when we have the discretion to do so''); *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (November 8, 1984) (known as ''EPA 1984 Indian Policy'').

[33] *See http://wdfw.wa.gov/hunting/tribal/treaty_history.html.*

[34] *See e.g.* Treaty with the Yakima art. 3, June 9, 1855, 12 Stat. 951. In *United States* v. *Winans,* 198 U.S. 371 (1905), the Supreme Court adopted a ''reservation of rights'' approach in interpreting the Stevens Treaty with the Yakima Nation: ''the treaty was not a grant of rights to the Indians, but a grant of rights from them—a reservation of those not granted.'' *Id.* at 381. In contrast, ''off reservation fishing by other citizens and residents of the state is not a right but merely a privilege which may be granted, limited or withdrawn by the state as the interests of the state or the exercise of treaty fishing rights may require.'' *U.S. v Washington,* 384 F. Supp. 312, 332 (W.D. Wash. 1974) *aff'd* 520 F.2d 676 (9th Cir. 1975), *cert. denied* 423 U.S. 1086 (1976).

[35] *See Seufert Bros. Co.* v. *U.S.,* 249 U.S. 194, 199 (1919). In *U.S. v Washington,* the court stated, citing *Seufert Bros. Co.,* ''every fishing location where members of a tribe customarily fished from time to time at and before treaty times, however distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters, is a usual and accustomed ground or station at which the treaty tribe reserved, and its members presently have, the right to take fish.'' 384 F. Supp. at 332.

[36] For a thorough discussion on the treaty negotiation and execution and meaning of the reserved fishing right, *see e.g., U.S. v Washington,* 384 F. Supp. at 348–359 (containing finding of facts regarding, *inter alia,* treaty status, pre-treaty role of fishing among northwest Indians, treaty background, negotiation and execution of the treaties, and post-treaty Indian fishing); *see also id.* at 340 (''The right to fish for all species available in the waters from which, for so many ages, their ancestors derived most of their subsistence is the single most highly cherished interest and concern of the present members of plaintiff tribes, with rare exceptions even among tribal members who personally do not fish or derive therefrom any substantial amount of their subsistence.''); *id.* at 343 (''The evidence shows beyond doubt that at treaty time the opportunity to take fish for personal subsistence and religious ceremonies was the single matter of utmost concern to all treaty tribes and their members.''); and *U.S.* v. *Washington,* No. 13–35474, 2016 U.S. App. LEXIS 11709, at *29 (9th Cir. June 27, 2016) (''The Indians reasonably understood Governor Stevens to promise not only that they would have access to their usual and accustomed fishing places, but also that there would be fish sufficient to sustain them.'').

[37] *U.S.* v *Washington,* 384 F. Supp. at 355–358 (internal citations to exhibits omitted).

[38] *See e.g., Washington* v. *Washington State Commercial Passenger Fishing Vessel Ass'n,* 443 U.S. 658, 678–679 (1979) (Because the Indians had always exercised the right to meet their subsistence and commercial needs by taking fish from treaty area waters, they would be unlikely to perceive a ''reservation'' of that right as merely the chance, shared with millions of other citizens, occasionally to dip their nets into the territorial waters. Moreover, the phrasing of the clause quite clearly avoids placing each individual Indian on an equal footing with each individual citizen of the State.''); *U.S.* v. *Washington,* 2016 U.S. App. LEXIS 11709 at *28 (Observing that to the Tribes, the Stevens Treaties' ''principal purpose was to secure a means of supporting themselves once the Treaties took effect,'' and to that end, ''[s]almon were a central concern.'').

[39] While EPA's action is based on harmonizing the requirements of the CWA with the terms of the treaty-reserved subsistence fishing right, the action also is consistent with federal Indian law principles addressing subsidiary treaty rights. A written legal opinion from the Solicitor of the U.S. Department of Interior (DOI) to EPA analyzed whether tribal reserved fishing rights include subsidiary rights to sufficient water quality. Letter from Hilary C. Tompkins, Solicitor, DOI, to Avi Garbow, General Counsel, EPA, regarding Maine's WQS and Tribal Fishing Rights of Maine Tribes (January 30, 2015). Although DOI's legal opinion primarily involved an analysis of fishing rights of tribes in Maine in connection with EPA's February 2, 2015 decision to disapprove WQS applied to waters of Indian Lands in Maine, its discussion of tribal fishing rights and water quality has relevance to tribes with reserved fishing rights in Washington. DOI's legal opinion identified several court decisions, including Supreme Court decisions interpreting the reserved fishing right in the Stevens Treaties, which have held that fishing rights for tribes encompass subsidiary rights that are necessary to render those rights meaningful. In *Washington* v. *Wash. State Commercial Passenger Fishing Vessel Ass'n,* the United States Supreme Court held that tribes with

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c. Use(s) of the Water(s) in Question

Consistent with EPA's September 14, 2015 proposed rule for Washington, in order to effectuate and harmonize treaty-reserved fishing rights with the CWA, EPA has determined that such rights must be appropriately considered when determining which criteria are sufficient to adequately protect Washington's designated uses. Looking at the treaty-reserved subsistence fishing right within the CWA water quality framework, the first step is to examine the use of the water(s) in question. The CWA generally assigns to a state the responsibility of determining the designated uses of its waters (subject to certain restrictions at 40 CFR 131.10),[40] and in Washington the state's designated uses include fish and shellfish harvesting.[41] As explained above, through treaties, tribes reserved specific fishing rights in Washington's waters, including the right to take fish from such waters for their subsistence. In order to effectuate these rights in harmony with the CWA, EPA has interpreted the state's EPA-approved designated fish and shellfish harvesting use to include or encompass a subsistence fishing component based on, and consistent with, the rights reserved to the tribes through the treaties. As discussed in more detail below, EPA construes the CWA to require that, when establishing WQS for these waters, the tribal members must be considered the target general population for the purposes of setting risk levels to protect the subsistence fishing use.

d. Target General Population for Deriving Criteria Protective of the Use(s)

Developing criteria to protect the fish and shellfish harvesting use, which includes subsistence fishing as informed by reserved fishing rights, necessarily involves identifying tribal members with reserved fishing rights as the target population for protection. EPA's conclusion to identify tribes as the target population is based on EPA's CWA implementing regulations requiring criteria to support the most sensitive use (*i.e.,* subsistence fishing) and EPA's 2000 Methodology recommendation that priority be given to identifying and protecting highly exposed populations. Further, in order to derive water quality criteria sufficient under the CWA to ensure that the tribes' treaty-reserved right to take fish for subsistence purposes is not substantially affected or impaired, it is reasonable and appropriate to identify tribes as the target *general* population for protection, rather than a subpopulation, and apply the 2000 Methodology's recommendations on exposure for the general population to the tribal target population.

Per EPA's regulations at 40 CFR 131.11(a)(1), water quality criteria must contain sufficient parameters or constituents to protect the designated use, and for waters with multiple uses, the criteria must support the most sensitive use. In the case of Washington's human health-related uses, the most sensitive use is fish and shellfish harvesting, which, as explained above, EPA has interpreted to include or encompass a subsistence fishing component based on, and consistent with, the rights reserved to the tribes through the treaties. Developing water quality criteria to protect the subsistence fishing component of the fish or shellfish harvesting use necessarily involves identifying the population exercising that use.

EPA's decision to identify tribes as the target population is further supported by EPA guidance for developing water quality criteria to protect human health. As explained in EPA's 2000 Methodology, the choice of the particular population to protect is an important decision to make when setting human health criteria.[42] EPA recommends that states provide adequate protection from adverse health effects to the general population, as well as to highly exposed populations, such as recreational and subsistence fishers, two distinct groups with FCRs that may be greater than the general population.[43] In fact, EPA's 2000 Methodology recommends considering how to protect both susceptible and highly exposed populations when setting criteria:

> EPA recommends that priority be given to identifying and adequately protecting the most highly exposed population. Thus, if the State or Tribe determines that a highly exposed population is at greater risk and would not be adequately protected by criteria based on the general population, and by the national 304(a) criteria in particular, EPA recommends that the State or Tribe adopt more stringent criteria using alternative exposure assumptions.[44]

Therefore, consistent with the guidance, EPA identifies the tribal population as the target population for protection and the subsistence fishing use must be the focus of the risk assessment supporting water quality criteria to adequately protect that use. Deriving criteria protective of the tribal target population necessarily involves determining the appropriate inputs for calculating protective criteria for tribal subsistence fishers, such as the FCR and cancer risk level.

EPA's approach in the 2000 Methodology, and its approach used for deriving national 304(a) recommended criteria, is for human health water quality criteria to provide a high level of protection for the general population (for example, FCRs designed to represent ''the general population of fish consumers,'' or a cancer risk level that ''reflects an appropriate risk for the general population''), while recognizing that more highly exposed ''subpopulations'' may face greater levels of risk.[45] The 2000 Methodology does not, however, speak to or envision the unique situation of setting WQS that cover areas where tribes have treaty-reserved rights to practice subsistence

reserved fishing rights are entitled to something more tangible than ''merely the chance . . . occasionally to dip their nets into the territorial seas.'' 443 U.S. 658, 679 (1979). Consistent with this reasoning, courts have held that treaty-reserved fishing rights entail the right to access fishing grounds and the right to water quantity sufficient to support fish habitat. *See e.g., United States* v. *Winans,* 198 U.S. 371, 384 (1905) (tribe must be allowed to cross private property to access traditional fishing ground); *Seufert Bros. Co.* v. *United States,* 249 U.S. 194 (1919) (tribe entitled to cross over and temporarily use any sites which they were accustomed to using at treaty time, including sites outside their ceded territories); *United States* v. *Adair,* 723 F .2d 1394, 1409–10 (9th Cir. 1983) (holding that the tribe's fishing right implicitly reserved sufficient waters to ''secure to the Tribe a continuation of its traditional . . . fishing lifestyle''; *Colville Confederated Tribes* v. *Walton,* 647 F.2d 42, 47–48 (9th Cir. 1981) (implying reservation of water to preserve tribe's replacement fishing grounds). Consistent with these precedents, in June 2016 the U.S. Court of Appeals for the Ninth Circuit affirmed the district court's finding that barrier culverts constructed by the State of Washington obstructing fish passage were in violation of tribal fishing rights set forth in the Stevens Treaties, noting that ''the Tribes' right of access to their usual and accustomed fishing places would be worthless without harvestable fish.'' *United States* v. *Washington,* 2016 U.S. App. LEXIS 11709 at *31. The court also acknowledged that the fishing clause of the Stevens Treaties could give rise to other environmental obligations, but that those would need to be addressed on a case-by-case basis depending on the precise nature of the action. *Id.* at *18–19. Consistent with this body of case law, DOI's legal opinion concludes that ''fundamental, longstanding tenets of federal Indian law support the interpretation of tribal fishing rights to include the right to sufficient water quality to effectuate the fishing right.'' DOI Letter at 10.

[40] 33 U.S.C. 1251(a)(2), 1313(c)(2)(A).

[41] See WAC 173–201A–600 and WAC 173–201A–610.

[42] EPA's 2000 Methodology, 2–1.

[43] *Id.* at 2–2.

[44] EPA's 2000 Methodology, 2–1—2. *See also* EPA's 2000 Methodology, 4–17 (''When choosing exposure factor values to include in the derivation of a criterion for a given pollutant, EPA recommends considering values that are relevant to population(s) that is (are) most susceptible to that pollutant. In addition, highly exposed populations should be considered when setting criteria.'').

[45] *See* EPA's 2000 Methodology, 2–6—7, 4–24—25.

fishing.[46] Nevertheless, it is possible to apply the general principles outlined in the 2000 Methodology to this situation, as informed by the treaties.

In light of the presence of the treaty-reserved fishing rights in Washington, interpreted by the U.S. Supreme Court to encompass, among other things, subsistence fishing, and EPA's interpretation of Washington's fish and shellfish harvesting use to include subsistence fishing, it is reasonable and appropriate to require that tribes with such rights be considered as the target general population for deriving criteria protective of the use rather than a sensitive subpopulation within the overall population of Washington. Treating tribes as the target general population will help derive water quality criteria sufficient under the CWA to ensure that the tribes' treaty-reserved right to take fish for subsistence purposes is not substantially affected or impaired. Therefore, the 2000 Methodology's recommendations on exposure for the target general population can be applied accordingly. EPA's conclusion to treat tribes as the target general population, as opposed to a subpopulation, is further supported by relevant case law interpreting the treaty-reserved fishing rights applicable in Washington; specifically the phrase ''in common with all citizens of the territory.''

Treating tribes as the target population instead of a sensitive subpopulation also impacts another important input parameter used to derive human health criteria, the cancer risk level. For carcinogenic pollutants, EPA's 2000 Methodology recommends that states protect the general population to a level of incremental cancer risk no greater than one in one hundred thousand to one in one million (1×10^{-5} to 10^{-6}). For over 20 years, Washington has used 10^{-6} as the level of risk that must be used to establish human health criteria for carcinogenic pollutants. EPA's 2000 Methodology indicates that if there are highly exposed groups or subpopulations within that target general population, such as subsistence consumers, WQS should protect those consumers to a level of incremental risk no greater than one in ten thousand (1×10^{-4}).[47] However, where treaty-reserved tribal fishing rights apply to particular waters, it would be unreasonable to expose the communities exercising those rights to levels of risk above what would be reasonable for the general population of the state. See section III.C.b for more information on cancer risk level.

e. Water Quality Criteria Sufficient To Protect the Use(s)

The data used to determine the FCR are critical to deriving criteria that will protect the subsistence fishing portion of the fish and shellfish harvesting designated use. EPA provides a recommended national default FCR for the general population but strongly recommends the use of local or regional data, where available, over default values.[48] Further, as EPA explained in its January 2013 *Human Health Ambient Water Quality Criteria and Fish Consumption Rates: Frequently Asked Questions,* it is important to avoid selecting a FCR that reflects consumption that is suppressed due to concerns about the safety of available fish. Under certain circumstances, it may also be relevant to look at the availability of fish when considering suppression effects on current FCRs.[49] EPA maintains that it is important, as a CWA goal, to avoid the suppression effect that may occur when criteria are derived using a FCR for a given target population that reflects an artificially diminished level of fish consumption from an appropriate baseline level of consumption for that population.[50] To use a FCR that is suppressed would not result in criteria that actually protect a fishing use because it would merely reinforce the existing suppressed use, or worse, set in motion a ''downward spiral''[51] of further reduction/suppression of fish consumption due to concerns about the safety of available fish or depleted fisheries. The CWA is meant not merely to maintain the status quo, but to *restore* and maintain the chemical, physical, and biological integrity of the Nation's waters. Therefore, deriving criteria using an unsuppressed FCR furthers the restoration goals of the CWA and ensures protection of human health-related designated uses (as pollutant levels decrease, fish habitats are restored, and fish availability increases over time).

CWA section 303(c)(2)(A) requires that water quality criteria be ''based upon'' applicable designated uses, and that such uses and criteria ''shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this [Act].'' The ''purposes of this [Act]'' are in section 101, and include, among other things, ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' and ''water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.'' EPA's implementing water quality regulations at 40 CFR 131.11 require water quality criteria to be based on sound scientific rationale and sufficient to protect the designated use, regardless of whether that use is currently being met. A subsistence fishing designated use, by definition, represents a level of fish consumption that is adequate to provide subsistence, regardless of whether such consumption is occurring today. It is entirely consistent with the CWA and regulations for EPA to determine that to protect the designated use, it is necessary and appropriate to derive the human health criteria using a fish consumption rate that reflects a subsistence level of consumption that is not artificially suppressed as a result of concerns about pollution or fish contamination where such data are available.

Any fish consumption rate used in setting criteria to protect a subsistence fishing use must allow for the consumption of fish from local waters at levels that could sustain and be protective of members of the target population practicing a subsistence lifestyle. Water quality criteria derived

[46] In response to comments on EPA's 1998 draft Human Health Methodology revisions, the Agency responded: ''As stated in the 1998 draft Methodology revisions, 'risk levels and criteria need to be protective of tribal rights under federal law (*e.g.,* fishing, hunting, or gathering rights) that are related to water quality.' We believe the best way to ensure that Tribal treaty and other rights under Federal law are met, consistent with the Federal trust responsibility, is to address these issues at the time EPA reviews water quality standards submissions.'' (See 65 FR 66444, 66457 November 3, 2000).

[47] 2000 Methodology, 2–6.

[48] EPA's 2000 Methodology, 4–24—4–25 (''EPA's first preference is that States and authorized Tribes use the results from fish intake surveys of local watersheds within the State or Tribal jurisdiction to establish fish intake rates that are representative of the defined populations being addressed for the particular waterbody.'')

[49] As noted by the National Environmental Justice Advisory Council in the 2002 publication *Fish Consumption and Environmental Justice,* ''a suppression effect may arise when fish upon which humans rely are no longer available in historical quantities (and kinds), such that humans are unable to catch and consume as much fish as they had or would. Such depleted fisheries may result from a variety of affronts, including an aquatic environment that is contaminated, altered (due, among other things, to the presence of dams), overdrawn, and/or overfished. Were the fish not depleted, these people would consume fish at more robust baseline levels. . . . In the Pacific Northwest, for example, compromised aquatic ecosystems mean that fish are no longer available for tribal members to take, as they are entitled to do in exercise of their treaty rights.''). National Environmental Justice Advisory Council, *Fish Consumption and Environmental Justice,* p.44, 46 (2002) *available at https://www.epa.gov/sites/production/files/2015–02/documents/fish-consump-report_1102.pdf.*

[50] *See id.* at 43.

[51] *See id.* at 47.

using a FCR below a level that would be adequate to sustain members of the target population exercising a subsistence use, such as tribal members who have a history of subsistence fishing in Washington, would not be protective of that use. In this context, use of an unsuppressed rate, where data to determine that rate are available, would ensure that the resulting criteria are protective of the subsistence use.

The importance of relying on an unsuppressed FCR, where data are available, is especially evident where the subsistence use is based in whole or in part on tribal treaty and other reserved subsistence fishing rights. This is because if human health criteria are set at a level that assumes only suppressed fish consumption, the waters will only be protected to support that level of suppressed fish consumption and thus never fully support—and potentially even may directly impair—the tribes' legal right to take fish for subsistence purposes. Accordingly, where adequate data are available to clearly demonstrate what the current unsuppressed FCR is for the relevant target population, the selected FCR must reflect that value. In the absence of such data, states, tribes, and EPA could consider upper percentile FCRs of local contemporary fish consumption surveys (such as the 95th or 99th percentile), heritage FCR data for the target population, and/or FCRs that provide for a subsistence fishing lifestyle. Consultation with tribes is important to ensure that all data and information relevant to this issue are considered.

Although treaties do not cover all waters in Washington, they cover the vast majority of the state's waters. Additionally, where treaty and non-treaty reserved rights apply on waters downstream of waters without reserved fishing rights, upstream WQS must provide for the attainment and maintenance of downstream WQS in accordance with EPA's regulations at 40 CFR 131.10(b). Based on a GIS analysis included in the docket for this final rulemaking, EPA concluded that greater than 90 percent of waters in Washington are covered by treaty rights and/or are upstream of waters with such rights or waters in Oregon (see section III.C.a). For any remaining waters in Washington, where reserved rights do not apply and that are not upstream of waters with such rights or waters in Oregon, it would be administratively burdensome to develop separate criteria to apply to such a small subset of waters, and would be difficult to implement separate criteria with a patchwork of protection among these areas when administering the WQS, NPDES permitting, and other programs. Therefore, EPA applies these final criteria to all waters under Washington's jurisdiction.

Many commenters supported EPA's decisions to derive criteria protective of the tribal population exercising their treaty-reserved fishing rights in Washington as the target general population, and to apply the resulting criteria to all waters under Washington's jurisdiction. Many other commenters did not support these decisions, and argued that EPA did not have a scientific or legal basis to interpret Washington's designated uses to encompass subsistence fishing and to treat the tribal population with treaty-reserved fishing rights as the target general population for protection under such use. For additional responses to these comments, see EPA's Response to Comment document in the docket for this rule.

C. Washington-Specific Human Health Criteria Inputs

a. Fish Consumption Rate

In Washington there are 24 tribes with treaty-reserved fishing rights, rights that encompass the right to fish for subsistence purposes, and several local and regional FCR surveys and heritage tribal consumption reports with widely varying estimates of tribal FCRs in Washington (for tables of relevant FCRs, see EPA's Response to Comment document in the docket for this rule). Available heritage FCRs range from 401 to 995 g/day, and contemporary survey FCRs range from 63 to 214 g/day (mean FCRs) and from 113 to 489 g/day (90th percentile FCRs). The discrepancy between contemporary and heritage FCRs suggests that current FCRs for certain tribal consumers in Washington may be suppressed.[52] [53] It is currently unclear how a contemporary fish consumption survey might quantitatively account for suppression, resulting in estimates of current FCRs that are unsuppressed to the maximum degree practicable. There is no local survey of contemporary fish consumption in Washington adjusted specifically to account for suppression, and no survey is a clear representation of current unsuppressed consumption for all tribes in Washington. Consistent with the principles outlined above, EPA considered the available, scientifically sound fish consumption data for Washington tribes and consulted with tribal governments to select a FCR for this final rulemaking.

The Washington tribes have generally agreed that 175 g/day is acceptable for deriving protective criteria at this time, when accompanied by other protective input parameters to calculate the criteria. However, EPA recognizes that some tribes have raised concerns as to whether a FCR of 175 g/day reasonably reflects current unsuppressed consumption rates of tribes within the State of Washington, based on the best currently available information. A FCR of 175 g/day approximates the 95th percentile consumption rate of surveyed tribal members from the CRITFC study[54] and includes anadromous fish, which is reasonable given that these marine species reside in Washington's nearshore (*i.e.,* within three miles of the coast) waters, especially Puget Sound, and accumulate pollutants discharged to these waters during a significant portion of their lives. The CRITFC survey also includes four tribes (three of which have treaty-reserved rights in Washington, the most of any one contemporary FCR survey in Washington) along the Columbia River in Washington, Idaho, and Oregon. Given this, and also considering the variability in heritage and contemporary FCRs and the uncertainty regarding suppression effects on current FCRs, the CRITFC survey provides scientifically sound estimates of fish consumption for the purpose of deriving a Washington statewide FCR for the tribal target general population.

Additionally, Oregon, much of which is downstream from Washington (or cross-stream in the Columbia River where it forms the border between the two states), used a FCR of 175 g/day to derive statewide human health criteria, which EPA approved in 2011. Use of this FCR to derive Washington's criteria will thus help ensure the attainment and maintenance of downstream WQS in Oregon.

Many commenters supported EPA's selected FCR, as well as the Agency's position that it is important to consider suppression effects on the FCR in general, and necessary and appropriate to do so where subsistence fishing is a reserved right and encompassed by the designated use of the waters. Some

[52] The number of fish advisories and closures due to contamination also suggest that contemporary FCRs may be suppressed due to concerns about pollution. *See* Washington Department of Health, Fish Consumption Advisories, available at *http://www.doh.wa.gov/CommunityandEnvironment/Food/Fish/Advisories.*

[53] Heritage rates refer to the rates of fish intake consistent with traditional tribal practices, prior to contact with European settlers.

[54] *Fish Consumption Survey of the Umatilla, Nez Perce, Yakama, and Warm Springs Tribes of the Columbia River Basin* (Columbia River Inter-Tribal Fish Commission (CRITFC), 1994).

commenters expressed concern that 175 g/day was not high enough to reflect current or historical consumption rates of all tribes in Washington. Many other commenters expressed the opposite concern, that 175 g/day was unreasonably high in order to protect Washington residents, and argued that treaty-reserved rights do not confer the right to eat fish at unsuppressed levels. Some of those commenters also argued that the CWA does not mention suppression. For detailed responses to these comments, see EPA's Response to Comment document in the docket for this rule.

b. Cancer Risk Level

EPA derives final human health criteria for carcinogens in Washington using a cancer risk level of one in one million (10^{-6}), based on Washington's longstanding use of that cancer risk level, EPA guidance, tribal reserved fishing rights, and downstream protection requirements.

To derive final human health criteria for each state in the NTR, EPA selected a cancer risk level based on each state's policy or practice regarding what risk level should be used when regulating carcinogens in surface waters. In its official comments on EPA's proposed NTR in 1992, Washington asked EPA to promulgate human health criteria using a cancer risk level of 10^{-6}, stating, ''The State of Washington supports adoption of a risk level of one in one million for carcinogens. If EPA decides to promulgate a risk level below one in one million, the rule should specifically address the issue of multiple contaminants so as to better control overall site risks.'' (57 FR 60848, December 22, 1992). Accordingly, in the NTR, EPA used a cancer risk level of 10^{-6} (one in one million) to derive human health criteria for Washington. Subsequently, Washington adopted and EPA approved a provision in the state's WQS that reads: ''Risk-based criteria for carcinogenic substances shall be selected such that the upper-bound excess cancer risk is less than or equal to one in a million'' (WAC 173–201A–240(6)). In Washington's August 1, 2016 submittal, the cancer risk level is identified in the new text and reformatted toxics criteria table at WAC 173–201A–240.

Subsequent to promulgating the NTR, EPA issued its 2000 Methodology, which states that when promulgating water quality criteria for states and tribes, EPA intends to use the 10^{-6} cancer risk level, which reflects an appropriate risk for the general population.[55] In this action, as described above, tribes with treaty-reserved rights in Washington are the target general population for the purpose of deriving revised criteria to protect the subsistence fishing uses of Washington's waters. Because those tribes are the general population in this case, EPA's selection of a 10^{-6} cancer risk level for the tribal target general population is consistent with current EPA guidance, specifically the 2000 Methodology.

In addition, use of a cancer risk rate of 10^{-6} ensures that the resulting human health criteria for carcinogens protect the subsistence fishing component of the designated use. Due to uncertainty regarding suppression effects (see sections II.C, III.B, and III.C.a, and EPA's Response to Comment document in the docket for this rule), using a cancer risk level of 10^{-6} along with a FCR of 175 g/day ensures that tribal members with treaty-reserved fishing rights will be protected at an acceptable risk level for the target general population. Throughout tribal consultation, the tribes generally supported 175 g/day as an acceptable FCR for purposes of revising Washington's human health criteria at this time, when accompanied by other protective input parameters (*e.g.,* a cancer risk level of 10^{-6}), to account for the uncertainty around an appropriate FCR value reflective of tribal subsistence fishing.

Finally, as discussed in section III.C.a, many of Washington's rivers are in the Columbia River Basin, upstream of Oregon's portion of the Columbia River. Oregon's criteria are based on a FCR of 175 g/day and a cancer risk level of 10^{-6}. EPA's decision to derive human health criteria for Washington using a cancer risk level of 10^{-6} along with a FCR of 175 g/day helps ensure that Washington's criteria will ensure the attainment and maintenance of Oregon's downstream WQS as required by 40 CFR 131.10(b).

Many commenters supported EPA's selection of a 10^{-6} cancer risk level, and EPA's rationale for doing so. Many other commenters disagreed and argued that deriving human health criteria for Washington using a 10^{-5} cancer risk level is appropriate and consistent with EPA guidance and past practice. Many of these commenters stated that tribal treaties did not confer rights to a particular level of risk. Additionally, some commenters supported EPA's consideration of downstream WQS in Oregon when establishing the criteria upstream, while others expressed concern that EPA was suggesting that Washington's upstream criteria must be identical to Oregon's downstream criteria and in doing so, acting inconsistently with its 2014 Frequently Asked Questions document on downstream protection.[56] For detailed responses to these comments, see EPA's Response to Comment document in the docket for this rule.

c. Relative Source Contribution

EPA recommends using a RSC for non-carcinogens and nonlinear carcinogens to account for sources of exposure other than drinking water and consumption of inland and nearshore fish and shellfish (see section II.C.d). In 2015, after evaluating information on chemical uses, properties, occurrences, releases to the environment and regulatory restrictions, EPA developed chemical-specific RSCs for non-carcinogens and nonlinear carcinogens ranging from 0.2 (20 percent) to 0.8 (80 percent) following the Exposure Decision Tree approach described in EPA's 2000 Methodology.[57] [58] EPA proposed to use these same RSCs to derive human health criteria for Washington, and where EPA did not update the nationally recommended criteria for certain pollutants in 2015, EPA proposed to use a RSC of 0.2 to derive human health criteria for those pollutants in Washington to ensure protectiveness.

Several commenters supported EPA's use of RSCs to account for other sources of pollutant exposure. Several others disagreed, arguing that water quality criteria under the CWA cannot control or consider sources of exposure other than from drinking water and eating fish and shellfish, so human health criteria should not account for these sources. Many of the commenters, in addition to criticizing the concept of RSCs as overly-conservative, argued that EPA was double-counting exposure to anadromous fish (which EPA considers marine in the national dataset) by both including them in the FCR and using the pollutant-specific RSCs that EPA pairs with an inland and nearshore-only

[55] EPA's 2000 Methodology, pages 2–6.

[56] *https://nepis.epa.gov/Exe/ZyPDF.cgi/P100LIJF.PDF?Dockey=P100LIJF.PDF.*

[57] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–822–B–00–004. *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

[58] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

FCR in its 304(a) national recommended human health criteria. Commenters argued that this is inconsistent with EPA's guidance, which recommends that states adjust the RSC to reflect a greater proportion of the RfD being attributed to water, fish and shellfish intake in instances where the FCR includes freshwater, estuarine and all marine fish consumption.[59] For detailed responses to the comments, see EPA's Response to Comment document in the docket for this rule.

Additionally, after further evaluation of the proposed revised human health criteria for antimony, EPA determined that the existing 304(a) national recommended criteria for antimony (last updated in 2002) use a pollutant-specific RSC of 0.4. EPA intended to apply a 0.2 RSC as a protective approach only where pollutant-specific RSCs were not already developed, which is not the case for antimony.[60]

While the selected FCR of 175 g/day does not include all marine fish (*e.g.,* it does not include consumption of species such as swordfish, tuna, etc.), EPA acknowledges that the criteria as proposed may have double-counted potential exposure to some pollutants in certain marine fish that are anadromous (*e.g.,* salmon). Therefore, EPA reviewed the RSCs in the proposed rule in light of EPA's guidance, which includes both the Exposure Decision Tree and associated discussion in EPA's 2000 Methodology, as well as EPA's recommendation to adjust the RSC when the FCR includes freshwater, estuarine, and all marine fish consumption. Arguably, EPA's guidance does not consider this exact scenario where the selected FCR includes some, but not all, species that EPA classifies as marine in the national NHANES dataset (and excludes some species that EPA classifies as nearshore in the national NHANES dataset, *i.e.,* shellfish).

One way to adjust the RSC values to account for inclusion of marine fish in the FCR is to examine the ratio of the national data characterizing all fish consumption rates versus inland and nearshore-only fish consumption rates derived from the NHANES dataset, and apply this ratio to the proportion of the RfD reserved for inland and nearshore fish consumption in the RSC. This approach assumes that the pollutant concentrations in anadromous fish are the same as the pollutant concentrations in inland and nearshore fish, which is the same assumption inherent in including multiple fish categories in the FCR for criteria calculation. This approach further assumes that the ratio of all fish to inland and nearshore fish from NHANES data approximates the ratio of inland, nearshore, and anadromous fish to just inland and nearshore fish from CRITFC data. At the 90th percentile rate of consumption, the national adult consumption rate from NHANES data for all fish is 53 g/day and 22 g/day for inland and nearshore-only fish, or a ratio of 2.4. Applying this to a RSC of 0.2 yields 0.48, or 0.5 rounding to a single decimal place. Because the selected FCR includes some but not all marine species, EPA decided to use this approach to adjust the RSC values. However, EPA only adjusted RSC values to 0.5 for criteria calculations previously using a RSC between 0.2 and 0.5.

There are important considerations in assigning a RSC, such as the total number of potential exposure routes from sources other than fish consumption, which compels caution in using this approach in all cases. As such, EPA decided to retain RSC values of 0.5 and above, recognizing the compelling need to account for the other potential exposure sources, including marine fish not accounted for in the FCR of 175 g/day, consistent with the logic and procedures used in establishing the national 304(a) criteria recommendations. The Exposure Decision Tree in EPA's 2000 Methodology only recommends using a RSC above 0.5 when there are no significant known or potential uses/sources other than the source of concern (Box 7, Figure 4–1 in EPA's 2000 Methodology) or there are sufficient data available on each source to characterize the exposure to those sources (Box 8C, Figure 4–1). Neither of these conditions are met for most of the pollutants in the final rule for Washington. EPA is not adjusting the RSCs for pollutants that already have national recommended RSCs greater than or equal to 0.5 (2–Chloronaphthalene (0.8), Endrin (0.8), gamma-BHC/Lindane (0.5), and methylmercury (2.7×10^{-5} subtracted from the RfD, which equates to a RSC of approximately 0.73). See Table 1, column B2 for a list of EPA's final RSCs by pollutant.

d. Body Weight

EPA calculates final human health criteria for Washington using a body weight of 80 kg, which represents the average weight of a U.S. adult and is consistent with EPA's 2015 updated national default body weight (see section II.C.c).[61] Local tribal survey data relevant to Washington are also consistent with EPA's national adult body weight of 80 kg.[62] Most commenters were silent on EPA's proposal to use a body weight of 80 kg to calculate human health criteria for Washington. A few commenters were concerned that 80 kg would not ensure adequate protection of women and children, and may not be representative of all residents in Washington based on limited local or regional data on body weight specific to Washington residents. EPA understands these concerns, but decided that the survey on which EPA's national default of 80 kg is based provides the most comprehensive dataset to establish a body weight value for deriving statewide human health criteria for Washington, and is consistent with the local tribal survey data mentioned above. The data cited by commenters do not provide sufficient evidence to come up with an alternative statewide body weight input parameter since the studies cited are limited in scope and pertain to specific subpopulations. For detailed responses to the comments, see EPA's Response to Comment document in the docket for this rule.

e. Drinking Water Intake

EPA calculates final human health criteria for Washington using a drinking water intake rate of 2.4 L/day, consistent with EPA's 2015 updated national default drinking water intake rate (see section II.C.c).[63] Most commenters were

[59] USEPA. January 2013. *Human Health Ambient Water Quality Criteria and Fish Consumption Rates: Frequently Asked Questions. https://www.epa.gov/wqc/human-health-ambient-water-quality-criteria-and-fish-consumption-rates-frequently-asked.*

[60] *http://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=20003IEI.txt See* also: National Primary Drinking Water Regulations-Synthetic Organic Chemicals and Inorganic Chemicals; National Primary Drinking Water Regulations Implementation, 57 FR 31776, July 17, 1992.

[61] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

[62] USEPA Region 10. August 2007. Framework for Selecting and Using Tribal Fish and Shellfish Consumption Rates for Risk-Based Decision Making at CERCLA and RCRA Cleanup Sites in Puget Sound and the Strait of Georgia. Appendix B. *http://yosemite.epa.gov/r10/CLEANUP.NSF/7780249be8f251538825650f0070bd8b/e12918970debc8e488256da6005c428e/$FILE/Tribal%20Shellfish%20Framework.pdf.*

[63] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

silent on or agreed with EPA's proposal to use a drinking water intake rate of 2.4 L/day to calculate human health criteria for Washington. However, two commenters stated this input was unnecessary in human health criteria derivation. Since at least the 1980s, EPA has included the drinking water exposure pathway in the development of human health criteria in order to protect water bodies with a drinking water designated use. EPA also provides the option of using organism-only human health criteria for water bodies where there is no drinking water use. One commenter stated that 2.4 L/day was an underestimate, and expressed concern that this value is not protective of tribal members who consume more water. EPA determined that it is appropriate to use its 2015 final national default drinking water intake rate, since it was adjusted pursuant to public comments after EPA issued the draft national default rate of 3 L/day in 2014. EPA acknowledges the concerns about members of the target general population who may consume larger amounts of water, but EPA does not have data (and did not receive any during the public comment period) with which to calculate a Washington-specific drinking water intake rate. For detailed responses to the comments, see EPA's Response to Comment document in the docket for this rule.

f. Pollutant-Specific Reference Doses and Cancer Slope Factors

As part of EPA's 2015 updates to its 304(a) recommended human health criteria, EPA conducted a systematic search of eight peer-reviewed, publicly available sources to obtain the most current toxicity values for each pollutant (RfDs for non-carcinogenic effects and CSFs for carcinogenic effects).[64] EPA calculates final human health criteria for Washington using the same toxicity values that EPA used in its 2015 304(a) criteria updates, to ensure that the resulting criteria are based on a sound scientific rationale. Where EPA did not update criteria for certain pollutants in 2015 and those pollutants are included in this final rule, EPA uses the toxicity values that the Agency used the last time it updated its 304(a) criteria for those pollutants as the best available scientific information. See Table 1, columns B1 and B3 for a list of EPA's final toxicity factors by pollutant.

In general, commenters were supportive of EPA using the latest and most scientifically defensible toxicity values to derive human health criteria for Washington. Some commenters expressed concern that where EPA did not update its 304(a) national recommended human health criteria for particular pollutants in 2015, the toxicity values from the existing 304(a) criteria for those pollutants were no longer valid. In particular, those commenters expressed concern about the CSFs for arsenic and PCBs, and the RfD for methylmercury, and argued that EPA should not revise Washington's criteria for those pollutants until toxicity factors are updated in the future. Unlike the situation with the toxicity factors for arsenic, dioxin and thallium (see section III.A), there is not sufficient scientific uncertainty surrounding the CSF for PCBs or the RfD for methylmercury to warrant delaying revision to Washington's human health criteria for these pollutants. For detailed responses to the comments, see EPA's Response to Comment document in the docket for this rule.

g. Pollutant-Specific Bioaccumulation Factors

For the 2015 national 304(a) human health criteria update, EPA estimated chemical-specific BAFs using a framework for deriving national BAFs described in EPA's 2000 Methodology.[65] Because the surveyed population upon which the 175 g/day FCR is based consumed almost exclusively trophic level four fish (*i.e.,* predator fish species), EPA uses the trophic level four BAF from the 2015 304(a) human health criteria updates in conjunction with the 175 g/day FCR, in order to derive protective criteria.[66] Where in 2015, EPA estimated BAFs from laboratory-measured BCFs and therefore derived a single pollutant-specific BAF for all trophic levels, EPA uses those single BAFs from the 2015 304(a) human health criteria updates. Where EPA's existing 304(a) recommended human health criteria for certain pollutants still incorporate a BCF, and those pollutants are included in this final rule, EPA uses those BCFs as the best available scientific information. See Table 1, columns B4 and B5 for a list of EPA's final bioaccumulation factors by pollutant.

Many commenters supported EPA's choice to use the latest and most scientifically defensible BAFs to derive human health criteria for Washington, and to use BCFs only when BAFs were not available for a given pollutant. Other commenters asserted that BCFs are no less scientifically defensible than BAFs, and that EPA did not provide sufficient information regarding how it developed BAFs in 2015 for commenters to fully evaluate EPA's proposed approach.

EPA's 2000 Methodology recommends use of BAFs that account for uptake of a contaminant from all sources by fish and shellfish, rather than BCFs that only account for uptake from the water column. EPA's 2015 national recommended BAFs are based on peer-reviewed, publicly available data and were developed consistent with EPA's 2000 Methodology and its supporting documents. EPA provided the basis for its 2015 BAFs in individual pollutant-specific criteria documents. The final human health criteria for Washington are consistent with EPA's 2000 Methodology, which makes clear that BAFs are a more scientifically defensible representation of bioaccumulation than BCFs. For detailed responses to the comments, see EPA's Response to Comment document in the docket for this rule.

D. Final Human Health Criteria for Washington

EPA finalizes 144 human health criteria for 74 different pollutants (72 organism-only criteria and 72 water-plus-organism criteria) to protect the applicable designated uses of Washington's waters (see Table 1). The water-plus-organism criteria in column C1 and the methylmercury criterion in column C2 of Table 1 are the applicable criteria for any waters that include the Domestic Water (domestic water supply) use defined in Washington's WQS (WAC 173–201A–600). The organism-only criteria in column C2 of Table 1 apply to waters that do not include the Domestic Water (domestic water supply) use and that Washington defines at WAC 173–201A–600 and 173–201A–610 as the following: Fresh waters—Harvesting (fish harvesting), and Recreational Uses; Marine waters—Shellfish Harvesting (shellfish—clam, oyster, and mussel—harvesting), Harvesting (salmonid and other fish

[64] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

[65] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–822–B–00–004. *https://www.epa.gov/wqc/human-health-water-quality-criteria.*

[66] *Fish Consumption Survey of the Umatilla, Nez Perce, Yakama, and Warm Springs Tribes of the Columbia River Basin* (Columbia River Inter-Tribal Fish Commission (CRITFC), 1994)

harvesting, and crustacean and other shellfish—crabs, shrimp, scallops, etc.—harvesting), and Recreational Uses.

TABLE 1—HUMAN HEALTH CRITERIA FOR WASHINGTON

A		B					C	
Chemical	CAS No.	Cancer slope factor, CSF (per mg/kg·d) (B1)	Relative source contribution, RSC (-) (B2)	Reference dose, RfD (mg/kg·d) (B3)	Bio-accumulation factor (L/kg tissue) (B4)	Bio-concentration factor (L/kg tissue) (B5)	Water & organisms (µg/L) (C1)	Organisms only (µg/L) (C2)
1. 1,1,1-4Trichloroethane	71556		0.50	2	10		20,000	50,000
2. 1,1,2,2-Tetrachloroethane	79345	0.2	-		8.4		0.1	0.3
3. 1,1,2-Trichloroethane	79005	0.057	-		8.9		0.35	0.90
4. 1,1-Dichloroethylene	75354		0.50	0.05	2.6		700	4,000
5. 1,2,4-Trichlorobenzene	120821	0.029	-		430		0.036	0.037
6. 1,2-Dichlorobenzene	95501		0.50	0.3	82		700	800
7. 1,2-Dichloroethane	107062	0.0033	-		1.9		8.9	73
8. 1,2-Dichloropropane	78875		-					
9. 1,2-Diphenylhydrazine	122667	0.8	-		27		0.01	0.02
10. 1,2-Trans-Dichloroethylene	156605		0.50	0.02	4.7		200	1,000
11. 1,3-Dichlorobenzene	541731		0.50	0.002	190		2	2
12. 1,3-Dichloropropene	542756	0.122	-		3.0		0.22	1.2
13. 1,4-Dichlorobenzene	106467		0.50	0.07	84		200	200
14. 2,3,7,8–TCDD (Dioxin)**	1746016	156,000	-			5,000	1.3E–08	1.4E–08
15. 2,4,6-Trichlorophenol	88062		-					
16. 2,4-Dichlorophenol	120832		0.50	0.003	48		10	10
17. 2,4-Dimethylphenol	105679		-					
18. 2,4-Dinitrophenol	51285		0.50	0.002	4.4		30	100
19. 2,4-Dinitrotoluene	121142		-					
20. 2-Chloronaphthalene	91587		0.80	0.08	240		100	100
21. 2-Chlorophenol	95578		-					
22. 2-Methyl-4,6-Dinitrophenol	534521		0.50	0.0003	10		3	7
23. 3,3′-Dichlorobenzidine	91941		-					
24. 3-Methyl-4-Chlorophenol	59507		-					
25. 4,4′-DDD	72548	0.24	-		240,000		7.9E–06	7.9E–06
26. 4,4′-DDE	72559	0.167	-		3,100,000		8.8E–07	8.8E–07
27. 4,4′-DDT	50293	0.34	-		1,100,000		1.2E–06	1.2E–06
28. Acenaphthene	83329		0.50	0.06	510		30	30
29. Acrolein	107028		-					
30. Acrylonitrile	107131		-					
31. Aldrin	309002	17	-		650,000		4.1E–08	4.1E–08
32. alpha-BHC	319846	6.3	-		1,500		4.8E–05	4.8E–05
33. alpha-Endosulfan	959988		0.50	0.006	200		6	7
34. Anthracene	120127		0.50	0.3	610		100	100
35. Antimony	7440360		0.50	0.0004		1	6	90
36. Arsenic**	7440382	1.75	-			44	[a] 0.018	[a] 0.14
37. Asbestos	1332214		-					
38. Benzene	71432		-					
39. Benzidine	92875		-					
40. Benzo(a) Anthracene	56553	0.73	-		3,900		0.00016	0.00016
41. Benzo(a) Pyrene	50328	7.3	-		3,900		1.6E–05	1.6E–05
42. Benzo(b) Fluoranthene	205992	0.73	-		3,900		0.00016	0.00016
43. Benzo(k) Fluoranthene	207089	0.073	-		3,900		0.0016	0.0016
44. beta-BHC	319857	1.8	-		180		0.0013	0.0014
45. beta-Endosulfan	33213659		-					
46. Bis(2-Chloroethyl) Ether	111444		-					
47. Bis(2-Chloro-1-Methylethyl) Ether*	108601		0.50	0.04	10		400	900
48. Bis(2-Ethylhexyl) Phthalate	117817	0.014	-		710		0.045	0.046
49. Bromoform	75252	0.0045	-		8.5		4.6	12
50. Butylbenzyl Phthalate	85687	0.0019	-		19,000		0.013	0.013
51. Carbon Tetrachloride	56235		-					
52. Chlordane	57749	0.35	-		60,000		2.2E–05	2.2E–05
53. Chlorobenzene	108907		0.50	0.02	22		100	200
54. Chlorodibromomethane	124481	0.04	-		5.3		0.60	2.2
55. Chloroform	67663		0.50	0.01	3.8		100	600
56. Chrysene	218019	0.0073	-		3,900		0.016	0.016
57. Copper	7440508		-					
58. Cyanide	57125		0.50	0.0006		1	9	100
59. Dibenzo(a,h) Anthracene	53703	7.3	-		3,900		1.6E–05	1.6E–05
60. Dichlorobromomethane	75274	0.034	-		4.8		0.73	2.8
61. Dieldrin	60571	16	-		410,000		7.0E–08	7.0E–08
62. Diethyl Phthalate	84662		0.50	0.8	920		200	200
63. Dimethyl Phthalate	131113		0.50	10	4,000		600	600
64. Di-n-Butyl Phthalate	84742		0.50	0.1	2,900		8	8
65. Endosulfan Sulfate	1031078		0.50	0.006	140		9	
66. Endrin	72208		0.80	0.0003	46,000		0.002	0.002
67. Endrin Aldehyde	7421934		-					
68. Ethylbenzene	100414		0.50	0.022	160		29	31
69. Fluoranthene	206440		0.50	0.04	1,500		6	6
70. Fluorene	86737		0.50	0.04	710		10	10
71. gamma-BHC; Lindane	58899		0.50	0.0047	2,500		0.43	0.43

TABLE 1—HUMAN HEALTH CRITERIA FOR WASHINGTON—Continued

A		B					C	
Chemical	CAS No.	Cancer slope factor, CSF (per mg/kg·d) (B1)	Relative source contribution, RSC (-) (B2)	Reference dose, RfD (mg/kg·d) (B3)	Bio-accumulation factor (L/kg tissue) (B4)	Bio-concentration factor (L/kg tissue) (B5)	Water & organisms (µg/L) (C1)	Organisms only (µg/L) (C2)
72. Heptachlor	76448	4.1	-		330,000		3.4E–07	3.4E–07
73. Heptachlor Epoxide	1024573	5.5	-		35,000		2.4E–06	2.4E–06
74. Hexachlorobenzene	118741	1.02	-		90,000		5.0E–06	5.0E–06
75. Hexachlorobutadiene	87683	0.04	-		1,100		0.01	0.01
76. Hexachlorocyclopentadiene	77474		0.50	0.006	1,300		1	1
77. Hexachloroethane	67721	0.04	-		600		0.02	0.02
78. Indeno(1,2,3-cd) Pyrene	193395	0.73	-		3,900		0.00016	0.00016
79. Isophorone	78591		-					
80. Methyl Bromide	74839		0.50	0.02	1.4		300	
81. Methylene Chloride	75092	0.002	-		1.6		10	100
82. Methylmercury	22967926		2.7E–05	0.0001				[b] 0.03 (mg/kg)
83. Nickel	7440020		0.50	0.02		47	80	100
84. Nitrobenzene	98953		0.50	0.002	3.1		30	100
85. N-Nitrosodimethylamine	62759		-					
86. N-Nitrosodi-n-Propylamine	621647		-					
87. N-Nitrosodiphenylamine	86306		-					
88. Pentachlorophenol (PCP)	87865	0.4	-		520		0.002	0.002
89. Phenol	108952		0.50	0.6	1.9		9,000	70,000
90. Polychlorinated Biphenyls (PCBs)		2	-			31,200	[c] 7E–06	[c] 7E–06
91. Pyrene	129000		0.50	0.03	860		8	8
92. Selenium	7782492		0.50	0.005		4.8	60	200
93. Tetrachloroethylene	127184	0.0021	-		76		2.4	2.9
94. Thallium**	7440280		-	0.000068		116	1.7	6.3
95. Toluene	108883		0.50	0.0097	17		72	130
96. Toxaphene	8001352		-					
97. Trichloroethylene	79016	0.05	-		13		0.3	0.7
98. Vinyl Chloride	75014	1.5	-		1.7			0.18
99. Zinc	7440666		0.50	0.3		47	1,000	1,000

[a] This criterion refers to the inorganic form of arsenic only.
[b] This criterion is expressed as the fish tissue concentration of methylmercury (mg methylmercury/kg fish). See *Water Quality Criterion for the Protection of Human Health: Methylmercury* (EPA–823–R–01–001, January 3, 2001) for how this value is calculated using the criterion equation in EPA's 2000 Human Health Methodology rearranged to solve for a protective concentration in fish tissue rather than in water.
[c] This criterion applies to total PCBs (*e.g.,* the sum of all congener or isomer or homolog or Aroclor analyses).
* Bis(2-Chloro-1-Methylethyl) Ether was previously listed as Bis(2-Chloroisopropyl) Ether.
** These criteria were promulgated for Washington in the National Toxics Rule at 40 CFR 131.36, and are moved into 40 CFR 131.45 to have one comprehensive human health criteria rule for Washington.

E. Applicability of Criteria

These new and revised human health criteria apply for CWA purposes in addition to any existing criteria already applicable to Washington's waters, including the state's narrative toxics criteria statement at WAC 173–201A–260(2)(a), and those human health criteria that Washington submitted on August 1, 2016, and EPA approved concurrent with this final rule.

EPA replicates in 40 CFR 131.45 the same general rules of applicability for human health criteria as in 40 CFR 131.36(c), with one exception. For waters suitable for the establishment of low flow return frequencies (*i.e.,* streams and rivers), this final rule provides that Washington must not use a low flow value below which numeric standards can be exceeded that is less stringent than the harmonic mean flow (a long-term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows), so that the criteria are implemented to be protective of the applicable designated use. Per the *Revisions to the Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (65 FR 66444, November 3, 2000), EPA now recommends harmonic mean flow be used to implement human health criteria for both carcinogens and non-carcinogens.[67] EPA received one comment on this provision, asking for clarification on whether this is consistent with Washington's current permitting approach of using the 30Q5 flow for non-carcinogens.[68] In response, Washington's use of low flow statistics more stringent than the harmonic mean flow is consistent with EPA's final rule.

Under the CWA, Congress gave states primary responsibility for developing and adopting WQS for their navigable waters (CWA section 303(a)-(c)). Although EPA revises and establishes new human health criteria for Washington in this final rule, Washington continues to have the option to adopt and submit to EPA human health criteria for the pollutants in this final rule, consistent with CWA section 303(c) and EPA's implementing regulations at 40 CFR part 131.

In its September 14, 2015 proposed rule, EPA proposed that if Washington adopted and submitted human health criteria, and EPA approved those criteria before finalizing its federal rule, EPA would not proceed with finalizing those criteria and Washington's approved criteria would be solely applicable for CWA purposes. EPA did not receive any comments opposing this provision, thus EPA is proceeding with such an approach. In this final rule, EPA is withdrawing Washington from the NTR at 40 CFR 131.36, and, with the exception of criteria for which EPA has approved Washington's criteria, EPA is incorporating the Washington-specific criteria in this rule (as well as the existing NTR criteria for arsenic, dioxin

[67] See also USEPA. 2014. Water Quality Standards Handbook—Chapter 5: General Policies. U.S. Environmental Protection Agency. Office of Water. Washington, DC EPA–820–B–14–004. *https://www.epa.gov/wqs-tech/water-quality-standards-handbook.*

[68] The 30Q5 flow is the lowest 30-day average flow event expected to occur once every five years, on average (determined hydrologically).

and thallium) into 40 CFR 131.45 so there is a single comprehensive set of federally promulgated criteria for Washington. Therefore, the CWA-effective numeric human health criteria in Washington consist of the federally promulgated criteria at 40 CFR 131.45 and those criteria that EPA approved at WAC 173–201A–240 in Washington's August 1, 2016 submittal.

Additionally, in its September 14, 2015 proposed rule, EPA proposed that if Washington adopted and submitted human health criteria after EPA finalized its rule, once EPA approved Washington's WQS, the pollutant-specific or site-specific EPA-approved criteria in Washington's WQS would become the solely effective criteria for CWA purposes and EPA's promulgated criteria for those pollutants or for that site would no longer apply. A few commenters supported this provision, where Washington's criteria for specific pollutants or sites become the only CWA-effective criteria upon EPA's approval, without any delay caused by EPA's withdrawal of the corresponding federal criteria. A few other commenters did not support this provision, and asked that EPA either delete the provision, or make clear that criteria adopted by the state would have to be at least as stringent as the federal criteria for EPA to approve and make the state criteria effective for CWA purposes. Upon further consideration of comments received on its proposed rule, EPA decided not to finalize this provision. Pursuant to 40 CFR 131.21(c), EPA's federally promulgated WQS are and will be applicable for purposes of the CWA until EPA withdraws those federally promulgated WQS. EPA would undertake such a rulemaking to withdraw the federal criteria if and when Washington adopts and EPA approves corresponding criteria that meet the requirements of section 303(c) of the CWA and EPA's implementing regulations at 40 CFR part 131.

F. Alternative Regulatory Approaches and Implementation Mechanisms

Washington has considerable discretion to implement these revised and new federal human health criteria through various water quality control programs including the NPDES program, which limits discharges to waters except in compliance with a NPDES permit. EPA's regulations at 40 CFR 131.14 authorize states and authorized tribes to adopt WQS variances to provide time to achieve the applicable WQS. 40 CFR part 131 defines WQS variances at 131.3(o) as time-limited designated uses and supporting criteria for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable conditions during the term of the WQS variances. WQS variances adopted in accordance with 40 CFR part 131 allow states and authorized tribes to address water quality challenges in a transparent and predictable way. Variances help states and authorized tribes focus on making incremental progress in improving water quality, rather than pursuing a downgrade of the underlying water quality goals through a designated use change, when the designated use is not attainable throughout the term of the variance due to one of the factors listed in 40 CFR 131.14. EPA's regulations at 40 CFR 122.47 provide the requirements when states and authorized tribes wish to include permit compliance schedules in their NPDES permits if dischargers need additional time to meet their water quality-based limits based on the applicable WQS. EPA's updated regulations at 40 CFR 131.15 require any state or authorized tribe wishing to use permit compliance schedules to also include provisions authorizing the use of permit compliance schedules after appropriate public involvement to ensure that a decision to allow permit compliance schedules derives from and complies with the applicable WQS. (80 FR 51022, August 21, 2015).

40 CFR 131.10 specifies how states and authorized tribes establish, modify or remove designated uses for their waters. 40 CFR 131.11 specifies the requirements for establishing criteria to protect designated uses, including criteria modified to reflect site-specific conditions. In the context of this rulemaking, a site-specific criterion (SSC) is an alternative value to the federal human health criteria that could be applied on a watershed, area-wide, or waterbody-specific basis that meets the regulatory test of protecting the designated use, being scientifically defensible, and ensuring the protection and maintenance of downstream WQS. A SSC may be more or less stringent than the otherwise applicable federal criterion. A SSC may be appropriate when further scientific data and analyses can bring added precision to express the concentration of a particular pollutant that protects the human health-related designated use in a particular waterbody.

A few commenters supported EPA's acknowledgement of the flexibilities that Washington has available when implementing the final criteria in this rule, while others commented that these tools allow Washington to delay or avoid implementing the criteria. EPA did not propose to change, nor does this final rule change, any of the flexibilities already afforded to Washington by EPA's regulations to modify or remove designated uses, adopt variances, issue compliance schedules, or establish site-specific criteria. These implementation tools are important for making incremental progress and allowing the time for adaptive management when designated uses and associated criteria are difficult to attain. Washington may continue to use any of these regulatory flexibilities when implementing the final federal human health criteria.

a. Designating Uses

EPA's final human health criteria apply to waters that Washington has designated for the following: Fresh waters—Harvesting (fish harvesting), Domestic Water (domestic water supply), and Recreational Uses; Marine waters—Shellfish Harvesting (shellfish—clam, oyster, and mussel—harvesting), Harvesting (salmonid and other fish harvesting, and crustacean and other shellfish—crabs, shrimp, scallops, etc.—harvesting), and Recreational Uses (see WAC 173–201A–600 and WAC 173–201A–610). If Washington removes the Domestic Water use but retains any of the other above designated uses for any particular waterbody affected by this final rule, and EPA finds that removal to be consistent with CWA section 303(c) and EPA's implementing regulations at 40 CFR part 131, then the federal organism-only criteria will apply in place of the federal water-plus-organism criteria. If Washington removes designated uses such that none of the above uses apply to any particular waterbody affected by this final rule and adopts the highest attainable use, as defined by 40 CFR 131.3(m), consistent with 40 CFR 131.10(g), and EPA finds that removal to be consistent with CWA section 303(c) and EPA's implementing regulations at 40 CFR part 131, then the federal human health criteria will no longer apply to that waterbody. Instead, any criteria associated with the newly designated highest attainable use would apply to that waterbody.

b. Variances and Compliance Schedules

EPA's final human health criteria apply to use designations that Washington has already established. Concurrent with this final rule, EPA approved revisions to Washington's variance and compliance schedule authorizing provisions. Washington may use its EPA-approved variance procedures (see WAC 173–201A–420) to establish time-limited designated uses and criteria to apply for the purposes specified in 40 CFR 131.14 as it pertains

to federal criteria when adopting such variances. Washington has sufficient authority to use variances when implementing the human health criteria as long as such variances are adopted consistent with 40 CFR 131.14, and submitted to EPA for review under CWA section 303(c). Similarly, Washington may use its EPA-approved regulation authorizing the use of permit compliance schedules (see WAC 173–201A–510(4)), consistent with 40 CFR 131.15, to grant compliance schedules, as appropriate, for WQBELs based on the federal criteria. These state regulations are not affected by this final rule.

c. Site-Specific Criteria

As discussed in section III.E, if Washington adopts and EPA approves site-specific criteria that fully meet the requirements of section 303(c) of the CWA and EPA's implementing regulations at 40 CFR part 131, EPA will undertake a rulemaking to withdraw the corresponding federal criteria.

IV. Economic Analysis

Under the CWA, water quality criteria are set on the basis of the latest scientific knowledge. EPA is not required under the CWA nor obligated under Executive Orders 12866 and 13563 to conduct an economic analysis of the criteria. Costs cannot be considered in establishing water quality criteria as part of WQS. Nonetheless, EPA conducted a cost analysis for the criteria in this final rule for the purpose of transparency and presents this information reflecting the potential economic effects of the rule.

These WQS may serve as a basis for development of NPDES permit limits. Washington has NPDES permitting authority, and retains considerable discretion in implementing standards. EPA evaluated the potential costs to NPDES dischargers associated with state implementation of EPA's final criteria. This analysis is documented in *Final Economic Analysis for the Revision of Certain Federal Water Quality Criteria Applicable to Washington,* which can be found in the record for this rulemaking.

Any NPDES-permitted facility that discharges pollutants for which the revised human health criteria are more stringent than the applicable aquatic life criteria (or for which human health criteria are the only applicable criteria) could potentially incur compliance costs. The types of affected facilities could include industrial facilities and POTWs discharging wastewater to surface waters (*i.e.,* point sources). EPA did not attribute compliance with water quality-based effluent limitations (WQBELs) reflective of existing federal human health criteria applicable to Washington (hereafter referred to as ''baseline criteria'') to the final rule. Once in compliance with WQBELs reflective of baseline criteria, EPA expects that dischargers will continue to use the same types of controls to come into compliance with the revised criteria; EPA did not fully evaluate the potential for costs to nonpoint sources,[69] such as agricultural runoff, that could be incurred under a TMDL for this analysis, but did analyze the administrative costs to the state of preparing TMDLs for potentially incrementally impaired waters. Actual costs of implementation of TMDLs is beyond the scope of this analysis.

A. Identifying Affected Entities

EPA identified 406 point source facilities that could ultimately be affected by this final rule. Of these potentially affected facilities, 73 are major dischargers and 333 are minor dischargers. EPA did not include general permit facilities in its analysis because data for such facilities are limited, and flows are usually negligible. Of the potentially affected facilities, EPA evaluated a sample of 17 major facilities. Minor facilities are unlikely to incur costs as a result of implementation of the rule, because minor facilities are typically those that do not discharge toxics in toxic amounts and discharge less than 1 million gallons per day (mgd). Although lower human health criteria could potentially change this categorization, EPA did not have effluent data on toxic pollutants to evaluate minor facilities for this analysis. Table 2 summarizes these potentially affected facilities by type and category.

TABLE 2—POTENTIALLY AFFECTED FACILITIES

Category	Minor	Major	All
Municipal	184	48	232
Industrial	149	25	174
Total	333	73	406

B. Method for Estimating Costs

EPA evaluated the two major municipal facilities with design flows greater than 100 mgd and a large industrial refinery, to attempt to capture the facilities with the potential for the largest costs. For the remaining major facilities, EPA evaluated a random sample of facilities to represent discharger type and category. For all sample facilities, EPA evaluated existing baseline permit conditions, reasonable potential to exceed human health criteria based on the final rule, and potential to exceed projected effluent limitations based on the last three years of effluent monitoring data (if available). In instances of exceedances of projected effluent limitations under the final criteria, EPA determined the likely compliance scenarios and costs. Only compliance actions and costs that would be needed above the baseline level of controls are attributable to the final rule.

EPA assumed that dischargers will pursue the least cost means of compliance with WQBELs. Incremental compliance actions attributable to the final rule may include pollution prevention, end-of-pipe treatment, and alternative compliance mechanisms (*e.g.,* variances). EPA annualized one-

[69] The CWA does not regulate nonpoint sources. However, EPA recognizes that the state may require controls for nonpoint sources as part of potential incremental TMDLs. It is difficult to model and evaluate the potential cost impacts of this final rule to nonpoint sources because they are intermittent, variable, and occur under hydrologic or climatic conditions associated with precipitation events. Also, data on instream and discharge levels of the pollutants of concern after dischargers have implemented controls to meet current WQS, total maximum daily loads (TMDLs) for impaired waters, or other water quality improvement plans, are not available. Therefore, trying to determine which sources would not achieve WQS based on the revised human health criteria after complying with existing regulations and policies may not be possible. In addition, legacy contamination (*e.g.,* in sediment) may be a source of ongoing loading. Atmospheric deposition may also contribute loadings of the pollutants of concern (*e.g.,* mercury). EPA did not estimate sediment remediation costs, or air pollution controls costs, for this analysis because EPA did not have data on the contribution of these sources, and because control costs for deposition may be covered by Clean Air Act rules.

time costs (capital costs and variance costs) over 20 years using a 3 percent discount rate to obtain total annual costs per facility. For the random sample, EPA extrapolated the annualized costs based on the sampling weight for each sample facility. To obtain an estimate of total costs to point sources, EPA added the results for the certainty sample to the extrapolated random sample costs.

C. Results

Based on the results for 17 sample facilities across 8 industrial and municipal categories,[70] EPA estimated a total annual compliance cost of approximately $126,000 to $150,000 for all major dischargers in the state (using a 3 percent discount rate). Only five facilities are estimated to incur pollution prevention program costs, while two facilities are expected to also incur costs of obtaining a variance. Most of the facilities would not bear any cost. The low end of the range reflects the assumption that the compliance actions (*e.g.,* pollution prevention) will result in compliance with projected effluent limits, whereas the high scenario reflects projected effluent limits not being met, and thus includes the estimated administrative cost of also obtaining a variance. All compliance costs are for industrial facilities, and are attributable to the human health criterion for methylmercury.

If the revised criteria result in an incremental increase in impaired waters, resulting in the need for TMDL development, there could also be some costs to nonpoint sources of pollution. Using available ambient monitoring data, EPA compared pollutant concentrations to the baseline and final criteria, identifying waterbodies that may be incrementally impaired (*i.e.,* impaired under the final criteria but not under the baseline). For the parameters and stations for which EPA had sufficient monitoring data available to evaluate, there were 50 impairments under the baseline criteria and 124 under the final criteria, for a total of 74 potential incremental impairments (or a 148 percent increase relative to the baseline; including for methylmercury, PCBs, and DDT). This increase indicates the potential for nonpoint sources to bear some compliance costs, although data are not available to estimate the magnitude of these costs. The control of nonpoint sources such as in the context of a TMDL could result in different requirements, and thus different costs, for point sources.

If the net increase in potential impairments is any indication of the potential increase in the number of TMDLs, then the total administrative costs for TMDL development could be in the range of $2.7 million to $3.0 million based on national average single-cause single-waterbody TMDL development costs from U.S. EPA (2001; updated to 2014 dollars). However, these costs may be reduced if Ecology develops multi-cause or multi-waterbody TMDLs. If these costs are spread over 8 to 15 years, at a discount rate of 3 percent, the annualized costs of developing TMDLs are $229,000 to $422,000.

Combining the potential facility compliance costs and TMDL administrative costs results in total annual costs of $355,000 to $572,000, at a 3 percent discount rate.

V. Statutory and Executive Order Reviews

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

It has been determined that this final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). The final rule does not establish any requirements directly applicable to regulated entities or other sources of toxic pollutants. However, these WQS may serve as a basis for development of NPDES permit limits. Washington has NPDES permitting authority, and retains considerable discretion in implementing standards. In the spirit of Executive Order 12866, EPA evaluated the potential costs to NPDES dischargers associated with state implementation of EPA's final criteria. This analysis, *Final Economic Analysis for the Revision of Certain Federal Water Quality Criteria Applicable to Washington,* is summarized in section IV of the preamble and is available in the docket.

B. Paperwork Reduction Act

This action does not impose any direct new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Actions to implement these WQS could entail additional paperwork burden. Burden is defined at 5 CFR 1320.3(b). This action does not include any information collection, reporting, or record-keeping requirements.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. EPA has the authority to promulgate WQS in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the CWA. EPA-promulgated standards are implemented through various water quality control programs including the NPDES program, which limits discharges to navigable waters except in compliance with an NPDES permit. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet applicable WQS. Thus, under the CWA, EPA's promulgation of WQS establishes standards that the state implements through the NPDES permit process. The state has discretion in developing discharge limits, as needed to meet the standards. As a result of this action, the State of Washington will need to ensure that permits it issues include any limitations on discharges necessary to comply with the standards established in the final rule. In doing so, the state will have a number of choices associated with permit writing. While Washington's implementation of the rule may ultimately result in new or revised permit conditions for some dischargers, including small entities, EPA's action, by itself, does not impose any of these requirements on small entities; that is, these requirements are not self-implementing.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. As these water quality criteria are not self-implementing, EPA's action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that could significantly or uniquely affect small governments.

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

[70] Seven industrial categories (mining, food and kindred products, paper and allied products, chemicals and allied products, petroleum refining and related industries, primary metal industries, and transportation and public utilities (except POTWs)) and municipal POTWs.

government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule does not alter Washington's considerable discretion in implementing these WQS, nor will it preclude Washington from adopting WQS in the future that EPA concludes meet the requirements of the CWA, which will eliminate the need for federal standards. Thus, Executive Order 13132 does not apply to this action.

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

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. In the State of Washington, there are 29 federally recognized Indian tribes. To date, nine of these Indian tribes have been approved for TAS for CWA sections 303 and 401.[71] Of these nine tribes, seven have EPA-approved WQS in their respective jurisdictions.[72] This rule could affect federally recognized Indian tribes in Washington because the numeric criteria for Washington will apply to waters adjacent to (or upstream or downstream of) the tribal waters, where many of those tribes have treaty rights to take fish for their subsistence. Additionally, there are ten federally recognized Indian tribes in the Columbia River Basin located in the states of Oregon and Idaho that this rule could impact because their waters could affect or be affected by the water quality of Washington's downstream or upstream waters.

EPA consulted with federally recognized tribal officials under EPA's Policy on Consultation and Coordination with Indian Tribes early in the process of developing this rule to permit them to have meaningful and timely input into its development. In February and March 2015, EPA held tribes-only technical staff and leadership consultation sessions to hear their views and answer questions of all interested tribes on the proposed rule. Representatives from approximately 23 tribes and four tribal consortia participated in two leadership meetings held in March 2015. EPA and tribes have also met regularly since November 2012 to discuss Washington's human health criteria at both the tribal leadership level and technical staff level. The tribes have repeatedly asked EPA to promulgate federal human health criteria for Washington if the state did not do so in a timely and protective manner. At these meetings, the tribes consistently emphasized that the human health criteria should be derived using at least a minimum FCR value of 175 g/day, a cancer risk level of 10^{-6}, and the latest scientific information from EPA's 304(a) recommended criteria. EPA considered the input received during consultation with tribes when developing this final rule (see section III for additional discussion of how EPA considered tribal input).

In subsequent coordination with tribes, EPA received a letter on August 5, 2016, from the Northwest Indian Fisheries Commission disagreeing with EPA's potential adjustments to the RSC from the proposed rule issued on September 14, 2015 to the final rule as a result of public comments. The tribes expressed concern that less stringent human health criteria as a result of the RSC adjustment would result in lower protection of designated uses and limit the ability to exercise tribal treaty rights, especially in light of a FCR that underestimates tribal consumption. EPA considered this information carefully before finalizing this rule, but for the reasons stated above, decided to adjust the RSC to account for inclusion of some marine fish in the FCR. This results in protective criteria that account for other routes of exposure in addition to drinking water and fish and shellfish from inland and nearshore waters and is consistent with EPA's guidance.

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

This rule is not subject to Executive Order 13045, because it is not economically significant as defined in Executive Order 12866, and because the environmental health or safety risks addressed by this action do not present a disproportionate risk to children.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act of 1995

This final rulemaking does not involve technical standards.

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

This action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. Conversely, this action identifies and ameliorates disproportionately high and adverse human health effects on minority populations and low-income populations in Washington. EPA developed the human health criteria included in this final rule specifically to protect Washington's designated uses, using the most current science, including local and regional information on fish consumption. Applying these criteria to waters in the State of Washington will afford a greater level of protection to both human health and the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 131

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

Dated: November 15, 2016.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—Federally Promulgated Water Quality Standards

§ 131.36 [Amended]

■ 2. In § 131.36, remove paragraph (d)(14).

■ 3. Add § 131.45 to read as follows:

§ 131.45 Revision of certain Federal water quality criteria applicable to Washington.

(a) *Scope.* This section promulgates human health criteria for priority toxic

[71] *http://water.epa.gov/scitech/swguidance/standards/wqslibrary/approvtable.cfm.*

[72] *http://yosemite.epa.gov/r10/water.nsf/34090d07b77d50bd88256b79006529e8/dd2a4df00fd7ae1a88256e0500680e86!OpenDocument.* Note that this number does not include the Confederated Tribes of the Colville Reservation, which has federally promulgated WQS from 1989. EPA is currently reviewing the Colville Tribe's application for TAS.

pollutants in surface waters in Washington.

(b) *Criteria for priority toxic pollutants in Washington.* The applicable human health criteria are shown in Table 1.

TABLE 1—HUMAN HEALTH CRITERIA FOR WASHINGTON

A		B					C	
Chemical	CAS No.	Cancer slope factor, CSF (per mg/kg·d) (B1)	Relative source contribution, RSC (-) (B2)	Reference dose, RfD (mg/kg·d) (B3)	Bio-accumulation factor (L/kg tissue) (B4)	Bio-concentration factor (L/kg tissue) (B5)	Water & organisms (µg/L) (C1)	Organisms only (µg/L) (C2)
1. 1,1,1-Trichloroethane	71556		0.50	2	10		20,000	50,000
2. 1,1,2,2-Tetrachloroethane	79345	0.2	-		8.4		0.1	0.3
3. 1,1,2-Trichloroethane	79005	0.057	-		8.9		0.35	0.90
4. 1,1-Dichloroethylene	75354		0.50	0.05	2.6		700	4,000
5. 1,2,4-Trichlorobenzene	120821	0.029	-		430		0.036	0.037
6. 1,2-Dichlorobenzene	95501		0.50	0.3	82		700	800
7. 1,2-Dichloroethane	107062	0.0033	-		1.9		8.9	73
8. 1,2-Dichloropropane	78875		-					
9. 1,2-Diphenylhydrazine	122667	0.8	-		27		0.01	0.02
10. 1,2-Trans-Dichloroethylene	156605		0.50	0.02	4.7		200	1,000
11. 1,3-Dichlorobenzene	541731		0.50	0.002	190		2	2
12. 1,3-Dichloropropene	542756	0.122	-		3.0		0.22	1.2
13. 1,4-Dichlorobenzene	106467		0.50	0.07	84		200	200
14. 2,3,7,8-TCDD (Dioxin)**	1746016	156,000	-			5,000	1.3E-08	1.4E-08
15. 2,4,6-Trichlorophenol	88062		-					
16. 2,4-Dichlorophenol	120832		0.50	0.003	48		10	10
17. 2,4-Dimethylphenol	105679		-					
18. 2,4-Dinitrophenol	51285		0.50	0.002	4.4		30	100
19. 2,4-Dinitrotoluene	121142		-					
20. 2-Chloronaphthalene	91587		0.80	0.08	240		100	100
21. 2-Chlorophenol	95578		-					
22. 2-Methyl-4,6-Dinitrophenol	534521		0.50	0.0003	10		3	7
23. 3,3′-Dichlorobenzidine	91941		-					
24. 3-Methyl-4-Chlorophenol	59507		-					
25. 4,4′-DDD	72548	0.24	-		240,000		7.9E-06	7.9E-06
26. 4,4′-DDE	72559	0.167	-		3,100,000		8.8E-07	8.8E-07
27. 4,4′-DDT	50293	0.34	-		1,100,000		1.2E-06	1.2E-06
28. Acenaphthene	83329		0.50	0.06	510		30	30
29. Acrolein	107028		-					
30. Acrylonitrile	107131		-					
31. Aldrin	309002	17	-		650,000		4.1E-08	4.1E-08
32. alpha-BHC	319846	6.3	-		1,500		4.8E-05	4.8E-05
33. alpha-Endosulfan	959988		0.50	0.006	200		6	7
34. Anthracene	120127		0.50	0.3	610		100	100
35. Antimony	7440360		0.50	0.0004		1	6	90
36. Arsenic**	7440382	1.75	-			44	[a] 0.018	[a] 0.14
37. Asbestos	1332214		-					
38. Benzene	71432		-					
39. Benzidine	92875		-					
40. Benzo(a) Anthracene	56553	0.73	-		3,900		0.00016	0.00016
41. Benzo(a) Pyrene	50328	7.3	-		3,900		1.6E-05	1.6E-05
42. Benzo(b) Fluoranthene	205992	0.73	-		3,900		0.00016	0.00016
43. Benzo(k) Fluoranthene	207089	0.073	-		3,900		0.0016	0.0016
44. beta-BHC	319857	1.8	-		180		0.0013	0.0014
45. beta-Endosulfan	33213659		-					
46. Bis(2-Chloroethyl) Ether	111444		-					
47. Bis(2-Chloro-1-Methylethyl) Ether*	108601		0.50	0.04	10		400	900
48. Bis(2-Ethylhexyl) Phthalate	117817	0.014	-		710		0.045	0.046
49. Bromoform	75252	0.0045	-		8.5		4.6	12
50. Butylbenzyl Phthalate	85687	0.0019	-		19,000		0.013	0.013
51. Carbon Tetrachloride	56235		-					
52. Chlordane	57749	0.35	-		60,000		2.2E-05	2.2E-05
53. Chlorobenzene	108907		0.50	0.02	22		100	200
54. Chlorodibromomethane	124481	0.04	-		5.3		0.60	2.2
55. Chloroform	67663		0.50	0.01	3.8		100	600
56. Chrysene	218019	0.0073	-		3,900		0.016	0.016
57. Copper	7440508		-					
58. Cyanide	57125		0.50	0.0006		1	9	100
59. Dibenzo(a,h) Anthracene	53703	7.3	-		3,900		1.6E-05	1.6E-05
60. Dichlorobromomethane	75274	0.034	-		4.8		0.73	2.8
61. Dieldrin	60571	16	-		410,000		7.0E-08	7.0E-08
62. Diethyl Phthalate	84662		0.50	0.8	920		200	200
63. Dimethyl Phthalate	131113		0.50	10	4,000		600	600
64. Di-n-Butyl Phthalate	84742		0.50	0.1	2,900		8	8
65. Endosulfan Sulfate	1031078		0.50	0.006	140		9	
66. Endrin	72208		0.80	0.0003	46,000		0.002	0.002
67. Endrin Aldehyde	7421934		-					
68. Ethylbenzene	100414		0.50	0.022	160		29	31
69. Fluoranthene	206440		0.50	0.04	1,500		6	6
70. Fluorene	86737		0.50	0.04	710		10	10
71. gamma-BHC; Lindane	58899		0.50	0.0047	2,500		0.43	0.43

TABLE 1—HUMAN HEALTH CRITERIA FOR WASHINGTON—Continued

A		B					C	
Chemical	CAS No.	Cancer slope factor, CSF (per mg/kg·d) (B1)	Relative source contribution, RSC (-) (B2)	Reference dose, RfD (mg/kg·d) (B3)	Bio-accumulation factor (L/kg tissue) (B4)	Bio-concentration factor (L/kg tissue) (B5)	Water & organisms (µg/L) (C1)	Organisms only (µg/L) (C2)
72. Heptachlor	76448	4.1	-		330,000		3.4E-07	3.4E-07
73. Heptachlor Epoxide	1024573	5.5	-		35,000		2.4E-06	2.4E-06
74. Hexachlorobenzene	118741	1.02	-		90,000		5.0E-06	5.0E-06
75. Hexachlorobutadiene	87683	0.04	-		1,100		0.01	0.01
76. Hexachlorocyclopentadiene	77474		0.50	0.006	1,300		1	1
77. Hexachloroethane	67721	0.04	-		600		0.02	0.02
78. Indeno(1,2,3-cd) Pyrene	193395	0.73	-		3,900		0.00016	0.00016
79. Isophorone	78591		-					
80. Methyl Bromide	74839		0.50	0.02	1.4		300	
81. Methylene Chloride	75092	0.002	-		1.6		10	100
82. Methylmercury	22967926		2.7E-05	0.0001				[b] 0.03 (mg/kg)
83. Nickel	7440020		0.50	0.02		47	80	100
84. Nitrobenzene	98953		0.50	0.002	3.1		30	100
85. N-Nitrosodimethylamine	62759		-					
86. N-Nitrosodi-n-Propylamine	621647		-					
87. N-Nitrosodiphenylamine	86306		-					
88. Pentachlorophenol (PCP)	87865	0.4	-		520		0.002	0.002
89. Phenol	108952		0.50	0.6	1.9		9,000	70,000
90. Polychlorinated Biphenyls (PCBs)		2	-			31,200	[c] 7E-06	[c] 7E-06
91. Pyrene	129000		0.50	0.03	860		8	8
92. Selenium	7782492		0.50	0.005		4.8	60	200
93. Tetrachloroethylene	127184	0.0021	-		76		2.4	2.9
94. Thallium**	7440280		-	0.000068		116	1.7	6.3
95. Toluene	108883		0.50	0.0097	17		72	130
96. Toxaphene	8001352		-					
97. Trichloroethylene	79016	0.05	-		13		0.3	0.7
98. Vinyl Chloride	75014	1.5	-		1.7			0.18
99. Zinc	7440666		0.50	0.3		47	1,000	1,000

[a] This criterion refers to the inorganic form of arsenic only.
[b] This criterion is expressed as the fish tissue concentration of methylmercury (mg methylmercury/kg fish). See *Water Quality Criterion for the Protection of Human Health: Methylmercury* (EPA–823–R–01–001, January 3, 2001) for how this value is calculated using the criterion equation in EPA's 2000 Human Health Methodology rearranged to solve for a protective concentration in fish tissue rather than in water.
[c] This criterion applies to total PCBs (*e.g.*, the sum of all congener or isomer or homolog or Aroclor analyses).
* Bis(2-Chloro-1-Methylethyl) Ether was previously listed as Bis(2-Chloroisopropyl) Ether.
** These criteria were promulgated for Washington in the National Toxics Rule at 40 CFR 131.36, and are moved into 40 CFR 131.45 to have one comprehensive human health criteria rule for Washington.

(c) *Applicability.* (1) The criteria in paragraph (b) of this section apply to waters with Washington's designated uses cited in paragraph (d) of this section and apply concurrently with other applicable water quality criteria.

(2) The criteria established in this section are subject to Washington's general rules of applicability in the same way and to the same extent as are other federally promulgated and state-adopted numeric criteria when applied to the same use classifications in paragraph (d) of this section.

(i) For all waters with mixing zone regulations or implementation procedures, the criteria apply at the appropriate locations within or at the boundary of the mixing zones; otherwise the criteria apply throughout the waterbody including at the end of any discharge pipe, conveyance or other discharge point within the waterbody.

(ii) The state must not use a low flow value below which numeric non-carcinogen and carcinogen human health criteria can be exceeded that is less stringent than the harmonic mean flow for waters suitable for the establishment of low flow return frequencies (*i.e.,* streams and rivers). Harmonic mean flow is a long-term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows.

(iii) If the state does not have such a low flow value for numeric criteria, then none will apply and the criteria in paragraph (b) of this section herein apply at all flows.

(d) *Applicable use designations.* (1) All waters in Washington assigned to the following use classifications are subject to the criteria identified in paragraph (d)(2) of this section:

(i) Fresh waters—

(A) Miscellaneous uses: Harvesting (Fish harvesting);

(B) Recreational uses;

(C) Water supply uses: Domestic water (Domestic water supply);

(ii) Marine waters—

(A) Miscellaneous uses: Harvesting (Salmonid and other fish harvesting, and crustacean and other shellfish (crabs, shrimp, scallops, etc.) harvesting);

(B) Recreational uses;

(C) Shellfish harvesting: Shellfish harvest (Shellfish (clam, oyster, and mussel) harvesting)

Note to paragraph (d)(1): The source of these uses is Washington Administrative Code 173–201A–600 for Fresh waters and 173–201A–610 for Marine waters.

(2) For Washington waters that include the use classification of Domestic Water, the criteria in column C1 and the methylmercury criterion in column C2 of Table 1 in paragraph (b) of this section apply. For Washington waters that include any of the following use classifications but do not include the use classification of Domestic Water, the criteria in column C2 of Table 1 in paragraph (b) of this section apply: Harvesting (fresh and marine waters), Recreational Uses (fresh and marine waters), and Shellfish Harvesting.

[FR Doc. 2016–28424 Filed 11–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA–R10–RCRA–2016–0629; FRL 9928–27–Region 10]

Determination of Full Program Adequacy of Washington's Municipal Solid Waste Landfill Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Under the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments, States must develop and implement permit programs for Municipal Solid Waste Landfills (MSWLFs) and seek an adequacy determination by the Environmental Protection Agency (EPA). This rule documents EPA's determination that Washington's MSWLF permit program is adequate to ensure compliance with Federal MSWLF requirements.

DATES: This direct final rule will become effective February 27, 2017 without further notice, unless EPA receives adverse comments on or before January 27, 2017. If written adverse comments are received, the EPA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–RCRA–2016–0629 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: calabro.domenic@epa.gov*.
- *Fax:* (206) 553–6640, to the attention of Domenic Calabro.
- *Mail:* Send written comments to Domenic Calabro, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mailstop: AW–150, Seattle, WA 98101.
- *Hand Delivery or Courier:* Deliver your comments to: Domenic Calabro, Office of Air and Waste, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mailstop: AW–150, Seattle, WA 98101. Such deliveries are only accepted during the Office's normal hours of operation.

Instructions: Identify your comments as relating to Docket ID No. EPA–R10–RCRA–2016–0629. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at w*ww.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or claimed to be other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

Docket: EPA has established a docket for this action under Docket ID No. EPA–R10–RCRA–2016–0629. All documents in the docket are listed on the *www.regulations.gov* Web site. Although it may be listed in the index, some information might not be publicly available, *e.g.,* CBI or other information the disclosure of which 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. Region 10 Library, 1200 Sixth Avenue, Seattle, Washington by appointment only; please telephone (206) 553–1289 to make an appointment.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, Mailcode: AW–150, Seattle, Washington, 98101 Attn: Mr. Domenic Calabro. Telephone: (206) 553–6640.

SUPPLEMENTARY INFORMATION:

I. Background

On October 9, 1991, the Environmental Protection Agency (EPA) promulgated the ''Solid Waste Disposal Facility Criteria: Final Rule'' (56 FR 50978). That rule established part 258 of Title 40 of the Code of Federal Regulations (CFR). The criteria set out in 40 CFR part 258 include location restrictions and standards for design, operation, groundwater monitoring, corrective action, financial assurance, and closure and post-closure care for MSWLFs. The 40 CFR part 258 criteria establish minimum Federal standards that take into account the practical capability of owners and operators of MSWLFs while ensuring that these facilities are designed and managed in a manner that is protective of human health and the environment. Section 4005(c)(1)(B) of subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, requires States to develop and implement permit programs to ensure that MSWLFs comply with the 40 CFR part 258 criteria. RCRA section 4005(c)(1)(C) requires EPA to determine whether the permit programs that States develop and implement for these facilities are adequate.

To fulfill this requirement to determine whether State permit programs that implement the 40 CFR part 258 criteria are adequate, EPA promulgated the State Implementation Rule (SIR) (63 FR 57025, Oct. 23, 1998). The SIR, which established part 239 of Title 40 of the CFR, has the following four purposes: (1) Lay out the requirements that State programs must satisfy to be determined adequate; (2) confirm the process for EPA approval or partial approval of State MSWLF permit programs; (3) provide the procedures for withdrawal of such approvals; and (4) establish a flexible framework for modifications of approved programs.

Only those owners and operators located in States with approved permit programs for MSWLFs can use the site-specific flexibility provided by 40 CFR part 258, to the extent the State permit program allows such flexibility. Every standard in the 40 CFR part 258 criteria is designed to be implemented by the owner or operator with or without oversight or participation by EPA or the State regulatory agency. States with approved programs may choose to require facilities to comply with the 40 CFR part 258 criteria exactly, or they may choose to allow owners and operators to use site-specific alternative approaches to meet the Federal criteria. The flexibility that an owner or operator may be allowed under an approved State program can provide a significant reduction in the burden associated with complying with the 40 CFR part 258

criteria. Regardless of the approval status of a State and the permit status of any facility, the 40 CFR part 258 criteria shall apply to all permitted and unpermitted MSWLFs. As EPA explained in the preamble to the revised Federal MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the revised Federal MSWLF criteria.

To receive a determination of adequacy for a MSWLF permit program under the SIR, a State must have enforceable standards for new and existing MSWLFs. These State standards must be technically comparable to the 40 CFR part 258 criteria. In addition, the State must have the authority to issue a permit or other notice of prior approval and conditions to all new and existing MSWLFs in its jurisdiction. The State also must provide for public participation in permit issuance and enforcement, as required in RCRA section 7004(b). Finally, the State must demonstrate that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved permit program. EPA expects States to meet all of these requirements for all elements of a permit program before it gives full approval to a State's program.

On April 9, 1993, Washington submitted an application to obtain a partial program adequacy determination for the State's MSWLF permit program under Section 4005 of RCRA. EPA reviewed Washington's application and published a determination of partial program adequacy on March 31, 1994 (FR Vol. 59, No. 62) for those portions of the MSWLF permit program that were adequate to ensure compliance with the revised Federal MSWLF criteria. Washington made amendments to Chapter 173–351 of the Washington Administrative Code, which became effective in November 2012 and November 2015. On June 16, 2016, Washington submitted to EPA an amended application which incorporated the amendments, seeking a determination of full program adequacy for Washington's MSWLF permitting program. The amended application included a detailed description of changes made to Washington's MSWLF permitting program since the March 31, 1994 EPA determination of partial program adequacy. Specifically, Washington addressed the following portions of its MSWLF permit program that were not approved in the March 31, 1994 determination of partial program adequacy:

(1) Revised the definitions of *Existing MSWLF Unit* and *Lateral Expansion,* per the federal regulations found in 40 CFR 258.2.

(2) Eliminated equivalent and arid liner designs in the state rule, retained composite liner requirements, and incorporated an option for alternate liner design, consistent with federal regulations.

(3) Revised the rules to require monitoring for total metals in groundwater.

(4) Adopted revisions to Appendix 3 of WAC 173–351–990 to include two hazardous organic constituents: 2,3,7,8-Tetrachlorodibenzo- p-dioxin - [CAS 1746–01–6] and alpha, alpha-Dimethylphenethylamine [CAS 122–09–8]. This revision affects landfills that are required to perform assessment monitoring under the rule, and is necessary to be consistent with federal rules in 40 CFR part 258.

(5) Adopted new post-closure care period criteria, which are based on potential risk to human and environmental receptors, per 40 CFR part 258.61(b).

(6) Made revisions to allow for issuance of Research, Development, and Demonstration (RD&D) landfill permits, pursuant to the 2004 rulemaking by EPA (69 FR 13242, March 22, 2004).

Washington Assistant Attorney General, Jonathan C. Thompson, certified in a letter dated June 10, 2016 that the regulations cited in the Washington Department of Ecology's Amended Application for Municipal Solid Waste Facilities Program Determination of Adequacy were enacted and full effective at the time of the application and will continue to be when the state's permit program is fully approved.

II. Decision

In addition to those portions of the State's MSWLF permit program that were approved on March 31, 1994, EPA has determined that the State's revised MSWLF permit program will ensure adequacy with the Federal criteria in 40 CFR part 258. In addition, Washington has demonstrated that its MSWLF permit program contains specific provisions for public participation, compliance monitoring, and enforcement. After reviewing Washington's amended application, EPA has concluded that Washington's MSWLF permit program meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Washington is granted a determination of full program adequacy for its MSWLF permitting program.

By finding that Washington's MSWLF permit program is adequate, EPA does not intend to affect the rights of Federally-recognized Indian Tribes in Washington, nor does it intend to limit the existing rights of the State of Washington. RCRA section 4005(a) provides that citizens may use the citizen suit provisions of RCRA section 7002 to enforce the 40 CFR part 258 criteria independent of any State enforcement program.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new Information Collection Request (ICR) burden under the PRA. The purpose of this action is to approve amendments to Washington's MSWLF permitting program which result in it meeting all of the statutory and regulatory requirements established by RCRA. The OMB has previously approved the information collection activities contained in the ICR for 40 CFR part 239, Requirements for State Permit Program Determination of Adequacy and part 258, MSWLF Criteria. This action does not impose any additional reporting requirements.

C. Regulatory Flexibility Act (RFA)

EPA certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule will not create any additional burden for small entities. Small entities are not required to take any action as a consequence of this rule, and this action will not have a significant impact on a substantial number of small entities. We have therefore concluded that this

action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. The costs involved in this action are imposed only by voluntary participation in a federal program.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. The EPA has concluded that this action will have no new tribal implications, nor would it present any additional burden on the tribes. It will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045, because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Washington has incorporated those requirements from the Federal MSWLF landfill criteria (40 CFR part 258) not found in Washington's existing program and EPA has determined that Washington's program includes terms and conditions that are at least as protective as the MSWLF landfill criteria for municipal solid waste landfills, to assure protection of human health and the environment.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The purpose of this action is to approve amendments to Washington's MSWLF permitting program which result in it meeting all of the statutory and regulatory requirements established by RCRA. The EPA believes that the human health and environmental risk addressed by this action will not have a new disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Authority: This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: October 20, 2016.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

[FR Doc. 2016–26754 Filed 11–25–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2015–0607; FRL–9953–28]

RIN 2025–AA42

Addition of Hexabromocyclododecane (HBCD) Category; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding a hexabromocyclododecane (HBCD) category to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). EPA is adding this chemical category to the EPCRA section 313 list because EPA has determined that HBCD meets the EPCRA section 313(d)(2)(B) and (C) toxicity criteria. Specifically, EPA has determined that HBCD can reasonably be anticipated to cause developmental and reproductive effects in humans and is highly toxic to aquatic and terrestrial organisms. In addition, based on the available bioaccumulation and persistence data, EPA has determined that HBCD should be classified as a persistent, bioaccumulative, and toxic (PBT) chemical and assigned a 100-pound reporting threshold.

DATES: *Effective Date:* This final rule is effective November 30, 2016.

Applicability date: This final rule will apply for the reporting year beginning January 1, 2017 (reports due July 1, 2018).

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–TRI–2015–0607. All documents in the docket are listed on *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* 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 electronically through *http://www.regulations.gov.* Additional instructions on visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Daniel R. Bushman, Toxics Release Inventory Program Division (7410M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 566–0743; email: *bushman.daniel@epa.gov.*

For general information contact: The EPCRA Hotline; telephone numbers: Toll free at (800) 424–9346 (select menu option 3) or (703) 412–9810 in Washington DC and International; or toll free, TDD (800) 553–7672; or go to *http://www.epa.gov/superfund/contacts/infocenter/.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this document apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use HBCD. 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:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. *Exceptions and/or limitations exist for these NAICS codes.
- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (corresponds to SIC code 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (corresponds to SIC code 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221118, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems).
- Federal facilities.

To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA is adding an HBCD category to the list of toxic chemicals subject to reporting under EPCRA section 313 and PPA section 6607. EPA is adding this chemical category to the EPCRA section 313 list because EPA has determined that HBCD meets the EPCRA section 313(d)(2)(B) and (C) toxicity criteria. EPA is also adding the HBCD category to the list of chemicals with special concern (see 40 CFR 372.28(a)(2)) and establishing a 100-pound reporting threshold.

C. What is the Agency's authority for taking this action?

This action is issued under EPCRA sections 313(d) and 328, 42 U.S.C. 11023 *et seq.,* and PPA section 6607, 42 U.S.C. 13106. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Congress established an initial list of toxic chemicals that comprised 308 individually listed chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in EPCRA section 313(d)(2) are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, to remove a chemical from the list, EPCRA section 313(d)(3) dictates that EPA must demonstrate that none of the criteria in EPCRA section 313(d)(2) are met. The listing criteria in EPCRA section 313(d)(2)(A)–(C) are as follows:

- The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.
- The chemical is known to cause or can reasonably be anticipated to cause in humans: Cancer or teratogenic effects, or serious or irreversible reproductive dysfunctions, neurological disorders, heritable genetic mutations, or other chronic health effects.
- The chemical is known to cause or can be reasonably anticipated to cause, because of its toxicity, its toxicity and persistence in the environment, or its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the EPCRA section 313(d)(2)(A) criterion as the ''acute human health effects criterion;'' the EPCRA section 313(d)(2)(B) criterion as the ''chronic human health effects criterion;'' and the EPCRA section 313(d)(2)(C) criterion as the ''environmental effects criterion.''

EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432) (FRL–4922–2), a statement clarifying its interpretation of the EPCRA section 313(d)(2) and (d)(3) criteria for modifying the EPCRA section 313 list of toxic chemicals.

II. Summary of Proposed Rule

A. What chemical did EPA propose to add to the EPCRA section 313 list of toxic chemicals?

As discussed in the proposed rule June 2, 2016 (81 FR 35275) (FRL–9943–55), EPA proposed to add HBCD which is a cyclic aliphatic hydrocarbon consisting of a 12-membered carbon ring with 6 bromine atoms attached (molecular formula $C_{12}H_{18}Br_6$). HBCD has 16 possible stereoisomers. HBCD may be designated as a non-specific mixture of all isomers (hexabromocyclododecane, Chemical Abstracts Service Registry Number (CASRN) 25637–99–4) or as a mixture of the three main diastereomers

(1,2,5,6,9,10-hexabromocyclododecane, CASRN 3194–55–6). EPA proposed to create an HBCD category that would cover these two chemical names and CASRNs and would be defined as: Hexabromocyclododecane, includes those chemicals covered by the following CAS numbers:

- 3194–55–6; 1,2,5,6,9,10-Hexabromocyclododecane
- 25637–99–4; Hexabromocyclododecane.

As a category, facilities that manufacture, process, or otherwise use HBCD covered under both of these names and CASRNs would file just one report.

B. What reporting threshold did EPA propose to establish for the HBCD category?

As EPA stated in the proposed rule June 2, 2016 (81 FR 35275) (FRL–9943–55), EPA proposed to add the HBCD category to the list of chemicals of special concern (see 40 CFR 372.28(a)(2)). There are several chemicals and chemical categories on the EPCRA section 313 chemical list that have been classified as chemicals of special concern because they are PBT chemicals. In a final rule published in the **Federal Register** of October 29, 1999 (64 FR 58666) (FRL–6389–11), EPA established the PBT classification criteria for chemicals on the EPCRA section 313 chemical list. The data presented in the proposed rule supported classifying the HBCD category as a PBT chemical category with a 100-pound reporting threshold.

C. What was EPA's rationale for proposing to list the HBCD category?

As discussed in the proposed rule June 2, 2016 (81 FR 35275) (FRL–9943–55), HBCD has been shown to cause developmental effects at doses as low as 146.3 milligrams per kilogram per day (mg/kg/day) lowest-observed-adverse-effect level (LOAEL) in male rats. Developmental effects have also been observed with a benchmark dose lower bound confidence limit (BMDL) of 0.056 mg/kg/day (benchmark dose (BMD) of 0.18 mg/kg/day) based on effects in female rats and a BMDL of 0.46 mg/kg/day (BMD of 1.45 mg/kg/day) based on effects in male rats. HBCD also causes reproductive toxicity at doses as low 138 mg/kg/day (LOAEL) in female rats. Based on the available developmental and reproductive toxicity, EPA stated that HBCD can be reasonably anticipated to cause moderately high to high chronic toxicity in humans. EPA stated that the evidence was sufficient for listing the HBCD category on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(B) based on the available developmental and reproductive toxicity data.

As also discussed in the proposed rule, HBCD has been shown to be highly toxic to both aquatic and terrestrial species with acute aquatic toxicity values as low as 0.009 milligrams per liter (mg/L) and chronic aquatic toxicity values as low as 0.0042 mg/L. HBCD is highly toxic to terrestrial species as well with observed toxic doses as low as 0.51 and 2.1 mg/kg/day. In addition to being highly toxic, HBCD is also bioaccumulative and persistent in the environment, which further supports a high concern for the toxicity to aquatic and terrestrial species. EPA stated that HBCD meets the EPCRA section 313(d)(2)(C) listing criteria on toxicity alone but also based on toxicity and bioaccumulation as well as toxicity and persistence in the environment. Therefore, EPA stated that the evidence is sufficient for listing the HBCD category on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(C) based on the available ecological toxicity data as well as the bioaccumulation and persistence data.

D. What was EPA's rationale for lowering the reporting threshold for HBCD?

EPA stated in the proposed rule that the available bioaccumulation and persistence data for HBCD support a classification of HBCD as a PBT chemical June 2, 2016 (81 FR 35275) (FRL–9943–55). HBCD has been shown to be highly bioaccumulative in aquatic species and to also biomagnify in aquatic and terrestrial food chains. While there is limited data on the half-life of HBCD in soil and sediment, the best available data supports a determination that the half-life of HBCD in soil and sediment is at least 2 months. This determination is further supported by the data from environmental monitoring studies, which indicate that HBCD has significant persistence in the environment. The widespread presence of HBCD in numerous terrestrial and aquatic species also supports the conclusion that HBCD has significant persistence in the environment. Therefore, consistent with EPA's established policy for PBT chemicals (See 64 FR 58666, October 29, 1999) (FRL–6389–11) EPA proposed to establish a 100-pound reporting threshold for the HBCD category.

III. What comments did EPA receive on the proposed rule?

EPA received three comments on the proposed rule, two from individuals (Refs. 1 and 2) and one from a coalition of environmental and public interest groups and individuals (the coalition) (Ref. 3). All commenters supported the addition of the HBCD category to the EPCRA section 313 toxic chemical list. However, in their comments the coalition stated that HBCD is highly bioaccumulative and highly persistent and based on EPA's PBT classification criteria, a reporting threshold of 10 pounds should be established for the HBCD category. EPA provided the following background information in the proposed rule:

''In a final rule published in the **Federal Register** of October 29, 1999 (64 FR 58666) (FRL–6389–11), EPA established the PBT classification criteria for chemicals on the EPCRA section 313 chemical list. For purposes of EPCRA section 313 reporting, EPA established persistence half-life criteria for PBT chemicals of 2 months in water/sediment and soil and 2 days in air, and established bioaccumulation criteria for PBT chemicals as a bioconcentration factor (BCF) or bioaccumulation factor (BAF) of 1,000 or higher. Chemicals meeting the PBT criteria were assigned 100-pound reporting thresholds. With regards to setting the EPCRA section 313 reporting thresholds, EPA set lower reporting thresholds (10 pounds) for those PBT chemicals with persistence half-lives of 6 months or more in water/sediment or soil and with BCF or BAF values of 5,000 or higher, these chemicals were considered highly PBT chemicals. The data presented in this proposed rule support classifying the HBCD category as a PBT chemical category with a 100-pound reporting threshold.'' June 2, 2016 (81 FR 35277) (FRL–9943–55).

EPA agrees with the commenter that HBCD is highly bioaccumulative but does not agree that HBCD meets the established criteria for highly persistent. The commenter stated that ''While half-life data is limited, several studies estimate the half-life in sediment and soil to be greater than 120 days, while one study estimates a half-life of 190 days in abiotic sediment.'' The study that the commenter cited as estimating a half-life of 190 days in abiotic sediment was Davis *et al.* 2005 (Ref. 4), which, as EPA discussed in the proposed rule, is a study that had a number of problems. For example, EPA noted that:

''Additionally, the Davis *et al.* 2005 study (Ref. 96) was considered to be of

uncertain reliability for quantifying HBCD persistence because of concerns regarding potential contamination of sediment samples, an interfering peak corresponding to γ-HBCD in the liquid chromatography/mass spectrometry (LC/MS) chromatograms, and poor extraction of HBCD leading to HBCD recoveries of 33–125% (Refs. 44 and 101).'' June 2, 2016 (81 FR 35284).

A better-conducted subsequent study by the same authors Davis *et al.* 2006 (Ref. 5) resulted in longer overall half-life values but no specific value equal to or above 180 days. As stated in the proposed rule, ''While there is limited data on the half-life of HBCD in soil and sediment, the best available data supports a determination that the half-life of HBCD in soil and sediment is at least 2 months.'' EPA does not believe that it would be appropriate to set a lower reporting threshold based on one half-life value of 190 days from a study that had a number of identified problems.

IV. Summary of Final Rule

EPA is finalizing the addition of an HBCD category to the EPCRA section 313 list of toxic chemicals. EPA has determined that HBCD meets the listing criteria under EPCRA section 313(d)(2)(B) and (C). The HBCD category will be defined as:

Hexabromocyclododecane (This category includes only those chemicals covered by the CAS numbers listed here)

- 3194–55–6; 1,2,5,6,9,10-Hexabromocyclododecane
- 25637–99–4; Hexabromocyclododecane.

EPA is also finalizing the addition of the HBCD category to the list of chemicals with special concern (see 40 CFR 372.28(a)(2)) and establishing a 100-pound reporting threshold. EPA has determined that the data support classifying the HBCD category as a PBT chemical category with a 100-pound reporting threshold.

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. Comment submitted by M. Clark. July 22, 2016. EPA–HQ–TRI–2015–0607–0217.

2. Anonymous public comment. July 31, 2016. EPA–HQ–TRI–2015–0607–0218.

3. Comment submitted by E. Gartner, Staff Attorney, Earthjustice *et al.* Re: Addition of Hexabromocyclododecane (HBCD) Category; Community Right-to-Know Toxic Chemical Release Reporting, August 1, 2016. EPA–HQ–TRI–2015–0607–0219.

4. Davis, J.W., Gonsior, S.J., Marty, G.T., *et al.* 2005. The transformation of hexabromocyclododecane in aerobic and anaerobic soils and aquatic sediments. Water Res. 39:1075–1084.

5. Davis, J.W., Gonsior, S.J., Markham, D.A., *et al.* 2006. Biodegradation and product identification of [^{14}C]hexabromocyclododecane in wastewater sludge and freshwater aquatic sediment. Environ. Sci. Technol. 40:5395–5401. Including supporting information document.

6. USEPA, OCSPP. 2016. Economic Analysis of the Final Rule to add HBCD to the List of TRI Reportable Chemicals. August 10, 2016.

VI. What are the Statutory and Executive Orders reviews associated with this action?

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not contain any new information collection requirements that require additional approval by OMB under the PRA, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2025–0009 and 2050–0078. Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350–1), or EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350–2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. Since the HBCD category would be classified a PBT category, it is designated as a chemical of special concern, for which Form A reporting is not allowed. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322, 42 U.S.C. 11042, 40 CFR part 350.

OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2025–0009 (EPA Information Collection Request (ICR) No. 1363) and those related to trade secret designations under OMB Control 2050–0078 (EPA ICR No. 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), 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 relevant to EPA's regulations are listed in 40 CFR part 9 or 48 CFR chapter 15, and displayed on the information collection instruments (*e.g.,* forms, instructions).

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, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are small manufacturing facilities. The Agency has determined that of the 55 entities estimated to be impacted by this action, 42 are small businesses; no small governments or small organizations are expected to be affected by this action. All 42 small businesses affected by this action are estimated to incur annualized cost impacts of less than 1%. Thus, this action is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis (Ref. 6).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action is not subject to the requirements

of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not subject to the EPCRA section 313 reporting requirements. EPA's economic analysis indicates that the total cost of this action is estimated to be $372,973 in the first year of reporting (Ref. 6).

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards and is therefore not subject to considerations under section 12(d) of NTTAA, 15 U.S.C. 272 note.

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

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action does not address any human health or environmental risks and does not affect the level of protection provided to human health or the environment. This action adds an additional chemical to the EPCRA section 313 reporting requirements. By adding a chemical to the list of toxic chemicals subject to reporting under section 313 of EPCRA, EPA would be providing communities across the United States (including minority populations and low income populations) with access to data which they may use to seek lower exposures and consequently reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the action will have positive human health and environmental impacts on minority populations, low-income populations, and children.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: November 15, 2016.

Gina McCarthy,

Administrator.

Therefore, 40 CFR chapter I is amended as follows:

PART 372—[AMENDED]

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

■ 2. In § 372.28, amend the table in paragraph (a)(2) as follows:

■ a. Revise the second column header to read ''Reporting threshold (in pounds unless otherwise noted)'', and

■ b. Alphabetically add the category ''Hexabromocyclododecane (This category includes only those chemicals covered by the CAS numbers listed here)'' and entries ''3194–55–6 (1,2,5,6,9,10-Hexabromocyclododecane)'' and ''25637–99–4 (Hexabromocyclododecane)''.

The additions read as follows:

§ 372.28 Lower thresholds for chemicals of special concern.

(a) * * *

(2) * * *

Category name	Reporting threshold (in pounds unless otherwise noted)
* * * * * * *	
Hexabromocyclododecane (This category includes only those chemicals covered by the CAS numbers listed here)	100
3194–55–6 1,2,5,6,9,10-Hexabromocyclododecane	.....
25637–99–4 Hexabromocyclododecane	.....
* * * * * * *	

* * * * *

■ 3. In § 372.65, paragraph (c) is amended by adding alphabetically an entry for ''Hexabromocyclododecane (This category includes only those chemicals covered by the CAS numbers listed here)'' to the table to read as follows:

§ 372.65 Chemicals and chemical categories to which this part applies.

* * * * *

(c) * * *

Category name	Effective date
* * * * * * *	
Hexabromocyclododecane (This category includes only those chemicals covered by the CAS numbers listed here)	1/1/17
3194–55–6 1,2,5,6,9,10-Hexabromocyclododecane	.....
25637–99–4 Hexabromocyclododecane	.....
* * * * * * *	

[FR Doc. 2016–28102 Filed 11–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[EPA–HQ–OW–2014–0598; FRL–9955–65–OW]

RIN 2040–AF68

Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category—Implementation Date Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because the Environmental Protection Agency (EPA) received comments that could be construed as adverse, the EPA is withdrawing the direct final rule issued on September 30, 2016, to extend the implementation date for certain facilities subject to the EPA's final rule establishing pretreatment standards under the Clean Water Act (CWA) for discharges of pollutants into publicly-owned treatment works (POTWs) from unconventional oil and gas extraction.

DATES: Effective November 28, 2016, the EPA withdraws the direct final rule published September 30, 2016 (81 FR 67191).

FOR FURTHER INFORMATION CONTACT: For more information, see EPA's Web site: *https://www.epa.gov/eg/unconventional-oil-and-gas-extraction-effluent-guidelines.* For technical information, contact Karen Milam, Engineering and Analysis Division (4303T), Office of Water, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone: 202–566–1915; email: *milam.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

On September 30, 2016, the EPA published a direct final rule that extended the implementation date for certain facilities to meet the requirements of the final pretreatment standards rule for unconventional oil and gas extraction. (81 FR 67191; September 30, 2016). In that direct final rule, the EPA stated that if we received adverse comments by October 31, 2016, the EPA would publish a timely withdrawal and address the comments in a final rule based on the proposed rule also published on September 30, 2016. (81 FR 67266; September 30, 2016).

The direct final rule specifically indicated that ''EPA will not consider any comment submitted on the direct final rule published today on any topic other than the appropriateness of an extension of the compliance date; any other comments will be considered to be outside the scope of this rulemaking.'' (81 FR 67192; September 30, 2016). Commenters supported the compliance date being extended; the EPA did not receive any comments opposing the extension of the compliance date, and thus maintains that there were no adverse comments on the direct final rule. As indicated in the direct final rule, the EPA considers any comments on topics other than the extension of the compliance date—including comments submitted on the applicability of the underlying final pretreatment standards rule—to be outside the scope of this rulemaking. However, to the extent that any of the comments could be broadly interpreted as seeking an alternative compliance period, and thus arguably within scope, the EPA, in its discretion, is withdrawing the direct final rule and instead will issue a final action to address the compliance date, which will be based on the parallel proposed rule also published on September 30, 2016. (81 FR 67266; September 30, 2016). For purposes of this withdrawal, compliance date and implementation date are used interchangeably. As stated in the parallel proposal, we will not institute a second comment period on this proposed action.

Withdrawal of this direct final rule removes the extension of the compliance date for the subset of facilities identified in the direct final rule. It does not withdraw, or otherwise impact, the underlying final pretreatment standards rule for unconventional oil and gas extraction, which continues to apply to all facilities that meet the definition of ''unconventional'' in that rule.

List of Subjects in 40 CFR Part 435

Environmental protection, Pretreatment, Waste treatment and disposal, Water pollution control, Unconventional oil and gas extraction.

Dated: November 17, 2016.

Michael H. Shapiro,

Deputy Assistant Administrator.

Accordingly, the direct final rule, published in the **Federal Register** on September 30, 2016, at 81 FR 67191, is withdrawn as of November 28, 2016.

[FR Doc. 2016–28566 Filed 11–25–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140819686–5999–02]

RIN 0648–XF045

Snapper-Grouper Fishery of the South Atlantic; 2016 Recreational Accountability Measure and Closure for South Atlantic Greater Amberjack

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the recreational sector of greater amberjack in the exclusive economic zone (EEZ) of the South Atlantic for the current

fishing year through this temporary rule. NMFS estimates that recreational landings have reached the recreational annual catch limit (ACL) for greater amberjack in the South Atlantic. Therefore, NMFS closes the recreational sector for greater amberjack in the South Atlantic exclusive economic zone (EEZ) through the remainder of the current fishing year (see DATES). This closure is necessary to protect the greater amberjack resource in the South Atlantic.

DATES: This rule is effective from 12:01 a.m., local time, November 30, 2016, until 12:01 a.m. local time, on March 1, 2017.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes greater amberjack and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The recreational ACL for South Atlantic greater amberjack is 1,167,837 lb (529,722 kg), round weight, as specified at 50 CFR 622.193(k)(2)(i). The fishing year for South Atlantic greater amberjack is from March 1 through the end of February (50 CFR 622.7(d)). Under 50 CFR 622.193(k)(2)(i), when landings of the greater amberjack recreational sector reach, or are projected to reach, the recreational ACL, NMFS is required to close the recreational sector for greater amberjack by filing a notification to that effect with the Office of the Federal Register.

NMFS has determined that the recreational ACL in the current fishing year that is from March 1, 2016, through the end of February 2017, has been reached. Therefore, this temporary rule implements an AM to close the recreational sector for greater amberjack in the South Atlantic for the remainder of the current fishing year. As a result, the recreational sector for greater amberjack in the South Atlantic EEZ will close effective 12:01 a.m., local time, November 30, 2016, until March 1, 2017, the start of the next fishing year.

During the recreational closure, the bag and possession limits for greater amberjack in or from the South Atlantic EEZ are zero. The prohibition on possession in the South Atlantic onboard a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued applies regardless of whether greater amberjack were harvested in state or Federal waters.

On October 4, 2016, NMFS closed the commercial sector of greater amberjack in the South Atlantic because the sector had reached the commercial quota (equivalent to the commercial ACL) (81 FR 67215, September 30, 2016). Because the commercial sector for South Atlantic greater amberjack has already closed for the remainder of the current fishing year, all harvest of South Atlantic greater amberjack will end on November 30, 2016. Both the commercial and recreational sectors will reopen on March 1, 2017, the start of the next fishing year.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic greater amberjack and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(k)(2)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the recreational sector for greater amberjack constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the AM itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect greater amberjack. Prior notice and opportunity for public comment would require time and would potentially allow the recreational sector to further exceed the recreational ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: November 22, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–28546 Filed 11–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140819686–5999–02]

RIN 0648–XF042

Snapper-Grouper Fishery of the South Atlantic; 2016 Recreational Closure for Hogfish in the South Atlantic

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for the hogfish recreational sector in the exclusive economic zone (EEZ) of the South Atlantic for the 2016 fishing year through this temporary rule. NMFS estimates recreational landings from the 2016 fishing year have reached the recreational annual catch limit (ACL) for hogfish. Therefore, NMFS closes the recreational sector for hogfish in the South Atlantic EEZ on November 30, 2016, through the remainder of the 2016 fishing year. This closure is necessary to protect the hogfish resource in the South Atlantic.

DATES: This rule is effective 12:01 a.m., local time, November 30, 2016, until 12:01 a.m., local time, January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes hogfish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The recreational ACL for hogfish is 85,355 lb (38,716 kg) round weight. In accordance with regulations at 50 CFR 622.193(u)(2)(i), NMFS is required to close the recreational sector for hogfish when the recreational ACL has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register.

NMFS has determined that the 2016 hogfish recreational ACL has been reached. Therefore, this temporary rule implements an AM to close the recreational sector for hogfish in the South Atlantic for the remainder of the 2016 fishing year. As a result, the recreational sector for hogfish in the South Atlantic EEZ will be closed effective 12:01 a.m., local time, November 30, 2016, until January 1, 2017, the start of the next fishing year.

During the recreational closure, the bag and possession limits for hogfish in or from the South Atlantic EEZ are zero. The recreational sector for hogfish will reopen on January 1, 2017.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of hogfish in the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(u)(2)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and public comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the recreational sector for hogfish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the AMs established by the Comprehensive ACL Amendment (77 FR 15916, March 16, 2012) and located at 50 CFR 622.193(u)(2)(i) have already been subject to notice and public comment. All that remains is to notify the public of the recreational closure for hogfish for the remainder of the 2016 fishing year. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect the hogfish resource, since time for notice and public comment will allow for continued recreational harvest and further exceedance of the recreational ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: November 22, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–28539 Filed 11–25–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 228
Monday, November 28, 2016

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9307; Directorate Identifier 2016–NM–076–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 787–9 airplanes. This proposed AD was prompted by a determination that a certain bolt used on the outboard clevis of the ram air turbine (RAT) forward support fitting might not be long enough to allow for proper installation of the RAT. This proposed AD would require inspection of the forward support fitting of the RAT and replacement if cracking is found, and installation of a longer shoulder bolt. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by January 12, 2017.

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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; 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–2016–9307.

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–2016–9307; 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: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6490; fax: 425–917–6590; email: *kelly.mcguckin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9307; Directorate Identifier 2016–NM–076–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

During production, a determination was made that the shoulder bolt used on the outboard clevis of the RAT forward support fitting might not be long enough to allow for proper installation of the RAT; therefore, the clevis of the joint could be clamped together, resulting in reduced fatigue life and possible fracture of the clevis. The RAT system supplies an emergency source of hydraulic power to operate the minimum flight controls necessary for flight, and an emergency source of electrical power in the case of a dual non-restartable engine loss. Fracture of the clevis of the forward support fitting of the RAT could result in the RAT departing the airplane during a dual non-restartable engine loss, and consequent loss of control of the airplane. The RAT departing the airplane could also result in injury to maintenance crews during periodic RAT ground tests.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin B787–81205–SB290031–00, Issue 001, dated March 25, 2016. The service information describes procedures for inspecting for cracking of the clevis of the forward support fitting of the RAT, installing a longer shoulder bolt, and replacing the forward support fitting with a new fitting if any cracking is found. 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.

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 the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the

procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9307.

Costs of Compliance

We estimate that this proposed AD affects 2 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection/shoulder bolt replacement	3 work-hours × $85 per hour = $255	$152	$407	$814

We estimate the following costs to do any necessary replacements of the forward support fitting that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Forward support fitting replacement	15 work-hours × $85 per hour = $1,275	$28,309	$29,584

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–2016–9307; Directorate Identifier 2016–NM–076–AD.

(a) Comments Due Date

We must receive comments by January 12, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–9 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin B787–81205–SB290031–00, Issue 001, dated March 25, 2016.

(d) Subject

Air Transport Association (ATA) of America Code 29; Hydraulic power.

(e) Unsafe Condition

This AD was prompted by a determination that the shoulder bolt used on the outboard clevis of the ram air turbine (RAT) might not be long enough to allow for proper installation of the RAT; therefore, the clevis of the joint could be clamped together, resulting in reduced fatigue life and possible fracture of the clevis. We are issuing this AD to prevent fracture of the clevis of the forward support fitting of the RAT, which could result in the RAT departing the airplane during a dual non-restartable engine loss, and consequent loss of control of the airplane, or injury to maintenance crews during periodic RAT ground tests.

(f) Compliance

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

(g) Inspection, Replacement of Shoulder Bolt, and Replacement of RAT Forward Support Fitting if Necessary

Within 12,000 flight hours or 24 months after the effective date of this AD, whichever occurs first: Do a high frequency eddy current inspection for cracking of the clevis of the forward support fitting of the RAT, and install a longer shoulder bolt, in accordance

with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB290031–00, Issue 001, dated March 25, 2016. If any cracking is found, before further flight, replace the RAT forward support fitting with a new fitting, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB290031–00, Issue 001, dated March 25, 2016.

(h) Credit for Previous Actions

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 the service information specified in paragraphs (h)(1), (h)(2), (h)(3), or (h)(4) of this AD.

(1) Boeing Message TBC–ANA–15–0272–01B, dated September 22, 2015.

(2) Boeing Message TBC–ANZ–15–0016–06B, dated October 14, 2015.

(3) Boeing Message TBC–CAL–15–0089–01B, dated September 22, 2015.

(4) Boeing Message TBC–VAA–15–0089–01B dated September 22, 2015.

(i) 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 (j)(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 repair, modification, or alteration 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. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

(1) For more information about this AD, contact Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6490; fax: 425–917–6590; email: *kelly.mcguckin@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; 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.

Issued in Renton, Washington, on November 2, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–27308 Filed 11–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–125946–10]

RIN 1545–BJ66

Dollar-Value LIFO Regulations: Inventory Price Index Computation (IPIC) Method Pools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that relate to the establishment of dollar-value last-in, first-out (LIFO) inventory pools by certain taxpayers that use the inventory price index computation (IPIC) pooling method. The proposed regulations provide rules regarding the proper pooling of manufactured or processed goods and wholesale or retail (resale) goods. The proposed regulations would affect taxpayers who use the IPIC pooling method and whose inventory for a trade or business consists of manufactured or processed goods and resale goods.

DATES: Comments and requests for a public hearing must be received by February 27, 2017.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–125946–10), Room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–125946–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS REG–125946–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Natasha M. Mulleneaux, (202) 317–7007; concerning submission of comments and requests for a public hearing, Regina Johnson, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 472 of the Internal Revenue Code permits a taxpayer to account for inventories using the LIFO method of accounting. The LIFO method of accounting for goods treats inventories on hand at the end of the year as consisting first of inventory on hand at the beginning of the year and then of inventories acquired during the year.

Section 1.472–8(a) of the Income Tax Regulations (26 CFR part 1) provides that any taxpayer may elect to determine the cost of its LIFO inventories using the dollar-value method, provided such method is used consistently and clearly reflects income. The dollar-value method of valuing LIFO inventories is a method of determining cost by using ''base-year'' cost expressed in terms of total dollars rather than the quantity and price of specific goods as the unit of measurement. The ''base-year'' cost is the aggregate of the cost (determined as of the beginning of the tax year for which the LIFO method is first adopted) of all items in a pool.

Pooling is central to the operation of the dollar-value LIFO method. Pooling requires costs related to different inventory products to be grouped into one or more inventory pools. To determine whether there is an increment or liquidation in a pool for a particular taxable year, the end of the year inventory of the pool expressed in terms of base-year cost is compared with the beginning of the year inventory of the pool expressed in terms of base-year cost. The regulations prescribe rules for determining whether the number and composition of the pools used by the taxpayer are appropriate. The rules vary depending upon whether the taxpayer is engaged in the activity of manufacturing or processing or the activity of wholesaling or retailing.

The general pooling rules applicable to dollar-value LIFO taxpayers are in § 1.472–8(b) and (c). These paragraphs provide separate pooling principles for taxpayers engaged in the manufacturing or processing of goods (§ 1.472–8(b)), and for taxpayers engaged in the wholesaling or retailing of goods purchased from others (§ 1.472–8(c)).

Section 1.472–8(b)(1) requires a manufacturer or processor to establish one pool for each natural business unit (natural business unit pooling method) unless the manufacturer or processor elects under § 1.472–8(b)(3) to establish multiple pools. Further, § 1.472–8(b)(2) provides that where a manufacturer or processor is also engaged in the wholesaling or retailing of goods purchased from others, the wholesaling or retailing operations with respect to such purchased goods shall not be considered a part of any manufacturing or processing unit. Additionally, § 1.472–8(b)(1) requires that where the manufacturer or processor is also engaged in the wholesaling or retailing of goods purchased from others, any pooling of the LIFO inventory of such purchased goods for wholesaling and retailing operations shall be determined in accordance with § 1.472–8(c).

In *Amity Leather Products Co.* v. *Commissioner,* 82 T.C. 726 (1984), the Tax Court considered whether a taxpayer that used the natural business unit pooling method was subject to the separate pooling requirements by virtue of being both a manufacturer and a wholesaler or retailer of merchandise. The court concluded that requiring separate inventory accounting for the two functions was reasonable and held that, where the taxpayer manufactured goods and regularly purchased identical goods from a subsidiary for resale, it was required to maintain separate pools for manufactured and purchased inventory.

A manufacturer or processor using the natural business unit pooling method may elect to use the multiple pooling method described in § 1.472–8(b)(3) for inventory items that are not within a natural business unit. Alternatively, a manufacturer or processor that does not use the natural business unit pooling method may elect to use the multiple pooling method. Under the multiple pooling method, generally each pool should consist of a group of inventory items that are substantially similar. Thus, raw materials that are substantially similar should be pooled together. Similarly, finished goods and goods-in-process should be placed in pools classified by major classes or types of goods.

Section 1.472–8(c)(1) requires wholesalers, retailer, jobbers, and distributors to establish inventory pools by major lines, types, or classes of goods. Mirroring § 1.472–8(b)(1), § 1.472–8(c)(1) requires that where a wholesaler or retailer is also engaged in the manufacturing or processing of goods, the pooling of the LIFO inventory for the manufacturing or processing operations must be determined in accordance with § 1.472–8(b).

In general, any taxpayer that elects to use the dollar-value LIFO method to value LIFO inventories may elect to use the IPIC method to compute the base-year cost and determine the LIFO value of a dollar-value pool for a trade or business. A taxpayer that elects to use the IPIC method of determining the value of a dollar-value LIFO pool for a trade or business may also elect to establish dollar-value pools, for those items accounted for using the IPIC method, using the IPIC pooling method provided in § 1.472–8(b)(4) and (c)(2). Section 1.472–8(b)(4) governs the application of the IPIC pooling method to manufacturers and processors that elect to use the IPIC method for a trade or business. Section 1.472–8(c)(2) governs the application of the IPIC pooling method to wholesalers, retailers, jobbers, and distributors that elect to use the IPIC method for a trade or business.

For manufacturers and processors using the IPIC pooling method under § 1.472–8(b)(4), pools may be established for those items accounted for using the IPIC method based on the 2-digit commodity codes (that is, major commodity groups) in Table 9 (formerly Table 6) of the Producer Price Index Detailed Report (PPI Detailed Report), which is published monthly by the United States Bureau of Labor Statistics (BLS). A taxpayer establishing IPIC pools under § 1.472–8(b)(4) may combine IPIC pools that comprise less than 5 percent of the total inventory value of all dollar-value pools to form a single miscellaneous IPIC pool. If the resulting miscellaneous IPIC pool is less than 5 percent of the total inventory value of all dollar-value pools, the taxpayer may combine the miscellaneous IPIC pool with its largest IPIC pool.

For retailers using the IPIC pooling method under § 1.472–8(c)(2), pools may be established for those purchased items accounted for using the IPIC method based on either the general expenditure categories (that is, major groups) in Table 3 of the Consumer Price Index Detailed Report (CPI Detailed Report), published monthly by BLS, or the 2-digit commodity codes (that is, major commodity groups) in Table 9 of the PPI Detailed Report. For wholesalers, jobbers, or distributors using the IPIC pooling method under § 1.472–8(c)(2), pools may be established for those items accounted for using the IPIC method based on the 2-digit commodity codes in Table 9 of the PPI Detailed Report. A taxpayer establishing IPIC pools under § 1.472–8(c)(2) may combine pools that comprise less than 5 percent of the total inventory value of all dollar-value pools to form a single miscellaneous IPIC pool. If the resulting miscellaneous IPIC pool is less than 5 percent of the total inventory value of all dollar-value pools, the taxpayer may combine the miscellaneous IPIC pool with its largest IPIC pool.

Each of the 5-percent rules provided in § 1.472–8(b)(4) or (c)(2) is a method of accounting. Thus, a taxpayer may not change to, or cease using either 5-percent rule without obtaining the prior consent of the Commissioner. Whether a specific IPIC pool or the miscellaneous IPIC pool satisfies the applicable 5-percent rule must be determined in the year of adoption or year of change (whichever is applicable) and redetermined every third taxable year. Any change in pooling required or permitted under a 5-percent rule is also a change in method of accounting. A taxpayer must secure the consent of the Commissioner before combining or separating pools. The general procedures under section 446(e) and § 1.446–1(e) that a taxpayer must follow to obtain the consent of the Commissioner to change a method of accounting for federal income tax purposes are contained in Rev. Proc. 2015–13, 2015–5 I.R.B. 419 (or its successors), as modified by Rev. Proc. 2015–33, 2015–24 I.R.B. 1067. See § 601.601(d)(2)(ii)(b).

The general pooling rules of § 1.472–8(b) and (c) provide that where a taxpayer is engaged in both a manufacturing or processing activity and a wholesaling or retailing activity, separate pooling rules apply to the separate activities, and goods purchased for resale may not be included in the same pool as manufactured or purchased goods. On the other hand, the IPIC pooling rules address circumstances where a trade or business consists entirely of a manufacturing, processing, retailing, or wholesaling activity. The Treasury Department and the IRS have become aware of confusion concerning how the IPIC pooling rules apply where a taxpayer is engaged in both a manufacturing or processing activity and a wholesaling or retailing

activity. Accordingly, these proposed regulations address this issue.

Explanation of Provisions

Changes to IPIC Pooling Rules

The proposed regulations amend the IPIC pooling rules to clarify that those rules are applied consistently with the general LIFO pooling rule that manufactured or processed goods and resale goods may not be included in the same dollar-value LIFO pool. This general rule is intended to limit cost transference, an inherent problem with pooling. Cost transference may occur, among other circumstances, when inventory items from separate economic activities (for example, manufacturing and resale activities) are placed in the same pool and may cause misallocation of cost or distortion of income.

Accordingly, the proposed regulations clarify that an IPIC-method taxpayer who elects the IPIC pooling method described in § 1.472–8(b)(4) or (c)(2) and whose trade or business consists of both manufacturing or processing activity and resale activity may not commingle the manufactured or processed goods and the resale goods within the same IPIC pool.

Specifically, the proposed regulations provide that a manufacturer or processor using the IPIC pooling method under § 1.472–8(b)(4) that is also engaged, within the same trade or business, in wholesaling or retailing goods purchased from others may elect to establish dollar-value pools for the manufactured or processed items accounted for using the IPIC method based on the 2-digit commodity codes in Table 9 of the PPI Detailed Report. If the manufacturer or processor makes this election, the manufacturer or processor must also establish pools for its resale goods in accordance with § 1.472–8(c)(2) (that is, based on the general expenditure categories in Table 3 of the CPI Detailed Report in the case of a retailer or the 2-digit commodity codes in Table 9 of the PPI Detailed Report in the case of a retailer, wholesaler, jobber, or distributor).

If the manufacturer or processor chooses to use the 5-percent method of pooling, manufactured or processed IPIC pools (IPIC pools consisting of manufactured or processed goods) of less than 5 percent of the total current year cost of all dollar-value pools may be combined to form a single miscellaneous IPIC pool of manufactured or processed goods. The manufacturer or processor may also combine resale IPIC pools (IPIC pools consisting of resale goods) of less than 5 percent of the total value of inventory to form a single miscellaneous IPIC pool of resale goods. If the miscellaneous IPIC pool of manufactured or processed goods is less than 5 percent of the total value of inventory, the manufacturer or processor may combine the miscellaneous IPIC pool of manufactured or processed goods with its largest manufactured or processed IPIC pool. The miscellaneous IPIC pool of resale goods may not be combined with any other IPIC pool.

The proposed regulations also provide that a wholesaler, retailer, jobber, or distributor using the IPIC pooling method under § 1.472–8(c)(2) that is also engaged, within the same trade or business, in manufacturing or processing activities may elect to establish dollar-value pools for the resale goods accounted for using the IPIC method in accordance with § 1.472–8(c)(2) (that is, based on the general expenditure categories in Table 3 of the CPI Detailed Report in the case of retailer or the 2-digit commodity codes in Table 9 of the PPI Detailed Report in the case of a wholesaler, retailer, jobber, or distributor). If the wholesaler, retailer, jobber, or distributor makes this election, it must also establish pools for its manufactured or processed goods based on the 2-digit commodity codes in Table 9 of the PPI Detailed Report.

If the wholesaler, retailer, jobber, or distributor chooses to use the 5-percent method of pooling, resale IPIC pools of less than 5 percent of the total value of inventory may be combined to form a single miscellaneous IPIC pool of resale goods. The wholesaler, retailer, jobber, or distributor may also combine the IPIC pools of manufactured or processed goods of less than 5 percent of the total value of inventory to form a single miscellaneous IPIC pool of manufactured or processed goods. If the resale miscellaneous IPIC pool is less than 5 percent of the total value of inventory, the wholesaler, retailer, jobber, or distributor may combine the resale miscellaneous IPIC pool with the largest resale IPIC pool. The miscellaneous IPIC pool of manufactured or processed goods may not be combined with any other IPIC pool.

The Treasury Department and the IRS specifically request comments on the requirement that a taxpayer engaged in both manufacturing and resale activities within the same trade or business is required to use IPIC pooling for both activities.

Changes To Conform With Current BLS Publications

These proposed regulations modify § 1.472–8(b), (c), and (e)(3) to update references from Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) to Table 9 (Producer price indexes and percent changes for commodity and service groupings and individual items, not seasonally adjusted) because of BLS changes in the PPI Detailed Report.

These proposed regulations also modify § 1.472–8(e)(3)(ii) to remove the exception to the trade or business requirement for taxpayers using the Department Store Inventory Price Indexes because BLS discontinued publishing these indexes after December 2013.

Effective/Applicability Date

These regulations are proposed to apply for taxable years ending on or after the date the regulations are published as final regulations in the **Federal Register**.

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, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public

hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Natasha M. Mulleneaux of the Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.472–8 also issued under 26 U.S.C 472. * * *

■ **Par. 2.** Section 1.472–8 is amended as follows:

■ 1. Paragraph (b)(4) is revised.

■ 2. Paragraph (c)(2) is revised.

■ 3. Paragraph (e)(3)(ii) is revised.

■ 4. Paragraph (e)(3)(iii)(B)(*2*) is amended by removing ''Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted)'' and adding in its place ''Table 9 (formerly Table 6) (Producer price indexes and percent changes for commodity and service groupings and individual items, not seasonally adjusted)'' in the first sentence; and removing ''Table 6'' and adding in its place ''Table 9'' in the second sentence.

■ 5. Paragraphs (e)(3)(iii)(C)(*1*) and (*2*) are amended by removing ''Table 6'' and adding in its place ''Table 9''.

■ 6. Paragraph (e)(3)(v) is revised.

The revisions read as follows:

§ 1.472–8 Dollar-value method of pricing LIFO inventories.

* * * * *

(b) * * *

(4) *IPIC method pools*—(i) *In general.* A manufacturer or processor that elects to use the inventory price index computation method described in paragraph (e)(3) of this section (IPIC method) for a trade or business may elect to establish dollar-value pools for those manufactured or processed items accounted for using the IPIC method as provided in this paragraph (b)(4)(i) based on the 2-digit commodity codes (that is, major commodity groups) in Table 9 (formerly Table 6) (Producer price indexes and percent changes for commodity and service groupings and individual items, not seasonally adjusted) of the ''PPI Detailed Report'' published monthly by the United States Bureau of Labor Statistics (available at *http://www.bls.gov*). A taxpayer electing to establish dollar-value pools under this paragraph (b)(4)(i) may combine IPIC pools of manufactured or processed goods that comprise less than 5 percent of the total current-year cost of all dollar-value pools for that trade or business to form a single miscellaneous manufactured or processed IPIC pool. A taxpayer electing to establish dollar-value pools under this paragraph (b)(4)(i) may combine a miscellaneous manufactured or processed IPIC pool that comprises less than 5 percent of the total current-year cost of all dollar-value pools with the largest manufactured or processed IPIC pool. Each of these 5-percent rules is a method of accounting. A taxpayer may not change to, or cease using, either 5-percent rule without obtaining the Commissioner's prior consent. Whether a specific manufactured or processed IPIC pool or the miscellaneous manufactured or processed IPIC pool satisfies the applicable 5-percent rule must be determined in the year of adoption or year of change, whichever is applicable, and redetermined every third taxable year. Any change in pooling required or permitted as a result of a 5-percent rule is a change in method of accounting. A taxpayer must secure the consent of the Commissioner pursuant to § 1.446–1(e) before combining or separating manufactured or processed IPIC pools and must combine or separate its manufactured or processed IPIC pools in accordance with paragraph (g)(2) of this section.

(ii) *Pooling of goods a manufacturer or processor purchased for resale.* A manufacturer or processor electing to establish dollar-value pools under paragraph (b)(4)(i) of this section and that is also engaged, within the same trade or business, in wholesaling or retailing goods purchased from others (resale), must establish pools for its resale goods in accordance with paragraph (c)(2)(i) of this section. A manufacturer or processor that must establish dollar-value pools for resale goods under this paragraph (b)(4)(ii) may combine IPIC pools of resale goods that comprise less than 5 percent of the total current-year cost of all dollar-value pools for that trade or business to form a single miscellaneous resale IPIC pool. The single miscellaneous resale IPIC pool established pursuant to this paragraph (b)(4)(ii) may not be combined with any other IPIC pool. This 5-percent rule is a method of accounting. A taxpayer may not change to, or cease using, this 5-percent rule without obtaining the Commissioner's prior consent. Whether a specific resale IPIC pool satisfies the 5-percent rule must be determined in the year of adoption or year of change, whichever is applicable, and redetermined every third taxable year. Any change in pooling required or permitted as a result of this 5-percent rule is a change in method of accounting. A taxpayer must secure the consent of the Commissioner pursuant to § 1.446–1(e) before combining or separating resale IPIC pools and must combine or separate its resale IPIC pools in accordance with paragraph (g)(2) of this section.

(iii) *No commingling of manufactured goods and resale goods within a pool.* Notwithstanding any other rule provided in paragraph (b) or (c) of this section, a manufacturer or processor electing to establish dollar-value pools under paragraph (b)(4)(i) of this section and that is also engaged in retailing or wholesaling may not include manufactured or processed goods in the same IPIC pool as goods purchased for resale. Further, in applying the 5-percent rules described in paragraphs (b)(4)(i) and (ii) of this section, a taxpayer may not combine an IPIC pool of manufactured or processed goods that comprises less than 5 percent of the total current-year cost of all dollar-value pools for that trade or business with a resale IPIC pool that comprises less than 5 percent of the total current-year cost of all dollar-value pools for the purpose of forming a single miscellaneous IPIC pool.

(iv) *Examples.* The rules of paragraph (b)(4) of this section may be illustrated by the following examples:

Example 1. (i) Taxpayer is engaged in the trade or business of manufacturing products A, B, and C. In order to cover temporary shortages, Taxpayer also purchases a small quantity of identical products for resale to customers. Taxpayer treats its manufacturing and resale activities as a single trade or business. Taxpayer uses the IPIC method described in paragraph (e)(3) of this section. Pursuant to its election, Taxpayer establishes dollar-value pools for the manufactured items under paragraph (b)(4)(i) of this section, based on the 2-digit commodity codes in Table 9 of the PPI Detailed Report. Taxpayer also establishes dollar-value pools for the items purchased for resale under paragraph (b)(4)(ii) of this section, based on the 2-digit commodity codes in Table 9 of the PPI Detailed Report. Taxpayer does not choose to use the 5-percent rules under paragraphs (b)(4)(i) and (ii) of this section.

(ii) Even though Taxpayer has manufactured items and resale items that share the same 2-digit commodity codes,

under paragraph (b)(4)(iii) of this section, Taxpayer's manufactured goods may not be included in the same IPIC pool as its goods purchased for resale.

Example 2. (i) The facts are the same as in *Example 1,* except Taxpayer establishes three IPIC pools for its manufacturing activities and three IPIC pools for its resale activities. Further, Taxpayer chooses to use the 5-percent rules of paragraphs (b)(4)(i) and (ii) of this section. The percentage of total current-year cost of each IPIC pool to the current-year cost of all dollar-value pools for the trade or business is as follows:

	Percentage of total current-year cost of IPIC pool to current-year cost of all dollar-value pools (%)
Manufacturing Pools:	
Pool A	90
Pool B	1
Pool C	1
Resale Pools:	
Pool D	6
Pool E	1
Pool F	1
	100

(ii) For purposes of applying the 5-percent rules to Taxpayer's manufacturing operations under paragraph (b)(4)(i) of this section, because Pools B and C each comprise less than 5 percent of the total current-year cost of all dollar-value pools, Pools B and C may be combined to form a single miscellaneous pool of manufactured or processed goods (new Pool G).

(iii) For purposes of applying the 5-percent rules to Taxpayer's resale operations under paragraph (b)(4)(ii) of this section, because Pools E and F each comprise less than 5 percent of the total current-year cost of all dollar-value pools, Pools E and F may be combined to form a single miscellaneous pool of resale goods (new Pool H).

(iv) Because Pool G comprises less than 5 percent of the total current-year cost of all dollar-value pools, under paragraph (b)(4)(i) of this section, Pool G may be combined with Pool A, the largest IPIC pool of manufactured goods.

(v) Although Pool H also comprises less than 5 percent of the total current-year cost of all dollar-value pools, under paragraph (b)(4)(ii) of this section, Pool H may not be combined with Pool A, the largest pool of manufactured goods, or Pool D, the largest pool of resale goods.

* * * * *

(c) * * *

(2) *IPIC method pools*—(i) *In general.* A retailer that elects to use the inventory price index computation method described in paragraph (e)(3) of this section (IPIC method) for a trade or business may elect to establish dollar-value pools for those purchased items accounted for using the IPIC method as provided in this paragraph (c)(2)(i) based on either the general expenditure categories (that is, major groups) in Table 3 (Consumer Price Index for all Urban Consumers (CPI–U): U.S. city average, detailed expenditure categories) of the ''CPI Detailed Report'' or the 2-digit commodity codes (that is, major commodity groups) in Table 9 (formerly Table 6) (Producer price indexes and percent changes for commodity and service groupings and individual items, not seasonally adjusted) of the ''PPI Detailed Report.'' A wholesaler, jobber, or distributor that elects to use the IPIC method for a trade or business may elect to establish dollar-value pools for any group of resale goods accounted for using the IPIC method based on the 2-digit commodity codes (that is, major commodity groups) in Table 9 (Producer price indexes and percent changes for commodity and service groupings and individual items, not seasonally adjusted) of the ''PPI Detailed Report.'' The ''CPI Detailed Report'' and the ''PPI Detailed Report'' are published monthly by the United States Bureau of Labor Statistics (BLS) (available at *http://www.bls.gov*). A taxpayer electing to establish dollar-value pools under this paragraph (c)(2)(i) may combine IPIC pools of resale goods that comprise less than 5 percent of the total current-year cost of all dollar-value pools for that trade or business to form a single miscellaneous resale IPIC pool. A taxpayer electing to establish pools under this paragraph (c)(2)(i) may combine a miscellaneous resale IPIC pool that comprises less than 5 percent of the total current-year cost of all dollar-value pools with the largest resale IPIC pool. Each of these 5-percent rules is a method of accounting. A taxpayer may not change to, or cease using, either 5-percent rule without obtaining the Commissioner's prior consent. Whether a specific resale IPIC pool or the miscellaneous resale IPIC pool satisfies the applicable 5-percent rule must be determined in the year of adoption or year of change, whichever is applicable, and redetermined every third taxable year. Any change in pooling required or permitted under a 5-percent rule is a change in method of accounting. A taxpayer must secure the consent of the Commissioner pursuant to § 1.446–1(e) before combining or separating resale IPIC pools and must combine or separate its resale IPIC pools in accordance with paragraph (g)(2) of this section.

(ii) *Pooling of manufactured or processed goods of a wholesaler, retailer, jobber, or distributor.* A wholesaler, retailer, jobber, or distributor electing to establish dollar-value pools under paragraph (c)(2)(i) of this section and that is also engaged, within the same trade or business, in manufacturing or processing, must establish pools for its manufactured or processed goods in accordance with paragraph (b)(4)(i) of this section. A wholesaler, retailer, jobber, or distributor that must establish dollar-value pools for manufactured or processed goods under this paragraph (c)(2)(ii) may combine IPIC pools of manufactured or processed goods that comprise less than 5 percent of the total current-year cost of all dollar-value pools for that trade or business to form a single miscellaneous manufactured or processed IPIC pool. The single miscellaneous manufactured or processed IPIC pool established pursuant to this paragraph (c)(2)(ii) may not be combined with any other IPIC pool. This 5-percent rule is a method of accounting. A taxpayer may not change to, or cease using, this 5-percent rule without obtaining the Commissioner's prior consent. Whether a specific manufactured or processed IPIC pool satisfies the 5-percent rule must be determined in the year of adoption or year of change, whichever is applicable, and redetermined every third taxable year. Any change in pooling required or permitted as a result of a 5-percent rule is a change in method of accounting. A taxpayer must secure the consent of the Commissioner pursuant to § 1.446–1(e) before combining or separating manufactured or processed IPIC pools and must combine or separate its manufactured or processed IPIC pools in accordance with paragraph (g)(2) of this section.

(iii) *No commingling of manufactured goods and purchased goods within a pool.* Notwithstanding any other rule provided in paragraph (b) or (c) of this section, a wholesaler, retailer, jobber, or distributor electing to establish dollar-value pools under paragraph (c)(2)(i) of this section and that is also engaged in manufacturing or processing may not include manufactured or processed goods in the same IPIC pool as goods purchased for resale. Further, in applying the 5-percent rules described in paragraphs (c)(2)(i) and (ii) of this section, a taxpayer may not combine an IPIC pool of manufactured or processed goods that comprises less than 5 percent of the total current-year cost of all dollar-value pools with a resale IPIC pool that comprises less than 5 percent of the total current-year cost of all dollar-value pools for purposes of forming a single miscellaneous IPIC pool.

(iv) *Examples.* The rules of paragraph (c)(2) of this section may be illustrated by the following examples:

Example 1. (i) Taxpayer is engaged in the trade or business of wholesaling products A, B, and C. Taxpayer also manufactures a small quantity of identical products for sale to customers. Taxpayer treats its wholesaling and manufacturing activities as a single trade or business. Taxpayer uses the IPIC method described in paragraph (e)(3) of this section. Pursuant to its election, Taxpayer establishes dollar-value pools for the wholesale items purchased for resale under paragraph (c)(2)(i) of this section, based on the 2-digit commodity codes in Table 9 of the PPI Detailed Report. Taxpayer also establishes dollar-value pools for the manufactured items under paragraph (c)(2)(ii) of this section, based on the 2-digit commodity codes in Table 9 of the PPI Detailed Report. Taxpayer does not choose to use the 5-percent rules under paragraphs (c)(2)(i) and (ii) of this section.

(ii) Even though Taxpayer has resale and manufactured items that share the same 2-digit commodity codes, under paragraph (c)(2)(iii) of this section, Taxpayer's resale goods may not be included in the same IPIC pool as its manufactured goods.

Example 2.(i) The facts are the same as in *Example 1,* except Taxpayer establishes three IPIC pools for its wholesale activities and three IPIC pools for its manufacturing activities. Further, Taxpayer chooses to use the 5-percent rules of paragraphs (c)(2)(i) and (ii) of this section. The percentage of total current-year cost of each IPIC pool to the current-year cost of all dollar-value pools for the trade or business is as follows:

	Percentage of total current-year cost of IPIC pool to current-year cost of all dollar-value pools (%)
Wholesaling Pools:	
Pool J	90
Pool K	1
Pool L	1
Manufacturing Pools:	
Pool M	6
Pool N	1
Pool O	1
	100

(ii) For purposes of applying the 5-percent rules to Taxpayer's wholesaling operations under paragraph (c)(2)(i) of this section, because Pools K and Pool L each comprise less than 5 percent of the total current-year cost of all dollar-value pools, Pools K and L may be combined to form a single miscellaneous pool of wholesale goods (new Pool P).

(iii) For purposes of applying the 5-percent rules to Taxpayer's manufacturing operations under paragraph (c)(2)(ii) of this section, because Pools N and O each comprise less than 5 percent of the total current-year cost of all dollar-value pools, Pools N and O may be combined to form a single miscellaneous pool of manufactured goods (new Pool Q).

(iv) Because Pool P comprises less than 5 percent of the total current-year cost of all dollar-value pools, under paragraph (c)(2)(i) of this section, Pool P may be combined with Pool J, the largest IPIC pool of resale goods.

(v) Although Pool Q also comprises less than 5 percent of the total current-year cost of all dollar-value pools, under paragraph (c)(2)(ii) of this section, Pool Q may not be combined with Pool J, the largest pool of resale goods, or Pool M, the largest pool of manufactured goods.

* * * * *

(e) * * *

(3) * * *

(ii) *Eligibility.* Any taxpayer electing to use the dollar-value LIFO method may elect to use the IPIC method. Except as provided in other published guidance, a taxpayer that elects to use the IPIC method for a specific trade or business must use that method to account for all items of dollar-value LIFO inventory.

* * * * *

(v) *Effective/applicability date.* The rules of this paragraph (e)(3) and paragraphs (b)(4) and (c)(2) of this section are applicable for taxable years ending on or after the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register**.

* * * * *

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–28375 Filed 11–25–16; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0454; FRL–9955–51-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; New Regulations for Architectural and Industrial Maintenance Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Maryland. This revision pertains to a provision establishing new volatile organic compound (VOC) content limits and standards for architectural and industrial maintenance (AIM) coatings available for sale and use in Maryland. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before December 28, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0454 at *http://www.regulations.gov,* or via email to *pino.maria@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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: Irene Shandruk, (215) 814–2166, or by email at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 2001, the Ozone Transport Commission (OTC), in collaboration with the Ozone Transport Region (OTR) states, developed several emission reduction measures, including a VOC model rule for AIM coatings (known as the Phase I AIM model rule), which addressed VOC reductions in the OTR. In 2004, consistent with the OTC Phase I AIM model rule, Maryland adopted COMAR 26.11.33—*Architectural Coatings,* which established VOC content limits, recordkeeping and labeling requirements, and standard practices for use and application of coatings used in architectural and industrial maintenance.

The Phase I AIM model rule was replaced with an amended OTC model rule in 2011 (known as the Phase II AIM model rule). The Phase II AIM model rule was developed for states that needed additional VOC emission

reductions in order to meet the ozone national ambient air quality standards (NAAQS). Consistent with the Phase II AIM model rule, Maryland developed and adopted COMAR 26.11.39—*Architectural and Industrial Maintenance Coatings,* which is an updated version of COMAR 26.11.33.

II. Summary of SIP Revision

On June 27, 2016, the Maryland Department of the Environment (MDE) submitted to EPA a SIP revision containing new AIM regulations .01 through .08 under COMAR 26.11.39—*Architectural and Industrial Maintenance Coatings.* The new regulations apply to any person who manufactures, blends, thins, supplies, sells, offers for sale, repackages for sale, or applies architectural and industrial maintenance coatings in Maryland. Maryland's new AIM regulations establish more stringent VOC content limits (Table 1) and standards for AIM coating categories than in COMAR 26.11.33, as well as establish container labeling requirements, reporting requirements, and compliance procedures. The requirements of COMAR 26.11.39 will supersede those of COMAR 26.11.33. A more detailed explanation and analysis of COMAR 26.11.39 can be found in the Technical Support Document (TSD) for this rulemaking under Docket ID No. EPA–R03–OAR–2016–0454.[1]

TABLE 1—VOC CONTENT LIMITS UNDER COMAR 26.11.39 FOR VARIOUS AIM COATING CATEGORIES

Architectural and industrial maintenance coatings category	Maryland's new VOC content limits (grams/liter) under COMAR 26.11.39
Flat coatings	50
Non-flat coatings	100
Non-flat—high gloss coatings	150
Specialty Coatings:	
Aluminum roof coatings	450
Basement specialty coatings	400
Bituminous roof coatings	270
Bituminous roof primers	350
Bond breakers	350
Calcimine recoater	475
Concrete curing compounds	350
Concrete/masonry sealers	100
Concrete surface retarders	780
Conjugated oil varnish	450
Conversion varnish	725
Driveway sealers	50
Dry fog coatings	150
Faux finishing coatings	350
Fire-resistive coatings	350
Floor coatings	100
Form-release coatings	250
Graphic arts coatings (Sign paints)	500
High-temperature coatings	420
Impacted immersion coatings	780
Industrial maintenance coatings	250
Low-solids coatings	120
Magnesite cement coatings	450
Mastic texture coatings	100
Metallic pigmented coatings	500
Multi-color coatings	250
Nuclear coatings	450
Pre-treatment wash primers	420
Primers, sealers, and undercoaters	100
Reactive penetrating sealers	350
Reactive penetrating carbonate stone sealers	500
Recycled coatings	250
Roof coatings	250
Rust preventative coatings	250
Shellacs:	
Clear	730
Opaque	550
Specialty primers, sealers, and undercoaters	100
Stains	250
Stone consolidant	450
Swimming pool coatings	340
Thermoplastic rubber coatings and mastic	550
Traffic marking coatings	100
Tub and tile refinish coatings	420
Waterproofing membranes	250
Wood coatings	275

[1] The TSD contains a comparison of VOC content limits in COMAR 26.11.39 and COMAR 26.11.33, demonstrating additional VOC emission reduction potential from COMAR 26.11.39 for this source category. The TSD also describes some AIM categories that were consolidated or added in the new COMAR 26.11.39 compared to COMAR 26.11.33, which EPA had previously approved for the Maryland SIP. However, none of these adjustments removed any VOC content limits from the Maryland regulation, which EPA had approved previously into the Maryland SIP.

TABLE 1—VOC CONTENT LIMITS UNDER COMAR 26.11.39 FOR VARIOUS AIM COATING CATEGORIES—Continued

Architectural and industrial maintenance coatings category	Maryland's new VOC content limits (grams/liter) under COMAR 26.11.39
Wood preservatives	350
Zinc-rich primers	340

III. Proposed Action

EPA's review of this material indicates that Maryland's new regulations for AIM coatings under COMAR 26.11.39 are based on the OTC's Phase II AIM model rule and establish more stringent VOC content limits and requirements for certain AIM coating categories compared to COMAR 26.11.33. Therefore, these new regulations should lead to additional VOC reductions from this category. Additionally, Maryland's new AIM coating regulations are more stringent than the federal standards found at 40 CFR 59, subpart D—*National Volatile Organic Compound Emission Standards for Architectural Coatings,* which in 1998 established nationwide VOC content limits and other requirements for manufacturers of architectural coatings. EPA expects more stringent VOC content limits will reduce emissions of VOCs, a precursor to ozone formation. Reduced VOC emissions and reduced ozone formation will assist Maryland with attaining and maintaining the ozone NAAQS. EPA proposes to add COMAR 26.11.39 to the Maryland SIP as a SIP strengthening measure. Pursuant to section 110 of the CAA, EPA is proposing to approve Maryland's new AIM coating provision, COMAR 26.11.39, which was submitted on June 27, 2016, as a revision to the Maryland SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Maryland's new regulations for AIM coatings under COMAR 26.11.39. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule pertaining to Maryland's new regulations for AIM coatings under COMAR 26.11.39, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: November 10, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2016–28436 Filed 11–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R03–OAR–2016–0053; FRL–9955–69-Region 3]

Approval and Promulgation of Air Quality Plans; State of Maryland; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a section 111(d)/129 plan submitted by the State of Maryland for existing hospital/medical/infectious waste incineration (HMIWI) units. The section 111(d)/129 plan contains revisions to a previously-approved state plan for existing HMIWI units and was submitted as a result of the October 6, 2009 promulgation of federal new source performance standards (NSPS) and emission guidelines for HMIWI

units, which were subsequently amended on April 4, 2011. This action is being taken under sections 111(d) and 129 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before December 28, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0053 at *http://www.regulations.gov,* or via email to *campbell.dave@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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: Mike Gordon, (215) 814–2039, or by email at *gordon.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 129 of the CAA requires EPA to establish performance standards and emission guidelines for various types of new and existing solid waste incineration units. Section 129(b)(2) requires states to submit to EPA for approval section 111(d)/129 plans that implement and enforce the promulgated emission guidelines. Section 129(b)(3) requires EPA to promulgate a federal plan (FP) within two years from the date on which the emission guidelines, or revision to the emission guidelines, is promulgated. The FP is applicable to affected facilities when the state has failed to receive EPA approval of the section 111(d)/129 plan. The FP remains in effect until the state submits and receives EPA approval of its section 111(d)/129 plan. State submittals under CAA sections 111(d) and 129 must be consistent with the relevant emission guidelines, in this instance 40 CFR part 60, subpart Ce, and the requirements of 40 CFR part 60, subpart B and part 62, subpart A. Section 129 of the CAA regulates air pollutants that include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, and mercury), hydrogen chloride, sulfur dioxide, nitrogen oxides, and particulate matter (which includes opacity).

On January 10, 2013, the Maryland Department of the Environment (MDE) submitted revisions to its section 111(d)/129 plan for HMIWI units that was previously approved by EPA on September 5, 2000 (65 FR 53608). The revisions address EPA's October 6, 2009 final rule (74 FR 51367) and April 4, 2011 amendments (76 FR 18407) for Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Hospital/Medical/Infectious Waste Incinerators, 40 CFR part 60, subparts Ec and Ce. Included with Maryland's plan are amendments to Code of Maryland Regulations (COMAR) 26.11.08, entitled ''Control of Incinerators,'' specifically regulations .01, .02, and .08–1 and adoption/amendments to new regulation .08–2. EPA's proposed approval of Maryland's HMIWI revisions amends state HMIWI regulations .01, .02, .08–1, and .08–2 of COMAR 26.11.08 to comport with the corresponding federal regulations. Unrevised portions of the previous state plan approved on September 5, 2000 remain in place.

II. Summary of Maryland's Section 111(d)/129 Plan for Existing HMIWI Units

EPA has reviewed the Maryland section 111(d)/129 plan submittal in the context of the requirements of 40 CFR part 60, subparts B, Ec and Ce, and part 62, subpart A. EPA has determined that the submitted section 111(d)/129 plan meets the above-cited requirements. Thus, EPA proposes to approve the above the submitted plan. EPA's proposed approval in this action is limited to the regulations addressing HMIWI units as identified by Maryland in its section 111(d)/129 plan submittal under COMAR 26.11.08, specifically, regulations .01, .02, .08–1, and .08–2.[1] A detailed explanation of the rationale behind this proposed approval is available in the July 22, 2016 technical support document (TSD). The TSD is available in the docket for this rulemaking and online at *www.regulations.gov.*

III. Proposed Action

EPA is proposing to approve the Maryland section 111(d)/129 plan for HMIWI units submitted pursuant to 40 CFR part 60, subpart Ce because the plan is at least as stringent as requirements in 40 CFR part 60, subpart Ce. Therefore, EPA is proposing to amend 40 CFR part 62, subpart V to reflect this action. The scope of the proposed approval of the section 111(d)/129 plan is limited to the provisions of 40 CFR parts 60 and 62 for existing HMIWI units, as referenced in the emission guidelines, subpart Ce.

The EPA Administrator continues to retain authority for several tasks affecting the regulation of HMIWI units, as stipulated in 40 CFR 60.32e(k) and 60.50c(i). This retention of authority includes the granting of waivers for performance tests.

IV. Statutory and Executive Order Reviews

In reviewing section 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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

[1] Definitions relating to the Maryland HMIWI plan are included in COMAR 26.11.08.01. While this section contains definitions for Maryland's general incinerator regulations, EPA is only taking action on requirements related to HMIWI units. Definitions related to incinerators other than HMIWI units are outside of the scope of Maryland's plan and EPA's approval is strictly limited to Part 60 and 62 provisions relevant to existing HMIWI units.

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule for existing HMIWI units within the State of Maryland does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the section 111(d)/129 plan is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 62

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

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

Dated: November 16, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2016–28428 Filed 11–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA–R10–RCRA–2016–0622; FRL 9928–26–Region 10]

Determination of Full Program Adequacy of Washington's Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments, States must develop and implement permit programs for Municipal Solid Waste Landfills (MSWLF) and seek an adequacy determination by the Environmental Protection Agency (EPA). This proposed rule documents EPA's determination that Washington's MSWLF permit program is adequate to ensure compliance with Federal MSWLF requirements.

DATES: Comments on this proposed action must be received in writing on or before January 27, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–RCRA–2016–0622 by one of the following methods:

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

• *Email: calabro.domenic@epa.gov.*

• *Fax:* (206) 553–6640, to the attention of Domenic Calabro.

• *Mail:* Send written comments to Domenic Calabro, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mailstop: AW–150, Seattle, WA 98101.

• *Hand Delivery or Courier:* Deliver your comments to: Domenic Calabro, Office of Air and Waste, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mailstop: AW–150, Seattle, WA 98101. Such deliveries are only accepted during the Office's normal hours of operation.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, Mailcode: AW–150, Seattle, Washington, 98101, Attn: Mr. Domenic Calabro. Telephone: (206) 553–6640.

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this issue of the **Federal Register**, the EPA is granting Washington a determination of full program adequacy for its MSWLF permitting program through a direct final rule without prior proposal, because the EPA views this as a noncontroversial action and anticipates no adverse comments to this action. Unless we receive written adverse comments which oppose this approval during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If written adverse comments are received, the EPA will review the comments and publish another **Federal Register** document responding to the comments and either affirming or revising the initial decision. For additional information, see the direct final rule which is located in the Rules and Regulations section of this issue of the **Federal Register**.

List of Subjects

40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Authority: This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: October 20, 2016.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

[FR Doc. 2016–26750 Filed 11–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 262, 264, 265 and 267

[EPA–HQ–OLEM–2016–0492; FRL–9954–26–OLEM]

RIN 2050–AG90

Internet Posting of and Confidentiality Determinations for Hazardous Waste Export and Import Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending existing regulations regarding the export and import of hazardous wastes from and into the United States. EPA is making these changes to improve protection of public health with respect to hazardous wastes by ensuring public accessibility and transparency of export and import documentation. Specifically, the proposed revisions of the existing regulations will require exporters of hazardous waste and receiving facilities recycling or disposing hazardous waste from foreign sources to maintain a single publicly accessible Web site (''Export/Import Web site'') to which documents can be posted regarding the confirmation of receipt and confirmation of completed recovery or disposal of individual hazardous waste import and export shipments. These proposed changes will improve information on the movement and disposition of hazardous wastes, and will enable interested members of the community and the government to

benefit from the provision of publicly accessible data to better monitor proper compliance with EPA's hazardous waste regulations and help ensure that hazardous waste import and export shipments are properly received and managed. The proposed internet posting requirements are planned for the interim period prior to the electronic import-export reporting compliance date when electronic submittal to EPA of confirmations of receipt and completed recovery or disposal for hazardous waste shipments will be required. EPA also proposes a confidentiality determination to exclude documents related to the export, import, and transit of hazardous waste and export of excluded CRTs from confidential business information (CBI) claims.

DATES: Comments must be received on or before January 27, 2017. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before December 28, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2016–0492 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. 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 *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Laura Coughlan, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (703) 308–0005; email: *coughlan.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. General Information
- A. List of acronyms used in this action
- B. What are the statutory authorities for this proposed rule?
- C. Does this action apply to me?
- D. What is the purpose of this proposed rule?
- E. Brief description of this proposal
  - 1. Internet Posting of Confirmations of Receipt and Confirmations of Recovery or Disposal
  - 2. CBI Claims for Hazardous Waste Export and Import Documents
  - 3. Release of Aggregate Data and Competitive Harm Concerns

II. Background
- A. RCRA General Hazardous Waste Export and Import Requirements
- B. EPA's Transition to Electronic Submittal of Export and Import Documents
  - 1. Why is EPA proposing to require that importers and exporters maintain a Web site to post hazardous waste export and import documents?
  - 2. What are the confirmations of receipt and confirmations of recovery or disposal and how will internet posting of these documents help improve tracking and monitoring of individual hazardous waste shipments?
  - 3. What accommodations will EPA make to allow original submitters of information and affected facilities to protect potential confidential business information (CBI) contained in the documents posted to the Export/Import Web site?
  - 4. What recordkeeping requirements apply to confirmations of receipt and confirmations of recovery or disposal with this proposed rule?

III. Summary of This Proposed Rule
- A. Changes to 40 CFR 260.2
- B. Changes to 40 CFR 262.83 and 262.84
- C. Changes to 40 CFR 264.74
- D. Changes to 40 CFR 265.74
- E. Changes to 40 CFR 267.71

IV. Costs and Benefits of the Proposed Rule
- A. Introduction
- B. Analytical Scope
- C. Cost Impacts
- D. Benefits

V. State Authorization

VI. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act (PRA)
- C. Regulatory Flexibility Act (RFA)
- 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. General Information

A. List of Acronyms Used in This Action

Acronym	Meaning
AES	Automated Export System
AOC	Acknowledgment of Consent (issued by EPA)
CBI	Confidential Business Information
CEC	Commission for Environmental Cooperation
CFR	Code of Federal Regulations
CRT	Cathode Ray Tube
EPA	United States Environmental Protection Agency
FR	Federal Register
HSWA	Hazardous and Solid Waste Amendments
NAFTA	North American Free Trade Agreement
OECD	Organization for Economic Cooperation and Development
OIG	EPA's Office of Inspector General
OMB	Office of Management and Budget
RCRA	Resource Conservation and Recovery Act
SIC	Standard Industrial Classification
SLAB	Spent Lead-Acid Battery
WIETS	EPA's Waste Import Export Tracking System

B. What are the statutory authorities for this proposed rule?

EPA's authority to promulgate this rule is found in sections 1002, 2002(a), 3001–3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901 et. seq., 6905, 6912, 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

C. Does this action apply to me?

The internet posting requirements in this action generally affect two (2) groups: (1) All persons who export (or arrange for the export) of hazardous waste for recycling or disposal, including those hazardous wastes subject to the alternate management standards for (a) universal waste for recycling or disposal, (b) spent lead-acid batteries (SLABs) being shipped for reclamation, (c) industrial ethyl alcohol being shipped for reclamation, (d) hazardous waste samples of more than 25 kilograms being shipped for waste characterization or treatability studies, and (e) hazardous recyclable materials being shipped for precious metal recovery; and (2) all recycling and disposal facilities who receive imports of such hazardous wastes for recycling or disposal. The application of these confidentiality determinations to certain export, import, and transit documents affects the groups described previously in addition to exporters of cathode ray tubes (CRTs). Potentially affected entities may include, but are not limited to:

NAICS Code	NAICS Description
211	Oil and Gas Extraction.
324	Petroleum and Coal Products Manufacturing.
325	Chemical Manufacturing.
326	Plastics and Rubber Products Manufacturing.
327	Nonmetallic Mineral Product Manufacturing.
331	Primary Metal Manufacturing.
332	Fabricated Metal Product Manufacturing.
333	Machinery Manufacturing.
334	Computer and Electronic Product Manufacturing.
335	Electrical Equipment, Appliance, and Component Manufacturing.
336	Transportation Equipment Manufacturing.
339	Miscellaneous Manufacturing.
423	Merchant Wholesalers, Durable Goods.
424	Merchant Wholesalers, Nondurable Goods.
522	Credit Intermediation and Related Activities.
525	Funds, Trusts, and Other Financial Vehicles.
531	Real Estate.
541	Professional, Scientific, and Technical Services.
561	Administrative and Support Services.
562	Waste Management and Remediation Services.
721	Accommodation.
813	Religious, Grantmaking, Civic, Professional, and Similar Organizations.
211	Oil and Gas Extraction.
324	Petroleum and Coal Products Manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this proposed rule to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

D. What is the purpose of this proposed rule?

This rule proposes two types of amendments. First, EPA is proposing certain amendments to the current RCRA regulations in part 262 governing exports and imports of hazardous waste in order to improve protection of public health and the environment by strengthening the public accessibility and transparency of documentation to better monitor proper compliance with EPA's hazardous waste regulations and help ensure that hazardous waste shipments are properly received and disposed. To achieve these goals, EPA is proposing to require internet posting of *confirmation of receipt* and *confirmation of recovery or disposal* documents (*i.e.,* two documents per import shipment and two documents per export shipment) where they are required for individual export and import shipments of hazardous wastes, prior to the electronic import-export reporting compliance date EPA will establish in a separate **Federal Register** notice. The proposed rule is a companion to EPA's Hazardous Waste Export-Import Revisions Final Rule also published in the ''Rules and Regulations'' section of this **Federal Register**, which is one of the Agency's priority actions under its plan for periodic retrospective reviews of existing regulations, as called for by Executive Order 13563. The proposed internet posting requirements are planned to be effective during the interim period prior to the electronic import-export reporting compliance date when electronic submittal to EPA of confirmations of receipt and confirmations of recovery or disposal for hazardous waste shipments will be required.

Second, EPA is also proposing confidentiality determinations with respect to CBI claims for the individual documents and compiled data for the following types of export and import documents, which will hereinafter be referred to as aforementioned ''documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes (CRTs)'':

(1) Documents related to the export of Resource Conservation and Recovery Act (RCRA) hazardous waste under 40 CFR part 262, subpart H, including but not limited to the notifications of intent to export, contracts submitted in response to requests for supplemental information from countries of import or

transit, RCRA manifests, annual reports, EPA acknowledgements of consent, any subsequent communication withdrawing a prior consent or objection, responses that neither consent nor object, exception reports, transit notifications, and renotifications;

(2) Documents related to the import of hazardous waste, under 40 CFR part 262, subpart H, including but not limited to contracts and notifications of intent to import hazardous waste into the U.S. from foreign countries or U.S. importers;

(3) Documents related to the confirmation of receipt and confirmation of recovery or disposal of hazardous waste exports and imports, under 40 CFR part 262, subpart H;

(4) Documents related to the transit of hazardous waste, under 40 CFR part 262, subpart H, including notifications from U.S. exporters of intent to transit through foreign countries, or notifications from foreign countries of intent to transit through the U.S.;

(5) Documents related to the export of cathode ray tubes (CRTs), under 40 CFR part 261, subpart E, including but not limited to notifications of intent to export CRTs;

(6) Documents related to the export of non-crushed spent lead acid batteries (SLABs) with intact casings, under 40 CFR part 266 subpart G, including but not limited to notifications of intent to export SLABs;

(7) Submissions from transporters under 40 CFR part 263, or from treatment, storage or disposal facilities under 40 CFR parts 264 and 265, related to exports or imports of hazardous waste, including but not limited to receiving facility notices of the need to arrange alternate management or return of an import shipment under 40 CFR 264.12(a)(3) and 265.12(a)(3); and

(8) Documents related to the export and import of RCRA universal waste under 40 CFR part 273, subparts B, C, D, and F.

We propose to apply confidentiality determinations such that no CBI claims may be asserted by any person with respect to any of the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs. EPA's determination that revisions to the export/import regulations are needed is bolstered by the concerns and recommendations in both the 2013 Commission for Environmental Cooperation (CEC) report on export and recycling of spent lead-acid batteries (SLABs) within North America (''Hazardous Trade? An Examination of US-generated Spent Lead-acid Battery Exports and Secondary Lead Recycling in Mexico, the United States and Canada'') and the 2015 EPA Office of Inspector General (OIG) report on hazardous waste imports (''EPA Does Not Effectively Control or Monitor Imports of Hazardous Waste''). Based on its findings, the CEC report recommended that the U.S. require the use of manifests for each international shipment of SLABs, require exporters to obtain a confirmation of recovery from foreign recycling facilities, explore establishing an electronic export annual report, and better share export and import data between environmental and border agencies. For a more complete discussion of the CEC report and EPA's related analysis, see Section VII of the Hazardous Waste Export-Import Revisions proposed rule (80 FR 63304). The 2015 EPA OIG report recommended that EPA improve the oversight of hazardous waste imports, including tracking of all hazardous waste import shipments. Copies of the CEC and EPA OIG reports can be found in the Docket for the Hazardous Waste Export-Import Revisions proposed rule (Docket ID No. EPA–HQ–RCRA–2015–0147, documents EPA–HQ–RCRA–2015–0147–0009 and EPA–HQ–RCRA–2015–0147–0011, respectively), and copies have been placed in the docket for this proposed rule.

EPA is particularly interested in input on this proposed action from persons who export hazardous waste or CRTs and those persons who receive imported hazardous waste, including those persons receiving imported or exporting hazardous wastes managed under the special management standards in 40 CFR part 266 (*e.g.,* spent lead acid batteries) and 40 CFR part 273 (*e.g.,* universal waste batteries, universal waste mercury lamps).

E. Brief Description of This Proposal

1. Internet Posting of Confirmations of Receipt and Confirmations of Recovery or Disposal

EPA is proposing to modify the reporting and recordkeeping requirements for exporters of hazardous waste and receiving facilities of hazardous waste imports such that, prior to the electronic import-export reporting compliance date to be established in a future, separate **Federal Register** notice, they are required to maintain a single publicly accessible Web site (herein referred to as the ''Export/Import Web site'') where the following documents will be posted: Export confirmations of receipt; export confirmations of recovery or disposal; import confirmations of receipt; and import confirmations of recovery or disposal. EPA is requesting comment on the time period during which exporters and receiving facilities should be required to post these documents to their Web site and whether such information should continue to be publicly available after the interim period, once EPA receives submittals of such documents electronically.

EPA is proposing that the required documents be posted as read-only, publicly accessible, downloadable images. Examples of acceptable document formats include, but are not limited to, Portable Document Format (PDF), Joint Photographic Experts Group (JPEG), and Graphics Interchange Format (GIF). If a publicly available Web site is not available, exporters and receiving facilities must develop a publicly accessible Web site to post the required documents. If a company has more than one physical site from which it exports hazardous waste or receives hazardous waste imports for recycling or disposal, the company must clearly group the posted documents by individual physical facility site. In addition, the documents for each physical site must be clearly organized by the consent number relevant to each export or import shipment. The company's Web site must be titled ''Hazardous Waste Export/Import Rule Compliance Documents.'' The documents and their respective file names posted to the Export/Import Web site must clearly identify the type of document, EPA ID number of the exporting or receiving facility, the consent number associated with the shipment, and the related shipment number (*e.g.,* Shipment No. 1 out of an expected 200 shipments for the consent number). We suggest the following standard nomenclature for file names:

- Exporter confirmation of receipt: EX_Conf_Receipt_[EPA ID No.]_[Consent No.]_[Shipment No.]
- Exporter confirmation of recovery or disposal: EX_Conf_Recovery_[EPA ID No.]_[Consent No.]_[Shipment No.]
- Receiving facility confirmation of receipt: RF_Conf_Receipt_[EPA ID No.]_[Consent No.]_[Shipment No.]
- Receiving facility confirmation of recovery or disposal: RF_Conf_Recovery_[EPA ID No.]_[Consent No.]_[Shipment No.]

EPA requests comment on the recommended organizational aspects of the Web site, and the proposed standard file name format, including whether the proposed standard file name format should be mandatory.

EPA is proposing that the documents posted to the Export/Import Web site must be publicly accessible on the Web site by the first of March of each year

and include all of the confirmations of receipt and confirmations of recovery or disposal received by the exporter or sent out by the receiving facility related to exports or imports of hazardous waste made during the previous calendar year. Each document must be available for a period of at least three years following the date on which each document was first required to be posted to the Web site. Furthermore, in accordance with current recordkeeping requirements, paper copies of export and import confirmations of receipt and confirmations of recovery or disposal must be retained by exporters and receiving facilities for a period of at least three (3) years.

2. CBI Claims for Hazardous Waste Export and Import Documents

EPA is also proposing confidentiality determinations and will no longer accept future CBI claims for the individual aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs. Our rationale is explained in the following paragraphs.

To date, our records indicate that EPA has received three assertions of confidentiality, one from Horizon Environment, Inc. in 2004 and two from Johnson Controls Battery Group, Inc. in 2011 and 2012 for certain information contained in hazardous waste export documents. In all three cases, the Agency determined that the information claimed as confidential was not entitled to confidential treatment, as explained in the following paragraphs.

Horizon Environment, Inc. and Johnson Controls Battery Group, Inc. asserted claims of confidentiality for certain hazardous waste export documents that were responsive to a request to EPA under the Freedom of Information Act (FOIA). Horizon's claims related to export notices, and Johnson Controls' claims related to annual reports.

Exemption 4 of the Freedom of Information Act (FOIA) exempts from disclosure ''trade secrets and commercial information obtained from a person and privileged or confidential'' (see 5 U.S.C. § 552(b)(4)). In order for information to meet the requirements of Exemption 4, EPA must find that the information is either (1) a trade secret; or (2) commercial or financial information obtained from a person and privileged or confidential (commonly referred to as ''Confidential Business Information'' (CBI)).

Trade Secret

The two companies' confidentiality claims did not assert that the information was a trade secret, nor did they provide information about how the Agency's release of this information would identify a plan, formula, process, or device. The companies also did not demonstrate how disclosure of the information would identify or reveal a trade secret. Consequently, EPA found that the information did not constitute a trade secret.

Confidential Business Information (CBI)

In order to qualify as CBI under Exemption 4, the information must be ''privileged or confidential.'' Both companies claimed the information to be confidential, but did not claim that the information was privileged. Information that is required to be submitted to the Government is confidential if its ''disclosure would be likely either (1) to impair the Government' s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.''' Critical Mass, 975 F.2d at 878 (quoting *National Parks and Conservation Association* v. *Morton,* 498 F.2d 765, 770 (D.C. Cir. 1974)) (footnote omitted). In these cases, the Agency had the authority to require the submission of the information and exercised it. Therefore, EPA concluded that the information was a required submission and was not voluntary.

In terms of competitive harm, as set forth in EPA's regulations at 40 CFR 2.208, required business information is entitled to confidential treatment if: The business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position. After careful consideration of the arguments submitted by both companies, EPA concluded that neither claim explained specifically how disclosure of the information in the submissions would likely cause substantial competitive harm to the companies, and therefore did not support the claim of competitive harm. Accordingly, EPA concluded that release of this was not likely to cause substantial harm to the companies' competitive positions.

As a result of these analyses, EPA found that the information claimed as confidential was not a trade secret or CBI and, therefore, was not within the scope of Exemption 4 of the FOIA. Based on EPA's analysis and decision in the confidentiality claims asserted by these two companies for their hazardous waste export notices and annual reports, EPA expects to apply a similar analysis and reach a similar decision with respect to these types of documents as well as the other aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs that would be submitted to EPA by other companies. Therefore, EPA proposes to make a confidentiality determination in this rule that all of the aforementioned documents are not confidential.

In addition, EPA has issued an annual **Federal Register** publication requesting comment from affected businesses (other than original submitters), as defined in 40 CFR 2.201(d), on their need to assert confidentiality claims for documents and data compiled from such documents submitted by original submitters related to the export, import and transit of RCRA hazardous waste, including those hazardous wastes managed under the special management standards in 40 CFR part 266 (*e.g.,* spent lead acid batteries) and 40 CFR part 273 (*e.g.,* universal waste batteries, universal waste mercury lamps), and related to the export of CRTs under 40 CFR part 261, made during the previous calendar year, prior to EPA considering such documents releasable upon public request. The annual **Federal Register** publications have not addressed CBI claims likely to be made by the original submitters, since RCRA regulations at 40 CFR 260.2(b) already address the CBI requirements for original submitters. To date, EPA has never received a comment from any business not an original submitter as a result of the annual **Federal Register** publication.

As discussed previously, EPA's regulations at 40 CFR 2.208 state that, in order for business information to be entitled to confidential treatment, the Agency must have determined that such claims meet several criteria.

EPA believes that the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs do not meet several of the criteria listed in 40 CFR 2.208. Our rationale is explained in the following paragraphs.

EPA believes that any CBI claim that might be asserted with respect to the individual selected hazardous waste documents would be extremely difficult to sustain under the substantive CBI criteria set forth in the Agency's CBI regulations (40 CFR part 2, subpart B). For example, to make a CBI claim, a business must satisfactorily show that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures. The selected hazardous waste documents submitted to the Agency are also shared with several commercial entities while they are being processed and used. As

a result, a business concerned with protecting its commercial information would find it exceedingly difficult to protect its records from disclosure by all the other persons who come into contact with such export, import and transit documents. For example, a business wanting to protect commercial information contained in individual hazardous waste export and import documents would need to enter into and enforce non-disclosure agreements or similar legal mechanisms with all its customers and other third parties and affected interests who might also be named as waste handlers on the documents or who otherwise might be expected to come into contact with its documents.

Furthermore, to substantiate a CBI claim, a business must also show that the information is not, and has not been, reasonably obtainable without the business's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding). As described previously, the selected hazardous waste documents are shared with several commercial entities throughout the chain of custody of a hazardous waste shipment. Therefore, information contained in these documents is relatively easily accessible to other parties without the business's explicit consent.

For these reasons, EPA believes that any CBI claim that might be asserted with respect to the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs would be difficult to sustain under the substantive CBI criteria (40 CFR part 2, subpart B).

Finally, EPA has established precedent in applying confidentiality determinations to RCRA hazardous waste documents. On February 7, 2014, EPA published the Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Electronic Manifests final rule which made a categorical determination for individual RCRA hazardous waste manifest records. In EPA's Notice of Data Availability and Request for Comment on the Agency's Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System (73 FR 10204) published on February 26, 2008, EPA concluded that information contained in individual manifested records is essentially public information and therefore is not eligible under federal law for treatment as CBI. The effect of this decision was that EPA made a categorical determination that it will not accept any CBI claims that might be asserted in connection with processing, using, or retaining individual paper or electronic manifests. Because the information contained in RCRA manifests is largely similar to the information contained in individual hazardous waste export and import documents, such as the name, address, and other information about the generator, transporter, and destination or receiving facility, EPA believes that the decision to apply categorical determinations for electronic manifests further supports the proposed confidentiality determination in this action for the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded cathode ray tubes (CRTs) and related aggregate information.

Based on our analysis of the CBI criteria in 40 CFR part 2, subpart B, the absence of successful confidentiality claims by the original submitters of information and the lack of assertions of confidentiality submitted by affected businesses other than original submitters in response to the annual **Federal Register** publication, EPA believes that our proposed confidentiality determination to exclude from CBI claims and release on an annual basis the aforementioned documents is reasonable.

EPA requests comment on our proposed confidentiality determination to prospectively exclude the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs from eligibility for CBI claims. In addition, the Agency believes that these documents do not qualify for the FOIA exemption for personal privacy, and thus the names of company employees or independent contractors that appear in these documents would not be exempt from public release. These documents do not qualify for the personal privacy exemption because the aforementioned documents submitted to the Agency are also shared with several commercial entities while they are being processed and used. As such, such persons whose names appear in these documents have no expectation of privacy. EPA requests public comment on this position.

EPA proposes not to make publicly accessible the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs during the previous calendar year until March 1 of the succeeding year, except as required by applicable federal law, because EPA considers that these documents are still not in final form. Access would be limited while the data are being collected and verified, as data are processed, and exceptions or discrepancies are being resolved. This decision would not impact any CBI claims or any determinations made in the past by EPA in resolving CBI claims related to the export, import, and transit of hazardous waste and export of excluded CRTs.

EPA requests comment on our proposed confidentiality determination that the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs, and data compiled from such documents, would be excluded from CBI claims and made releasable on an annual basis, except as required by applicable federal law. EPA also requests comment on whether requiring that internet posting of confirmations of receipt and confirmations of recovery or disposal by March 1 of each year is an appropriate timeframe for the documents to be considered in final form.

3. Release of Aggregate Data and Competitive Harm Concerns

EPA understands that the waste management industry may be concerned that the aggregation of the data contained in the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs may enable competitors to obtain more immediate and efficient access to customer information, thus potentially creating competitive consequences not previously experienced under the current paper system. Exemption 4 of the Freedom of Information Act (FOIA) exempts from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' (5 U.S.C. 552(b)(4)). In order for information to meet the requirements of Exemption 4, EPA must find that the information is either (1) a trade secret; or (2) commercial or financial information obtained from a person and privileged or confidential (commonly referred to as ''Confidential Business Information' (''CBI'')). Since the individual aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs would not be eligible for CBI treatment for the reasons discussed previously, it is a novel issue for EPA whether requests under FOIA for data aggregated from multiple selected records would require special handling by EPA under the FOIA exemption for confidential business information.

Therefore, EPA is seeking public comment on how, if at all, EPA should address any future FOIA requests for aggregate data from the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs. First, EPA needs information on how substantial the harm would be to a company's competitive position if aggregate data from multiple manifests could be obtained from EPA under a FOIA request. How would this situation differ quantifiably from the current situation where a FOIA request can be made for several of the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs and the requester must then aggregate the relevant data in each of these manifests for himself or herself?

Given our uncertainty about the adverse effects or competitive harm to waste management businesses that would submit hazardous waste export and import documents to EPA, we seek comment on whether the release of aggregated data would adversely impact waste management businesses. In particular, we ask that the waste management industry substantiate their concerns, if any, that the aggregation of manifest data and the subsequent disclosure of that data would somehow release their company's confidential business information and thus cause substantial competitive harm to them.

If EPA were to determine that the waste management industry concerns for the disclosure of aggregate information are legitimate and that they are not sufficiently addressed by the approach described previously in this proposal, then we could develop another approach to mitigate the ability to efficiently create customer lists from aggregated data. We therefore request comment on how EPA should design and implement an approach to protect the disclosure of aggregate data of competitive value, if such an approach were appropriate. For example, what are the indicators of aggregated requests (*e.g.,* requests of 50 or more import, export or transit documents involving a single exporter or importer) that would justify our handling aggregated data differently from individual manifests for FOIA disclosure purposes? What information should be redacted from the data that are released to mitigate any competitive harm from the data disclosure?

If, however, EPA were to determine that the release of aggregate information would not be entitled to confidentiality, EPA would make publicly available such aggregate information in addition to individual documents discussed previously.

The proposed internet posting requirements do not affect the current recordkeeping requirements for retaining paper copies of the export confirmations of receipt, export confirmations of completing recovery or disposal, import confirmations of receipt, and import confirmations of completing recovery or disposal. These paper documents must be retained by exporters and receiving facilities for a period of at least three (3) years.

II. Background

A. RCRA General Hazardous Waste Export and Import Requirements

EPA's hazardous waste export and import regulations were originally promulgated in 1986, and have been revised multiple times. For more information about these requirements and revisions that are being published in this issue of the **Federal Register**, see ''Hazardous Waste Export-Import Revisions Final Rule'' found in the ''Rules and Regulations'' section of this **Federal Register**.

B. EPA's Transition to Electronic Submittal of Export and Import Documents

Under the newly revised requirements in 40 CFR parts 262, 264 and 265, as amended in EPA's Hazardous Waste Export-Import Revisions Final Rule (found in the ''Rules and Regulations'' section of this **Federal Register**), export notices for hazardous waste (40 CFR 262.83(b)) and export notices for CRTs being shipped for recycling (40 CFR 261.39(a)(5)(ii)) are required to be submitted electronically to EPA using EPA's Waste Import Export Tracking System (WIETS) starting on December 31, 2016. Export annual reports for hazardous waste (40 CFR 262.83(g)) and export annual reports for CRTs being shipped for recycling (40 CFR 261.39(a)(5)(xi)) are required to be submitted by paper method prior to one year after a future Automated Export System (AES) filing compliance date to be announced in a future, separate **Federal Register** notice, and then submitted electronically into EPA's WIETS system thereafter. The following documents related to hazardous waste exports and imports are required to be submitted to EPA by paper method prior to a future electronic import-export reporting compliance date to be established in a future, second separate **Federal Register** notice, and then submitted electronically into EPA's WIETS system thereafter:

- Import notices for hazardous waste in cases where country of export does not control as hazardous waste export and EPA has not received notice from country of export (40 CFR 262.84(b));
- Export exception reports for hazardous waste (40 CFR 262.83(h), in lieu of exception reporting required under 40 CFR 262.42);
- Receiving facility notifications of the need to arrange alternate management or the return of an import shipment of hazardous waste (262.84(f)(6), 264.12(a)(4)(ii), 265.12(a)(4)(ii)).

As of the electronic import-export reporting compliance date, per the newly revised requirements in 40 CFR parts 262, 264 and 265, as amended in EPA's Hazardous Waste Export-Import Revisions Final Rule (found in the ''Rules and Regulations'' section of this **Federal Register**), the following additional confirmation documents must be submitted electronically to EPA regarding hazardous waste import and export shipments:

(a) Export confirmations of receipt using movement document (submittal by foreign recovery facility required per contract requirements, 40 CFR 262.83(d)(xv) and 262.83(f)(4));

(b) Export confirmations of completing recovery or disposal (submittal by foreign recovery facility required per contract requirements, 40 CFR 262.83(f)(5));

(c) Import confirmations of receipt using movement document (40 CFR 262.84(d)(xv), 264.12(a)(2), 264.71(d), 265.12(a)(2), 265.71(d));

(d) Import confirmations of completing recovery or disposal (40 CFR 262.84(g), 264.12(a)(4)(i), 265.12(a)(4)(i)).

To facilitate accessibility and transparency of documentation concerning import and export shipments of hazardous waste that are received and completely recovered or disposed of during the period prior to the electronic import-export reporting compliance date, EPA is proposing that exporters and receiving facilities of hazardous waste maintain a publicly accessible Web site (''Export/Import Web site'') to which the four confirmation documents listed previously in (a), (b), (c), and (d) would be posted. EPA believes that easier access to this information will allow EPA and the public to better monitor exporters' and importers' compliance with EPA's hazardous waste regulations and help verify that hazardous waste shipments are properly received and disposed.

EPA believes the internet is currently the most convenient and widely

accessible means for gathering information while the Agency develops electronic submittal capabilities for WIETS. After the electronic import-export reporting compliance date, when EPA's WIETS is ready to receive these export and import confirmations electronically, exporters and receiving facilities will no longer be required to post these confirmations on their respective company's Web site, as the regulations would then require electronic submittal of the export and import shipment confirmations to EPA using WIETS.

1. Why is EPA proposing to require that importers and exporters maintain a Web site to post hazardous waste export and import documents?

EPA's proposal requires exporters and receiving facilities of hazardous waste to maintain a Web site to which information can be posted regarding the confirmation of receipt and confirmation of completed recovery or disposal of individual hazardous waste export and import shipments. The Web site is an appropriate means for ensuring public access to the required information while the Agency develops the electronic submittal capabilities of WIETS. EPA intends for such postings to the exporter or receiving facility's Web site to be a temporary requirement to be superseded on the electronic import-export reporting compliance date when they will be required to electronically submit the confirmations to WIETS.

2. What are the confirmations of receipt and confirmations of recovery or disposal and how will internet posting of these documents help improve tracking and monitoring of individual hazardous waste shipments?

The confirmation of receipt is a copy of the signed and dated international movement document that must accompany a consented hazardous waste shipment from the starting site in the country of export to the destination site in the country of import. To confirm receipt of the shipment, U.S. exporters must ensure that copies of the signed movement document (*i.e.,* confirmation of receipt) be sent by the foreign destination facility to the exporter and to the countries of export (as of the electronic import-export reporting compliance date), import, and transit that respectively control the shipment as an export, import or transit of hazardous waste. Similarly, U.S. receiving facilities that receive imports of hazardous waste must send copies of the confirmation of receipt to the foreign exporter and to the countries of export, import (as of the electronic import-export reporting compliance date) and transit. The confirmation of receipt reduces the risk of a shipment being misdirected to a country or facility not approved to receive the shipments for disposal or recovery. The confirmation of receipt also highlights any incident where the shipment is interrupted or misdirected, as the exporter and competent authorities will not receive the confirmation from the approved destination facility within expected timeframes. Lastly, the confirmation of receipt provides documentation for both the exporter and the countries of import and export that the shipment in fact went to the approved recycling or disposal facility.

The confirmation of recovery or disposal documents the completion of final management (*i.e.,* treatment and disposal, recovery) of each hazardous waste export or importshipment. Once received at the approved facility, management (*i.e.,* treatment and disposal, recovery) of each shipment is required to be completed within one year of shipment delivery. For export shipments the U.S. exporter must ensure that the foreign destination facility send confirmation of completing such management back to the exporter and to the countries of export (as of the electronic import-export reporting compliance date), import, and transit that respectively control the shipment as an export or transit of hazardous waste. Similarly for import shipments, a U.S. recycling or disposal facility receiving an import of hazardous waste must send such confirmation back to the exporter and to the countries of export, import (as of the electronic import-export reporting compliance date) and transit. Requiring destination facilities to send such confirmation to the exporter and to the competent authorities of the countries of export and import of the shipment, helps minimize the risk of speculative accumulation or abandonment of the waste shipments, and decreases the potential for associated damage to human health and the environment.

As described previously, the confirmation of receipt and confirmation of recovery or disposal are important requirements that document the receipt and final disposition of individual hazardous waste export and import shipments. With regards to exports, the confirmations are the only records documenting that hazardous waste shipments are properly received and managed in the foreign country importing the waste. EPA believes that public access to these documents on the Web sites of exporters and receiving facilities of hazardous waste from foreign sources facilitates the tracking and monitoring compliance of hazardous waste shipments in accordance with EPA's hazardous waste regulations and helps verify that hazardous waste shipments are properly received and disposed.

3. What accommodations will EPA make to allow original submitters of information and affected facilities to protect potential confidential business information (CBI) contained in the documents posted to the Export/Import Web site?

As discussed in the previous section, EPA proposes to apply confidentiality determinations to the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs. Based on our analysis of the CBI criteria provided in Section I.E. of this proposed rule, we conclude that the information contained in the aforementioned documents related to the export, import, and transit of hazardous waste and export of excluded CRTs is essentially public information. Therefore, we propose that no CBI claims may be asserted with respect to any of the aforementioned documents, including hazardous waste export and import confirmations of receipt and confirmations of recovery or disposal.

4. What recordkeeping requirements apply to confirmations of receipt and confirmations of recovery or disposal with this proposed rule?

Each confirmation of receipt and confirmation of recovery or disposal posted to the company Web sites of hazardous waste exporters and receiving facilities of hazardous waste from foreign sources must be publicly available for a period of at least three years following the date on which the document was first required to be posted to the Web site. The proposed internet posting requirements do not affect the current recordkeeping requirements for retaining paper copies of the export confirmations of receipt, export confirmations of completing recovery or disposal, import confirmations of receipt, and import confirmations of completing recovery or disposal. These paper documents must be retained by exporters and receiving facilities for a period of at least three (3) years.

After the electronic import-export reporting compliance date when confirmations will be submitted electronically, the requirement to post these copies and to make them publicly available for three years does not apply.

Records of the confirmations must be kept as either paper copies or electronic submittals retained in the exporter's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for reviewing and production if requested by any EPA or authorized state inspector, as stated in the Hazardous Waste Export-Import Revisions rule published in this **Federal Register** and in § 262.83(i)(2) and § 262.84(h)(3).

III. Summary of This Proposed Rule

A. Changes to 40 CFR 260.2

EPA is proposing a confidentiality determination to exclude hazardous waste export, import, and transit documents and CRT export documents from confidentiality claims.

B. Changes to 40 CFR 262.83 and 262.84

EPA is proposing to modify the reporting and recordkeeping requirements for exporters of hazardous waste and receiving facilities such that, prior to the future electronic import/export reporting compliance date, regulated parties are required to maintain a single, publicly accessible Web site (''Export/Import Web site'') containing readable, read-only, publicly accessible, downloadable images of the following documents: Export confirmations of receipt; export confirmations of recovery or disposal; import confirmations of receipt; and import confirmations of recovery or disposal. The exporter's Web site must be titled ''Hazardous Waste Export/Import Regulations Compliance Documents.''

Each document posted to the Export/Import Web site must be publicly accessible on the Web site by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal received by the exporter or sent out by the receiving facility during the previous calendar year. Each confirmation must be publicly available for a period of at least three years following the date on which the document was first required to be posted to the Web site. This requirement to post these copies and to make them publicly available for three years does not apply, however, after the electronic import-export reporting compliance date. The documents must clearly identify the EPA ID number of the exporter or receiving facility, the consent number associated with the shipment, and the shipment number relative to the total number of allowable shipments for the consent number. These documents must be retained by exporters or receiving facilities for a period of at least three (3) years.

C. Changes to 40 CFR 264.74

EPA is proposing to modify the reporting and recordkeeping requirements for the owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source such that, prior to the future electronic import-export reporting compliance date, regulated parties will be required to maintain a single, publicly available Web site containing readable, read-only, publicly accessible, downloadable images of the following documents: Import confirmations of receipt and import confirmations of recovery or disposal. The receiving facility's Web site must be titled ''Hazardous Waste Export/Import Rule Compliance Documents.'' Each document posted to the Export/Import Web site must be publicly accessible on the Web site by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal sent out by the receiving facility during the previous calendar year. Each confirmation must be publicly available for a period of at least three years following the date on which the document was first required to be posted to the Web site. (This requirement to post these copies and to make them publicly available for three years does not apply, however, after the electronic import-export reporting compliance date.) These documents must be retained by the receiving facilities for a period of at least three (3) years.

D. Changes to 40 CFR Part 265.74

EPA is proposing to modify the reporting and recordkeeping requirements for the owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source such that, prior to the future electronic import-export reporting compliance date, regulated parties will be required to maintain a single, publicly available Web site containing readable, read-only, publicly accessible, downloadable images of the following documents: Import confirmations of receipt and import confirmations of recovery or disposal documents. The receiving facility's Web site must be titled ''Hazardous Waste Export/Import Rule Compliance Documents.'' Each document posted to the Export/Import Web site must be publicly accessible on the Web site by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal sent out by the receiving facility during the previous calendar year. Each confirmation must be publicly available for a period of at least three years following the date on which the document was first required to be posted to the Web site. This requirement to post these copies and to make them publicly available for three years does not apply, however, after the electronic import-export reporting compliance date. These documents must be retained by the receiving facilities for a period of at least three (3) years.

E. Changes to 40 CFR Part 267.71

EPA is proposing to modify the reporting and recordkeeping requirements for the owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source such that, prior to the future electronic import-export reporting compliance date, regulated parties will be required to maintain a single, publicly available Web site containing readable, read-only, publicly accessible, downloadable images of the import confirmations of receipt. The receiving facility's Web site must be titled ''Hazardous Waste Export/Import Rule Compliance Documents.'' Each document posted to the Export/Import Web site must be publicly accessible on the Web site by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal sent out by the receiving facility during the previous calendar year. Each confirmation must be publicly available for a period of at least three years following the date on which the document was first required to be posted to the Web site. This requirement to post these copies and to make them publicly available for three years does not apply, however, after the electronic import-export reporting compliance date. These documents must be retained by the receiving facilities for a period of at least three (3) years.

IV. Costs and Benefits of the Proposed Rule

A. Introduction

The Agency's economic assessment conducted in support of this proposed action evaluates costs, cost savings, benefits, and other impacts, such as environmental justice, children's health, unfunded mandates, regulatory takings, and small entity impacts. To conduct this analysis, we developed and

implemented a methodology for examining impacts, and followed appropriate guidelines and procedures for examining equity considerations, children's health, and other impacts.

B. Analytical Scope

This economic analysis assesses the costs and cost savings of the proposed rule. It estimates the unit costs for each provision of the rule and applies these values to the number of affected entities, and it employs a ''model entity'' approach to estimate the cost and cost savings associated with the proposed rule, applying average costs by entity type (*i.e.,* exporter, importer, transporter, or recognized trader) and foreign trade partner. The costs (and cost savings) of the proposed rule are estimated over a twenty-year time horizon and using a seven percent discount rate.

The analysis conducted for this proposal is a simple cost assessment. We do not attempt to estimate the social costs and benefits associated with this action. This is consistent with Executive Order 12866, which requires a full Regulatory Impact Analysis only for actions having an estimated impact on society of greater than $100 million per year.

C. Cost Impacts

Regulated parties will incur costs to familiarize itself with the requirements of the rule and comply with each of the provisions described in the summary of the proposed rule and changes. The most significant costs to industry under the proposed rule are associated with the posting of the required documents to the Export/Import Web site until the electronic submittal capabilities of WIETS are fully developed.

As a result of the rule, the annualized costs to regulated parties are estimated to be about $99,309 if the electronic submittal capabilities of WIETS are developed in 2018 and estimated to be about $333,993 if the electronic submittal capabilities of WIETS are developed in 2022, using a 7 percent discount rate.

D. Benefits

There are a number of qualitative benefits associated with this proposed rule.

During the interim period, the rule will:

- Achieve greater transparency and public accessibility of export and import documentation;
- Improve the public's ability to acquire information regarding the quantities of U.S. hazardous waste exports and imports;
- Help monitor proper compliance with EPA's hazardous waste regulations and verify that hazardous waste shipments are properly received and disposed.

Due to data availability, EPA could not quantify all the benefits, such as human health benefits from increased compliance with the rule.

V. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer their own hazardous waste programs in lieu of the federal program within the State. 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 requirements 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. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the federal program (see also 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

Because of the federal government's special role in matters of foreign policy, EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations. This approach of having Federal, rather than State, administering of the import/export functions promotes national coordination, uniformity and the expeditious transmission of information between the United States and foreign countries.

Although States do not receive authorization to administer the Federal government's export functions in the previous 40 CFR part 262 subpart E, import functions in the previous 40 CFR part 262 subpart F, import/export functions in the previous or revised 40 CFR part 262 subpart H, or the import/export relation functions in any other section of the RCRA hazardous waste regulations, State programs are still required to adopt the provisions in this rule to maintain their equivalency with the Federal program (see 40 CFR 271.10(e)).

This proposed rule contains amendments to the revised 40 CFR part 262 subpart H. The rule also contains related amendments to 40 CFR parts 260, 262, 264, 265, and 267, all of which are more stringent.

The States that have already adopted 40 CFR part 262 subparts E, F and H, 40 CFR parts 263, 264, 265, and any other import/export related regulations, and that will be adopting the revisions in the Hazardous Waste Export-Import Revisions Final Rule, published in the ''Rules and Regulations'' section of this **Federal Register**, must adopt the revisions to those provisions in this final rule. But only States that have previously adopted the optional CRT conditional exclusion in 40 CFR 261.39, or the optional exclusions for samples in 40 CFR 261.4(d) and (e) are required to adopt the revisions related to those exclusions in this final rule.

When a State adopts the import/export provisions in this rule (if final), they must not replace Federal or international references or terms with State references or terms.

The provisions of this rule, if final, will take effect in all States on the effective date of the rule, since these import and export requirements will be

administered by the Federal government as a foreign policy matter, and will not be administered by States.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This proposed rule is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review. The EPA prepared an economic analysis of the potential costs and benefits associated with this action. This analysis, titled ''Regulatory Impact Analysis: Internet Posting and Confidentiality Determinations for Hazardous Waste Export and Import Documents Proposed Rule,'' is available in the docket. Interested persons, including those persons currently importing and exporting hazardous waste, are encouraged to read and comment on the accuracy of the assumptions and the burden estimates presented in this document (*e.g.,* for Web site development, hiring or training of additional staff, including legal counsel or external consultants, to comply with the finalized requirements).

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 2557.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

This action proposes that exporters of hazardous waste and receiving facilities of hazardous waste post read-only, publicly accessible, downloadable images of required documents to a single publicly accessible Web site to be developed and maintained by each regulated party.

Respondents/affected entities: Recycling and disposal facilities who receive imports of hazardous waste and all persons who export or import (or arrange for the export or import) hazardous waste being shipped for either recycling or disposal, SLABs being shipped for reclamation, industrial ethyl alcohol being shipped for reclamation, and hazardous recyclable materials being shipped for precious metal recovery, and hazardous waste samples of more than 25 kilograms being shipped for waste characterization or treatability studies.

Respondent's obligation to respond: Required per proposed regulations 40 CFR 262.83, 262.84, 264.74, 265.74, and 267.71 under RCRA (42 U.S.C. 6901 et seq., 6905, 6912, 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974).

Estimated number of respondents: 476.

Frequency of response: Yearly.

Total estimated burden: 4452 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $0, includes $0 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 *OIRA_submission@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 December 28, 2016. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

EPA certifies 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 exporters of hazardous waste and receiving facilities of hazardous waste from foreign sources. The Agency has determined that approximately 22 percent of exporters and approximately 25 percent of facilities receiving hazardous waste from foreign sources, are small entities, generating an average revenue of approximately $41 million and $8 million annually. The cumulative average cost of this proposed action will not exceed one percent of annual revenues for any one entity. Details of this analysis are presented in Section 5.2 of ''Regulatory Impact Analysis: Internet Posting and Confidentiality Determinations for Hazardous Waste Export and Import Documents Proposed Rule,'' which is available in the docket.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Further, UMRA does not apply to the portions of this action concerning application of OECD import and export procedures because those portions are necessary for the national security or the ratification or implementation of international treaty obligations (*i.e.,* the 1986 OECD Decision-Recommendation and the Amended 2001 OECD Decision).

E. Executive Order 13132: Federalism

This action does not have federalism implications because the state and local governments do not administer the export and import requirements under RCRA. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No exporters, importers or transporters affected by this action are known to be owned by Tribal governments or located within or adjacent to Tribal lands. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The requirements in this action should prevent mismanagement

of hazardous wastes in foreign countries and better document proper management of imported hazardous wastes in the United States.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking 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 that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action is designed to increase the accessibility and transparency of documentation of individual hazardous waste import and export shipments.

K. Executive Order 13659: Streamlining the Export/Import Process for America's Businesses

Executive Order 13659, titled ''Streamlining the Export/Import Process for America's Businesses'' (79 FR 10657, February 25, 2014), establishes federal executive policy on improving the technologies, policies, and other controls governing the movement of goods across our national borders. This proposed action strengthens the accessibility and transparency of documentation by requiring public internet posting of confirmation of receipt and confirmation of recovery or disposal of individual export and import shipments of hazardous wastes prior to the future electronic import-export reporting compliance date EPA will establish in a separate **Federal Register** notice. Thus, this proposed action is consistent with the purpose of Executive Order 13659.

List of Subjects

40 CFR Part 260

Environmental protection, CRTs, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Transits.

40 CFR Part 262

Environmental protection, Hazardous waste, Exports, Imports, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Hazardous waste, Imports, Reporting and recordkeeping requirements.

40 CFR Part 265

Environmental protection, Hazardous waste, Imports, Reporting and recordkeeping requirements.

40 CFR Part 267

Environmental protection, Hazardous waste, Imports, Reporting and recordkeeping requirements.

Dated: October 28, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, chapter 1 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), 6921–27, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

■ 2. Amend § 260.2 by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 260.2 Availability of information; confidentiality of information.

* * * * *

(b) Except as provided under paragraphs (c) and (d) of this section, any person who submits information to EPA in accordance with parts 260 through 266 and 268 of this chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in § 2.203(b) of this chapter. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in part 2, Subpart B, of this chapter.

* * * * *

(d)(1) After [final rule effective date], no claim of business confidentiality may be asserted by any person with respect to information contained in cathode ray tube export documents prepared, used and submitted under §§ 261.39(a)(5) and 261.41(a) of this chapter, and with respect to information contained in hazardous waste export, import, and transit documents prepared, used and submitted under §§ 262.82(c), 262.83, 262.84, 264.12(a), 264.71(d), 265.12(a), 265.71(d), and 267.71(d), whether submitted to EPA electronically or in paper format.

(2) EPA will make any cathode ray tube export documents prepared, used and submitted under §§ 261.39(a)(5) and 261.41(a) of this chapter, and any hazardous waste export, import, and transit documents prepared, used and submitted under §§ 262.82(c), 262.83, 262.84, 264.12(a), 264.71(d), 265.12(a), 265.71(d), and 267.71(d) of this chapter available to the public under this section when these electronic or paper documents are considered by EPA to be releasable and final. These submitted electronic and paper documents related to hazardous waste exports, imports and transits and cathode ray tube exports are considered by EPA to be public documents and are considered to be final documents on March 1 of the calendar year after the related cathode ray tube exports or hazardous waste exports, imports, or transits were made.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 3. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C 6906, 6912, 6922–6925, 6937, and 6938.

■ 4. In § 262.83, as amended in a final rule published elsewhere in this issue of the **Federal Register** and effective December 31, 2016, add paragraph (i)(4) to read as follows:

§ 262.83 Exports of hazardous waste.

* * * * *

(i) * * *

(4) Prior to the electronic import-export reporting compliance date, the exporter must post copies of the export confirmations of receipt and confirmations of recovery or disposal that the exporter receives to the exporter's publicly accessible Web site (Export/Import Web site). The exporter's Web site must be titled ''Hazardous Waste Export/Import Rule Compliance Documents.'' The posted copies must be clearly readable, read-only, publicly accessible, and downloadable, and the file names of each copy must clearly identify the document type, EPA ID number of the facility, and consent number associated with the shipment. Each copy must be posted no later than by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal received by the exporter during the previous calendar year. Each confirmation must be maintained on the exporter's Web site for at least three (3)

years from the date it was initially required to be posted. This requirement to post these copies does not apply after the electronic import-export reporting compliance date.

■ 5. In § 262.84, as amended in a final rule published elsewhere in this issue of the **Federal Register** and effective December 31, 2016, add paragraph (h)(5) to read as follows:

§ 262.84 Imports of hazardous waste.

* * * * *

(h) * * *

(5) Prior to the electronic import-export reporting compliance date, the receiving facility must post copies of the import confirmations of receipt and confirmations of recovery or disposal that the receiving facility sends to the foreign exporter to the receiving facility's publicly accessible Web site (Export/Import Web site). The receiving facility's Web site must be titled ''Hazardous Waste Export/Import Rule Compliance Documents.'' The posted copies must be clearly readable, read-only, publicly accessible, and downloadable, and the file names of each copy must clearly identify the document type, EPA ID number of the facility, and consent number associated with the shipment. Each copy must be posted no later than by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal sent out by the receiving facility during the previous calendar year. Each confirmation must be maintained on the receiving facility's Web site for at least three (3) years from the date it was initially required to be posted. This requirement to post these copies does not apply after the electronic import-export reporting compliance date.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 6. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

■ 7. Amend 264.74 by adding paragraph (d) to read as follows:

§ 264.74 Availability, retention, and disposition of records.

* * * * *

(d) Prior to the electronic import-export reporting compliance date, the owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must post copies of the import confirmations of receipt and confirmations of recovery or disposal that the facility sends to the foreign exporter to the facility's publicly accessible Web site (Export/Import Web site). The receiving facility's Web site must be titled ''Hazardous Waste Export/Import Rule Compliance Documents.'' The posted copies must be clearly readable, read-only, publicly accessible, and downloadable, and the file names of each copy must clearly identify the document type, EPA ID number of the facility, and consent number associated with the shipment. Each copy must be posted no later than by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal sent out by the receiving facility during the previous calendar year. Each confirmation must be maintained on the receiving facility's Web site for at least three (3) years from the date it was initially required to be posted. This requirement to post these copies does not apply after the electronic import-export reporting compliance date.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 8. 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.

■ 9. Amend 265.74 by adding paragraph (d) to read as follows:

§ 265.74 Availability, retention, and disposition of records.

* * * * *

(d) Prior to the electronic import-export reporting compliance date, the owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must post copies of the import confirmations of receipt and confirmations of recovery or disposal that the facility sends to the foreign exporter to the facility's publicly accessible Web site (Export/Import Web site). The receiving facility's Web site must be titled ''Hazardous Waste Export/Import Rule Compliance Documents.'' The posted copies must be clearly readable, read-only, publicly accessible, and downloadable, and the file names of each copy must clearly identify the document type, EPA ID number of the facility, and consent number associated with the shipment. Each copy must be posted no later than by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal sent out by the receiving facility during the previous calendar year. Each confirmation must be maintained on the receiving facility's Web site for at least three (3) years from the date it was initially required to be posted. This requirement to post these copies does not apply after the electronic import-export reporting compliance date.

PART 267—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

■ 9. The authority citation for part 267 continues to read as follows:

Authority: 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

■ 10. Amend § 267.71 by adding paragraph (e) as follows:

§ 267.71 Use of the manifest system.

* * * * *

(e) Prior to the electronic import-export reporting compliance date, the facility that receives hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must post copies of the import confirmations of receipt and confirmations of recovery or disposal that the facility sends to the foreign exporter to the facility's publicly accessible Web site (Export/Import Web site). The receiving facility's Web site must be titled ''Hazardous Waste Export/Import Rule Compliance Documents.'' The posted copies must be clearly readable, read-only, publicly accessible, and downloadable, and the file names of each copy must clearly identify the document type, EPA ID number of the facility, and consent number associated with the shipment. Each copy must be posted no later than by the first of March of each year and include all of the confirmations of receipt and confirmations of recovery or disposal sent out by the receiving facility during the previous calendar year. Each confirmation must be maintained on the receiving facility's Web site for at least three (3) years from the date it was initially required to be posted. This requirement to post these copies does not apply after the electronic import-export reporting compliance date.

[FR Doc. 2016–27431 Filed 11–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2015–0387; FRL–9945–53]

RIN 2070–AK09

Alkylpyrrolidones; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Toxic Substance Control Act (TSCA), EPA is proposing a significant new use rule (SNUR) for two alkylpyrrolidones: *N*-ethylpyrrolidone (NEP) and *N*-isopropylpyrrolidone (NiPP). The proposed significant new uses are any use of NiPP and any use of NEP except for the ongoing uses as a reactant, in silicone seal remover, coatings, consumer and commercial paint primer, and adhesives. Persons subject to the SNUR would be required to notify EPA at least 90 days before commencing any manufacturing or processing of the chemical substance for a significant new use. The required notification initiates EPA's evaluation of the conditions of use within the applicable review period. Manufacture and processing for the significant new use is unable to commence until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination.

DATES: Comments must be received on or before January 27, 2017.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2015–0387, 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:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 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 technical information contact:* Tyler Lloyd, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–4016; email address: *lloyd.tyler@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.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or distribute in commerce chemical substances and mixtures. 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:

- Ship Building and Repairing (NAICS code 336611).
- Aircraft Manufacturing (NAICS code 336411).
- Museums (NAICS code 712110).
- Independent Artists, Writers, and Performers (NAICS code 711510).
- Reupholster and Furniture Repair (NAICS code 811420).
- Automotive Body Paint and Interior Repair Maintenance (NAICS code 811121).
- Flooring Contractors (NAICS code 238330).
- Painting and Wall Covering Contractors (NAICS code 238320).
- Adhesive Tape Manufacturing (NAICS code 339113).
- Adhesive Manufacturing (NAICS code 325520).
- Denture Adhesive Manufacturing (NAICS code 325620).
- Basic Chemical Manufacturing (NAICS code 325411).
- Pharmaceutical and Medicine Manufacturing (NAICS code 32541).
- Printing Ink Manufacturing (NAICS code 325910).
- Textile Leather Manufacturing (NAICS code 316998).
- Textile Manufacturing (NAICS code 325613).

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after December 28, 2016 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

If you have any questions regarding the applicability of this action to a particular entity, consult the technical information contact listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Is the Agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2) (see Unit IV.). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture (including import) or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)(i)). TSCA furthermore prohibits such manufacturing or processing from commencing until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). As described in Unit V., the general SNUR provisions are found at 40 CFR part 721, subpart A.

C. What action is the agency taking?

EPA is proposing a SNUR for two alkylpyrrolidones: N-ethylpyrrolidone (NEP) and N-isopropylpyrrolidone (NiPP). The proposed significant new uses are any use of NiPP and any use of NEP except for the ongoing uses as a reactant, in silicone seal remover, coatings, consumer and commercial paint primer, and adhesives. The

proposed significant new uses EPA has identified in this unit are uses that EPA believes are not ongoing at the time of this proposed rule. EPA is requesting public comment on this proposal, and specifically on the Agency's understanding of ongoing uses for the chemicals identified. EPA would welcome specific documentation of any ongoing uses.

This proposed SNUR would require persons that intend to manufacture (including import) or process any of these chemicals for a significant new use, consistent with the requirements at 40 CFR 721.25, to notify EPA at least 90 days before commencing such manufacture or processing. This proposed SNUR would furthermore preclude the commencement of such manufacturing or processing until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination.

D. Why is the agency taking this action?

This proposed SNUR is necessary to ensure that EPA receives timely advance notice of any future manufacturing or processing of NEP and NiPP for new uses that may produce changes in human and environmental exposures, and to ensure that an appropriate determination (relevant to the risks of such manufacturing or processing) has been issued prior to the commencement of such manufacturing or processing. Today's action is furthermore necessary to ensure that, in the event that EPA determines: (1) That the significant new use presents an unreasonable risk under the conditions of use (without consideration of costs or other nonrisk factors, and including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by EPA); (2) that the information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the significant new use; (3) that in the absence of sufficient information, the manufacture, processing, distribution in commerce, use, or disposal of the substance, or any combination of such activities, may present an unreasonable risk (without consideration of costs or other nonrisk factors, and including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by EPA), or (4) that there is sufficient potential for environmental release or human exposure (as defined in TSCA section 5(a)(3)(B)(ii)(II)), then manufacturing or processing for the significant new use cannot proceed until EPA has responded to the circumstances by taking the required actions under sections 5(e) or 5(f) of TSCA.

The two chemical substances subject to this proposed SNUR are structurally similar to and have similar physical-chemical properties to N-methylpyrrolidone (NMP), which EPA identified for risk evaluation as part of its Work Plan for Chemical Assessment under TSCA. Because of structural and physical-chemical similarity to NMP (Ref. 1, 2), these chemicals are expected to exhibit toxicity similar to NMP. The rationale and objectives for this proposed SNUR are explained in Unit III.

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers and processors of the chemical substances included in this proposed rule. This analysis (Ref. 3), which is available in the docket, is discussed in Unit IX., and is briefly summarized here.

In the event that a SNUN is submitted, costs are estimated to be less than $8,900 per SNUN submission for large business submitters and $6,500 for small business submitters. These estimates include the cost to prepare and submit the SNUN and the payment of a user fee. The proposed SNUR would require first-time submitters of any TSCA section 5 notice to register their company and key users with the CDX reporting tool, deliver a CDX electronic signature to EPA, and establish and use a Pay.gov E-payment account before they may submit a SNUN, for a cost of approximately $200 per firm. However, these activities are only required of first time submitters of section 5 notices. In addition, for persons exporting a substance that is the subject of a SNUR, a one-time notice to EPA must be provided for the first export or intended export to a particular country, which is estimated to be approximately $80 per notification.

II. Chemical Substances Subject to This Proposed Rule

A. What chemicals are included in the proposed SNUR?

This proposed SNUR would apply to two alkylpyrrolidones: NiPP (Chemical Abstract Services Registry Number (CASRN) 3772–26–7) for any use, and to NEP (CASRN 2687–91–4) for any use except for the ongoing uses as a reactant, in silicone seal remover, coatings, consumer and commercial paint primer, and adhesives.

B. What are the production volumes and uses of NEP and NiPP?

In order to identify production volumes and uses of NEP and NiPP, EPA reviewed published literature including IHS' Chemical Economics Handbook, National Institute of Health's (NIH) Household Product Database, EPA's Chemical/Product Categorical Data (CPcat) database, the Consumer Product Information Database, the most recent data available from EPA's Chemical Data Reporting (CDR) program, general *Google.com* searches, Safety Data Sheets (SDSs), European Chemical Agency (ECHA) reports and risk assessments, the Danish Ministry of the Environment Surveys of Chemicals in Consumer Products, and other information from manufacturing company Web sites (Ref. 3). NEP has a wide variety of potential applications as a chemical intermediate in cosmetics, paints and printing inks, paint strippers, pharmaceuticals, adhesives and cleaners for polymeric residue (Ref. 4), in adhesives and reprographic agents (Ref. 5), and as a replacement for NMP in coating and cleaning applications (Ref. 6). Many of these potential uses have not been identified by EPA to occur domestically. Four companies, including domestic manufacturers and importers, reported production of NEP between 1,000,000 to 10,000,000 million pounds to the 2012 CDR database (Ref. 7). The uses reported to CDR for NEP include industrial solvent and reactant uses in pharmaceuticals, paints and coatings, adhesives, textiles, and print ink manufacturing. EPA was able to identify several U.S. products containing NEP including silicone seal remover, coatings, consumer and commercial paint primer, and adhesives. Based on this available product data, EPA believes that the ongoing uses of NEP can be described as ''use as a reactant, in silicone seal remover, coatings, consumer and commercial paint primer, and adhesives.''

There are no known ongoing uses of NiPP as of November 17, 2016, the date of public release/web posting of this proposal.

C. What are the potential health effects of NEP and NiPP?

NEP is an organic solvent used as a substitute for NMP because of its similar solvent properties and very similar chemical structure (Ref. 1). NiPP is also a structurally similar analog with physical-chemical properties similar to NMP (Ref. 2). These two chemical

substances, like NMP, are pyrrolidones with alkyl groups, but with two or three carbons in the carbon chain on the nitrogen, whereas NMP has a methyl group (one carbon) on the nitrogen. Because of their similar structure and physical-chemical properties, NEP has been shown (Ref. 1) to, and NiPP is expected to, exhibit toxicity similar to NMP.

EPA has identified developmental effects as a key endpoint of concern from NMP exposure. Specifically, EPA has identified a number of biologically relevant, consistent, and sensitive developmental effects due to exposure to NMP through the oral and dermal routes, including decreased fetal and pup body weight, delayed ossification, skeletal malformations, and increased fetal and pup mortality (Ref. 8, 9, 10).

Study data are available on NEP and the developmental effects and malformations observed in the animal studies of NEP are similar to those observed in NMP studies (Ref. 1). For example, NEP exposure through oral and dermal routes is associated with adverse effects on fetal body weight, post-implantation loss (specifically late resorptions following oral exposures), and malformations. NEP exposure is also associated with skeletal malformations by oral route and cardiovascular malformation by oral and dermal routes in the animal studies (Ref. 1).

D. What are the potential routes and sources of exposure to NEP and NiPP?

NMP is well absorbed following dermal exposures, such as during use of coating, paint stripping or cleaning products (Ref. 11, 12). Since NEP and NiPP are analogs of NMP, these chemical substances are expected to have similar routes of exposure. Dermal exposure and absorption, which includes dermal absorption from the vapor phase, typically contributes significantly to human exposure. Prolonged exposures to neat (*i.e.,* pure) NMP increase the permeability of the skin. NMP is also absorbed via inhalation but the low vapor pressure and mild volatility can limit the amount of NMP available for inhalation.

Given the similarity of their physical-chemical properties to those of NMP, NEP, and NiPP can be used in ways similar to NMP resulting in potential dermal and inhalation exposures.

III. Rationale and Objectives

A. Rationale

EPA is concerned about the potential for adverse health effects of NEP and NiPP based on data on the adverse health effects of NEP and because these chemicals are analogs of NMP that have similar physical-chemical properties and are therefore expected to or have been shown to have similar toxicological properties.

As discussed in Unit II, based on an extensive review of available information, EPA has determined that, at the time of publication of this proposed rule NiPP is not used for any use, and that NEP has ongoing uses as a reactant, in silicone seal remover, coatings, consumer and commercial paint primer, and adhesives (Ref. 3). EPA has concluded that action on these chemical substances is warranted and therefore any manufacturing or processing of NiPP for any use, and manufacture or processing of NEP for any use except for the ongoing uses as a reactant, in silicone seal remover, coatings, consumer and commercial paint primer, and adhesives, would be a significant new use.

Consistent with EPA's past practice for issuing SNURs under TSCA section 5(a)(2), EPA's decision to propose a SNUR for a particular chemical use need not be based on an extensive evaluation of the hazard, exposure, or potential risk associated with that use. If a person decides to begin manufacturing or processing any of these chemicals for the use, the notice to EPA allows the Agency to evaluate the use according to the specific parameters and circumstances surrounding the conditions of use.

B. Objectives

Based on the considerations in Unit III.A., EPA wants to achieve the following objectives with regard to the significant new use(s) of NEP and NiPP that are designated in this proposed rule:

1. EPA would receive notice of any person's intent to manufacture or process the chemical substances for the described significant new use before that activity begins.

2. EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing the chemical substances for the described significant new use.

3. EPA would be able to either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.

IV. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors including:

1. The projected volume of manufacturing and processing of a chemical substance.

2. The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.

3. The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.

4. The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

To determine what would constitute a significant new use of NEP or NiPP, as discussed in this unit, EPA considered relevant information about the toxicity or expected toxicity of these substances, likely human exposures and environmental releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. EPA has preliminarily determined as significant new uses: Any use of NiPP and any use of NEP except for the ongoing uses as a reactant, in silicone seal remover, coatings, consumer and commercial paint primer, and adhesives. Because NiPP is not used, and NEP is not currently used except as a reactant, in silicone seal remover, coatings, consumer and commercial paint primer, and adhesives, EPA believes any new use could increase the magnitude and duration of human exposure to these chemical substances. Exposure to NEP or NiPP may lead to adverse developmental health effects.

V. Applicability of General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule.

Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular,

these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's finding.

Persons who export or intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, codified at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

VI. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

EPA designates November 17, 2016 (the date of public release/web posting of this proposal) as the cutoff date for determining whether the new use is ongoing. This designation varies slightly from EPA's past practice of designating the date of **Federal Register** publication as the date for making this determination (Ref. 13). The objective of EPA's approach has been to ensure that a person could not defeat a SNUR by initiating a significant new use before the effective date of the final rule. In developing this proposal, EPA has recognized that, given EPA's practice of now posting proposed rules on its Web site a week or more in advance of **Federal Register** publication, this objective could be thwarted even before that publication. Thus, EPA has slightly modified its approach in this rulemaking and plans to follow this modified approach in future significant new use rulemakings. See the **Federal Register** of August 24, 2016, (81 FR 57846) (FRL–9951–06), (see page 57848).

Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified as of November 17, 2016 would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until all TSCA prerequisites for the commencement of manufacture or processing have been satisfied. Consult the **Federal Register** document of April 24, 1990 (55 FR 17376) for a more detailed discussion of the cutoff date for ongoing uses.

VII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not usually require developing new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: Development of information is required where the chemical substance subject to the SNUR is also subject to a rule, order, or consent agreement under TSCA section 4 (see TSCA section 5(b)(1)).

In the absence of a section 4 test rule covering the chemical substance, persons are required to submit only information in their possession or control and to describe any other information known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 721.25, and 40 CFR 720.50). However, as a general matter, EPA recommends that SNUN submitters include information that would permit a reasoned evaluation of risks posed by the chemical substance during its manufacture, processing, use, distribution in commerce, or disposal. EPA encourages persons to consult with the Agency before submitting a SNUN. As part of this optional pre-notice consultation, EPA would discuss specific information it believes may be useful in evaluating a significant new use.

Submitting a SNUN that does not itself include information sufficient to permit a reasoned evaluation may increase the likelihood that EPA will either respond with a determination that the information available to the Agency is insufficient to permit a reasoned evaluation of the health and environmental effects of the significant new use or, alternatively, that in the absence of sufficient information, the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance may present an unreasonable risk of injury.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs and define the terms of any potentially necessary controls if the submitter provides detailed information on human exposure and environmental releases that may result from the significant new uses of the chemical substance.

VIII. SNUN Submissions

EPA recommends that submitters consult with the Agency prior to submitting a SNUN to discuss what information may be useful in evaluating a significant new use. Discussions with the Agency prior to submission can afford ample time to conduct any tests that might be helpful in evaluating risks posed by the substance. According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 721.25 and 40 CFR 720.40. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

IX. Economic Analysis

A. SNUNs

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers and processors of the chemical substance included in this proposed rule (Ref. 3). In the event that a SNUN is submitted, costs are estimated at approximately $8,900 per SNUN submission for large business submitters and $6,500 for small business submitters. These estimates include the cost to prepare and submit the SNUN, and the payment of a user fee. Businesses that submit a SNUN would be subject to either a $2,500 user fee required by 40 CFR 700.45(b)(2)(iii), or, if they are a small business with annual sales of less than $40 million when combined with those of the parent company (if any), a reduced user fee of $100 (40 CFR 700.45(b)(1)). EPA's complete economic analysis is available in the public docket for this proposed rule (Ref. 3).

B. Export Notification

Under section 12(b) of TSCA and the implementing regulations at 40 CFR part 707, subpart D, exporters must notify EPA if they export or intend to export

a chemical substance or mixture for which, among other things, a rule has been proposed or promulgated under TSCA section 5. For persons exporting a substance that is the subject of a SNUR, a one-time notice to EPA must be provided for the first export or intended export to a particular country. The total costs of export notification will vary by chemical, depending on the number of required notifications (*i.e.,* the number of countries to which the chemical is exported). While EPA is unable to make any estimate of the likely number of export notifications for the chemical covered in this proposed SNUR, as stated in the accompanying economic analysis of this proposed SNUR, the estimated cost of the export notification requirement on a per unit basis is $83.

X. Alternatives

Before proposing this SNUR, EPA considered the following alternative regulatory action: Promulgate a TSCA Section 8(a) Reporting Rule.

Under a TSCA section 8(a) rule, EPA could, among other things, generally require persons to report information to the Agency when they intend to manufacture or process a listed chemical for a specific use or any use. However, for NEP and NiPP, the use of TSCA section 8(a) rather than SNUR authority would have several limitations. First, if EPA were to require reporting under TSCA section 8(a) instead of TSCA section 5(a), that action would not ensure that EPA receives timely advance notice of any future manufacturing or processing of NEP and NiPP for new uses that may produce changes in human and environmental exposures. Nor would it ensure that an appropriate determination (relevant to the risks of such manufacturing or processing) has been issued prior to the commencement of such manufacturing or processing. Furthermore, a TSCA section 8(a) rule would not ensure that, in the event that EPA determines: (1) That the significant new use presents an unreasonable risk under the conditions of use (without consideration of costs or other nonrisk factors, and including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by EPA); (2) that the information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the significant new use; (3) that in the absence of sufficient information, the manufacture, processing, distribution in commerce, use, or disposal of the substance, or any combination of such activities, may present an unreasonable risk (without consideration of costs or other nonrisk factors, and including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by EPA), or (4) that there is sufficient potential for environmental release or human exposure (as defined in TSCA section 5(a)(3)(B)(ii)(II)), then manufacturing or processing for the significant new use cannot proceed until EPA has responded to the circumstances by taking the required actions under sections 5(e) or 5(f) of TSCA.

In addition, EPA may not receive important information from small businesses, because such firms generally are exempt from TSCA section 8(a) reporting requirements (see TSCA sections 8(a)(1)(A) and 8(a)(1)(B)). In view of the level of health concerns about NEP and NiPP if used for a proposed significant new use, EPA believes that a TSCA section 8(a) rule for this substance would not meet EPA's regulatory objectives.

XI. Scientific Standards, Evidence, and Available Information

EPA has used scientific information, technical procedures, measures, methods, protocols, methodologies, and models consistent with the best available science, as applicable. These information sources supply information relevant to whether a particular use would be a significant new use, based on relevant factors including those listed under TSCA section 5(a)(2). As noted in Unit III, EPA's decision to propose a SNUR for a particular chemical use need not be based on an extensive evaluation of the hazard, exposure, or potential risk associated with that use.

The clarity and completeness of the data, assumptions, methods, quality assurance, and analyses employed in EPA's decision are documented, as applicable and to the extent necessary for purposes of this proposed significant new use rule, in Unit II and in the references noted above. EPA recognizes, based on the available information, that there is variability and uncertainty in whether any particular significant new use would actually present an unreasonable risk. For precisely this reason, it is appropriate to secure a future notice and review process for these uses, at such time as they are known more definitely. The extent to which the various information, procedures, measures, methods, protocols, methodologies or models used in EPA's decision have been subject to independent verification or peer review is adequate to justify their use, collectively, in the record for a significant new use rule

XII. Request for Comment

A. Do you have comments or information about ongoing uses?

EPA welcomes comment on all aspects of this proposed rule. EPA based its understanding of the use profile of these chemicals on the published literature, the 2012 Chemical Data Reporting submissions, market research, and review of Safety Data Sheets. To confirm EPA's understanding, the Agency is requesting public comment on all aspects of this proposed rule, including EPA's understanding that NiPP is not currently used, and NEP is not used except as a reactant, in silicone seal remover, coatings, consumer and commercial paint primer, and adhesives. In providing comments on an ongoing use of NEP and NiPP, it would be helpful if you provide sufficient information for EPA to substantiate any assertions of use. EPA does not have specific information on the concentration by weight of NEP currently being used in silicone seal remover, coatings, consumer and commercial paint primer, and adhesives. If this information were available, EPA could better characterize the use. As such, EPA requests comment on the concentration by weight of NEP currently being used in silicone seal remover, coatings, consumer and commercial paint primer, and adhesives.

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

1. *Submitting CBI.* It is EPA's policy to include all comments received in the public docket without change or further notice to the commenter and to make the comments available on-line at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. 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 that you mail to EPA 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, subpart B.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www2.epa.gov/dockets/commenting-epa-dockets#tips.*

XIII. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, 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. ECHA, Committee for Risk Assessment. Annex 1 Background document to the Opinion proposing harmonised classification and labelling at Community level of *N*-ethyl-2-pyrrolidone (NEP). ECHA/RAC/CLH–O–0000002192–83–01/A1. 2011.
2. Vandeputte, Bart; Moonen, Kristof; and Roose, Peter. Use of improved *N*-alkyl pyrrolidone solvents. Google Patents. Publication Number: US20150057375 A1. Filing Date: January 17, 2013. Publication Date: February 26, 2015. Available at *http://www.google.com/patents/WO2013107822A1?cl=en.*
3. EPA. Economic Analysis of the Proposed Significant New Use Rule for Alkylpyrrolidones. March 31, 2016.
4. BASF. N-Ethylpyrrolidone-2 (NEP) Technical Data Sheet. July 2009. Available at *http://worldaccount.basf.com/wa/NAFTA~es_MX/Catalog/ChemicalsNAFTA/doc4/BASF/PRD/30036616/.pdf?urn=urn:documentum:eCommerce_sol_EU:09007bb280065a74.pdf.*
5. EPA. Chemical and Product Categories (CPCat) Database. Accessed September 2015. Available at *http://actor.epa.gov/cpcat/faces/home.xhtml.*
6. BASF Corp Germany. N-Ethylpyrrolidone. Accessed August 2016. Available at *https://www.standort-ludwigshafen.basf.de/group/corporate/site-ludwigshafen/en/brand/N_ETHYLPYRROLIDONE.*
7. EPA. Downloadable of the Non-Confidential Chemical Reporting Data (CDR) Database. Downloaded July 2014.
8. Sitarek, K., J. Stekiewicz, and W. Wasowicz. 2012. Evaluation of Reproductive Disorders in Female Rats Exposed to N-Methyl-2-Pyrrolidone. Birth Defects Research (Part B), 95, 195–201.
9. Saillenfait, A. M., F. Gallissot, I. Langonne, and J. P. Sabate. 2002. Developmental Toxicity of NMethyl-2-Pyrrolidone Administered Orally to Rats. Food Chemistry and Toxicology, 40(11), 1705–1712.
10. Hass, U., S. P. Lund, and J. Elsner. 1994. Effects of Prenatal Exposure to N-Methylpyrrolidone on Postnatal Development and Behavior in Rats. Neurotoxicology and Teratology, 16(3), 241–249.
11. Bader, M., R. Wrbitzky, M. Blaszkewicz, M. Schaper, and C. van Thriel. 2008. Human Volunteer Study on the Inhalational and Dermal Absorption of N-Methyl-2-Pyrrolidone (NMP) from the Vapour Phase. Archives of Toxicology, 82(1), 13–20.
12. Keener, S., R. Wrbitzky, and M. Bader. 2007. Human Volunteer Study on the Influence of Exposure Dilution of Dermally Applied N-Methyl-2-Pyrrolidone (NMP) on the Urinary Elimination of NMP Metabolites. International Archives of Occupational and Environmental Health, 80(4), 327–334.
13. EPA. Significant New Uses of Certain Chemical Substances; Final Rule. RIVM, 2013). **Federal Register** (April 24, 1990, 55 FR 17376) (FRL–3658–5).

XIV. Statutory and Executive Order Reviews

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

This proposed SNUR is not a ''significant regulatory action'' and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* Burden is defined in 5 CFR 1320.3(b). The information collection activities associated with existing chemical SNURs are already approved under OMB control number 2070–0038 (EPA ICR No. 1188); and the information collection activities associated with export notifications are already approved under OMB control number 2070–0030 (EPA ICR No. 0795). If an entity were to submit a SNUN to the Agency, the annual burden is estimated to be less than 100 hours per response, and the estimated burden for export notifications is less than 1.5 hours per notification. In both cases, burden is estimated to be reduced for submitters who have already registered to use the electronic submission system.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR, part 9, and included on the related collection instrument, or form, as applicable.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* I certify that promulgation of this SNUR would not have a significant economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows.

A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. Since this SNUR will require a person who intends to engage in such activity in the future to first notify EPA by submitting a SNUN, no economic impact will occur unless someone files a SNUN to pursue a significant new use in the future or forgoes profits by avoiding or delaying the significant new use. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemical substances, the Agency receives only a handful of notices per year. During the six year period from 2005–2010, only three submitters self-identified as small in their SNUN submission (Ref. 3). EPA believes the cost of submitting a SNUN is relatively small compared to the cost of developing and marketing a chemical new to a firm or marketing a new use of the chemical and that the requirement to submit a SNUN generally does not have a significant economic impact.

Therefore, EPA believes that the potential economic impact of complying with this proposed SNUR is not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published as a final rule on August 8, 1997 (62 FR 42690) (FRL–5735–4), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to

believe that any State, local, or Tribal government would be impacted by this rulemaking. As such, the requirements of sections 202, 203, 204, or 205 of UMRA, 2 U.S.C. 1531–1538, do not apply to this action.

E. Executive Order 13132: Federalism

This action will not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not have substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have any effect on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this action does not address environmental health or safety risks, and EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order.

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 any effect on energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve any technical standards, and is therefore not subject to considerations under section 12(d) of NTTAA, 15 U.S.C.272 note.

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

This action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action does not affect the level of protection provided to human health or the environment.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 14, 2016.

Jeffery T. Morris,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add § 721.10925 to subpart E to read as follows:

§ 721.10925 Alkylpyrrolidones.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances *N*-ethylpyrrolidone (CASRN 2687–91–4) and *N*-isopropylpyrrolidone (CASRN 3772–26–7) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) For *N*-ethylpyrrolidone (CASRN 2687–91–4), any use except for use as reactant and in silicone seal remover, coatings, consumer and commercial paint primer, and adhesives.

(ii) For *N*-isopropylpyrrolidone (CASRN 3772–26–7), any use.

(b) [Reserved]

[FR Doc. 2016–28565 Filed 11–25–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[NHTSA–2015–0096]

RIN 2127–AL33

Vehicle Defect Reporting Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: NHTSA is proposing to require placing a label on the passenger side sun visor of light-duty vehicles that provides information about how to submit a safety-related motor vehicle defect complaint to NHTSA. This rulemaking also proposes updating the required information in 49 CFR 575.6 for defect reporting information in owner's manuals through the addition of the text developed for this proposal. This proposal responds to the mandate in the Moving Ahead for Progress in the 21st Century Act of 2012 (MAP–21) that manufacturers be required to affix, in the glove compartment or in another readily accessible location on the vehicle, a sticker, decal, or other device that provides, in simple and understandable language, information about how to submit a safety-related motor vehicle defect complaint to NHTSA; and prominently print the information described above within the owner's manual.

DATES: Comments must be received on or before January 27, 2017. See the **SUPPLEMENTARY INFORMATION** section on ''Public Participation'' for more information about written comments.

ADDRESSES: You may submit your comments, identified by Docket ID No. NHTSA–2015–0096, by any of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *Fax:* NHTSA: (202) 493–2251.
- *Mail:*
  - Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Rm. W12–140, Washington, DC 20590, Attention Docket ID No. NHTSA–2015–0096.
- *Hand Delivery:*
  - Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Rm. W12–140, Washington, DC 20590, Attention

Docket ID No. NHTSA–2015–0096 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except federal holidays.

Instructions: Regardless of how you submit comments, you should mention Docket ID No. NHTSA–2015–0096 or the Regulatory Identification Number (RIN) for this rulemaking. You may call the Docket Management Facility at 202–366–9826. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted, except as noted below, without change to *http://www.regulations.gov,* including any personal information provided.

Docket: All documents in the dockets are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Rm. W12–140, Washington, DC 20590. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

FOR FURTHER INFORMATION CONTACT: For technical issues: Hisham Mohamed, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–0307.

For legal issues: Ryan Hagen, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–2992.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

This rulemaking proposes to require placing a sticker, decal, or other device that provides, in simple and understandable language, information about how to submit a safety-related motor vehicle defect complaint to NHTSA on the passenger side sun visor. The agency believes that the sun visor is not only the most accessible of the locations considered, but also it is the most prominent location, which would allow for the most informational benefit to consumers. This rulemaking also proposes updating the defect reporting information manufactures are required to include in owner's manuals. This rulemaking proposes to move the requirement to a different section of the CFR.

The benefits of the proposed rule, although not quantifiable, are anticipated to include: (1) improved messaging and information to consumers on how to submit a safety-related motor vehicle defect complaint to NHTSA; (2) increased consumer involvement in the motor vehicle defect reporting process; (3) reduced time between consumer awareness of a possible motor vehicle defect and industry response; (4) cost savings to the consumer through improved and timely defect-related response by the manufacturer; (5) reduction in the risk and incidence of injuries and fatalities attendant with the possible safety-related motor vehicle defect; (6) decreased motor vehicle property damage; (7) improvement in agency data-collection on potential safety problems in motor vehicles and motor vehicle equipment, and resultant decisions on whether to open an investigation; and, (8) cost savings to the industry by providing motor vehicle manufacturers with information that they may not yet have identified and gathered. While NHTSA believes that the benefits of this proposed rule would outweigh the costs, NHTSA notes that this rulemaking is required by statute and the agency is not required to determine that it is cost-beneficial.

II. Statutory Mandate

The Moving Ahead for Progress in the 21st Century Act of 2012 (MAP–21) [1] requires that NHTSA develop a rule to provide consumers with information, in simple and understandable language, on how to submit a safety-related motor vehicle defect complaint to NHTSA. This information is to be placed on a sticker, decal or other device affixed to each new vehicle and printed within the owner's manual.

Section 31306 of MAP–21 amended section 32302(d) of Chapter 323, Title 49, of the United States Code (U.S.C.). Chapter 323 codifies consumer information requirements initially established by the Motor Vehicle Information and Cost Savings Act of 1972 (Pub. L. 92–513). Section 31306 of MAP–21 requires that NHTSA develop a rulemaking to require passenger motor vehicle manufacturers (1) to affix, in the glove compartment or in another readily accessible location on the vehicle, a sticker, decal, or other device that provides, in simple and understandable language, information about how to submit a safety-related motor vehicle defect complaint to NHTSA; and (2) to prominently print the information described above by placing the text in Bold letters within the owner's manual. Section 31306 specifies that the above information must not be placed on the label required under section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232).

The agency has interpreted Section 31306 as directing DOT (by delegation, NHTSA) to determine a readily accessible location in a passenger motor vehicle for the required information to be affixed (considering the glove compartment as one option), and to ensure that the information is conveyed in simple and understandable language via a sticker, decal, or other device. NHTSA believes that the determinations of whether to require (1) a particular location for the sticker, decal, or other device, (2) specified language to be used by all manufacturers, or (3) a particular location for the information in the owner's manual, are left to the agency's discretion. We have interpreted the terms ''sticker, decal, or other device,'' to be various forms of the term ''label.'' Thus, we use the term ''label'' throughout this proposal to refer to the various ways a manufacturer could place the required information on the vehicle. We believe this could be fulfilled either through an adhesive method, such as a label generally refers to, or through a printing method, where

[1] Public Law 112–141.

text would be directly applied to a surface.

This rulemaking satisfies this mandate by proposing to require manufacturers to place a label on the passenger side sun visor that provides concise information on how to submit a safety-related defect complaint to NHTSA. This rulemaking also proposes to require manufacturers to print the same information in the owner's manual.

III. Background

Motor vehicle safety is defined as ''the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes non-operational safety of a motor vehicle.'' [2] A defect includes ''any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment.'' [3] Generally, a safety defect is defined as a problem that exists in a motor vehicle or item of motor vehicle equipment that poses an unreasonable risk to motor vehicle safety, and may exist in a group of vehicles of the same design or manufacture, or items of equipment of the same type and manufacture.

The National Traffic and Motor Vehicle Safety Act of 1966 [4] (the Vehicle Safety Act) granted NHTSA the authority to investigate defects and to determine whether a defect exists. If a safety defect is discovered, the manufacturer must notify NHTSA, as well as vehicle or equipment owners, dealers, and distributors. If NHTSA determines that a defect creates an unreasonable safety risk, the agency may require a manufacturer to notify consumers, remedy a defect or issue a recall.[5] [6] The manufacturer is then required to remedy the problem at no charge to the owner. NHTSA monitors the manufacturer's corrective action to ensure successful completion of the recall campaign. Since the passage of the Vehicle Safety Act,[7] 605 million cars, trucks, buses, recreational vehicles, motorcycles, and mopeds, as well as nearly 59 million tires, 91 million items of motor vehicle equipment, and 60 million child safety seats have been recalled to correct safety defects.[8]

To obtain information about potential safety defects in vehicles and equipment, NHTSA's Office of Defects Investigation (ODI) receives data from a variety of sources including vehicle and equipment manufacturers, dealers, and consumer advocacy groups and forums. However, ODI relies heavily on information received from consumers who experience issues with their vehicles and equipment. ODI receives, on average, between 40,000 and 50,000 complaints from consumers each year.

If a consumer thinks that his/her vehicle or equipment may have a safety-related defect, reporting it to NHTSA is an important first step to take to get the situation remedied and help make the nation's roads safer. If the agency receives similar reports from a number of consumers about the same product, this could indicate that a safety-related defect exists that could warrant the opening of an investigation. However, an analysis of one complaint may also lead to an investigation depending on the type of defect that is reported. In order to make it convenient for consumers to report any suspected safety-related defects to NHTSA, the agency offers three ways to file such complaints.

Vehicle Safety Hotline

NHTSA operates the United States Department of Transportation's Vehicle Safety Hotline telephone service to collect accurate and timely information from consumers on vehicle safety problems. Consumers can call 1–888–327–4236 or 1–800–424–9393 toll-free from anywhere in the United States, Puerto Rico, and the Virgin Islands to register complaints or receive recall information about a vehicle. The Hotline also has Spanish-speaking representatives and offers a dedicated number, 1–800–424–9153, for use by persons with hearing impairments.

When a consumer calls the Hotline to report a vehicle-related safety issue, the consumer is asked to provide certain critical information that NHTSA technical staff needs to evaluate the problem.[9] The information that the consumer provides is filed on a Vehicle Owner's Questionnaire (VOQ) form, entered into the agency's consumer-complaint database, and forwarded to NHTSA technical staff for evaluation. VOQs filed through the Hotline are mailed to consumers for verification of data. In addition, consumers receive an explanation of how their questionnaire will be used. NHTSA may provide information from the questionnaire to the vehicle manufacturer.

[2] 49 U.S.C. 30101(a)(8).

[3] 49 U.S.C. 30101(a)(2).

[4] Codified at 15 U.S.C. 1381 *et seq.* and recodified in 1994 as Chapter 30, Title 49, of the United States Code.

[5] A manufacturer of a motor vehicle or motor vehicle equipment is required by 49 U.S.C. 30118(c) to notify the Secretary by certified mail, and the owners, purchasers, and dealers of the vehicle or equipment as provided in section 30119(d) of this section, if the manufacturer—

(1) learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety; or

(2) decides in good faith that the vehicle or equipment does not comply with an applicable motor vehicle safety standard prescribed under this chapter.

Section 30119(d) provides notification procedures. Section 30120(a) of 49 U.S.C. provides that when notification is required under section 30118(c), the remedy shall be without charge when the vehicle or equipment is presented for remedy. NHTSA regulations at 49 CFR part 573 ''Defects and noncompliance responsibility and reports,'' and Part 577 ''Defects and noncompliance notification'' implement these statutory requirements.

Pursuant to 49 U.S.C. 30165, a manufacturer who violates any of the above-mentioned statutory or regulatory provisions is liable to the Government for a civil penalty. Until 1997 the maximum civil penalty was $1,000 per violation up to a maximum of $800,000 for a related series of violations. By a separate statutorily mandated regulation, since 1997 NHTSA has adjusted the § 30165 civil penalties upward for inflation. 49 CFR part 578. The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, (Pub. L. 106–414), enacted in 2000 in light of the Firestone/Ford controversy, amended the Safety Act by, inter alia, raising those maximum civil penalties to $5,000 per violation and $15,000,000 for a related series of violations, and added criminal penalties (49 U.S.C. 30170) for violations of reporting requirements. MAP–21, enacted in 2012, increased the maximum civil penalty for a related series of violations to $35,000,000. The Fixing America's Surface Transportation Act (FAST Act), Public Law 114–94 (Dec. 4, 2015), increased maximum civil penalties to $21,000 per violation and $105,000,000 for a related series of violations. The increases in maximum civil penalties in the FAST Act become effective on the date on which the Secretary of Transportation certifies that NHTSA has completed a rulemaking to provide an interpretation of the penalty factors in 49 U.S.C. 30165. The higher civil penalty maximums in the Part 578, MAP–21, and the FAST Act amendments are not retroactive to violations that occurred before their enactments.

[6] Under the 1974 amendments to the Motor Vehicle Safety Act, Congress gave NHTSA broad new power to enforce recall decisions. These included new reporting requirements, increased penalties for noncompliance, and subpoena and plant inspection authority.

[7] During the period 1966 to 2014.

[8] 2014 Recall Annual Report—NHTSA. See report at *http://www.safercar.gov/staticfiles/safercar/pdf/2014-annual-recalls-report.pdf* (last accessed September 18, 2015). This data includes recalls that take place because the vehicles and equipment do not meet the requirements of applicable safety standards set by NHTSA. Manufacturers voluntarily initiate most recalls.

[9] The Privacy Act of 1974—Public Law 93–579, As Amended: This information is requested pursuant to the authority vested in the National Highway Traffic Safety Act and subsequent amendments. Consumers are under no obligation to respond to this questionnaire. Consumer response may be used to assist NHTSA in determining whether a manufacturer should take appropriate action to correct a safety defect. If NHTSA proceeds with administration enforcement or litigation against a manufacturer, consumer response, or statistical summary thereof, may be used in support of the agency's action.

Safercar.gov

Consumers can also report a vehicle safety issue to NHTSA online at its vehicle safety Web site: *www.safercar.gov.* The consumer can select ''Report Safety Problems'' within the Vehicle Owners section of the home page. The information that a consumer submits via the Web site is recorded in VOQ format, entered into NHTSA's consumer complaint database, and provided to NHTSA technical staff for evaluation. NHTSA may provide information from the questionnaire to the vehicle manufacturer.

U.S. Mail

A consumer can also report a defect by sending a letter to the agency via U.S. mail.

SaferCar Mobile Application

In March 2013, NHTSA launched its SaferCar mobile application that allows consumers to access important vehicle safety information from their mobile devices.[10] To report a safety complaint to NHTSA through the SaferCar mobile application, a consumer who has a smart phone or a tablet can download the SaferCar application for free, scan in their vehicle identification number, and follow instructions to submit their complaint. The information collected through this mobile application is similar to that which is collected online at SaferCar.gov.

Manufacturers are currently required to include the following text in all passenger vehicle owner's manuals: [11]

If you believe that your vehicle has a defect which could cause a crash or could cause injury or death, you should immediately inform the National Highway Traffic Safety Administration (NHTSA) in addition to notifying [INSERT NAME OF MANUFACTURER].

If NHTSA receives similar complaints, it may open an investigation, and if it finds that a safety defect exists in a group of vehicles, it may order a recall and remedy campaign. However, NHTSA cannot become involved in individual problems between you, your dealer, or [INSERT NAME OF MANUFACTURER].

To contact NHTSA, you may call the Vehicle Safety Hotline toll-free at 1–888–327–4236 (TTY: 1–800–424–9153); go to http://www.safercar.gov; or write to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. You can also obtain other information about motor vehicle safety from http://www.safercar.gov.

NHTSA notes that this required text uses an outdated mailing address. The correct mailing address is: U.S. Department of Transportation, National Highway Traffic Safety Administration, Office of Defects Investigation (NEF–100), 1200 New Jersey Avenue SE., Washington, DC 20590.

The currently required text also does not advise vehicle users of the ability to file a complaint on the safercar.org Web site, or through the new safercar.gov mobile application.

IV. Alternatives Considered and Proposed for the Label

NHTSA first considered whether to require a particular location for the label containing defect reporting language, or whether to leave the location up to the manufacturer's discretion. Section 31306 does not specify whether the determination of location is to be made by the agency or the manufacturer. NHTSA acknowledges that differing vehicles designs may mean that the most accessible location for a label in a particular vehicle also differs. We also considered that there may be benefits to providing flexibility to manufacturers by allowing them to make the location determination. The agency believes that increased compliance flexibility often has the potential to lower costs while preserving manufacturer ability to design to consumer preferences. In this case, however, the benefits to increased manufacturer flexibility are believed to be minimal. The base estimated costs of implementing this proposal are believed to be low, and the agency does not believe that additional flexibility would be able to provide any significant further cost savings. In addition, the purpose of requiring such a label is to ensure that consumers encounter the information; to the extent that a manufacturer seeks to ''blend'' the label into preexisting vehicle designs, we believe this may detract from the purpose of the requirement.

On the other hand, we believe a standardized location for defect reporting information would best further the purpose of Section 31306 by increasing the accessibility of the information through repeat consumer exposure and expectations. We anticipate that once the consumer has encountered the information in a particular vehicle location, he or she would be more likely to associate the information with the location and be able to access it again at a point when it is sought (such as after a safety incident has occurred or a defect suspected). Therefore, we are proposing to require a particular location for placement of the language by all manufacturers.

NHTSA identified five locations on a vehicle where the placement of a label is likely to be practicable and the information displayed likely to be accessible to a consumer. The five options thus considered in this proposal are: (1) the passenger's sun visor; (2) the glove compartment; (3) the edge of the driver's door; (4) the driver's side B-pillar, and (5) the headliner above the sun visor. Section 31306 of MAP–21 (''. . . affix, in the glove compartment or in another readily accessible location on the vehicle . . .'') appears to suggest that the glove compartment may be the best location for the label, however, the selection of the location is left to the agency's discretion.

Merriam-Webster dictionary defines ''accessible'' as ''capable of being reached, easy to communicate, capable of being influenced, capable of being used or seen, or capable of being understood or appreciated.'' [12] NHTSA notes that while Section 31306 does not mandate that the required location be determined to be the most accessible of all the options, Congress appears to have given the accessibility of the information the highest priority of potential factors. The agency notes that in the context of placing displays of information, the prominence of the placement directly influences the degree to which the information can be seen, and thus the degree to which the language can communicate and be understood. Prominence is thus an important element of accessibility when considering where to put a label. Therefore, NHTSA first focused its analysis on which prominent locations inside the vehicle could display information that would then be highly accessible to (*i.e.,* reachable by) vehicle users.

First, NHTSA considered the glove compartment for prominence and accessibility, as this location was specifically suggested by Congress. We believe this location may have been suggested because of the common practice of storing documents such as the vehicle owner's manual, registration, and insurance information, which a driver is likely to reference in the event of an accident or problem with the vehicle. In addition, glove compartments face the vehicle occupants and are generally within a few feet of eye level, which may make information displayed within one more prominent than it would be in locations that are behind or to side of occupants, or further from eye level.

However, the agency believes that the variety in current designs of glove

[10] The current SaferCar mobile application is available for the iOS and Android mobile operating systems.

[11] 49 CFR 575.6.

[12] Merriam-Webster Online—*http://www.merriam-webster.com/dictionary/accessible* (last accessed January 23, 2013).

compartments may impact the degree of accessibility and prominence of information displayed within them. For example, we are aware of some designs that open on a simple hinge, similar to an envelope drop box, and others that open on a hinge that drops the compartment down below the dashboard. After consideration of the surface areas available for placement of a label within different glove compartment designs, we are concerned the variation in designs may make placement of a label inside the glove compartment more visible on some vehicles than others. Not all glove compartments appear to offer a prominent surface area on which to place a label with detailed reporting information. Additionally, we believe that consistency in visibility of the label across model types may make it more accessible and prominent to consumers through their past associations with labels in other vehicles.

Next, NHTSA considered the passenger's side sun visor. This location was considered accessible and prominent, as it is situated in front of vehicle occupants not far from eye level. The suitability of this location for labels has previously been leveraged by the agency for both air bag labels and vehicle rollover labels.

The air bag label, established under FMVSS 208 (Occupant Crash Protection), requires manufacturers to affix an air bag warning label to the sun visor at each seating position that is equipped with an inflatable restraint.[13] 49 CFR part 575.105 (Vehicle Rollover) also requires that a rollover warning label be affixed at the driver's sun visor for utility vehicles.[14] The rollover warning label may appear on either side of the visor, but if it appears on the same side as the air bag label, it must be separated from the air bag label by a certain distance. The air bag label may be affixed to either side of the sun visor. FMVSS 208 also specifies that no other information may appear on the same side of the sun visor to which the air bag warning label is affixed, except for the utility vehicle warning label, and no other information about the air bags or the need to wear seat belts may appear anywhere on sun visors.[15]

NHTSA considered that the label for information on how to contact NHTSA with a vehicle safety defect complaint could be affixed on the passenger's sun visor on the opposite side from the air bag warning label, which would allow for sufficient separation of the two labels. As each label would contain concise information, we believe that such separation from the pictogram of the air bag label would be sufficient to ensure that both labels display information prominently. We note that a similar setup exists on the driver side sun visor of utility vehicles, which bears either the air bag label on one side and the rollover warning label on the other side of the visor, or both labels on the same side. The agency is not aware of any negative impacts from the placement of two labels on one visor on those vehicles.

NHTSA next considered the driver's side b-pillar or edge of the driver's door. In its tire safety information final rule,[16] the agency agreed with manufacturers that there is a concern about the sufficiency of the space for the placement of the vehicle placard and tire inflation label in the door edge or B-pillar for some vehicles. As a result, in that rule, NHTSA added other alternative requirements to the requirement that the vehicle placard and tire inflation pressure label be located on the driver's side B-pillar.[17] The agency remains concerned that the relatively limited space in these locations, combined with design variations, may detract from the prominence of a label with detailed reporting information. We also believe that the current vehicle placard and tire inflation pressure label are relatively technically specific, and by adding another label may crowd the messaging on how to reach NHTSA with a potential vehicle safety complaint.

Finally, NHTSA considered the headliner above the sun visor. Like the sun visor, the headliner is a relatively accessible and prominent location, being in front of the vehicle occupants and not far from eye level. A label on either the headliner or the ''back'' side of the visor would only be visible when the visor was in the ''open'' (not stowed) position. As the headliner currently does not contain labels, a potential benefit to using this space for the defect label would be to avoid any confusion or crowding of information.[18] The ability to require the label on the driver's side headliner, as opposed to the passenger's side sun visor may carry additional accessibility benefits by bringing the information closer to the driver, who is more likely to need or use the information.

However, a label on the back side of the visor would appear closer to eye level when the visor was in the open position. NHTSA is also concerned that the potential use of the driver's side headliner may introduce a crowding issue in utility vehicles, which would now have three informational labels in the same area on the driver's side (this could defeat any spacing benefit assumed for avoiding the use of the sun visor). In addition, the use of the visor for existing label requirements may make it more likely that a vehicle occupant would associate the visor with vehicle safety-related reference information and thus check it in the event of a safety problem. For these reasons, the agency believes a label on the headliner may be less prominent than one on the visor itself.

For the above reasons, of the five locations considered, the agency's preferred alternative for placement of the sticker, decal, or other device is the passenger side sun visor. The agency also recognizes that the headliner above the sun visor may have similar benefits to the visor without some of the disadvantages of the visor. Therefore, the headliner is currently considered a close second to the preferred alternative.

NHTSA invites comments on whether the passenger side sun visor is indeed the best easily accessible location for a label, as well as whether the agency should have considered additional locations within the vehicle. Commenters should provide detail on

[13] § 571.208, Standard No. 208; Occupant crash protection.

S4.5.1(b) *Sun visor air bag warning label.* (1) Except as provided in S4.5.1(b)(2), each vehicle shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint.

[14] § 575.105 Vehicle rollover.

c) Definitions. Utility vehicles means multipurpose passenger vehicles (other than those which are passenger car derivatives) which have a wheelbase of 110 inches or less and special features for occasional off-road operation.

[15] § 571.208.

S4.5.1(b)(5) Limitations on additional labels. (i) Except for the information on an air bag maintenance label placed on the sun visor pursuant to S4.5.1(a) of this standard, or on a utility vehicle warning label placed on the sun visor that conforms in content, form, and sequence to the label shown in Figure 1 of 49 CFR 575.105, no other information shall appear on the same side of the sun visor to which the sun visor air bag warning label is affixed.

(ii) Except for the information in an air bag alert label placed on the sun visor pursuant to S4.5.1(c) of this standard, or on a utility vehicle warning label placed on the sun visor that conforms in content, form, and sequence to the label shown in Figure 1 of 49 CFR 575.105, no other information about air bags or the need to wear seat belts shall appear anywhere on the sun visor.

[16] 67 FR 69600, at 69617–69618.

[17] *Id.* at 69617.

[18] Related, the headliner may provide for more consistency in label placement if manufacturers frequently vary whether to place the air bag label on the front or back side of the label. However, NHTSA believes that the variation in air bag label placement is likely due to manufacturer desire to limit the label visibility to when the visor is in the open position, and requiring a label on each side of the visor would make that concern irrelevant.

which location is best and why. If additional locations are suggested, commenters are requested to provide information on the accessibility, prominence, and practicability of the suggested location. NHTSA also invites comments on whether its assumptions and assessment of the preferred location are reasonable. Commenters are requested to provide supporting information for their suggestions.

Specified Language

NHTSA also considered whether to require specified language to be printed on the label, or whether to leave the choice of language up to the vehicle manufacturer. Section 31306 of MAP–21 does not specify whether the choice of actual content is to be made by the agency or by the manufacturer. Given that information on how to submit a safety-related defect complaint is relatively straightforward, and does not vary by vehicle type or design, we do not see a benefit to leaving the choice of language up to the manufacturer. Conversely, we believe that requiring standardized language could prevent confusion or inaccuracies that customized language could produce. Further, standardized language may have the benefit of creating a phrase association for vehicle users that could help them remember which agency to contact with a safety-related concern whether or not they remember where the contact information is located within their vehicle. For these reasons, NHTSA is proposing standardized language for the decal, label, or other device.

Next, NHTSA considered proposed content for the labels. Information on how to reach NHTSA with potential vehicle safety defect complaints is currently written in all passenger vehicle owner's manuals. Manufacturers are currently required to include the following text in all passenger vehicle owner's manuals: [19]

If you believe that your vehicle has a defect which could cause a crash or could cause injury or death, you should immediately inform the National Highway Traffic Safety Administration (NHTSA) in addition to notifying [INSERT NAME OF MANUFACTURER].

If NHTSA receives similar complaints, it may open an investigation, and if it finds that a safety defect exists in a group of vehicles, it may order a recall and remedy campaign. However, NHTSA cannot become involved in individual problems between you, your dealer, or [INSERT NAME OF MANUFACTURER].

To contact NHTSA, you may call the Vehicle Safety Hotline toll-free at 1–888–327–4236 (TTY: 1–800–424–9153); go to http://www.safercar.gov; or write to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590. You can also obtain other information about motor vehicle safety from http://www.safercar.gov.

Section 31306 of MAP–21 states that the label information must be ''in simple and understandable language.'' Given the currently required language, NHTSA interprets one purpose of the new requirement as relaying the same basic information to vehicle users in a more straightforward and condensed manner appropriate for a sticker or label. With that in mind, NHTSA developed the following proposed language for the consumer information label:

Do you believe your vehicle has a safety-related problem?

The National Highway Traffic Safety Administration (NHTSA) NEEDS to know.

File your complaint with NHTSA today! Filing a complaint is easy:

Online: http://www.safercar.gov
Toll-free Hotline: 1–888–327–4236 (TTY: 1–800–424–9153)
Mail: U.S. Department of Transportation, NHTSA, Office of Defects Investigation, NEF–100, 1200 New Jersey Avenue SE., Washington, DC 20077–9382.

Information about how to keep your vehicle safe can be found at www.SaferCar.gov.

NHTSA believes the above proposed language would be easily readable and comprehensible, and that by sticking to brief, standardized content, the proposed device would effectively inform consumers of how to file a potential vehicle safety defect. The agency believes that longer strings of information in this context are unnecessary, and may detract from a vehicle user's ability to internalize the information presented. The simple listing format above is intended to make it less likely that a vehicle user would miss the key message of the label or device.

NHTSA requests comment on the language, including whether it provides the necessary information on how to contact NHTSA with vehicle safety-related complaints, and whether it is simple and understandable. Should the commenter have additional or revised language to propose, the agency requests detail as to what additional or revised language is recommended and how it is likely to fulfill the statutory purpose better than the proposed text.

Label Design

NHTSA believes the intent of Section 31306 of MAP–21 was to provide consumers with easily accessible and understandable information on how to contact the agency with any vehicle safety-related defects and complaints. NHTSA does not believe that the requirements under this rule are intended to increase a manufacturer burden beyond communicating the basic information on how to contact the agency with a vehicle safety-related defect complaint.

With that in mind, NHTSA is proposing the following simple design requirements for the label, which are similar to the design requirements of the air bag warning label and the rollover warning label: [20]

- The title must be in a bold black text.
- The message area must be white with black text.
- The pictograms must be black with a white background.
- The label must be appropriately sized so that it is legible, visible and prominent to the driver.

NHTSA believes that these requirements communicate the information as intended in the statute in an accessible, readable, and comprehensive manner. NHTSA believes that a simple black and white label would effectively communicate the necessary information, and that requiring color on labels could create an unnecessary financial burden to some manufacturers. In regard to the font for the label, NHTSA is not proposing either a particular font face, font size, or case for the label. In existing label requirements (*e.g.,* tire, rollover, and air bag), the agency has not encountered issues with leaving the font specifications up to manufacturers. However, NHTSA is proposing to specify that the text on the label be ''legible, visible, and prominent'' to the driver.[21] NHTSA is also not proposing to specify a size, shape, or dimension for the label, in order to provide manufacturers the flexibility to design the placard and label in a manner that can be configured to each vehicle design. This flexibility is similar to that provided in other label requirements.[22] A sample of the proposed label is as follows:

[19] 49 CFR 575.6.

[20] See 49 CFR part 571.208; 49 CFR part 575.105, Vehicle Rollover.

[21] See 67 FR 69617.

[22] Id.

Figure 1. Safety Defect Reporting Sun Visor Label

NHTSA seeks comments on the proposed design of the label, including the current recommendation to keep the label in black and white without additional colors. If a comment requests that the labels have color, either on the background and/or in the content including text, the commenter should provide a detailed explanation as to the benefit such changes would provide to the consumer. NHTSA also seeks comment on the proposed content, as to whether the information is adequate to inform consumers on what actions to take should they feel they have a safety-related problem with their vehicle, and whether there is any undue burden that vehicle manufacturers may face under this proposal that the agency should consider.

V. Alternatives Considered and Proposal for the Owner's Manual Information

NHTSA considered whether to develop unique language for owner's manuals on how to submit a defect complaint, whether to use the same language in the manual as is required for the label, or whether to simply update the currently required owner's manual information with NHTSA's new address and SaferCar mobile application.

NHTSA believes that the clearest way to read Section 31306(d)(1)(B) of MAP–21 (''prominently print the information described in [the label requirement] within the owner's manual'') is that Congress intended for the same essential information displayed in the label to be available in the owner's manual, but not necessarily that the label be exactly reproduced in the owner's manual. If Congress had intended for the label to be printed in both places, we believe it would have indicated so more directly by combining the two requirements, rather than refer to the required information more broadly as that ''described in'' the label requirement. Further, we believe that the greater space offered in owner's manuals allows for additional explanatory statements that may be useful to a consumer seeking more information on the defects reporting process.

For the above reasons, NHTSA is proposing the following language for the owner's manual requirement:

> If you believe that your vehicle has a defect which could cause a crash or could cause injury or death, you should immediately inform the National Highway Traffic Safety Administration (NHTSA) in addition to notifying [INSERT NAME OF MANUFACTURER].
>
> If NHTSA receives similar complaints, it may open an investigation, and if it finds that a safety defect exists in a group of vehicles, it may order a recall and remedy campaign. However, NHTSA cannot become involved in individual problems between you, your dealer, or [INSERT NAME OF MANUFACTURER].
>
> To contact NHTSA, you may call the Vehicle Safety Hotline toll-free at 1–888–327–4236 (TTY: 1–800–424–9153); go to *http://www.safercar.gov;* download the SaferCar mobile application; or write to: Administrator, NHTSA, 1200 New Jersey Ave. SE., Washington, DC 20590. You can also obtain other information about motor vehicle safety from *http://www.safercar.gov.*

NHTSA is not proposing design requirements for the owner's manual information, beyond that it must be printed in a font size no smaller than 10 point type. NHTSA is also not proposing to require the owner's manual information to be printed in a particular section of the manual. We recognize that there may be some increased consumer exposure benefit to requiring the information to be printed in a standard design, and/or on a particular page of the manual. However, in the event of a safety-related issue with their vehicle, we believe it is common for a vehicle user to consult the table of contents within the manual for direction on their particular issue, and thus would be informed of where to find the information on how to submit a defect complaint. We also believe that manufacturers would be capable of fulfilling the statutory requirement to print the information prominently without the potential burden of redesigning their manual layouts to incorporate a standardized placement.

NHTSA is also proposing to move the required language currently located in 49 CFR part 575.6 to 49 CFR 575.501 in order keep these like requirements in the same place. This section will provide manufacturers with the required safety-related defect reporting information in the owner's manual. As noted above, the current requirement does not include the most up-to-date reporting information, including the Safercar mobile application, and we believe that Congress developed the new owner's manual requirement with the intent that it would subsume the existing regulation.

NHTSA requests comment on the proposal to use an updated version of the currently required owner's manual information, including whether this

would fulfill the statutory requirement. NHTSA also requests comment on whether to require specific design requirements and whether to require the owner's manual information in a particular section of the manual, and whether our assessment of the limited benefits of such additional requirements is accurate. Commenters are requested to provide detailed explanations for any recommendations.

VI. Costs

In determining estimated industry costs associated with this proposal, the agency investigated potential ''ball-park'' production cost and labor cost for labels and owner's manual information.

For purposes of the label cost estimate, NHTSA estimates the one-time cost and recurring annual cost associated with producing a new, adhesive-type label that is separate from existing labels. NHTSA estimates that the one-time cost per manufacturer for development of the label is $22.67, assuming one hour of labor. The labor cost estimate is based on the Bureau of Labor Statistics Motor Vehicle Manufacturing average hourly wage of production workers.[23] See Table 1. The total one-time industry cost to 22 manufacturers of passenger cars and light trucks is estimated at $586.74.

TABLE 1—ESTIMATED ONE-TIME MANUFACTURER COST FOR LABEL

[2012 Dollars]

One-time startup costs	Estimated labor rate/hour	Estimated labor hours	Cost per manufacturer
Motor Vehicle Manufacturing Production Worker	$26.67	1	$26.67

We estimate the annual costs for producing the label as follows. NHTSA assumes a per-label cost of $0.04 and a labor value of $0.09 per label. To arrive at a labor value of $0.09, we estimate the average assembly line worker salary[24] ($21.14) divided by 60 minutes, divided by 60 seconds = $0.0059 per second. We estimate that affixing the label on the sun visor would take approximately 15 seconds, based on the amount of time we assumed the average worker would take to open the vehicle door, position the sun visor, and affix the label. This also assumes that, like the VIN numbers, the label would be affixed to the vehicle after it is assembled. We assume that 16.5 million passenger vehicles will be sold per year.[25] Based on the above, we estimate that the total annual industry cost for the label, including printing and labor, is $2.15 million. See Table 2.

TABLE 2—ESTIMATED TOTAL LABEL ANNUAL INDUSTRY COST

[2012 Dollars]

Number of vehicles	Cost of label	Labor value per label	Cost w/out labor	$ Labor	Industry annual cost
16.5 million	$0.04	$0.09	$660,000	$1,485,000	
Total cost					$2,145,000

NHTSA developed the following cost estimates for the development and printing in simple and understandable language within the owner's manual, information about how to submit a safety-related motor vehicle defect complaint to the National Highway Traffic Safety Administration. See Table 3. The cost of printing the page the size of the required text is estimated at $0.04. Multiplying $0.04 by 16.5 million vehicles results in an estimated annual cost to vehicle manufacturers of $660,000 for printing the page in the owner's manual. The one-time cost to manufacturers for the information in the owner's manual is negligible.

TABLE 3—ESTIMATED OWNER'S MANUAL INFORMATION PRINTING COST

[2012 Dollars]

Annual costs	Rate	Pages	Cost
Printing—per page	$0.04	1	$0.04
16.5 million number of vehicles			660,000

The estimated total annual recurring cost to vehicle manufacturers is $2.8 million ($2.15 million label cost + $0.66 million owner's manual cost).

VII. Benefits

As information on the effects of making defect reporting information more accessible to vehicle users is not available, the benefits of this proposed rule are not quantifiable. However, NHTSA believes that there would be several qualitative benefits of this action. Some of the anticipated benefits would fall to vehicle users. These benefits could be direct (improved consumer awareness and involvement) or indirect (fewer vehicle safety incidents or accidents across particular model types on account of an expanded or quickened defect reporting and response process). Other anticipated benefits would fall to agency and the industry in the form of efficiencies gained by closing information gaps. The anticipated benefits of this proposal include:

[23] *http://www.bls.gov/oes/current/oes519199.htm.*

[24] *http://www.bls.gov/oes/current/oes512099.htm.*

[25] See 78 FR 55138.

(1) Improved messaging and information to consumers on how to submit a safety-related motor vehicle defect complaint to NHTSA;

(2) increased consumer involvement in the motor vehicle defect reporting process;

(3) reduced time between consumer awareness of a possible motor vehicle defect and industry response;

(4) cost savings to the consumer through improved and timely defect-related response by the manufacturer;

(5) reduction in the risk and incident of injuries and fatalities attendant with the possible safety-related motor vehicle defect;

(6) decrease in motor vehicle property damage;

(7) improvement in agency data-collection on potential safety problems in motor vehicles and motor vehicle equipment, and resultant decisions on whether to open an investigation; and,

(8) cost savings to the industry by providing motor vehicle manufacturers with information that they may not yet have identified and gathered.

The agency believes that the benefits of this proposal would be higher than the costs. NHTSA requests comment on the benefits described here, and on any additional benefits and/or ways to quantify benefits.

VIII. Compliance and Penalties

In adding the 32302(d) requirements under MAP–21, Congress did not amend the existing compliance and civil penalty provisions in 49 U.S.C. Chapter 323; therefore, NHTSA tentatively concludes that those provisions apply for regulations promulgated under 32302(d).

49 U.S.C. 32308(a) states, in relevant part, that a person commits a violation of Chapter 323 if that person fails to provide the Secretary of Transportation (by delegation, the Administrator of NHTSA) with information requested in carrying out Chapter 323, or fails to comply with the applicable regulations prescribed under Chapter 323. 32308(b) prescribes a civil penalty of not more than $1,000 for each violation of 32308(a).

IX. Proposed Compliance Date

The proposed compliance date for label and owner's manual requirements is the first model year that occurs more than one year following the publication date of a final rule implementing this proposal. The compliance date adheres to the provision in Section 31306(d)(2) of MAP–21, which states that the above requirements ''shall apply to passenger motor vehicles manufactured in any model year beginning more than 1 year after the date on which a final rule is published.'' NHTSA believes the lead time proposed for the label may be necessary; however, early compliance would be encouraged. With regard to owner's manual information, NHTSA believes this amount of lead time is more than necessary. First, the agency is proposing standardized language. Additionally, in most cases, owner's manual information is developed, reviewed, and approved in an entirely digital environment, which significantly reduces lead time. Moreover, the agency is aware that some manufacturers have moved, or are in the process of moving, to full digital delivery of owner's manual information, where owner's manual information is delivered via a digital video disc (DVD) or some other digital format.[26] In some of these cases, official vehicle manufacturer owner's manual information is available via the internet for reference; one manufacturer currently provides vehicle owners information via an electronic tablet device as the primary information source, with a more traditional paper version as a secondary method.[27]

NHTSA seeks comment on whether the proposed lead time is reasonable. If a commenter wishes the agency to provide additional lead time, NHTSA requests that the commenter provide specific explanations for why more lead time might be needed for which elements of the proposal. For example, if a commenter sought more lead time for the owner's manual requirements, NHTSA seeks any relevant details of the owner's manual publication process and associated timing, along with current and future media that would be used for the owner's manual information.

X. Public Participation

NHTSA requests comment on all aspects of this proposed rule. This section describes how you can participate in this process.

A. How do I prepare and submit comments?

1. Further instructions for submitting comments to the NHTSA docket are described below:

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the Docket Number NHTSA–2015–0096 in your comments. Your comments must not be more than 15 pages long.[28] NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents, which are not subject to the page limit, to your comments.

If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using the Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[29] Please note that pursuant to the Data Quality Act, in order for the substantive data to be relied upon and used by the agencies, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines.

Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg_reproducible* (last accessed January 2, 2014), and DOT's guidelines may be accessed at *http://regs.dot.gov* (last accessed January 2, 2014).

2. Tips for Preparing Your Comments

When submitting comments, please remember to:

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

Make sure to submit your comments by the comment period deadline identified in the **DATES** section above.

[26] ''Chrysler Phases Out Paper Owner's Manual'' *http://wheels.blogs.nytimes.com/2009/09/23/chrysler-does-away-with-paper-owners-manual/* (last accessed June 17, 2015).

[27] ''2012 Hyundai Equus Continues To Redefine Intelligent Luxury,'' *http://www.hyundainews.com/us/en-us/Media/PressRelease.aspx?mediaid=32732&title=2012-hyundai-equus-continues-to-redefine-intelligent-luxury* (last accessed February 5, 2016).

[28] 49 CFR 553.21.

[29] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

XI. Regulatory Notices and Analyses

A. Executive Orders 12866 and 13563

NHTSA has considered the impact of this rulemaking action under Executive Orders 12866 and 13563 and the Department of Transportation's regulatory policies and procedures. This action is not significant and therefore was not subject to review by OMB under Executive Order 12866. The benefits and costs of this proposal are described above. Because the proposed rule would, if adopted, would not be economically significant, the agency has not prepared a separate Preliminary Regulatory Evaluation.

B. Regulatory Flexibility Act

We estimate these proposed requirements would cost each small vehicle manufacturer approximately $0.13 per vehicle, or far less than 1% of the cost of one of these vehicles, and would therefore not appear to constitute a significant economic impact. Thus, NHTSA certifies that this rule, if adopted, would not have a significant impact on a substantial number of small entities.

C. Executive Order 13132

NHTSA does not believe that there would be sufficient federalism implications to warrant the preparation of a federalism assessment.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' [30] NHTSA has considered whether this rulemaking would have any retroactive effect. This proposed rule does not have any retroactive effect.

E. National Environmental Policy Act (NEPA)

For the purposes of the National Environmental Policy Act, NHTSA has determined that implementation of this rulemaking action would not have any significant impact on the quality of the human environment.

F. Paperwork Reduction Act

The proposed rule does not implicate any information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

G. Unfunded Mandates Reform Act of 1995

NHTSA has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

[30] 61 FR 4729 (Feb. 7, 1996).

H. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.,* the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. NHTSA has not identified any existing voluntary consensus standards that could be used for this proposal.

I. Plain Language

Executive Orders 12866 and 13563 require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

J. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For more information on DOT's implementation of the Privacy Act, please visit: *http://www.dot.gov/privacy.* You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

List of Subjects in 49 CFR Part 575

Consumer protection, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

Proposed Regulatory Text

For the foregoing reasons, NHTSA proposes to amend 49 CFR part 575 as follows:

PART 575—CONSUMER INFORMATION

■ 1. The authority citation for part 575 is revised to read as follows:

Authority: 49 U.S.C. 32302, 32304A, 30111, 30115, 30117, 30123, 30166, 30181, 30182, 30183, and 32908, Pub. L. 104–414, 114 Stat. 1800, Pub. L. 109–59, 119 Stat. 1144, Pub. L. 110–140, 121 Stat. 1492, Pub. L. 112–141, 126 Stat. 405, 15 U.S.C. 1232(g); delegation of authority at 49 CFR 1.95.

■ 2. Amend § 575.6 by removing paragraph (a)(2) and redesignating paragraphs (a)(3) through (5) as paragraphs (a)(2) through (4).

■ 3. Add Subpart F to read as follows:

Subpart F—Moving Ahead for Progress in the 21st Century Act; Consumer Information

Authority: 49 U.S.C. 30101 *et. seq.,* Sec. 31306, Pub. L. 112–141, 126 Stat. 405, delegation of authority at 49 CFR 1.95.

§ 575.501 Safety defect reporting

(a) *Purpose and scope.* This section requires manufacturers of passenger motor vehicles to affix a label that describes the process for submitting a complaint about a safety-related motor vehicle defect to the National Highway Traffic Safety Administration. This section also requires manufacturers to include the same information in the owner's manual.

(b) *Application.* This section applies to passenger motor vehicles under 10,000 lbs GVWR.

(c) *Required information*— (1) *Label.* (i) Each passenger motor vehicle must have a label permanently affixed to the passenger's sun visor. The label must not appear on the same side of the sun visor to which the sun visor air bag warning label is affixed, as required by S4.5.1(b)(5) of 49 CFR 571.208. The label must conform in content, form, and sequence to the label shown in Figure 1 of this section, and must comply with the following requirements:

(A) The title must be in a bold black text.

(B) The message area must have a white background and black text.

(C) The pictograms must be black with a white background.

(D) The label must be appropriately sized so that it is legible, visible, and prominent to the driver.

(ii) When the safety defect reporting label required by paragraph (c)(1)(i) of this section and the air bag alert label required by S4.5.1(c) of 49 CFR 571.208 are affixed to the same side of the passenger's sun visor, the pictogram of the air bag alert label must be separated

from the pictograms of the safety defect reporting label by text and:

(A) The labels must be located such that the shortest distance from any of the lettering or graphics on the safety defect reporting label to any of the lettering or graphics on the air bag alert label is not less than 3 cm, or

(B) If the safety defect reporting and air bag alert labels are each surrounded by a continuous solid-lined border, the shortest distance from the border of the safety defect reporting label to the border of the air bag alert label must be not less than 1 cm.

(iii) At the option of the manufacturer, the requirement in paragraph (c)(1)(i) of this section for a permanently affixed label may instead be met by permanent marking and molding of the required information onto the specified location.

(2) *Owner's Manual.* (i) The manufacturer of each passenger motor vehicle must provide to the purchaser, in writing in the English language and not less than 10 point type, the following statement in the owner's manual, or, if there is no owner's manual or the owner's manual is electronic, on a one-page document:

If you believe that your vehicle has a defect which could cause a crash or could cause injury or death, you should immediately inform the National Highway Traffic Safety Administration (NHTSA) in addition to notifying [INSERT NAME OF MANUFACTURER]. To contact NHTSA, you may call the Vehicle Safety Hotline toll-free at 1–888–327–4236 (TTY: 1–800–424–9153); go to *http://www.safercar.gov;* download the SaferCar mobile application; or write to: Administrator, NHTSA, 1200 New Jersey Ave. SE., Washington, DC 20590. You can also obtain other information about motor vehicle safety from *http://www.safercar.gov.*

If NHTSA receives similar complaints, it may open an investigation, and if it finds that a safety defect exists in a group of vehicles, it may order a recall and remedy campaign. However, NHTSA cannot become involved in individual problems between you, your dealer, or [INSERT NAME OF MANUFACTURER].

(ii) The manufacturer must specify in the table of contents of the owner's manual the location of the statement required in paragraph (c)(2)(i). The heading in the table of contents must state ''Reporting Safety Defects.''

Do you believe your car has a safety-related problem?

The National Highway Traffic Safety Administration (NHTSA) **NEEDS** to know.

File your complaint with NHTSA today! Filing a complaint is easy:

Online: www.safercar.gov

Toll-free Hotline: 1-888-327-4236
(TTY: 1-800-424-9153)

Mail: U.S. Department of Transportation, NHTSA
Office of Defects Investigation, NVS-216
1200 New Jersey Avenue SE.
Washington, DC 20590

For more information, see your vehicle owner's manual and visit www.safercar.gov.

Issued in Washington, DC.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2016–28125 Filed 11–25–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2012–0013; 4500030115]

RIN 1018–AY38

Endangered and Threatened Wildlife and Plants; Listing the Hyacinth Macaw

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, notify the public that we are making changes to our July 6, 2012, proposed rule to list the hyacinth macaw *(Anodorhynchus hyacinthinus)* as an endangered species under the Endangered Species Act of 1973, as amended (Act). Based on new information, we now propose to list the hyacinth macaw as a threatened species under the Act. We also propose a concurrent rule under section 4(d) of the Act for this species. We are reopening the comment period to allow comments on the new information presented in this document relevant to the changes described below. Comments previously submitted will be considered and do not need to be resubmitted. However, we encourage those who may have commented previously to submit additional comments, if appropriate, in light of this new information.

DATES: The comment period for the proposed rule published July 6, 2012 (77 FR 39965) is reopened. We will accept comments received on or before January 27, 2017. *Comments submitted electronically using the Federal eRulemaking Portal (see* **ADDRESSES**, *below) must be received by 11:59 p.m. Eastern Time on the closing date. Requests for a public hearing must be received by January 12, 2017.*

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

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Follow instructions for submitting comments to Docket No. FWS–R9– ES–2012–0013.

(2) *U.S. mail or hand delivery:* Public Comments Processing, Attn: [FWS–R9–

ES–2012–0013]; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041; telephone 703–358–2171. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

Before a plant or animal species can receive the protection provided by the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), it must first be added to the Federal List of Endangered and Threatened Wildlife or the Federal List of Endangered and Threatened Plants, found in title 50 of the Code of Federal Regulations (CFR) in part 17. A species may warrant protection through listing if it is found to be an endangered or threatened species throughout all or a significant portion of its range. Under the Act, if a species is determined to be endangered or threatened we are required to publish in the **Federal Register** a proposed rule to list the species. We are proposing to list the hyacinth macaw as a threatened species under the Act. We are also proposing a rule under section 4(d) of the Act that defines the prohibitions and exceptions that apply to hyacinth macaws.

II. Major Provisions of the Regulatory Action

If adopted as proposed, this action will list the hyacinth macaw as a threatened species in the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h), and will allow the import and export of certain hyacinth macaws into and from the United States and certain acts in interstate commerce without a permit under the Act. This action is authorized by the Act.

Information Requested

Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made solely on the basis of the best scientific and commercial data available. Therefore, we request comments or information from other concerned governmental agencies, the scientific community, industry, and any other interested parties concerning this revised proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) New or expanding populations; and

(b) Estimates for new and expanding populations.

(2) Deforestation rates in areas where the hyacinth macaw occurs.

(3) Conservation actions or plans that address either the hyacinth macaw or deforestation in areas where the hyacinth occurs; as well as the status of those actions and plans (level of implementation, success, challenges, etc.).

(4) Availability of nesting cavities.

(5) The factors that are the basis for making a listing determination for a species or subspecies under section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

(6) The potential effects of climate change on the subspecies and its habitat.

(7) The proposed rule under section 4(d) of the Act that will allow the import and export of certain hyacinth macaws into and from the United States and certain acts in interstate commerce without a permit under the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination.

Public Hearing

Section 4(b)(5) of the Act requires the Service to hold a public hearing on this proposal, if requested within 45 days of publication of the notice. At this time, we do not have a public hearing scheduled for this revised proposed rule. The main purpose of most public hearings is to obtain public testimony or comment. In most cases, it is sufficient to submit comments through the Federal eRulemaking Portal, described above in **ADDRESSES**. If you would like to request a public hearing for this proposed rule, you must submit your request, in writing, to the person listed in **FOR FURTHER INFORMATION CONTACT** by the date specified in **DATES**.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited peer review on our July 6, 2012, proposed rule. In accordance with our August 22, 2016 memorandum updating and clarifying the role of peer review of listing actions under the Act, we will solicit the expert opinions of at least three appropriate and independent specialists for peer review of this proposed rule. The purpose of such review is to ensure that decisions are based on scientifically sound data, assumptions, and analysis. We will send peer reviewers copies of this revised proposed rule immediately following publication in the **Federal Register**. We will invite peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listing status for the hyacinth macaw. We will summarize the opinions of these reviewers in the final decision document, and we will consider their input and any additional information we receive, as part of our process of making a final decision on the revised proposal.

Previous Federal Actions

On January 31, 2008, the Service received a petition dated January 29, 2008, from Friends of Animals, as represented by the Environmental Law Clinic, University of Denver, Sturm College of Law, requesting that we list 14 parrot species, including the hyacinth macaw, under the Act. The petition clearly identified itself as a petition and included the requisite information required in the Code of Federal Regulations (50 CFR 424.14(a)). On July 14, 2009 (74 FR 33957), we published a 90-day finding in which we determined that the petition presented substantial scientific and commercial information to indicate that listing may be warranted for 12 of the 14 parrot species, including the hyacinth macaw. We initiated the status review to determine if listing each of the 12 species as a threatened species or endangered species under the Act is warranted, and initiated an information collection period to allow all interested parties an opportunity to provide information on the status of these 12 species of parrots.

On October 24 and December 2, 2009, the Service received 60-day notices of intent to sue from Friends of Animals

and WildEarth Guardians, respectively, for failure to make determinations on whether the petitioned action is warranted, not warranted, or warranted but precluded by other listing actions within 12 months after receiving a petition presenting substantial information indicating listing may be warranted (''12-month findings''). On March 2, 2010, Friends of Animals and WildEarth Guardians filed suit against the Service for failure to make 12-month findings on the petition to list the 14 species within the statutory deadline of the Act *(Friends of Animals, et al.* v. *Salazar,* Case No. 1:10–CV–00357–RPM (D.D.C.)).

On July 21, 2010, a settlement agreement was approved by the Court, in which the Service agreed to submit to the **Federal Register** by July 29, 2011, September 30, 2011, and November 30, 2011, 12-month findings for no fewer than four of the petitioned species on each date. On August 9, 2011, the Service published in the **Federal Register** a 12-month finding and proposed rule for the following four parrot species: Crimson shining parrot, Philippine cockatoo, white cockatoo, and yellow-crested cockatoo (76 FR 49202). On October 6, 2011, a 12-month finding was published for the red-crowned parrot (76 FR 62016). On October 11, 2011, a 12-month finding and proposed rule was published for the yellow-billed parrot (76 FR 62740), and on October 12, 2011, a 12-month finding was published for the blue-headed macaw and grey-cheeked parakeet (76 FR 63480).

On September 16, 2011, the Court granted a request to extend the November 30, 2011, deadline allowing the Service to submit 12-month findings for the four remaining species, including hyacinth macaw, to the **Federal Register** by June 30, 2012. On July 6, 2012, the Service published in the **Federal Register** a 12-month finding and proposed rule to list the hyacinth macaw as an endangered species under the Act (77 FR 39965). On February 21, 2013, the Service reopened the public comment period to allow all interested parties an opportunity to provide additional comments on the proposed rule and to submit information on the status of the species (78 FR 12011).

Background

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. The Act defines ''endangered species'' as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and ''threatened species'' as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered or a threatened species based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

We fully considered the comments and information we received from the public and peer reviewers. We also conducted a search for information that became available since our 2012 proposed rule. We made some technical corrections and included additional information on the work being done by the Hyacinth Macaw Project. Based on new information, we also reevaluated impacts to the species from deforestation and predation. Based on our evaluation of this new information, we are proposing to list the hyacinth macaw as a threatened species under the Act. We summarize below the information on which we based our evaluation of the five factors provided in section 4(a)(1) of the Act. We are also proposing a rule under section 4(d) of the Act that defines the prohibitions and exceptions that apply to hyacinth macaws.

Species Information

Taxonomy and Species Description

The hyacinth macaw (hyacinth) is the largest bird of the parrot family, Family Psittacidae, (Guedes and Harper 1995, p. 395; Munn *et al.* 1989, p. 405). It measures approximately 1 meter (m) (3.3 feet (ft)) in length. Average female and male wing lengths measure approximately 400 to 407.5 millimeters (mm) (1.3 ft), respectively. Average tail lengths for females and males are 492.4 mm (1.6 ft) and 509.4 mm (1.7 ft), respectively (Forshaw 1973, p. 364). Hyacinth macaws are characterized by a predominately cobalt-blue plumage, black underside of wing and tail, and unlike other macaws, have feathered faces and lores (areas of a bird's face from the base of the bill to the front of the eyes). In addition, they have bare yellow eye rings, bare yellow patches surrounding the base of their lower mandibles, large and hooked grey-black bills, dark-brown irises. Their legs, which are dark grey in most birds but lighter grey to white in older adults, are short and sturdy to allow the bird to hang sideways or upside down while foraging. Immature birds are similar to adults, but with shorter tails and paler yellow bare facial skin (Juniper and Parr 1998, pp. 416–417; Guedes and Harper 1995, p. 395; Munn *et al.* 1989, p. 405; Forshaw 1973, p. 364).

The hyacinth macaw experiences late maturity, not reaching first reproduction until 8 or 9 years old (Guedes 2009, p. 117). Hyacinths are monogamous and faithful to nesting sites; a couple may reproduce for more than a decade in the same nest. They nest from July to January in tree cavities and, in some parts of its range, cliff cavities (Tortato and Bonanomi 2012, p. 22; Guedes 2009, pp. 4, 5, 12; Pizo *et al.* 2008, p. 792; Pinho and Nogueira 2003, p. 35; Abramson *et al.* 1995, p. 2). The hyacinth macaw lays two smooth, white eggs approximately 48.4 mm (1.9 inches (in)) long and 36.4 mm (1.4 in) wide. Eggs are usually found in the nest from August until December (Guedes 2009, p. 4; Juniper and Parr 1998, p. 417; Guedes and Harper 1995, p. 406). The female alone incubates the eggs for approximately 28–30 days. The male remains near the nest to protect it from invaders, but may leave 4–6 times a day to forage and collect food for the female (Schneider *et al.* 2006, pp. 72, 79; Guedes and Harper 1995, p. 406). Chicks are mostly naked, with sparse white down feathers at hatching. Young are fed regurgitated, chopped palm nuts (Munn *et al.* 1989, p. 405). Most chicks fledge at 105–110 days old; however, separation is a slow process. Fledglings will continue to be fed by the parents for 6 months, when they begin to break hard palm nuts themselves, and may remain with the adults for 16 months, after which they will join groups of other young birds (Schneider *et al.* 2006, pp. 71–72; Guedes and Harper 1995, pp. 407–411).

Hyacinth macaws naturally have a low reproductive rate, a characteristic common to all parrots, due, in part, to asynchronous hatching. Although hyacinths lay two eggs, usually only one chick survives (Guedes 2009, p. 31; Faria *et al.* 2008, p. 766; Kuniy *et al.* 2006, p. 381; Guedes, 2004b, p. 6; Munn *et al.* 1989, p. 409). Not all hyacinth nests fledge young, and, due to the long period of chick dependence, hyacinths breed only every 2 years (Faria *et al.*

2008, p. 766; Schneider *et al.* 2006, pp. 71–72; Guedes 2004b, p. 7; Pinho and Nigueira 2003, p. 30; Guedes and Harper 1995, pp. 407–411; Munn *et al.* 1989, p. 409). In a study of the Pantanal, the largest population of hyacinth macaws, it was suggested that only 15–30 percent of adults attempt to breed; it may be that as small or an even smaller percentage in Pará and Gerais attempt to breed (Munn *et al.* 1998, p. 409).

Range and Population

At one time, hyacinths were widely distributed, occupying large areas of Central Brazil into the Bolivian and Paraguayan Pantanal (Guedes 2009, pp. xiii, 11; Pinho and Nogueira 2003, p. 30; Whittingham *et al.* 1998, p. 66; Guedes and Harper 1995, p. 395). Today, the species is limited to three areas totaling approximately 537,000 km^2, almost exclusively within Brazil: (1) Eastern Amazonia in Pará, Brazil, south of the Amazon River along the Tocantins, Xingu, and Tapajós rivers; (2) the Gerais region of northeastern Brazil, including the states of Maranhão, Piauí, Goiás, Tocantins, Bahia, and Minas Gerais; and (3) the Pantanal of Mato Grosso and Mato Grosso do Sul, Brazil and marginally in Bolivia and Paraguay. These areas have experienced less pressure from trapping, hunting, and agriculture (Birdlife International (BLI) 2014a, unpaginated; Snyder *et al.* 2000, p. 119; Juniper and Parr 1998, p. 416; Abramson *et al.* 1995, p. 14; Munn *et al.* 1989, p. 407).

Prior to the arrival of Indians and Europeans to South America, there may have been between 100,000 and 3 million hyacinth macaws (Munn *et al.* 1989, p. 412); however, due to the species' large but patchy range, an estimate of the original population size when the species was first described (1790) is unattainable (Collar *et al.* 1992, p. 253). Although some evidence suggests that the hyacinth macaw was abundant before the mid-1980s (Guedes 2009, p. 11; Collar *et al.* 1992, p. 253), the species significantly declined throughout the 1980s due to an estimated 10,000 birds illegally captured for the pet trade and a further reduction in numbers due to habitat loss and hunting. Although population estimates prior to 1986 are lacking, a very rapid population decline is suspected to have taken place over the last 31 years (three generations) (BLI 2014a, unpaginated). In 1986, the total population of hyacinth macaws was estimated to be 3,000, with a range between 2,500 and 5,000 individuals; 750 occurred in Pará, 1,000 in Gerais, and 1,500 in Pantanal (Guedes 2004b, p. 2; Collar *et al.* 1992, p. 253; Munn *et al.* 1989, p. 413). In 2003, the population was estimated at 6,500 individuals; 5,000 of which were located in the Pantanal region, and 1,000–1,500 in Pará and Gerais, combined (BLI 2014a, unpaginated; Guedes 2009, p. 11; Brouwer 2004, unpaginated; WWF 2004, unpaginated). Observations of hyacinth macaws in the wild have increased in Paraguay, especially in the northern region (Espinola 2013, pers. comm.), but no quantitative data is available. Locals report the species increasing in Bolivia; between 140 and 160 hyacinths are estimated to occur in the Bolivian Pantanal, with estimates as high as 300 for the entire country (Guedes 2012, p. 1; Pinto-Ledezma 2011, p. 19).

Although the 2003 estimate indicates a substantial increase in the Pantanal population, the methods or techniques used to estimate the population are not described; therefore, the reliability of the estimation techniques, as well as the accuracy of the estimated increase, are not known (Santos, Jr. 2013, pers. comm.). Despite the uncertainty in the estimated population increase, the Pantanal is the stronghold for the species and has shown signs of recovery since 1990, most likely as a response to conservation projects (BLI 2014a, unpaginated; Antas *et al.* 2006, p. 128; Pinho and Nogueira 2003, p. 30). However, the overall population trend for the hyacinth macaw is reported as decreasing (BLI 2014a, unpaginated), although there are no extreme fluctuations reported in the number of individuals (BLI 2014a, unpaginated).

Essential Needs of the Species

Hyacinths use a variety of habitats in the Pará, Gerais, and Pantanal regions. Each region features a dry season that prevents the growth of extensive closed-canopy tropical forests and maintains the more open habitat preferred by this species. In Pará, the species prefers palm-rich várzea (flooded forests), seasonally moist forests with clearings, and savannas. In the Gerais region, hyacinths are located within the Cerrado biome, where they inhabit dry open forests in rocky, steep-sided valleys and plateaus, gallery forests (a stretch of forest along a river in an area of otherwise open country), and *Mauritia* palm swamps. In the Pantanal region, hyacinth macaws frequent gallery forests and palm groves with wet grassy areas (Juniper and Parr 1998, p. 417; Guedes and Harper 1995, p. 395; Munn *et al.* 1989, p. 407).

Hyacinths have a specialized diet consisting of the fruits of various palm species, which are inside an extremely hard nut that only the hyacinth can easily break (Guedes and Harper 1995, p. 400; Collar *et al.* 1992, p. 254). Hyacinths are highly selective in choice of palm nut; they have to be the right size and shape, as well as have an extractable kernel with the right lignin pattern (Brightsmith 1999, p. 2; Pittman 1993, unpaginated). They forage for palm nuts and water on the ground, but may also forage directly from the palm tree and drink fluid from unripe palm fruits. Hyacinths also feed on the large quantities of nuts eliminated by cattle in the fields and have been observed in close proximity to cattle ranches where waste piles are concentrated (Juniper and Parr 1998, p. 417; Yamashita 1997, pp. 177, 179; Guedes and Harper 1995, pp. 400–401; Collar *et al.* 1992, p. 254).

In each of the three regions where hyacinths occur, they use only a few specific palm species. In Pará, hyacinths have been reported to feed on *Maximiliana regia* (inajá), *Orbignya martiana* (babassu), *Orbignya phalerata* (babacú) and *Astrocaryum* sp. (tucumán). In the Gerais region, hyacinths feed on *Attalea funifera* (piacava), *Syagrus coronata* (catolé), and *Mauritia vinifera* (buriti). In the Pantanal region, hyacinths feed exclusively on *Scheelea phalerata* (acuri) and *Acrocromia totai* (bocaiúva) (Antas *et al.* 2006, p. 128; Schneider *et al.* 2006, p. 74; Juniper and Parr 1998, p. 417; Guedes and Harper 1995, p. 401; Collar *et al.* 1992, p. 254; Munn *et al.* 1987, pp. 407–408). Although hyacinths prefer bocaiúva palm nuts over acuri, bocaiúva is only readily available from September to December, which coincides with the peak of chick hatching; however, the acuri is available throughout the year and constitutes the majority of this species' diet in the Pantanal (Guedes and Harper 1995, p. 400).

Hyacinths also have specialized nesting requirements. As a secondary tree nester, they require large, mature trees with preexisting tree holes to provide nesting cavities large enough to accommodate them (Tortato and Bonanomi 2012, p. 22; Guedes 2009, pp. 4, 5, 12; Pizo *et al.* 2008, p. 792; Abramson *et al.* 1995, p. 2). In Pará, the species nests in holes of *Bertholettia excelsa* (Brazil nut). In the Gerais region, nesting may occur in large dead *Mauritia vinifera* (buriti), but is most commonly found in natural rock crevices. In the Pantanal region, the species nests almost exclusively (94 percent) in *Sterculia striata* (manduvi) as it is one of the few tree species that grows large enough to supply cavities that can accommodate the hyacinth's large size. Manduvi trees must be at least 60 years old, and on average 80 years old, to provide adequate cavities

(Guedes 2009, pp. 59–60; Pizo *et al.* 2008, p. 792; Santos Jr. *et al.* 2006, p. 185). Nesting has also been reported in *Pithecellobium edwalii* (angio branco), *Enterolobium contortisiliquum* (ximbuva), *Vitex sp.* (tarumá), and the cliff face of mountains on the border of the Pantanal (van der Meer 2013, p. 24; Guedes 2004b, p. 6; Kuniy *et al.* 2006, p. 381; Santos Jr. *et al.* 2006, p. 180; Pinho and Nogueira 2003, pp. 30, 33; Guedes 2002, p. 4; Juniper and Parr 1998, p. 417; Guedes and Harper 1995, p. 402; Collar *et al.* 1992, p. 255; Munn *et al.* 1987, p. 408).

Conservation Status

In 1989, the hyacinth was listed on the Official List of Brazilian Fauna Threatened with Extinction by the Brazilian Institute of Environment and Natural Resources (IBAMA), the government agency that controls the country's natural resources (Lunardi *et al.* 2003, p. 283; IBAMA Ordinance No. 1522, of December 19, 1989). Due to actions to combat trafficking of animals, the hyacinth macaw was removed from the list in 2014 (Instituto Chico Mendes de Conservação da Bioversidade 2016, unpaginated). It is listed as ''critically endangered'' by the State of Minas Gerais and ''vulnerable'' by the State of Pará (Garcia and Marini 2006, p. 153). In Paraguay, the hyacinth is listed as in danger of extinction (Secretaría del Ambiente n.d., p. 4; Bauer 2012, pers. comm.).

From 2000 to 2013, this species was classified as ''endangered'' by the IUCN. However, in 2014, the hyacinth was downlisted to ''vulnerable'' because evidence suggested that it had not declined as rapidly as previously thought. A ''vulnerable'' taxon is considered to be facing a high risk of extinction in the wild, whereas an ''endangered taxon is considered to be facing a very high risk of extinction in the wild (BLI 2014a, unpaginated). The hyacinth macaw is also listed as Appendix I on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) list. Species included in CITES Appendix I are considered threatened with extinction, and international trade is permitted only under exceptional circumstances, which generally precludes commercial trade.

Factors Affecting the Species

Most of the information on the hyacinth macaw is from the Pantanal region, as this is the largest and most studied population. The species occurs only marginally within Bolivia and Paraguay as extensions from the Brazilian Pantanal population, and there is little information on the species in those countries. We found little information on the status of the Pará and Gerais populations; therefore, we evaluated impacts to these populations by a broader region (*e.g.,* the Amazon biome for Pará and the Cerrado biome for Gerais).

Parrots in general have traits that predispose them to extinction (Lee 2010, p. 3; Thiollay 2005, p. 1121; Guedes 2004a, p. 280; Wright *et al.* 2001, p. 711; Munn *et al.* 1998, p. 409). Additionally, feeding and habitat specializations are good predictors of a bird species' risk of extinction. The hyacinth scores high in both food and nest site specialization (Faria *et al.* 2008, p. 766; Pizo *et al.* 2008, p. 795; Munn *et al.* 1998, p. 409; Johnson *et al.* 1997, p. 186; Guedes and Harper 1995, p. 400) as they feed on and nest in very limited number of tree species. Therefore, hyacinths are particularly vulnerable to extinction due to the loss of food sources and nesting sites (Faria *et al.* 2008, p. 766; Pizo 2008, p. 795; Munn *et al.* 1998, pp. 404, 409; Johnson *et al.* 1997, p. 186). As stated above, hyacinths naturally have a low reproductive rate; not all hyacinth nests fledge young, and, due to the long period of chick dependence, hyacinths breed only every 2 years. Only 15–30 percent of adults in the Pantanal attempt to breed; it may be that as small or an even smaller percentage in Pará and Gerais attempt to breed. The specialized nature and reproductive biology of the hyacinth macaw contribute to low recruitment of juveniles and decrease the ability to recover from reductions in population size caused by anthropogenic disturbances (Faria *et al.* 2008, p. 766; Wright *et al.* 2001, p. 711). This species' vulnerability to extinction is further heightened by deforestation that negatively affects the availability of essential food and nesting resources, hunting that removes individuals from already small populations, and other factors that further reduce naturally low reproductive rates, recruitment, and the population.

Deforestation

Natural ecosystems across Latin America are being transformed due to economic development, international market demands, and government policies. In Brazil, demand for soybean oil and soybean meal has increased, causing land conversion to significantly increase to meet this demand (Barona *et al.* 2010, pp. 1–2). Much of the recent surge in cropland area expansion is taking place in the Brazilian Amazon and Cerrado regions (Nepstad *et al.* 2008, p. 1738). Brazil has also become the world's largest exporter of beef. Over the past decade, more than 10 million hectares (ha) (24.7 million acres (ac)) were cleared for cattle ranching, and the government is aiming to double the country's share of the beef export market to 60 percent by 2018 (Butler 2009, unpaginated).

Pará

Pará is one of the Brazilian states that constitute the Amazon biome (Greenpeace 2009, p. 2). This biome contains more than just the well-known tropical rainforests; it also encompasses other ecosystems, including floodplain forests and savannas. Between 1995 and 2009, conversion of floodplain forests in the Amazon region to cattle ranching expanded significantly and was the greatest cause of deforestation (da Silva 2009, p. 3; Lucas 2009, p. 1; Collar *et al.* 1992, p. 257).

Cattle ranching has been present in the várzea (floodplain forests) of the Amazon for centuries (Arima and Uhl, 1997, p. 433). However, since the late 1970s, state subsidies and massive infrastructure development have facilitated large-scale forest conversion and colonization for cattle ranching (Barona *et al.* 2010, p. 1). Additionally, certain factors have led to a significant expansion of this land use. The climate of the Brazilian Amazon is favorable for cattle ranching; frosts do not occur in the south of Brazil, and rainfall is more evenly distributed throughout the year, increasing pasture productivity and reducing the risk of fire. In Pará, incidence of disease, such as hoof-and-mouth disease and brucellosis, and ectoparasites are lower than in central and south Brazil. Additionally, the price of land in Pará has been lower than in central and south Brazil, resulting in ranchers selling farms in those areas and establishing larger farms in Pará to compete in the national market (Arima and Uhl, 1997, p. 446).

Although the immediate cause of deforestation in the Amazon was predominantly the expansion of pasture between 2000 and 2006 (Barona *et al.* 2010, p. 8), the underlying cause may be the expansion of soy cultivation in other areas, leading to a displacement of pastures further north into parts of Pará causing additional deforestation (Barona *et al.* 2010, pp. 6, 8).

In the Brazilian North region, including Pará, cattle occupy 84 percent of the total area under agricultural and livestock uses. This area, on average, expanded 9 percent per year over 10 years causing 70–80 percent of deforestation (Nepstad *et al.* 2008, p. 1739). Pará itself contains two-thirds of

the Brazilian Amazonia cattle herd (Arima and Uhl 1997, p. 343), with a sizable portion of the state classified as cattle-producing area (Walker *et al.* 2009, p. 69). For 7 months of the year, cattle are grazed in the várzea, but are moved to the upper terra firma the other 5 months (Arima and Uhl, 1997, p. 440). Intense livestock activity can affect seedling recruitment via trampling and grazing. Cattle also compact the soil such that regeneration of forest species is severely reduced (Lucas 2009, pp. 1–2). This type of repeated disturbance can lead to an ecosystem dominated by invasive trees, grasses, bamboo, and ferns (Nepstad *et al.* 2008, p. 1740).

Pará has long been known as the epicenter of illegal deforestation (Dias and Ramos 2012, unpaginated) and has one of the highest deforestation rates in the Brazilian Amazon (Portal Brasil 2010, unpaginated). From 1988 to 2015, the state lost 139,824 km² (53,986 mi²), with annual rates varying between 3,780–8,870 km² (1,460–3,424 mi²) (Brazil's National Institute for Space Research (INPE) 2015, unpaginated; Butler 2010, unpaginated). Since 2004, deforestation rates in Pará have generally decreased; however, rates rose 35 percent in 2013 before decreasing again (INPE 2015, unpaginated) (Table 1).

TABLE 1—DEFORESTATION IN PARÁ (2004–2015)

Year	Accumulated deforested area (km²)	Annual deforested area (km²)	Annual change in deforestation rate (%)
2004	*98,257	8,870	24
2005	104,156	5,899	−33
2006	109,815	5,659	−4
2007	115,341	5,526	−2
2008	120,948	5,607	1
2009	125,229	4,281	−24
2010	128,999	3,770	−12
2011	132,007	3,008	−20
2012	133,748	1,741	−42
2013	136,094	2,346	35
2014	137,981	1,887	−20
2015	139,862	1,881	0

* Accumulation since 1988.

Given the role cattle ranching plays in national and international markets and the profitability of ranching, significant expansion of cattle herds in the Brazilian Amazon has continued (Walker *et al.* 2009, p. 68). The remaining forested areas of Pará are at risk of being cleared; Pará is one of the states where most of Brazil's agriculture expansion is taking place (BBC News 2014, unpaginated). Furthermore, modeled future deforestation is concentrated in eastern Amazonia, which includes Pará, where the density of paved highways (existing and planned) will continue to be highest for several decades (Soares-Filho *et al.* 2006, p. 522).

Gerais

The Gerais region is within the Cerrado biome, a 2-million-km² (772,204-mi²) area consisting of plateaus and depressions with vegetation that varies from dense grasslands with sparse shrubs and small trees to almost closed woodland (Pinto *et al.* 2007, p. 14; da Silva 1997, p. 437; Ratter *et al.* 1997, p. 223). In the Cerrado, hyacinths now mostly nest in rock crevices, most likely a response to the destruction of nesting trees (Collar *et al.* 1992, p. 255). These crevices will likely remain constant and are not a limiting factor. However, deforestation for agriculture, primarily soy crops, and cattle ranching threaten the remaining native cerrado vegetation, including palm species the hyacinth macaw relies on as a food source.

Approximately 50 percent of the original Cerrado vegetation has been lost due to conversion to agriculture and pasture, although estimates range up to 80 percent, and the area continues to suffer high rates of habitat loss (Grecchi *et al.* 2015, p. 2865; Beuchle *et al.* 2015, p. 121; WWF 2015, p. 2; Soares-Filho *et al.* 2014, p. 364; Pearce 2011, unpaginated; WWF–UK 2011b, p. 2; Carvalho *et al.* 2009, p. 1393; BLI 2008, unpaginated; Pinto *et al.* 2007, p. 14; Klink and Machado 2005, p. 708; Marini and Garcia 2005, p. 667; WWF 2001, unpaginated; da Silva 1997, p. 446, da Silva 1995, p. 298). From 2002 to 2008, the demand for land conversion in the Cerrado resulted in an annual deforestation rate of more than 14,200 km² (5,483 mi²) (Ministério do Meio Ambiente (MMA) 2015, p. 9; WWF–UK 2011b, p. 2). At this rate, the vegetation of the Cerrado region was disappearing faster than the Amazon rainforest (Pearce 2011, unpaginated; WWF–UK 2011c, p. 19; Pennington *et al.* 2006 In Beuchle *et* al. 2015, p. 117; Klink and Machado 2005, p. 708; Ratter *et al.* 1997, p. 228). However, since that time, the loss of natural vegetation decreased to an estimated 12,949 km² (4,999 mi²) per year from 2000 to 2005 and 11,812 km² (4,560 mi²) per year from 2005 to 2010 (Beuchle *et al.* 2015, pp. 124, 125). Between 2009 and 2010, the deforestation in the Cerrado decreased 16 percent. Compared to the deforestation rates of the early 2000s, deforestation has decreased about 40 percent (Critical Ecosystem Partnership Fund (CEPF) 2016, p. 145).

Since 2008, annual monitoring of deforestation in the Cerrado has taken place through a government program that monitors each of the Brazilian biomes. Although the annual rate of deforestation is generally decreasing, satellite monitoring of the area indicates a slow and steady increase in deforested area (MMA 2015, p. 9) (Table 2).

TABLE 2—DEFORESTATION IN THE CERRADO (2002–2011)

Years assessed	Accumulated deforested area (km²)	Percent (%) of Cerrado deforested	Annual deforested area (km²)	Annual deforestation rate (%)	Remaining areas of natural vegetation (km²)
Up to 2002	890,636	43	–	–	1,148,750
2002–2008	975,710	47.8	14,179	0.69	1,063,676
2008–2009	983,347	48.2	7,637	0.37	1,056,039
2009–2010	989,816	48.5	6,469	0.32	1,049,570
2010–2011	997,063	48.9	7,247	0.35	1,042,323

The remaining natural vegetation of the Cerrado is highly fragmented (only 20 percent of the original biome is considered intact) and continues to be pressured by conversion for soy plantations and extensive cattle ranching (WWF–UK 2011c, p. 21; WWF–UK 2011b, p. 2; Carvalho *et al.* 2009, p. 1393; BLI 2008, unpaginated). About six in every 10 hectares of the Cerrado are suitable for mechanized agriculture (WWF–UK 2011b, p. 2). Maranhão, Tocantins, Piauí, and Bahia, states where hyacinth macaws occur, are undergoing rapid conversion, mostly to soy crops (CEPF 2016, p. 151). Soy production will continue to grow as the beans have many uses for food, feed, and industry in Brazil and abroad (CEPF 2016, p. 152). Furthermore, the Brazilian government has proposed a 731,735 km²-agricultural development, of which 91 percent occurs in the Cerrado, with little regard for the environment, at least as of 2015 (Clark 2015 and Miranda 2015 In CEPF 2016, p. 95). Additionally, the conversion of land for biofuel production is likely imminent, creating a market for the expansion and establishment of new areas for soy, castor beans, other oil-bearing plants, and sugar cane (Carvalho *et al.* 2009, p. 1400).

Given that the Cerrado is the most desirable biome for agribusiness expansion and contains approximately 40 million ha (98.8 million ac) of ''environmental surplus'' that could be legally deforested (See discussion of Brazil's Forest Code, below) (Soares-Filho *et al.* 2014, p. 364), this region will likely continue to suffer high deforestation rates. Projections for coming decades show the largest increase in agricultural production occurring in the Cerrado (CEPF 2016, p. 145).

Pantanal

The Pantanal is a 140,000-km² (54,054-mi²) seasonally flooded wetland interspersed with higher areas not subject to inundation (cordilleras), covered with cerrado or seasonal forests (Santos Jr. 2008, p. 133; Santos Jr. *et al.* 2007, p. 127; Harris *et al.* 2005, p. 715; Mittermeier *et al.* 1990, p. 103). Transitions during the 1990s to more intensive cattle ranching methods led to the conversion of more forests to pasture and the introduction of nonnative grasses. Ninety-five percent of the Pantanal is privately owned; 80 percent of the privately owned land is used for cattle ranches, making cattle ranching the predominant economic activity in this region and the greatest cause of habitat loss in the Pantanal (van der Meer 2013, p. 5; Guedes and Vicente 2012, pp. 146–147, 148; Guedes 2009, p. 12; Pizo *et al.* 2008, p. 793; Harris *et al.* 2006, pp. 165, 175–176; Harris *et al.* 2005, pp. 715–716, 718; Pinho and Nogueira 2003, p. 30; Seidl *et al.* 2001, p. 414; Guedes and Harper 1995, p. 396; Mettermeier 1990, pp. 103, 107–108).

Manduvi, the tree that hyacinth macaws almost exclusively use for nesting in this region, grow in cordilleras, which constitute only 6 percent of the vegetative area of the Pantanal (van der Meer 2013, p. 6; Pizo *et al.* 2008, p. 793; Johnson *et al.* 1997, p. 186). Much of these patches and corridors are surrounded by seasonally flooded grasslands used as rangeland for cattle during the dry season (Johnson *et al.* 1997, p. 186). During the flooding season (January to June), up to 80 percent of the Pantanal is flooded and ranchers move cattle to cordilleras, increasing cattle pressure on upland forests (van der Meer 2013, p. 3; Guedes 2002, p. 3). These upland forests are often removed and converted to cultivated pastures with exotic grasses (van der Meer 2013, p. 6; Santos Jr. 2008, p. 136; Santos Jr. *et al.* 2007, p. 127; Harris *et al.* 2006, p. 165; Harris *et al.* 2005, p. 716; Pinho and Nogueira 2003, p. 30; Seidl *et al.* 2001, p. 414; Johnson *et al.* 1997, p. 186). Clearing land to establish pasture is perceived as the economically optimal land use, while land not producing beef is often perceived as unproductive (Seidl *et al.* 2001, pp. 414–415).

Since 2002, regular monitoring of land use and vegetative cover in the Upper Paraguay Basin, which includes the Pantanal, has taken place. While the annual rate of deforestation is decreasing, satellite monitoring of the area indicates a slow and steady increase in deforested area (Table 3).

TABLE 3—DEFORESTATION IN THE PANTANAL (2002–2014)

Years assessed	Accumulated deforested area (km²)	Percent (%) of Pantanal deforested	Annual deforested area (km²)	Annual deforestation rate (%)	Citation
2002–2008	20,265	13.4	612	0.41	CI *et al.* 2009, pp. 30–32.
2008–2010	20,851	13.8	605	0.40	CI *et al.* 2011, pp. 3–4.
2010–2012	20,833	13.8	389	0.26	CI *et al.* 2013, pp. 4–5.
2012–2014	22,439	14.9	394	0.26	CI *et al.* 2015, pp. 2–4.

When clearing land for pastures, palm trees are often left, as the cattle will feed on the palm nuts (Pinho and Nogueira 2003, p. 36). In fact, hyacinths occur near cattle ranches and feed off the palm nuts eliminated by the cattle (Juniper and Parr 1998, p. 417; Yamashita 1997, pp. 177, 179; Guedes and Harper 1995, pp. 400–401; Collar *et al.* 1992, p. 254).

However, other trees, including potential nesting trees, are often removed (Snyder *et al.* 2000, p. 119). Even in areas where known nesting trees were left and the surrounding area was cleared, competition with each other and other macaw species became so fierce that hyacinth macaws were unable to reproduce; both eggs and chicks were destroyed by pecking. Furthermore, 3 years after deforestation, the nesting trees that were left were lost due to isolation and damage from storms and wind.

Other activities associated with cattle ranching, such as the introduction of exotic foraging grasses, grazing, burning, compaction, and fragmentation, can negatively impact the nesting trees of the hyacinth macaw (Guedes 2013, unpaginated; Guedes and Vicente 2012, pp. 149–150; Santos Jr. *et al.* 2007, p. 128; Harris *et al.* 2006, p. 175; Snyder *et al.* 2000, p. 119). For example, fire is a common method for renewing pastures, controlling weeds, and controlling pests (*e.g.,* ticks); however, fires frequently become uncontrolled and are known to enter the patches and corridors of manduvi trees during the dry season (Harris *et al.* 2005, p. 716; Johnson *et al.* 1997, p. 186). Although fire can promote cavity formation in manduvi trees, frequent fires can also prevent trees from surviving to a size capable of providing suitable cavities, and can cause a high rate of nesting tree loss (Guedes 1993 in Johnson *et al.* 1997, p. 187). Guedes (Guedes and Vicente 2012, p. 157; 1995 in Santos Jr. *et al.* 2006, pp. 184–185) noted that 5 percent of manduvi trees are lost each year to deforestation, fire, and storms.

In addition to the direct removal of trees and the impact of fire on recruitment of manduvi trees, cattle themselves have impacted the density of manduvi seedlings in the Pantanal. Cattle forage on and trample manduvi seedlings, affecting the recruitment of this species to a size large enough to accommodate hyacinths (Pizo *et al.* 2008, p. 793; Johnson *et al.* 1997, p. 187; Mettermeier *et al.* 1990, p. 107). Only those manduvi trees 60 years old or older are capable of providing these cavities (Pizo *et al.* 2008, p. 792; Santos Jr. *et al.* 2006, p. 185). The minimum diameter at breast height (DBH) for trees to potentially contain a cavity suitable for hyacinth macaws is 50 cm (20 in), while all manduvi trees greater than 100 cm (39 in) DBH contain suitable nest cavities. However, there is low recruitment of manduvi trees in classes greater than 5 cm (2 in) DBH, a strong reduction in the occurrence of trees greater than 50 cm (20 in) DBH, and very few trees greater than 110 cm (43 in) DBH (Santos Jr. *et al.* 2007, p. 128). Only 5 percent of the existing adult manduvi trees (trees with a DBH greater than 50 cm (20 in)) in south-central Pantanal (Guedes 1993 in Johnson *et al.* 1997, p. 186), and 10.7 percent in southern Pantanal (van der Meer 2013, p. 16), contain suitable cavities for hyacinth macaws. This finding indicates that potential nesting sites are rare and will become increasingly rare in the future (Santos Jr. *et al.* 2007, p. 128).

Impacts of Deforestation

Because the hyacinth is highly specialized in both diet and nesting sites, it is particularly vulnerable to the loss of these resources and extinction (Faria *et al.* 2008, p. 766; Pizo 2008, p. 795; Munn *et al.* 1998, pp. 404, 409; Johnson *et al.* 1997, p. 186). The loss of tree species used by hyacinths negatively impacts the species by reducing availability of food resources, creating a shortage of suitable nesting sites, increasing competition, and resulting in lowered recruitment and a reduction in population size (Lee 2010, pp. 2, 6, 12; Santos Jr. *et al.* 2007, p. 128; Johnson *et al.* 1997, p. 188).

Its specialized diet makes hyacinth macaws vulnerable to changes in food availability. Inadequate nutrition can contribute to poor health and reduced reproduction in parrots generally (McDonald 2003 In Lee 2010, p. 6). Changes in fruit availability are known to decrease reproduction in hyacinths (Guedes 2009, pp. 42–43, 44). In Pará and the Gerais region, where food sources are threatened, persistence of the species is a concern given that one of the major factors thought to have contributed to the critically endangered status of the Lear's macaw (*Anodorhynchus leari*) is the loss of its specialized food source, licuri palm stands (*Syagrus* sp.), to cattle grazing (Collar *et al.* 1992, p. 257).

Hyacinths can tolerate a certain degree of human disturbance at their breeding sites (Pinho and Noguiera 2003, p. 36); however, the number of usable cavities increases with the age of the trees in the forest (Newton 1994, p. 266), and clearing land for agriculture and cattle ranching, cattle trampling and foraging, and burning of forest habitat result in the loss of mature trees with natural cavities of sufficient size and a reduction in recruitment of native species, which could eventually provide nesting cavities.

A shortage of nest sites can jeopardize the persistence of the hyacinth macaw by constraining breeding density, resulting in lower recruitment and a gradual reduction in population size (Santos Jr. *et al.* 2007, p. 128; Johnson *et al.* 1997, p. 188; Guedes and Harper 1995, p. 405; Newton 1994, p. 265). This reduction may lead to long-term effects on the viability of the hyacinth macaw population, especially in Pará and the Pantanal where persistence of nesting trees is compromised (Santos Jr. *et al.* 2007, p. 128; Santos Jr. *et al.* 2006, p. 181).

Although a species may survive the initial shock of deforestation, the resulting lack of food resources and breeding sites may reduce the viability of the population and make the species vulnerable to extinction (Sodhi *et al.* 2009, p. 517). Given the land-use trends across the range of the hyacinth macaw, the continued availability of food and nesting resources is of great concern.

In response to the loss of its nesting tree, hyacinths in the Gerais region now use rock crevices for nesting. Hyacinths have been reported in various trees species and even on cliffs on the border of the Pantanal; however, the majority of their nests are in Brazil nut (in Pará) and manduvi (in the Pantanal) (see *Essential Needs of the Species*). We do not know if the hyacinths in this region will respond in the same way to the loss of nesting trees as those in the Gerais region. It is possible that if these primary nesting trees become scarcer, hyacinths may adapt to using cavities of other trees (Van der Meer 2013, p. 3) or perhaps even cliff faces. However, to accommodate their large size, hyacinth macaws require older trees with large cavities. Deforestation in these regions would likely impact any alternative nesting trees and food sources, resulting in the same negative effect on the hyacinth macaw. Furthermore, competition for limited nesting sites and food would continue.

Regulatory Protections

In general, wildlife species and their nests, shelters, and breeding grounds are subject to Brazilian laws designed to provide protection (Clayton 2011, p. 4; Snyder *et al.* 2000, p. 119; Environmental Crimes Law (Law No. 9605/98); Stattersfield and Capper 1992, p. 257; Official List of Brazilian Endangered Animal Species (Order No. 1.522/1989); Brazilian Constitution (Title VIII, Chapter VI, 1988); Law No. 5197/1967; UNEP, n.d., unpaginated). Additionally, the forests of Brazil are specifically subject to several Brazilian laws designed to protect them. Destruction and damaging of forest reserves, cutting trees in forest reserves, and causing fire in forests, among other actions, without authorization are prohibited (Clayton 2011, p. 5; Environmental Crimes Law (Law No. 9605/98); UNEP, n.d., unpaginated).

Brazil's Forest Code, passed in 1965, is a central component of the nation's environmental legislation; it dictates the minimum percentage and type of woodland that farmers, timber companies, and others must leave intact on their properties (Barrionuevo 2012, unpaginated; Boadle 2012, unpaginated). Since 2001, the Forest Code has required landowners to conserve native vegetation on their rural properties. This requirement includes setting aside a Legal Reserve that comprises 80 percent of the property if it is located in the Amazon and 20 percent in other biomes. The Forest Code also designated environmentally sensitive areas as Areas of Permanent Preservation (APPs) to conserve water resources and prevent soil erosion. APPs include Riparian Preservation Areas, to protect riverside forest buffers, and Hilltop Preservation Areas to protect hilltops, high elevations, and steep slopes (Soares-Filho *et al.* 2014, p. 363).

For years this law was widely ignored by landowners and not enforced by the government, as evidenced by the high deforestation rates (Leahy 2011, unpaginated; Pearce 2011, unpaginated; Ratter *et al.* 1997, p. 228). However, as deforestation rates increased in the early 2000s, Brazil began cracking down on illegal deforesters and used satellite imagery to track deforestation, resulting in decreased deforestation rates (Soares-Filho *et al.* 2014, p. 363; Barrionuevo 2012, unpaginated; Boadle 2012, unpaginated; Darlington 2012, unpaginated). Efforts to strengthen enforcement of the Forest Code increased pressure on the farming sector, which resulted in a backlash against the Forest Code and industry's proposal of a new Forest Code (Soares-Filho *et al.* 2014, p. 363).

In 2011, reforms to Brazil's Forest Code were debated in the Brazilian Senate. The reforms were favored by the agricultural industry but were greatly opposed by environmentalists. At that time, the expectation of the bill being passed resulted in a spike in deforestation (Darlington 2012, unpaginated; Moukaddem 2011, unpaginated; WWF–UK 2011a, unpaginated). In 2012, a new Forest Code was passed; although the new reforms were an attempt at a compromise between farmers and environmentalists, many claim the new bill reduces the total amount of land required to be maintained as forest and will increase deforestation, especially in the Cerrado (Soares-Filho *et al.* 2014, p. 364; Boadle 2012, unpaginated; Darlington 2012, unpaginated; do Valle 2012, unpaginated; Greenpeace 2012, unpaginated).

Environmentalists oppose the new law due to the complexity of the rule, challenges in implementation, and a lack of adequate protection of Brazil's forests. The new Forest Code carries over conservation requirements for Legal Reserves and Riparian Preservation Areas. However, changes in the definition of Hilltop Preservation Areas reduced their total area by 87 percent. Additionally, due to more flexible protections and differentiation between conservation and restoration requirements, Brazil's environmental debt (areas of Legal Reserve and Riparian Preservation Areas deforested illegally before 2008 that, under the previous Forest Code, would have required restoration at the landowner's expense) was reduced by 58 percent (Soares-Filho et al. 2014, p. 363). The legal reserve debt was forgiven for ''small properties,'' which ranged from 20 ha (49 ac) in southern Brazil to 440 ha (1,087 ac) in the Amazon; this provision has resulted in approximately 90 percent of Brazilian rural properties qualifying for amnesty.

Further reductions in the environmental debt resulted from: (1) Reducing the Legal Reserve restoration requirement from 80 percent to 50 percent in Amazonian municipalities that are predominately occupied by protected areas; (2) including Riparian Preservation Areas in the calculation of the Legal Reserve area (total area they are required to preserve); and (3) relaxing Riparian Preservation Area restoration requirements on small properties. These new provisions effectively reduced the total amount of land farmers are required to preserve and municipalities and landowners are required to restore. Reductions were uneven across states and biomes, with the Amazon and Cerrado biomes being two of the three biomes most affected and vulnerable to deforestation.

Altogether, provisions of the new Forest Code have reduced the total area to be restored from approximately 50 million ha (123.5 million ac) to approximately 21 million ha (51.8 million ac) (Soares-Filho *et al.* 2014, p. 363; Boadle 2012, unpaginated). Furthermore, the old and new Forest Codes allow legal deforestation of an additional 88 million ha (217.4 million ac) on private properties deemed to constitute an ''environmental surplus.'' ''Environmental surplus'' areas are those that are not conserved by the Legal Reserve and Riparian Preservation Area conservation requirements. The Cerrado alone contains approximately 40 million ha (98.8 million ac) of environmental surplus that could be legally deforested (Soares-Filho *et al.* 2014, p. 364).

Although the Forest Code reduces restoration requirements, it introduces new mechanisms to address fire management, forest carbon, and payments for ecosystem services, which could reduce deforestation and result in environmental benefits. The most important mechanism may be the Environmental Reserve Quota (ERQ). The ERQ is a tradable legal title to areas with intact or regenerating native vegetation exceeding the Forest Code requirements. It provides the opportunity for landowners who, as of July 2008 did not meet the area-based conservation requirements of the law, to instead ''compensate'' for their legal reserve shortages by purchasing surplus compliance obligations from properties that would then maintain native vegetation in excess of the minimum legal reserve requirements. This mechanism could provide forested lands with monetary value, creating a trading market. The ERQ could potentially reduce 56 percent of the Legal Reserve debt (Soares-Filho *et al.* 2014, p. 364).

The new Forest Code requires landowners to take part in a Rural Environmental Registry System, a mapping and registration system for rural properties that serves as a means for landowners to report their compliance with the code in order to remain eligible for state credit and other government support. On May 6, 2014, the Ministry for the Environment published a regulation formally implementing the Rural Environmental Registry and requiring all rural properties be enrolled by May 2015. However, on May 5, 2015, the deadline was extended to May 4, 2016. According to information provided by the Ministry for the Environment, at that time 1,407,206 rural properties had been registered since the New Code became effective. This number covers an area of 196,767,410 hectares and represents 52% of all rural areas in Brazil for which registration is mandatory (Filho *et al.* 2015, unpaginated). This system could facilitate the market for ERQs and payments for ecosystem services.

It is unclear whether the Brazilian Government will be able to effectively enforce the new law (Barrionuevo 2012, unpaginated; Boadle 2012, unpaginated; Greenpeace 2012, unpaginated). The original code was largely ignored by landowners and not enforced, leading to Brazil's high rates of deforestation (Boadle 2012, unpaginated). Although Brazil's deforestation rates declined between 2005 and 2010, 2011 marked the beginning of an increase in rates due

to the expectation of the new Forest Code being passed. Another slight increase occurred in 2013, then doubled over 6 months (Schiffman 2015, unpaginated). Corruption in the government, land fraud, and a sense of exemption from penalties for infractions, have contributed to increases in illegal deforestation (Schiffman 2015, unpaginated). Additionally, amnesty afforded by the new Forest Code has led to the perception that illegal deforesters are unlikely to be prosecuted or could be exonerated in future law reforms (Schiffman 2015, unpaginated; Soares-Filho *et al.* 2014, p. 364). Enforcement is often non-existent in Brazil as IBAMA is underfunded and understaffed. Only 1 percent of the fines IBAMA imposed on individuals and corporations for illegal deforestation is actually collected (Schiffman 2015, unpaginated). In Para, one of two states where most of the clearing is occurring, 78 percent of logging between August 2011 and July 2012 was illegal (Schiffman 2015, unpaginated). Furthermore, while much logging is being conducted illegally, there is concern that even if regulations are strictly adhered to, the development is not sustainable (Schiffman 2015, unpaginated).

Additionally, State laws designed to protect the habitat of the hyacinth macaw are in place. To protect the main breeding habitat of the hyacinth macaw, Mato Grosso State Senate passed State Act 8.317 in 2005, which prohibits the cutting of manduvi trees, but not others. Although this law protects nesting trees, other trees around nesting trees are cut, exposing the manduvi tree to winds and storms. Manduvi trees end up falling or breaking, rendering them useless for the hyacinths to nest in (Santos Jr. 2008, p. 135; Santos Jr. *et al.* 2006, p. 186).

Although laws are in place to protect the forests of Brazil, lack of supervision and lack of resources prevent these laws from being properly implemented (Guedes 2012, p. 3). Ongoing deforestation in the Amazon, Cerrado, and Pantanal are evidence that existing laws are not being adequately enforced. Without greater enforcement of laws, deforestation will continue to impact the hyacinth macaw and its food and nesting resources.

Habitat loss for the hyacinth macaw continues despite regulatory mechanisms intended to protect Brazil's forests. As described above, the hyacinth's food and nesting trees are removed for agriculture and cattle ranching and fire is used to clear land and maintain pastures. The original Forest Code was not properly enforced and, thus was not adequately protective. It is questionable whether the new Forest Code will be effectively enforced. Regardless of enforcement, given the provisions of the new Forest Code, some level of deforestation is highly likely to continue and will continue to compromise the status of the species.

Climate Change

Changes in Brazil's climate and associated changes to the landscape may result in additional habitat loss for the hyacinth macaw. Across Brazil, temperatures are projected to increase and precipitation to decrease (Carabine and Lemma 2014, p. 11; Siqueira and Peterson 2003, p. 2). The latest Intergovernmental Panel on Climate Change assessment estimates temperature changes in South America by 2100 to range from 1.7 to 6.7 °C (3.06 to 12.06 °F) under medium and high emission scenarios and 1 to 1.5 °C (1.8 to 2.7 °F) under a low emissions scenario (Magrin *et al.* 2014, p. 1502; Carabine and Lemma 2014, p. 10). Projected changes in rainfall in South America vary by region. Reductions are estimated for northeast Brazil and the Amazon (Magrin *et al.* 2014, p. 1502; Carabine and Lemma 2014, pp. 10, 11). At a national level, climate change may induce significant reductions in forestland in all Brazilian regions (Féres *et al.* 2009, pp. 12, 15).

Temperature increases in Brazil are expected to be greatest over the Amazon rainforest, where Pará is located, with models indicating a strong warming and drying of this region during the 21st Century, particularly after 2040 (Marengo *et al.* 2011, pp. 8, 15, 27, 39, 48; Féres *et al.* 2009, p. 2). Estimates of temperature changes in Amazonia are 2.2 °C (4 °F) under a low greenhouse gas emission scenario and 4.5 °C (8 °F) under a high-emission scenario by the end of the 21st Century (2090–2099) (Marengo *et al.* 2011, p. 27). Several models simulating varying amounts of global warming indicate Amazonia is at a high risk of forest loss and more frequent wildfires (Magrin *et al.* 2007, p. 596). Some leading global circulation models suggest extreme weather events, such as droughts, will increase in frequency or severity due to global warming. As a result, droughts in Amazonian forests could become more severe in the future (Marengo *et al.* 2011, p. 48; Laurance *et al.* 2001, p. 782). For example, the 2005 drought in Amazonia was a 1-in-20-year event; however, those conditions may become a 1-in-2-year event by 2025 and a 9-in-10-year event by 2060 (Marengo *et al.* 2011, p. 28). Impacts of deforestation are greater under drought conditions as fires set for forest clearances burn larger areas (Marengo *et al.* 2011, p. 16). Additionally, drought increases the vulnerability of seasonal forests of the Amazon, such as those found in eastern Amazonia, to wildfires during droughts (Laurance *et al.* 2001, p. 782).

Previous work has indicated that, under increasing temperature and decreasing rainfall conditions, the rainforest of the Amazon could be replaced with different vegetation. Some models have predicted a change from forests to savanna-type vegetation over parts of, or perhaps the entire, Amazon in the next several decades (Magrin *et al.* 2014, p. 1523; Marengo *et al.* 2011, pp. 11, 18, 29, 43; Magrin *et al.* 2007, pp. 583, 596). In the regions where the hyacinth macaw occurs, the climate features a dry season, which prevents the growth of an extensive closed-canopy tropical forest. Therefore, the transition of the Amazon rainforests could provide additional suitable habitat for the hyacinth macaw. However, we do not know how the specific food and nesting resources the hyacinth macaw uses will be impacted if there is an increase in the dry season. Furthermore, there are uncertainties in this modeling, and the projections are not definitive outcomes. In fact, some models indicate that conditions are likely to get wetter in Amazonia in the future (Marengo *et al.* 2011, pp. 28–29). These uncertainties make it challenging to predict the likely effects of continued climate change on the hyacinth macaw.

Temperatures in the Cerrado, which covers the Gerais region, are also predicted to increase; the maximum temperature in the hottest month may increase by 4 °C (7.2 °F) and by 2100 may increase to approximately 40 °C (104 °F) (Marini *et al.* 2009, p. 1563). Along with changes in temperature, other models have predicted a decrease in tree diversity and range sizes for birds in the Cerrado.

Projections based on a 30-year average (2040–2069) indicate serious effects to Cerrado tree diversity in coming decades (Marini *et al.* 2009, p. 1559; Siqueira and Peterson 2003, p. 4). In a study of 162 broad-range tree species, the potential distributional area of most trees was projected to decline by more than 50 percent. Using two climate change scenarios, 18–56 species were predicted to go extinct in the Cerrado, while 91–123 species were predicted to decline by more than 90 percent in the potential distributional area (Siqueira and Peterson 2003, p. 4).

Of the potential impacts of predicted climate-driven changes on bird distribution, extreme temperatures seemed to be the most important factor limiting distribution, revealing their

physiological tolerances (Marini *et al.* 2009, p. 1563). In a study on changes in range sizes for 26 broad-range birds in the Cerrado, range sizes are expected to decrease over time, and significantly so as soon as 2030 (Marini *et al.* 2009, p. 1564). Changes ranged from a 5 percent increase to an 80 percent decrease under two dispersal scenarios for 2011–2030, 2046–2065, and 2080–2099 (Marini *et al.* 2009, p. 1561). The largest potential loss in range size is predicted to occur among grassland and forest-dependent species in all timeframes (Marini *et al.* 2009, p. 1564). These species will likely have the most dire future conservation scenarios because these habitat types are the least common (Marini *et al.* 2009, p. 1559). Although this study focused on broad-range bird species, geographically restricted birds, such as hyacinth macaw, are predicted to become rarer (Marini *et al.* 2009, p. 1564).

Whether species will or will not adapt to new conditions is difficult to predict; synergistic effects of climate change and habitat fragmentation, or other factors, such as biotic interactions, may hasten the need for conservation even more (Marini *et al.* 2009, p. 1565). Although there are uncertainties in the climate change modeling discussed above, the overall trajectory is one of increased warming under all scenarios. Species, like the hyacinth macaw, whose habitat is limited, population is reduced, are large in physical size, and are highly specialized, are more vulnerable to climatic variations and at a greater risk of extinction (Guedes 2009, p. 44).

We do not know how the habitat of the hyacinth macaw may change under these conditions, but we can assume some change will occur. The hyacinth macaw is experiencing habitat loss due to widespread expansion of agriculture and cattle ranching. Climate change has the potential to further decrease the specialized habitat needed by the hyacinth macaw; the ability of the hyacinth macaw to cope with landscape changes due to climate change is questionable given the specialized needs of the species. Furthermore, one of the factors that affected reproductive rates of hyacinths in the Pantanal was variations in temperature and rainfall (Guedes 2009, p. 42). Hotter, drier years, as predicted under different climate change scenarios, could result in greater impacts to hyacinth reproduction due to impacts on the fruit and foraging for the hyacinth macaw and competition with other bird and mammal species for limited resources (See *Other Factors Affecting Reproductive Rates*).

Hunting

In Pará and the Gerais region, hunting removes individual hyacinth macaws vital to the already small populations (Brouwer 2004, unpaginated; Collar *et al.* 1992, p. 257; Munn *et al.* 1989, p. 414). Hyacinths in Pará are hunted for subsistence and the feather trade by some Indian groups (Brouwer 2004, unpaginated; Munn *et al.* 1989, p. 414). Because the hyacinth is the largest species of macaw, it may be targeted by subsistence hunters, especially by settlers along roadways (Collar *et al.* 1992, p. 257). Additionally, increased commercial sale of feather art by Kayapo Indians of Gorotire may be of concern given that 10 hyacinths are required to make a single headdress (Collar *et al.* 1992, p. 257). The Gerais region is poor and animal protein is not as abundant as in other regions; therefore, meat of any kind, including the large hyacinth macaw, is sought as a protein source (Collar *et al.* 1992, p. 257; Munn *et al.* 1989, p. 414).

Because the hyacinth macaw populations in Pará and the Gerais region are estimated at only 1,000–1,500 individuals, combined, the removal of any individuals from these small populations has a negative effect on reproduction and the ability of the species to recover. Any continued hunting for either meat or the sale of feather art is likely to contribute to the decline of the hyacinth macaw in these regions, particularly when habitat conversion is also taking place.

Hunting, capture, and trade of animal species is prohibited without authorization throughout the range of the hyacinth macaw (Clayton 2011, p. 4; Snyder *et al.* 2000, p. 119; Environmental Crimes Law (Law No. 9605/98); Stattersfield and Capper 1992, p. 257; Munn *et al.* 1989, p. 415; Official List of Brazilian Endangered Animal Species (Order No. 1.522/1989); Brazilian Constitution (Title VIII, Chapter VI, 1988); Law No. 5197/1967; UNEP, n.d., unpaginated). However, continued hunting in some parts of its range is evidence that existing laws are not being adequately enforced. Without greater enforcement of laws, hunting will continue to impact the hyacinth macaw.

Low Reproductive Rates

As described above, the specialized nature and reproductive biology of the hyacinth macaw contribute to low recruitment of juveniles and decrease the ability to recover from reductions in population size caused by anthropogenic disturbances (Faria *et al.* 2008, p. 766; Wright *et al.* 2001, p. 711). This species' vulnerability to extinction is further heightened by deforestation that negatively affects the availability of essential food and nesting resources. In addition to direct impacts on food and nesting resources and hyacinth macaws themselves, several other factors affect the reproductive success of the hyacinth. In the Pantanal, competition, predation, disease, destruction or flooding of nests, and climatic conditions and variations are major factors affecting reproductive success of the hyacinth macaw (Guedes 2009, pp. 5, 8, 42; Guedes 2004b, p. 7).

In the Pantanal, competition for nesting sites is intense. The hyacinth nests almost exclusively in manduvi trees; however, there are 17 other bird species, small mammals, and honey bees (*Apis melifera*) that also use manduvi cavities (Guedes and Vicente 2012, pp. 148, 157; Guedes 2009, p. 60; Pizo *et al* 2008, p. 792; Pinho and Nogueira 2003, p. 36). Bees are even known to occupy artificial nests that could be used by hyacinth macaws (Pinho and Nogueira 2003, p. 33; Snyder *et al.* 2000, p. 120). Manduvi is a key species for the hyacinth, and, as discussed above, these cavities are already limited and there is evidence of decreased recruitment of this species of tree (Santos Jr. *et al.* 2006, p. 181). Competition for nesting cavities is exacerbated because manduvi trees must be at least 60 years old, and on average 80 years old, to produce cavities large enough to be used by the hyacinth macaw (Guedes 2009, pp. 59–60; Pizo *et al.* 2008, p. 792; Santos Jr. *et al.* 2006, p. 185). Given that there is currently a limited number of manduvi trees in the Pantanal of adequate size capable of accommodating the hyacinth macaw, evidence of reduced recruitment of these sized manduvi, and numerous species that also use this tree, competition will certainly increase as the number of manduvi decreases, further affecting reproduction by limiting tree cavities available to the hyacinth macaw for nesting (Guedes 2009, p. 60). Furthermore, a shortage of suitable nesting sites could lead to increased competition resulting in an increase in infanticide and egg destruction by other hyacinths and other macaw species (Lee 2010, p. 2). Black vultures (*Coragyps atratus*), collared forest falcons (*Micrastur semitorquatus*), and red-and-green macaws (*Ara chloropterus*) break hyacinth macaw eggs when seeking nesting cavities (Guedes 2009, p. 75).

A 10-year study conducted in the Miranda region of the Pantanal concluded that the majority of hyacinth macaw nests (63 percent) failed, either

partially or totally, during the egg phase. Predation accounted for 52 percent of lost eggs (Guedes 2009, pp. 5, 74). Of 582 eggs monitored over 6 years in the Nhecolândia region of the Pantanal, approximately 24 percent (138 eggs) were lost to predators (Pizo *et al.* 2008, pp. 794, 795). Researchers have identified several predators of hyacinth eggs, including toco toucans (*Ramphastos toco*), purplish jays (*Cyanocorax cyanomelas*), white-eared opossums (*Didelphis albiventris*), and coatis (*Nasua nasua*) (Guedes 2009, pp. 5, 23, 46, 58, 74–75; Pizo *et al.* 2008, p. 795). The toco toucan was the main predator, responsible for 12.4 percent of the total eggs lost and 53.5 percent of the eggs lost annually in the Nhecolândia region (Pizo *et al.* 2008, pp. 794, 795). Most predators leave some sort of evidence behind; however, toco toucans are able to swallow hyacinth macaw eggs whole, leaving no evidence behind. This ability may lead to an underestimate of nest predation by toucans (Pizo *et al.* 2008, p. 793).

The remaining eggs that were considered lost during the 10-year study of the Miranda region did not hatch due to infertility, complications during embryo development, inexperience of young couples that accidentally smash their own eggs while entering and exiting the nest, breaking by other bird and mammal species wanting to occupy the nesting cavity, and broken trees and flooding of nests (Guedes 2009, p. 75).

Guedes (2009, pp. 66, 79) also found in the 10-year study of the Miranda region that, of the nests that successfully produced chicks, 49 percent experienced a total or partial loss of chicks. Of these, 62 percent were lost due to starvation, low temperature, disease or infestation by ectoparasites, flooding of nests, and breaking of branches. Thirty-eight percent were lost due to predation of chicks by carnivorous ants (*Solenopis* spp.), other insects, collared forest falcon, and spectacled owl (*Pulsatrix perspicillata*). The toco toucan and great horned owl (*Bubo virginianus*) are also suspected of chick predation, but this has not yet been confirmed (Guedes 2009, pp. 6, 79–81; Pizo *et al.* 2008, p. 795).

Variations in temperature and rainfall were also found to be factors affecting reproduction of the hyacinth in the Pantanal (Guedes 2009, p. 42). Years with higher temperatures and lower rainfall can affect the production of fruits and foraging and, therefore, lead to a decrease in reproduction of hyacinths the following year (Guedes 2009, pp. 42–43, 44). This outcome is especially problematic for a species that relies on only two species of palm nuts as a source of food. Competition with other bird and mammal species may also increase during these years. Acuri are available year round, even during times of fruit scarcity, making it a resource many other species also depend on during unfavorable periods (Guedes 2009, p. 44). Additionally, the El Niño event during the 1997–98 breeding season caused hotter, wetter conditions favoring breeding, but survival of the chicks was reduced. In 1999, a longer breeding period was observed following drier, colder conditions caused by the La Niña that same year; however, 54 percent of the eggs were lost that year (Guedes 2009, p. 43).

Conservation Measures

The main biodiversity protection strategy in Brazil is the creation of Protected Areas (National Protected Areas System) (Federal Act 9.985/00) (Santos Jr. 2008, p. 134). Various regulatory mechanisms (Law No. 11.516, Act No. 7.735, Decree No. 78, Order No. 1, and Act No. 6.938) in Brazil direct Federal and State agencies to promote the protection of lands and govern the formal establishment and management of protected areas to promote conservation of the country's natural resources (ECOLEX 2007, pp. 5–7). These mechanisms generally aim to protect endangered wildlife and plant species, genetic resources, overall biodiversity, and native ecosystems on Federal, State, and privately owned lands (*e.g.,* Law No. 9.985, Law No. 11.132, Resolution No. 4, and Decree No. 1.922). Brazil's Protected Areas were established in 2000 and may be categorized as ''strictly protected'' or ''sustainable use'' based on their overall management objectives. Strictly protected areas include national parks, biological reserves, ecological stations, natural monuments, and wildlife refuges protected for educational and recreational purposes and scientific research. Protected areas of sustainable use (national forests, environmental protection areas, areas of relevant ecological interest, extractive reserves, fauna reserves, sustainable development reserves, and private natural heritage reserves) allow for different types and levels of human use with conservation of biodiversity as a secondary objective. As of 2005, Federal and State governments strictly protected 478 areas totaling 37,019,697 ha (14,981,340 ac) in Brazil (Rylands and Brandon 2005, pp. 615–616). Other types of areas contribute to the Brazilian Protected Areas System, including indigenous reserves and areas managed and owned by municipal governments, nongovernmental organizations, academic institutions, and private sectors (Rylands and Brandon 2005, p. 616).

The states where the hyacinth macaw occurs contain 53 protected areas (Parks.it nd, unpaginated); however, the species occurs in only 3 of those areas (BLI 2014b, unpaginated; Collar *et al.* 1992, p. 257). The Amazon contains a balance of strictly prohibited protected areas (49 percent of protected areas) and sustainable use areas (51 percent) (Rylands and Brandon 2005, p. 616). We found no information on the occurrence of the hyacinth macaw in any protected areas in Pará. The Cerrado biome is one of the most threatened biomes and is underrepresented among Brazilian protected areas; only 2.25 percent of the original extent of the Cerrado is protected (Marini *et al.* 2009, p. 1559; Klink and Machado 2005, p. 709; Siqueira and Peterson 2003, p. 11). Within the Cerrado, the hyacinth macaw is found within the Araguaia National Park in Goiás and the Parnaíba River Headwaters National Park (BLI 2014b; Ridgely 1981, p. 238). In 2000, the Pantanal was designated as a Biosphere Reserve by UNESCO (Santos Jr. 2008, p. 134). Only 4.5 percent of the Pantanal is categorized as protected areas (Harris *et al.* 2006, pp. 166–167), including strictly protected areas and indigenous areas (Klink and Machado 2005, p. 709). Within these, the hyacinth macaw occurs only within the Pantanal National Park (Collar *et al* 1992; Ridgely 1981, p. 238). The distribution of Federal and State protected areas are uneven across biomes, yet all biomes need substantially more area to be protected to meet the recommendations established in priority-setting workshops. These workshops identified 900 areas for conservation of biodiversity and all biomes, including the Amazon, Cerrado, and Pantanal (Rylands and Brandon 2005, pp. 615–616).

Many challenges limit the effectiveness of the protected areas system. Brazil is faced with competing priorities of encouraging development for economic growth and resource protection. In the past, the Brazilian Government, through various regulations, policies, incentives, and subsidies, has actively encouraged settlement of previously undeveloped lands, which facilitated the large-scale habitat conversions for agriculture and cattle-ranching that occurred throughout the Amazon, Cerrado, and Pantanal biomes (WWF–UK 2011b, p. 2; WWF 2001, unpaginated; Arima and Uhl, 1997, p. 446; Ratter *et al.* 1997, pp. 227–228). However, the risk of intense wild

fires may increase in areas, such as protected areas, where cattle are removed and the resulting accumulation of plant biomass serves as fuel (Santos Jr. 2013, pers. comm.; Tomas *et al.* 2011, p. 579).

The Ministry of Environment is working to increase the amount of protected areas in the Pantanal and Cerrado regions; however, the Ministry of Agriculture is looking at using an additional 1 million km² (386,102 mi²) for agricultural expansion, which will speed up deforestation (Harris *et al.* 2006, p. 175). These competing priorities make it difficult to enact and enforce regulations that protect the habitat of this species. Additionally, after the creation of protected areas, a delay in implementation or a lack of local management commitment often occurs, staff limitations make it difficult to monitor actions, and a lack of acceptance by society or a lack of funding make administration and management of the area difficult (Santos Jr. 2008, p. 135; Harris *et al.* 2006, p. 175). Furthermore, ambiguity in land titles allows illegal occupation and clearing of forests in protected areas, such as federal forest reserves (Schiffman 2015, unpaginated). The designation of the Pantanal as a Biosphere Reserve is almost entirely without merit because of a lack of commitment by public officials (Santos Jr. 2008, p. 134).

Of 53 designated protected areas within the states in which the hyacinth macaw occurs, it is found in only 3 National Parks; none of which are effectively protected (Rogers 2006, unpaginated; Ridgely 1981, p. 238). The hyacinth macaw continues to be hunted in Pará and the Gerais region, and habitat loss due to agricultural expansion and cattle ranching is occurring in all three regions. Therefore, it appears that Brazil's protected areas system does not adequately protect the hyacinth macaw or its habitat.

In addition to national and state laws, the Brazilian Government and nongovernmental organizations have developed plans for protecting the forests of Brazil. In 2009, Brazil announced a plan to cut deforestation rates by 80 percent by 2020 with the help of international funding; Brazil's plan calls on foreign countries to fund $20 billion U.S. dollars (USD) (Marengo *et al.* 2011, p. 8; Moukaddem 2011, unpaginated; Painter 2008, unpaginated). If Brazil's plan is implemented and the goal is met, deforestation in Brazil would be significantly reduced. Between 2005 and 2010, Brazil reduced deforestation rates by more than three-quarters. Most of the decrease took place within the Amazon Basin. However, deforestation increased slightly in 2013, then doubled in 6 months in 2014–2015 (Schiffman 2015, unpaginated).

Brazil's Ministry of Environment and The Nature Conservancy have worked together to implement the Farmland Environmental Registry to curb illegal deforestation in the Amazon. This program was launched in the states of Mato Grosso and Pará; it later became the model for the Rural Environmental Registry that monitors all of Brazil for compliance with the Forest Code. This plan helped Paragominas, a municipality in Pará, be the first in Brazil to come off the government's blacklist of top Amazon deforesters. After 1 year, 92 percent of rural properties in Paragominas had been entered into the registry, and deforestation was cut by 90 percent (Dias and Ramos 2012, unpaginated; Vale 2010, unpaginated). In response to this success, Pará launched its Green Municipalities Program in 2011. The purpose of this project is to reduce deforestation in Pará by 80 percent by 2020 and strengthen sustainable rural production. To accomplish this goal, the program seeks to create partnerships between local communities, municipalities, private initiatives, IBAMA, and the Federal Public Prosecution Service and focus on local pacts, deforestation monitoring, implementation of the Rural Environmental Registry, and structuring municipal management (Veríssimo *et al.* 2013, pp. 3, 6, 12–13). The program aims to show how it is possible to develop a new model for an activity identified as a major cause of deforestation (Dias and Ramos 2012, unpaginated; Vale 2010, unpaginated).

Awareness of the urgency in protecting the biodiversity of the Cerrado biome is increasing (Klink and Machado 2005, p. 710). The Brazilian Ministry of the Environment's National Biodiversity Program and other government-financed institutes such as the Brazilian Environmental Institute, Center for Agriculture Research in the Cerrado, and the National Center for Genetic Resources and Biotechnology, are working together to safeguard the existence and viability of the Cerrado. Additionally, nongovernmental organizations such as Fundaço Pró-Natureza, Instituto Sociedade População e Natureza, and World Wildlife Fund have provided valuable assessments and are pioneering work in establishing extractive reserves (Ratter *et al.* 1997, pp. 228–229). Other organizations are working to increase the area of Federal Conservation Units, a type of protected area, that currently represent only 1.5 percent of the biome (Ratter *et al.* 1997, p. 229).

A network of nongovernmental organizations, Rede Cerrado, has been established to promote local sustainable-use practices for natural resources (Klink and Machado 2005, p. 710). Rede Cerrado provided the Brazilian Ministry of the Environment recommendations for urgent actions for the conservation of the Cerrado. As a result, a conservation program was established to integrate actions for conservation in regions where agropastoral activities were especially intense and damaging (Klink and Machado 2005, p. 710). Conservation International, The Nature Conservancy, and World Wildlife Fund have worked to promote alternative economic activities, such as ecotourism, sustainable use of fauna and flora, and medicinal plants, to support the livelihoods of local communities (Klink and Machado 2005, p. 710). Although these programs demonstrate awareness of the need for protection and efforts in protecting the Cerrado, we have no details on the specific work or accomplishments of these programs, or how they would affect, or have affected, the hyacinth macaw and its habitat.

The Brazilian Government, under its Action Plan for the Prevention and Control of Deforestation and Burning in the Cerrado—Conservation and Development (2010), committed to recuperating at least 8 million ha (20 million ac) of degraded pasture by the year 2020, reducing deforestation by 40 percent, decreasing forest fires, expanding sustainable practices, and monitoring remaining natural vegetation. It also planned to expand the areas under protection in the Cerrado to 2.1 million ha (5 million ac) (Ribeiro *et al.* 2012, p. 11; WWF–UK 2011b, p. 4). However, we do not have details on the success of the action plan or the progress on expanding protected areas.

In 1990, the Hyacinth Macaw Project (Projecto Arara Azul) began with support from the University for the Development of the State (Mato Grosso do Sul) and the Pantanal Region (Brouwer 2004, unpaginated; Guedes 2004b, p. 28; Pittman 1999, p. 39). This program works with local landowners, communities, and tourists to monitor the hyacinth macaw, study the biology of this species, manage the population, and promote its conservation and ensure its protection in the Pantanal (Santos Jr. 2008, p. 135; Harris *et al.* 2005, p. 719; Brouwer 2004, unpaginated; Guedes 2004a, p. 281). Studies have addressed feeding, reproduction, competition, habitat

survival, chick mortality, behavior, nests, predation, movement, and threats contributing to the reduction in the wild population (Guedes 2009, p. xiii; Guedes 2004a, p. 281). Because there are not enough natural nesting sites in this region, the Hyacinth Macaw Project began installing artificial nest boxes; more than 180 have been installed. Hyacinths have adapted to using the artificial nests, leading to more reproducing couples and successful fledging of chicks. Species that would otherwise compete with hyacinth macaws for nesting sites have also benefitted from the artificial nests as a result of reduced competition for natural nesting sites. Hyacinths reuse the same nest for many years; eventually the nests start to decay or become unviable. The Hyacinth Macaw Project also repairs these nests (natural and artificial) so they are not lost. In areas where suitable cavities are scarce, the loss of even one nest could have substantial impacts on the population. Additionally, wood boards are used to make cavity openings too small for predators, while still allowing hyacinths to enter (Brouwer 2004, unpaginated; Guedes 2004a, p. 281; Guedes 2004b, p. 8).

In nests with a history of unsuccessful breeding, the Hyacinth Macaw Project has also implemented chick management, with the approval of the Committee for Hyacinth Macaw Conservation coordinated by IBAMA. Hyacinth macaw eggs are replaced with chicken eggs, and the hyacinth eggs are incubated in a field laboratory. After hatching, chicks are fed for a few days, and then reintroduced to the original nest or to another nest with a chick of the same age. This process began to increase the number of chicks that survived and fledged each year (Brouwer 2004, unpaginated; Guedes 2004a, p. 281; Guedes 2004b, p. 9).

Awareness has also been raised with local cattle ranchers. Attitudes have begun to shift, and ranchers are proud of having macaw nests on the property. Local inhabitants also served as project collaborators (Guedes 2004a, p. 282; Guedes 2004b, p. 10). This shift in attitude has also diminished the threat of illegal trade in the Hyacinth Macaw Project area (Brouwer 2004, unpaginated).

The Hyacinth Macaw Project has contributed to the increase of the hyacinth population in the Pantanal since the 1990s (Harris *et al.* 2005, p. 719). Nest and chick management implemented by the Hyacinth Macaw Project has led to an increase in the Pantanal population; for every 100 couples that reproduce, 4 juveniles survive and are added to the population. Additionally, hyacinth macaws have expanded to areas where it previously disappeared, as well as new areas (Guedes 2012, p. 1; Guedes 2009, pp. 4–5, 8, 35–36, 39, 82).

Nest boxes can have a marked effect on breeding numbers of many species on a local scale (Newton 1994, p. 274), and having local cattle ranchers appreciate the presence of the hyacinth macaw on their land helps diminish the effects of habitat destruction and illegal trade. However, the Hyacinth Macaw Project area does not encompass the entire Pantanal region. Although active management has contributed to the increase in the hyacinth population, and farmers have begun to protect hyacinth macaws on their property, land conversion for cattle ranching continues to occur in the Pantanal. The recruitment of the manduvi tree has been severely reduced, and is expected to become increasingly rare in the future, due to ongoing damage caused by cattle grazing and trampling of manduvi saplings, as well as the burning of pastures for maintenance. If this activity continues, the hyacinth's preferred natural cavities will be severely limited and the species will completely rely on the installation of artificial nest boxes, which is currently limited to the Hyacinth Macaw Project area. Furthermore, survival of hyacinth eggs and chicks are being impacted by predation, competition, climate variations, and other natural factors. Even with the assistance of the Hyacinth Macaw Project, only 35 percent of eggs survive to the juvenile stage.

Pet Trade

The hyacinth macaw is protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), an international agreement between governments to ensure that the international trade of CITES-listed plant and animal species does not threaten species' survival in the wild. Under this treaty, CITES Parties (member countries or signatories) regulate the import, export, and re-export of specimens, parts, and products of CITES-listed plant and animal species. Trade must be authorized through a system of permits and certificates that are provided by the designated CITES Management Authority of each CITES Party. Brazil, Bolivia, and Paraguay are Parties to CITES.

The hyacinth macaw is currently listed in Appendix I of CITES. An Appendix-I listing includes species threatened with extinction whose trade is permitted only under exceptional circumstances, which generally precludes commercial trade. The import of an Appendix-I species generally requires the issuance of both an import and export permit. Import permits for Appendix-I species are issued only if findings are made that the import would be for purposes that are not detrimental to the survival of the species and that the specimen will not be used for primarily commercial purposes (CITES Article III(3)). Export permits for Appendix-I species are issued only if findings are made that the specimen was legally acquired and trade is not detrimental to the survival of the species, and if the issuing authority is satisfied that an import permit has been granted for the specimen (CITES Article III(2)).

The import of hyacinth macaws into the United States is also regulated by the Wild Bird Conservation Act (WBCA) (16 U.S.C. 4901 *et seq.*), which was enacted on October 23, 1992. The purpose of the WBCA is to promote the conservation of exotic birds by ensuring that all imports of exotic birds to the United States are biologically sustainable and not detrimental to the species in the wild. The WBCA generally restricts the importation of most CITES-listed live or dead exotic birds. Import of dead specimens is allowed for scientific purposes and museum specimens. Permits may be issued to allow import of listed birds for various purposes, such as scientific research, zoological breeding or display, or personal pets, when certain criteria are met. The Service may approve cooperative breeding programs and subsequently issue import permits under such programs. Wild-caught birds may be imported into the United States if certain standards are met and they are subject to a management plan that provides for sustainable use. At this time, the hyacinth macaw is not part of a Service-approved cooperative breeding program, and has not been approved for importation of wild-caught birds.

In the 1970s and 1980s, substantial trade in hyacinth macaws was reported, but actual trade was likely significantly greater given the amount of smuggling, routing of birds through countries not parties to CITES, and internal consumption in South America (Collar *et al.* 1992, p. 256; Munn *et al.* 1989, pp. 412–413). Trade in parrots in the 1980s was particularly high due to a huge demand from developed countries, including the United States, which was the main consumer of parrot species at that time (Rosales *et al.* 2007, pp. 85, 94; Best *et al.* 1995, p. 234). In the late 1980s and early 1990s, reports of

hyacinth trapping included one trapper who worked an area for 3 years removing 200–300 wild hyacinths a month during certain seasons and another trapper who caught 1,000 hyacinths in 1 year and knew of other teams operating at similar levels (Silva (1989a) and Smith (1991c) in Collar *et al.* 1992, p. 256). More than 10,000 hyacinths are estimated to have been taken from the wild in the 1980s (Smith 1991c, in Collar *et al.* 1992, p. 256; Munn *et al.* 1987, in Guedes 2009, p. 12). In the years following the enactment of the WBCA, studies found lower poaching levels than in prior years, suggesting that import bans in developed countries reduced poaching levels in exporting countries (Wright *et al.* 2001, pp. 715, 718).

Based on CITES trade data obtained from United Nations Environment Programme—World Conservation Monitoring Center (UNEP–WCMC) CITES Trade Database, from the time the hyacinth macaw was uplisted to CITES Appendix I in October 1987 through 2011, and taking into account that several records appear to be overcounts due to slight differences in the manner in which the importing and exporting countries reported their trade, international trade involved 2,030 specimens, including 1,804 live birds. Of the 2,030 specimens, 106 (4.6 percent) were exported from Bolivia, Brazil, or Paraguay (the range countries of the species). With the information given in the UNEP–WCMC database, from 1987 through 2011, only 24 of the 1,804 live hyacinth macaws reported in trade were reported as wild-sourced, 1,671 were reported as captive bred or captive born, 35 were reported as pre-Convention, and 74 were reported with the source as unknown.

Since our 2012 proposed rule published, CITES trade data from the UNEP–WCMC CITES Trade Database for the years 2012 through 2014 has become available. From 2012 through 2014 (the most recent year for which data is available from the WCMC–UNEP database), a total of 250 hyacinth macaw specimens, including 193 live birds, is reported in international trade in the WCMC–UNEP database. Except for five scientific samples imported by Switzerland in 2012, none of the other specimens were reported as being wild caught; all were either recorded as captive bred or captive born. Twenty live wild-caught hyacinth macaws are recorded as having been imported by Turkey from Cameroon in 2012; at the time of writing, we are still waiting for information from Turkey as to whether this data is accurate, and if so, whether this was lawful or unlawful trade.

We found little additional information on illegal trade of this species in international markets. One study found that illegal pet trade in Bolivia continues to involve CITES-listed species; the authors speculated that similar problems exist in Peru and Brazil (Herrera and Hennessey 2007, p. 298). In that same study, 11 hyacinths were found for sale in a Santa Cruz market from 2004 to 2007 (10 in 2004 and 1 in 2006) (Herrera and Hennessey 2009, pp. 233–234). Larger species, like the hyacinth, were frequently sold for transport outside of the country, mostly to Peru, Chile, and Brazil (Herrera and Hennessey 2009, pp. 233–234). During a study conducted from 2007 to 2008, no hyacinths were recorded in 20 surveyed Peruvian wildlife markets (Gastañaga *et al.* 2010, pp. 2, 9–10). We found no other data on the presence of hyacinths in illegal trade.

Although illegal trapping for the pet trade occurred at high levels during the 1980s, trade has decreased significantly from those levels. International trade of parrots was significantly reduced during the 1990s as a result of tighter enforcement of CITES regulations, stricter measures under EU legislation, and adoption of the WBCA, along with adoption of national legislation in various countries (Snyder *et al.* 2000, p. 99). We found no information indicating trade is currently impacting the hyacinth macaw. It is possible, given the high price of hyacinth macaws, that illegal domestic trade is occurring; however, we have no information to suggest that illegal trapping for the pet trade is currently occurring at levels that are affecting the populations of the hyacinth macaw in its three regions.

Finding

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether the hyacinth macaw is in danger of extinction throughout all or a significant portion of its range (endangered) or likely to become endangered within the foreseeable future throughout all or a significant portion of its range (threatened). We examined the best scientific and commercial information available regarding factors affecting the status of the hyacinth macaw. We reviewed the petition, information available in our files, and other available published and unpublished information.

In considering what factors may constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to the factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine if it may drive or contribute to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species as those terms are defined by the Act.

Hyacinth macaws have a naturally low reproductive rate. Not all hyacinth chicks fledge young and, due to the long period of chick dependence, hyacinths breed only every 2 years. In the Pantanal population, the largest population of hyacinth macaws, only 15–30 percent of adults attempt to breed each year; it may be that as small or an even smaller percentage in Pará and Gerais attempt to breed. Additionally, feeding and habitat specializations are good predictors of a bird species' risk of extinction; because the hyacinth macaw has specialized food and nest site needs, it is at higher risk of extinction from the anthropogenic stressors described above.

Across its range, the hyacinth macaw is losing habitat, including those essential food and nesting resources, to expanding agriculture and cattle ranching. Pará has long been the epicenter of illegal deforestation primarily caused by cattle-ranching. Large-scale forest conversion for colonization and cattle ranching has accelerated due to state subsidies, infrastructure development, favorable climate in Pará, lower prices for land, and expansion of soy cultivation in other areas that has led to displacement of pastures into parts of Pará. Although deforestation rates decreased between 2009 and 2012, Amazon deforestation increased between 2012 and 2013 with the greatest increase occurring in Pará.

In the Gerais region, more than 50 percent of the original Cerrado vegetation has been lost due to conversion to agriculture and pasture. Although annual deforestation rates have decreased, there is a slow and steady increase in the amount of deforested area. Remaining Cerrado vegetation continues to be lost to conversion for soy plantations and extensive cattle ranching. Projections for coming decades show the largest

increase in agricultural production occurring in the Cerrado.

The greatest cause of habitat loss in the Pantanal is the expansion of cattle ranching. Only 6 percent of the Pantanal landscape is cordilleras, higher areas where the manduvi occur. These upland forests, including potential nesting trees, are often removed and converted to pastures for grazing during the flooding season; however, palm species used by hyacinths for food are usually left, as cattle also feed on the palm nuts. While deforestation rates between 2002 and 2014 indicate a decrease in the annual deforestation rate, there continues to be a slow and steady increase in the area deforested. Fire is also a common method for renewing pastures, controlling weeds, and controlling pests in the Pantanal. Fires become uncontrolled and are known to impact patches of manduvi. Fires can help in the formation of cavities, but too frequent fires can prevent trees from surviving to a size capable of providing suitable cavities and can cause a high rate of tree loss. Five percent of manduvi trees are lost each year due to deforestation, fires, and storms.

In addition to the direct removal of trees and the impact of fire on forest establishment, cattle impact forest recruitment. Intense livestock activity can affect seedling recruitment via trampling and grazing. Cattle also compact the soil such that regeneration of forest species is severely reduced. This type of repeated disturbance can lead to an ecosystem dominated by invasive trees, grasses, bamboo, and ferns. Manduvi, which contain the majority of hyacinth nests, are already limited in the Pantanal; only 5 percent of the existing adult manduvi trees in south-central Pantanal and 10.7 percent in the southern Pantanal contain suitable cavities for hyacinth macaws. Evidence of severely reduced recruitment of manduvi trees suggests that this species of tree, of adequate size to accommodate the hyacinth macaw, is not only scarce now, but likely to become increasingly scarce in the future.

Deforestation also reduces the availability of food resources. The species' specialized diet makes it vulnerable to changes in food availability. Another *Anodorhynchus* species, the Lear's macaw, is critically endangered due, in part, to the loss of its' specialized food source (licuri palm stands). Inadequate nutrition can contribute to poor health and is known to have reduced reproduction in hyacinth macaws. In Pará and the Gerais region, where food sources are being removed, persistence of the species is a concern.

Deforestation for agriculture and cattle ranching, cattle trampling and foraging, and burning of forest habitat result in the loss of mature trees with natural cavities of sufficient size and a reduction in recruitment of native species, which could eventually provide nesting cavities. A shortage of nest sites can jeopardize the persistence of the hyacinth macaw by constraining breeding density, resulting in lower recruitment and a gradual reduction in population size. This situation may lead to long-term effects on the viability of the hyacinth macaw population, especially in Pará and the Pantanal where persistence of nesting trees is compromised. While the Hyacinth Macaw Project provides artificial nest alternatives, such nests are only found within the project area.

Loss of essential tree species also negatively impacts the hyacinth macaw by increasing competition for what is already a shortage of suitable nest sites. In the Pantanal, the hyacinth nests almost exclusively in manduvi trees. The number of manduvi old and large enough to provide suitable cavities is already limited. Additionally, there are 17 other bird species, small mammals, and honey bees that also use manduvi cavities. Competition has been so fierce that hyacinths were unable to reproduce as it resulted in an increase in egg destruction and infanticide. As the number of suitable trees is further limited, competition for adequate cavities to accommodate the hyacinth macaw will certainly increase, reducing the potential for hyacinth macaws to reproduce.

In the Gerais region, hyacinth macaws mostly nest in rock crevices, most likely a response to the destruction of nesting trees. Although it is possible that hyacinths could use alternative nesting sites in Pará and the Pantanal, deforestation in these regions would impact alternative nesting trees, as well as food sources, resulting in the same negative effect on the hyacinth macaw. Furthermore, competition for limited nesting and food resources would continue.

Climate change models have predicted increasing temperatures and decreasing rainfall throughout most of Brazil. There are uncertainties in this modeling, and the projections are not definitive outcomes. How a species may adapt to changing conditions is difficult to predict. We do not know how the habitat of the hyacinth macaw may vary under these conditions, but we can assume some change will occur. The hyacinth macaw is experiencing habitat loss due to widespread expansion of agriculture and cattle ranching. Effects of climate change have the potential to further decrease the specialized habitat needed by the hyacinth macaw; the ability of the hyacinth macaw to cope with landscape changes due to climate change is questionable given the specialized needs of the species. Furthermore, hotter, drier years, as predicted under different climate change scenarios, could result in greater impacts to hyacinth reproduction due to impacts on the fruit and foraging for the hyacinth macaw and competition with other bird and mammal species for limited resources.

In addition to direct impacts on food and nesting resources and hyacinth macaws themselves, several other factors affect the reproductive success of the hyacinth. Information indicates that hyacinths in Pará and Gerais are hunted as a source of protein and for feathers to be used in local handicrafts. Although we do not have information on the numbers of macaws taken for these purposes, given the small populations in these two regions, any loss of potentially reproducing individuals could have a devastating effect on the ability of those populations to increase. Additionally, in the Pantanal, predation, variations in temperature and rainfall, and ectoparasites all contribute to loss of eggs and chicks, directly affecting the reproductive rate of hyacinth macaws.

Brazil has various laws to protect its natural resources. Despite these laws and plans to significantly reduce deforestation, expanding agriculture and cattle ranching has contributed to increases in deforestation rates in some years and deforested areas continue to increase each year. Additionally, hunting continues in some parts of the hyacinth macaw's range despite laws prohibiting this activity. Without effective implementation and enforcement of environmental laws, deforestation and hunting will continue.

Section 3 of the Act defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' After analyzing the species' status in light of the five factors discussed above, we find the hyacinth macaw is a ''threatened species'' as a result of the following: Continued deforestation and reduced recruitment of forests (Factor A), hunting (Factor B), predation and disease (Factor C), competition (Factor

E), and effects of climate change (Factor E). Furthermore, despite laws to protect the hyacinth macaw and the forests it depends on, deforestation and hunting continue (Factor D).

In total, there are approximately 6,500 hyacinth macaws left in the wild, dispersed among 3 populations. Two of the populations, Pará and Gerais, contain just 1,000–1,500 individuals, combined. The current overall population trend for the hyacinth macaw is reported as decreasing, although there are no reports of extreme fluctuations in the number of individuals. The hyacinth population has grown in the Pantanal; however, the growth is not sufficient to counter the continued and predicted future anthropogenic disturbances on the hyacinth macaw. Because the hyacinth macaw has specialized food and nest site needs, it is at higher risk of extinction from anthropogenic stressors described above. Additionally, the hyacinth macaw has relatively low recruitment of juveniles, which decreases the ability of a population to recover from reductions caused by anthropogenic disturbances. Hyacinths may not have a high enough reproduction rate and may not survive in areas where nest sites and food sources are destroyed.

In our 2012 proposed rule, we found that the hyacinth macaw was in danger of extinction (an endangered species) based on estimates indicating the original vegetation of the Amazon, Cerrado, and Pantanal, including the hyacinth's habitat, would be lost between the years 2030 and 2050 due to deforestation, combined with its naturally low reproductive rate, highly specialized nature, hunting, competition, and effects of climate change. Deforestation rates in Pará decreased between 2013 and 2014 by 20 percent, and rates remained stable in 2015. More recent estimates of deforestation indicate annual deforestation rates in the Cerrado and Pantanal have decreased by approximately 40 and 37 percent, respectively. If these rates are maintained or are further reduced, the loss of all native habitat from these areas, including the species of trees needed by the hyacinth for food and nesting, and the hyacinth's risk of extinction is not as imminent as predicted. Therefore, we do not find that the hyacinth macaw is currently in danger of extinction. However, the hyacinth macaw remains a species particularly vulnerable to extinction due to the interaction between continued habitat loss and its highly specialized needs for food and nest trees. Given land-use trends, lack of enforcement of laws, and predicted landscape changes under climate change scenarios, the persistence of essential food and nesting resources and, therefore the hyacinth macaw, is of concern.

Threats to the hyacinth macaw and remaining habitat, and declines in the population are expected to continue throughout its range in the foreseeable future. What habitat remains is at risk of being lost due to ongoing deforestation. Pará is one of the states where most of Brazil's agriculture expansion is taking place. Modeled future deforestation is concentrated in this area. The Cerrado is the most desirable biome for agribusiness expansion and contains approximately 40 million ha (98.8 million ac) of ''environmental surplus'' that could be legally deforested, therefore, this region will likely continue to suffer deforestation. Ninety-five percent of the Pantanal is privately owned, 80 percent of which is used for cattle ranches. Clearing land to establish pasture is perceived as the economically optimal land use while land not producing beef is often perceived as unproductive. Furthermore, potential nesting sites are rare and will become increasingly rare in the future. Continued loss of remaining habitat may lead to long-term effects on the viability of the hyacinth macaw, as hyacinth macaws may not have a high enough reproductive rate to survive where nest sites are destroyed. Additionally, any factors that contribute to the loss of eggs and chicks ultimately reduce reproduction and recruitment of juveniles into the population and the ability of those populations to recover. Therefore, long-term survival of this species is a concern. On the basis of the best scientific and commercial information, we find that the hyacinth macaw meets the definition of a ''threatened species'' under the Act, and we are listing the hyacinth macaw as threatened throughout its range.

Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' We published a final policy interpreting the phrase ''Significant Portion of its Range'' (SPR) (79 FR 37578, July 1, 2014). The final policy states that (1) if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

We found the hyacinth macaw likely to become endangered within the foreseeable future throughout its range. Therefore, no portions of the species' range are ''significant'' as defined in our SPR policy, and no additional SPR analysis is required.

Available Conservation Measures

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

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

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

Proposed 4(d) Rule

The purposes of the Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in the Act (16 U.S.C. 1531(b)). When a species is listed as endangered, certain actions are prohibited under section 9 of the Act and our regulations at 50 CFR 17.21. These include, among others, prohibitions on take within the United States, within the territorial seas of the United States, or upon the high seas; import; export; and shipment in interstate or foreign commerce in the course of a commercial activity. Exceptions to the prohibitions for endangered species may be granted in accordance with section 10 of the Act and our regulations at 50 CFR 17.22.

The Act does not specify particular prohibitions and exceptions to those prohibitions for threatened species. Instead, under section 4(d) of the Act, the Secretary, as well as the Secretary of Commerce depending on the species, was given the discretion to issue such regulations as deemed necessary and advisable to provide for the conservation of such species. The Secretary also has the discretion to prohibit by regulation with respect to any threatened species any act prohibited under section 9(a)(1) of the Act. Exercising this discretion, the Service has developed general prohibitions in the Act's regulations (50 CFR 17.31) and exceptions to those prohibitions (50 CFR 17.32) that apply to most threatened species. Under 50 CFR 17.32, permits may be issued to allow persons to engage in otherwise prohibited acts for certain purposes.

Under section 4(d) of the Act, the Secretary, who has delegated this authority to the Service, may also develop specific prohibitions and exceptions tailored to the particular conservation needs of a threatened species. In such cases, the Service issues a 4(d) rule that may include some or all of the prohibitions and authorizations set out in 50 CFR 17.31 and 17.32, but which also may be more or less restrictive than the general provisions at 50 CFR 17.31 and 17.32. For the hyacinth macaw, the Service is using our discretion to propose a 4(d) rule.

If the proposed 4(d) rule is adopted, we will incorporate all prohibitions and provisions of 50 CFR 17.31 and 17.32, except that import and export of certain hyacinth macaws into and from the United States and certain acts in interstate commerce will be allowed without a permit under the Act, as explained below.

Import and Export

The proposed 4(d) rule will apply to all commercial and noncommercial international shipments of live and dead hyacinth macaws and parts and products, including the import and export of personal pets and research samples. In most instances, the proposed 4(d) rule will adopt the existing conservation regulatory requirements of CITES and the WBCA as the appropriate regulatory provisions for the import and export of certain hyacinth macaws. The import and export of birds into and from the United States, taken from the wild after the date this species is listed under the Act; conducting an activity that could take or incidentally take hyacinth macaws; and foreign commerce will need to meet the requirements of 50 CFR 17.31 and 17.32, including obtaining a permit under the Act. However, the 4(d) rule proposes to allow a person to import or export either: (1) A specimen held in captivity prior to the date this species is listed under the Act; or (2) a captive-bred specimen, without a permit issued under the Act, provided the export is authorized under CITES and the import is authorized under CITES and the WBCA. If a specimen was taken from the wild and held in captivity prior to the date this species is listed under the Act, the importer or exporter will need to provide documentation to support that status, such as a copy of the original CITES permit indicating when the bird was removed from the wild or museum specimen reports. For captive-bred birds, the importer would need to provide either a valid CITES export/re-export document issued by a foreign Management Authority that indicates that the specimen was captive bred by using a source code on the face of the permit of either ''C,'' ''D,'' or ''F.'' For exporters of captive-bred birds, a signed and dated statement from the breeder of the bird, along with documentation on the source of their breeding stock, would document the captive-bred status of U.S. birds.

The proposed 4(d) rule will apply to birds captive-bred in the United States and abroad. The terms ''captive-bred'' and ''captivity'' used in the proposed 4(d) rule are defined in the regulations at 50 CFR 17.3 and refer to wildlife produced in a controlled environment that is intensively manipulated by man from parents that mated or otherwise transferred gametes in captivity. Although the proposed 4(d) rule requires a permit under the Act to ''take'' (including harm and harass) a hyacinth macaw, ''take'' does not include generally accepted animal husbandry practices, breeding procedures, or provisions of veterinary care for confining, tranquilizing, or anesthetizing, when such practices, procedures, or provisions are not likely to result in injury to the wildlife when applied to captive wildlife.

We assessed the conservation needs of the hyacinth macaw in light of the broad protections provided to the species under CITES and the WBCA. The hyacinth macaw is listed in Appendix I under CITES, a treaty which contributes to the conservation of the species by monitoring international trade and ensuring that trade in Appendix I species is not detrimental to the survival of the species (see *Conservation Status).* The purpose of the WBCA is to promote the conservation of exotic birds and to ensure that imports of exotic birds into the United States do not harm them (See Factor D). The best available commercial data indicate that legal and illegal trade of hyacinth macaws is not currently occurring at levels that are affecting the populations of the hyacinth macaw in its three regions. Accordingly we find that the import and export requirements of the proposed 4(d) rule provide the necessary and advisable conservation measures that are needed for this species. This proposed 4(d) rule, if finalized, would streamline the permitting process for these types of activities by deferring to existing laws that are protective of hyacinths in the course of import and export.

Interstate Commerce

Under the proposed 4(d) rule, a person may deliver, receive, carry, transport, or ship a hyacinth macaw in interstate commerce in the course of a commercial activity, or sell or offer to sell in interstate commerce a hyacinth macaw without a permit under the Act. At the same time, the prohibitions on take under 50 CFR 17.21 would apply under this proposed 4(d) rule, and any interstate commerce activities that could

incidentally take hyacinth macaws or otherwise prohibited acts in foreign commerce would require a permit under 50 CFR 17.32.

Persons in the United States have imported and exported captive-bred hyacinth macaws for commercial purposes and one body for scientific purposes, but trade has been very limited (UNEP–WCMC 2011, unpaginated). We have no information to suggest that interstate commerce activities are associated with threats to the hyacinth macaw or would negatively affect any efforts aimed at the recovery of wild populations of the species. Therefore, because acts in interstate commerce within the United States have not been found to threaten the hyacinth macaw, the species is otherwise protected in the course of interstate commercial activities under the take provisions and foreign commerce provisions contained in 50 CFR 17.31, and international trade of this species is regulated under CITES, we find this proposed 4(d) rule contains all the prohibitions and authorizations necessary and advisable for the conservation of the hyacinth macaw.

Required Determinations

Clarity of Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us page numbers and the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Paperwork Reduction Act (44 U.S.C. 3501, et seq.)

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rulemaking will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that we do not need to prepare an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted under section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A list of all references cited in this document is available at *http://www.regulations.gov,* Docket No. FWS–R9–ES–2012–0013, or upon request from the U.S. Fish and Wildlife Service, Ecological Services, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary authors of this notice are staff members of the Branch of Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended on July 6, 2012, at 77 FR 39965 and on April 7, 2016, at 81 FR 20302, as set forth below:

PART 17—[AMENDED]

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

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

■ 2. Amend § 17.11(h) by adding an entry for ''Macaw, hyacinth'' in alphabetical order under Birds to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Macaw, hyacinth	*Anodorhynchus hyacinthinus.*	Bolivia, Brazil, Paraguay.	Entire	T	NA	NA	17.41(c)
*	*	*	*	*	*		*

* * * * *

■ 3. Amend § 17.41 by revising paragraph (c) introductory text, paragraphs (c)(1), (c)(2) introductory text, (c)(2)(ii) introductory text and (c)(2)(ii)(E) to read as follows:

§ 17.41 Special rules—birds.

* * * * *

(c) The following species in the parrot family: Salmon-crested cockatoo *(Cacatua moluccensis),* yellow-billed parrot *(Amazona collaria),* white cockatoo (*Cacatua alba*), scarlet macaw (*Ara macao macao* and scarlet macaw subspecies crosses (*Ara macao macao* and *Ara macao cyanoptera*)), and

hyacinth macaw (*Anodorhynchus hyacinthinus*).

(1) Except as noted in paragraphs (c)(2) and (c)(3) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 of this part apply to these species.

(2) *Import and export.* You may import or export a specimen from the southern DPS of *Ara macao macao* and scarlet macaw subspecies crosses without a permit issued under § 17.52 of this part, and you may import or export all other specimens without a permit issued under § 17.32 of this part only when the provisions of parts 13, 14, 15, and 23 of this chapter have been met and you meet the following requirements:

* * * * *

(ii) *Specimens held in captivity prior to certain dates:* You must provide documentation to demonstrate that the specimen was held in captivity prior to the dates specified in paragraphs (c)(2)(ii)(A), (B), (C), (D), or (E) of this section. Such documentation may include copies of receipts, accession or veterinary records, CITES documents, or wildlife declaration forms, which must be dated prior to the specified dates.

* * * * *

(E) *For hyacinth macaws:* [EFFECTIVE DATE OF THE FINAL RULE] (the date this species was listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*)).

* * * * *

Dated: November 19, 2016.

Stephen Guertin,

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

[FR Doc. 2016–28318 Filed 11–25–16; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 81, No. 228

Monday, November 28, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AFRICAN DEVELOPMENT FOUNDATION

Public Quarterly Meeting of the Board of Directors

AGENCY: United States African Development Foundation.

ACTION: Notice of meeting.

SUMMARY: The U.S. African Development Foundation (USADF) will hold its quarterly meeting of the Board of Directors to discuss the agency's programs and administration.

DATES: The meeting date is Wednesday, November 30, 2016, 9:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting location is 1400 I St NW., Suite 1000, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Jason Parker, 202–233–8800.

Authority: Public Law 96–533 (22 U.S.C. 290h).

Dated: November 21, 2016.

Doris Mason Martin,

General Counsel.

[FR Doc. 2016–28423 Filed 11–25–16; 8:45 am]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 22, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

Comments regarding this information collection received by December 28, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725–17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Application for Payment of Amounts Due Persons Who Have Died, Disappeared or Declared Incompetent.

OMB Control Number: 0560–0026.

Summary of Collection: Representatives or survivors of persons who die, disappear, or are declared incompetent must be afforded a method of obtaining any payment intended for the person. 7 CFR 707 provides that form, FSA–325, be used as the form of application for person desiring to claim such payments. It is necessary to collect information recorded on FSA–325 in order to determine whether representatives or survivors of a person are entitled to receive payments earned by a person who dies, disappears, or is declared incompetent before receiving the payments due.

Need and Use of the Information: FSA will collect information to determine if the survivors have rights to the existing payments or to the unpaid portions of the person's payments. Survivors must show proof of death, disappearance, or incompetency.

Description of Respondents: Individuals or households.

Number of Respondents: 2,000.

Frequency of Responses: Reporting: Other (when necessary).

Total Burden Hours: 3,000.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–28477 Filed 11–25–16; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 21, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

Comments regarding this information collection received by December 28, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the

submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Review of Child Nutrition Data & Analysis for Program Management.

OMB Control Number: 0584–NEW.

Summary of Collection: The Richard B. Russell National School Lunch Act of 1946 (42 U.S.C. 1751 *et seq.*), and the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*) provide the legislative authority for the Food and Nutrition Service (FNS) to administer the National School Lunch Program (NSLP) and the School Breakfast Program (SBP). These programs provide Federal financial assistance and USDA Foods to public and non-profit private schools and residential childcare institutions to facilitate serving meals that meet nutritional standards. In accordance with Federal regulations, School Food Authorities (SFA) collect a range of required and reported basic data elements that the States and FNS use to monitor program reach, efficiency, and implementation, but they also collect additional data, which the SFAs need to manage their own operations. SFAs and States have migrated from paper-based processes to Management Information Systems (MIS) of varying levels of sophistication for the management of their data. FNS is conducting the Review of Child Nutrition Data and Analysis for Program Management Study to document the current status of the SFAs' and the State's NSLP/SBP MIS.

Need and Use of the Information: The data collected from this voluntary study will be used to evaluate the available data elements that State agencies and SFAs collect for the operation of the NSLP and SBP. FNS will use the results of this study to identify specific data elements that could improve and streamline reporting to FNS to improve program oversight. The information gathered from the study will also be used to provide technical assistance to State agencies and SFAs and to develop MIS best practices.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 4,382.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 2,712.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–28414 Filed 11–25–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Aquaculture Surveys. Revision to burden hours will be needed due to changes in NASS estimates programs, target population sizes, sampling designs, and/or content of questionnaires.

DATES: Comments on this notice must be received by January 27, 2017 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0150, by any of the following methods:

- *Email: omboffi cer@nass.usda.gov.* Include the docket number above in the subject line of the message.
- *Efax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: R. Renee Picanso, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *omboffi cer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Aquaculture Surveys.

OMB Control Number: 0535–0150.

Expiration Date: June 30, 2017.

Type of Request: Intent to seek approval to revise and extend a currently approved information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production, prices, and disposition. The Aquaculture Surveys program produces estimates at the national level on both trout and catfish. Survey results are used by government agencies and others in planning farm programs.

The trout survey includes inventory counts, sales (dollars, pounds, and quantities), percent of product sold by outlet at the point of first sale, number of fish raised for release into open waters, and losses. The catfish surveys include inventory counts, water surface acreage used for production, sales (dollars, pounds, and quantities), and losses.

- Twenty-five states are in the Trout Production Survey. In January, data are collected in the selected states that produce and either sell or distribute trout. State, federal, tribal, and other facilities where trout are raised for conservation, restoration, or recreational purposes are included in the survey.
- Nine states are in the Catfish Production Survey. Data are collected from farmers in January for inventory, water surface acreage, and previous year sales. In addition, farmers in the three major catfish producing states are surveyed in July for mid-year inventory and water surface acreage.
- The surveys conducted in Florida, Hawaii, and Pennsylvania are conducted under cooperative agreements with each of these states.
- All of the surveys conducted under this approval will have voluntary reporting, with the exception of the Pennsylvania survey. The Pennsylvania State Government requires producers to respond to this survey.

The Catfish Feed Deliveries and Catfish Processing surveys that are present in the current information collection were discontinued due to budget sequestration in 2013. The information that was collected by these two surveys is now being collected and published by the Catfish Institute in their bimonthly publication *Catfish Journal.*

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food

Security Act of 1985, as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320. NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

The Pennsylvania aquaculture census is being conducted to obtain basic data on aquaculture production per Section 4217 of the Pennsylvania Agriculture Act of 1998, which states that, ''Persons licensed shall submit annually a summary report of sales specifying the amount or weight of each species sold and gross receipts.''

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 to 20 minutes per response. Pre-survey publicity or cover letters will also be included to encourage respondents to complete and return the surveys and to provide the respondents with information on how to complete the surveys using the internet.

Respondents: Farms and aquaculture facilities.

Estimated Number of Respondents: Approximately 3,700 per year.

Estimated Total Annual Burden on Respondents: 1,100 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, November 9, 2016.

R. Renee Picanso,

Associate Administrator.

[FR Doc. 2016–28419 Filed 11–25–16; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice for Inviting Applications for the Position of National Fund Manager for the Healthy Food Financing Initiative

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This notice invites Community Development Financial Institutions to apply for the position of National Fund Manager for the Healthy Food Financing Initiative (HFFI), which was authorized under Section 4206 of the Agricultural Act of 2014 (2014 Farm Bill).

DATES: Applications are due by 4:00 p.m. Eastern Standard Time on December 28, 2016.

ADDRESSES: Submit complete applications to: James Barham, Agricultural Economist, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3254, 1400 Independence Avenue SW., Washington, DC 20250–0783; james.barham@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 7, 2014, the Agricultural Act of 2014 (Pub. L. 113–79) (2014 Farm Bill) was signed into law. Section 4206 of the 2014 Farm Bill established the Healthy Food Financing Initiative (HFFI). The purposes of the HFFI are to improve access to healthy foods in underserved areas, to create and preserve quality jobs, and to revitalize low-income communities by providing loans and grants to eligible fresh, healthy food retailers to overcome the higher costs and initial barriers to entry in underserved areas.

A key component to the successful implementation of the HFFI is the National Fund Manager (NFM). The primary roles of the NFM, as identified in the 2014 Farm Bill, will be to raise private capital, provide financial and technical assistance to partnerships, and fund eligible projects to support retailers and their supply chains that bring fresh, healthy food into underserved areas.

HFFI was designed as a three-agency initiative. Since the Department of Treasury and the Department of Health and Human Services already have HFFI activities underway through existing programs, in standing up HFFI at USDA, the Agency and the NFM will take great care to ensure appropriate cooperation and coordination to achieve the goals of HFFI. Until Federal funds are appropriated for this HFFI program, the NFM will pay for its own administrative, fundraising, and management costs; USDA will not be responsible for such costs. Those costs may be covered through private fundraising agreements or other third party sources. If and when Federal funds are made available, Section 4206 permits them to be used to cover administrative expenses of the NFM in an amount not to exceed 10 percent of the Federal funds provided.

I. Eligibility Criteria for Being the National Fund Manager

To be eligible to be the National Fund Manager, the applicant must meet each of the following conditions:

- The applicant must be a Community Development Financial Institution (CDFI) certified by the U.S. Department of the Treasury Department CDFI Fund.
- The applicant must have been in existence on February 7, 2014, and must still be in existence on the date the CDFI applies for the NFM position.

II. Roles and Responsibilities of the National Fund Manager

The Agency envisions that the NFM will have a variety of roles and responsibilities to help ensure the success of the HFFI program. The following presents the general roles and responsibilities of the NFM currently envisioned by the Agency. The final roles and responsibilities will be identified in an appropriate agreement as agreed upon between the successful applicant and the Agency. The roles and responsibilities may vary depending on whether Federal funds are appropriated for the HFFI program.

A. Assistance-Related

- *Raise private capital.* The NFM will be expected to raise private funds to be used toward the HFFI purposes.
- *Leverage public funds.* The NFM will be expected to leverage, and encourage the use of, funds from other federal agencies/resources, such as Treasury's CDFI Fund, HHS' Office of Community Services, SBA loans and grants, and USDA loans and grants.
- *Other financial assistance.* In addition to the types of financial assistance identified in the statute (loans and grants), the NFM may

provide other financial assistance provided such assistance conforms to all applicable laws and regulations and best industry practices and are approved by the Agency prior to being utilized.

• *Technical assistance.* The NFM will be expected to provide appropriate and necessary technical assistance to partnerships and projects seeking HFFI funding and those funded under this initiative.

B. Award-Related

• *Establish eligibility criteria for projects and partnerships.* The NFM will establish criteria for both projects and partnerships to determine if they are eligible to receive HFFI funding in accordance with section 4206. These criteria will be subject to Agency approval.

• *Making awards.* The NFM will review all project applications to ensure that each application is complete and eligible to be considered for an award. The NFM will establish an award process consistent with the priorities identified in the statute and any other priorities that otherwise advance the HFFI purposes, as determined by the Agency.

C. Post-Award Related

• *Track performance.* The NFM will recommend to the Agency for approval outcome metrics for tracking the performance of projects awarded funding under the HFFI program. The Agency expects the NFM to track both financial performance and community impact.

• *Data collection and compilation.* The NFM will collect and compile the USDA-approved outcome metrics from HFFI program beneficiaries.

• *Reports to USDA.* For all projects receiving funding under the HFFI program, the NFM will submit to the Agency:

○ Periodic reports on outcome metrics;

○ Percentage of the number of projects funded each Federal fiscal year that are located in a rural area; (rural area as used in this notice means any area other than (i) a city or town that has a population of greater than 50,000 inhabitants; and (ii) any urbanized area contiguous and adjacent to a city or town described in clause (i)).

○ A copy of its CDFI Fund Annual Certification and Data Collection Report Form submitted to the Department of Treasury; and

○ An annual report with a synopsis of each project receiving funding under the HFFI program.

D. Outreach

The NFM will be expected to actively publicize the HFFI program to appropriate communities and priority populations. In addition, the NFM will be expected to help build the capacity of potential applications, partners, and peers. The specific role of the NFM in this area will be negotiated between the Agency and the NFM.

III. Application Information

CDFIs must submit all of the information identified in this section of the notice to be considered for the NFM position. When submitting your application, be mindful of the scoring criteria identified in Section V, Scoring Information, of this notice to ensure your application is fully responsive.

1. *Contact information.* The full name of the CDFI, its address, at least two points-of-contact with both email addresses and telephone numbers.

2. *Certification.* Certify that on February 7, 2014, the applicant was in existence and was certified through the U.S. Department of the Treasury's CDFI Fund. Additionally, provide documentation showing that you are currently a CDFI (*i.e.,* at time of application) and when your current certification expires.

3. *Project experience.* Describe your experience with projects associated with retail outlets, regional food systems, and locally grown foods and with such projects that serve women-owned businesses and minority-owned businesses. Identify the source of funds for such projects. Include the type of project, its purpose(s), size, location (including whether rural or urban), populations served (including women- and minority-owned businesses), and source of funds. Be sure to identify the types of assistance you provided for these projects, especially for projects relevant to the HFFI program (*e.g.,* retail outlets, regional food systems, locally grown foods).

• For revolving loan funds and other products that provide loans, describe the CDFI's relationship to and role in each revolving loan fund (*e.g.,* raised capital, administered, served as a consultant). If you have used other financial products to provide loans, describe each, how they were used, how successful they were, and the communities/populations/businesses served.

• For grants to fund projects, identify the size of the grant and any terms and conditions associated with the use of the grant funds.

• For technical assistance, describe the types of technical assistance and to whom the technical assistance was provided. In addition, describe the types of Technical Assistance that you would provide, if selected as the NFM, to benefit underserved areas with low- and moderate-income populations; rural communities; women- and minority-owned businesses; and local or regional food systems.

4. *Outreach and collaboration.* Describe outreach activities that the CDFI has led or participated in for underserved areas with low- and moderate-income populations and their location (rural, urban). Identify your role and the content of the outreach activity. Provide an assessment of why they were successful or not. If not successful, describe what can be done to improve their effectiveness.

Describe the CDFI's history of collaboration with the U.S. Department of Agriculture and other governmental (*e.g.,* other federal, regional, state, local) agencies, other CDFIs, national organizations in the healthy food arena, and other similar stakeholders. Identify the partners, including contact information, the types of projects you collaborated on, and the roles you and the partners each played. If not included under Project Experience, identify the types of projects that you have collaborated on, including their size, purpose, location, and populations served.

If selected as the NFM, describe your plans to reach out to underserved areas with low- and moderate-income populations, rural communities, women- and minority-owned businesses, and businesses that support local or regional food systems. Include examples where you have implemented any of these approaches and provide an assessment of why they were or were not successful. If not successful, describe what can be done to improve their effectiveness.

As the NFM, describe the roles that both national organizations and local healthy food stakeholders would play in supporting the HFFI program. Describe your approach to collaborating with these stakeholders to facilitate HFFI investments.

5. *Financing/Capital.* Describe the CDFI's financial condition and provide your current audited financial statement. Describe your experience in raising capital and administering pools of capital in a cost-efficient manner, including specific examples and their size.

If you are selected as the NFM, describe the strategy you will use to raise private capital in support of this HFFI program and your strategy for making successful HFFI investments. Be

sure to address HHFI investment in rural areas and the priority areas (*e.g.,* regional food systems, local foods, quality jobs) identified in the statute.

6. *Project management capacity.* Describe your management team, including length and type of financial experience, government experience, and experience relevant to healthy foods, especially in connection with public-private partnerships, underserved areas with low- and moderate-income populations, rural communities, and women- and minority-owned businesses and in connection with food supply chains. Provide resumes of key managers.

Describe your contracting (including subcontracting) experience relevant to the types of assistance to be provided through the HFFI program. This might include such activities as contracting for support of servicing loan or grant awards or for the provision of specific types of technical assistance. For each contracting effort described, identify the purpose/scope of the contract, its size and duration, and the party or parties with whom you contracted. Please provide any additional contracting-related information you believe is relevant to the role of the NFM.

Discuss the keys to being a successful NFM and for the HFFI program to succeed. Describe barriers to making HFFI successful and how, if you are selected, you will overcome them. Additionally, describe any innovative techniques that you have used successfully and how, if you are selected, you will use them to improve implementation of the HFFI program.

7. *Rural experience.* Describe the CDFI's experience specific to rural communities, populations, and programs. Include the types of projects, their size, and specific locations; collaboration with rural partners; and outreach efforts directed toward rural communities.

Discuss the strategies you would use, if you are selected as the NFM, to ensure the successful implementation of the HFFI program in rural areas.

8. *Rural project awards.* If you are selected as the NFM, based on the total number of projects funded under this program, identify the minimum percentage of rural projects that you will fund in the first Federal fiscal year, the second Federal fiscal year, and third (and thereafter) Federal fiscal year. Provide an explanation for how you arrived these three percentages.

9. *Program evaluation.* Describe the CDFI's experience in identifying/establishing and employing program performance targets and metrics, including the gathering of information and data from recipients of funding. Indicate if you have reported such information to third-parties and, if so, to whom, what information was provided, and how frequently the information was reported.

Discuss metrics you would use, if selected as NFM, to evaluate whether and to what extent the projects funded have met the objectives of the HFFI program.

10. *Local and regional food.* Describe the CDFI's involvement in a project that supported local and regional food systems. Discuss any unique financing or logistical challenges. In particular, describe how that project enhanced low-income consumers' access to staple foods, created quality jobs and otherwise supported community economic development.

Describe the greatest financial and logistical challenges facing local and regional food systems and how, if you are selected as the NFM, you would address those challenges to successfully incorporate projects that support local and regional food systems into the HFFI program.

IV. NFM Application Submittal Requirements

All responses must be in English. Applications must not exceed 30 pages, excluding resumes and current audited financial statements. Applications must use 12-point font of any type, and may be either single- or double-spaced. Application material must be printable by electronic media on one side of the paper. Do not include formatting that requires large megabyte support.

Responses to either the mailing address or the email address identified under the **ADDRESSES** section of this notice no later than the date and time provided in the **DATES** section of this Notice. If responding via email, your response must be sent as a pdf file attachment to the email.

V. NFM Scoring Information

The following describes how the Agency will score complete, eligible applications for the NFM position. In general, providing specific examples under all of the criteria will help boost an applicant's score.

A. Project Experience (Maximum 20 Points)

The more experience the NFM has with similar projects and the types of assistance for implementing the HFFI program, the better the NFM will be able to implement and manage the program. Therefore, an applicant's score under this criterion will be commensurate with the applicant's experience in and understanding of:

- *Type of projects.* The Agency will consider the applicant's experience with projects identified in the statute authorizing the HFFI program. Other experience associated with relevant HFFI-related projects/fresh, healthy food retail business enterprises, including regional food systems and locally grown foods, will help boost an applicant's score.
- *Size of each project.* CDFIs with experience in only (or mainly) large projects may not be well suited to support small projects and vice-versa. Experience with a variety of project sizes helps show desirable capabilities. Therefore, the Agency will consider an applicant's experience with various size projects. Experience with a wide variety of project sizes will help boost an applicant's score.
- *Entities served.* The Agency will consider the level of experience the applicant has in providing assistance to underserved areas with low- and moderate-income populations; women-owned businesses; and minority-owned businesses. More experience in providing assistance to such entities will help boost an applicant's score.
- *Type of assistance.* Successfully provided the type of assistance indicated in the statute, including making and servicing grants, loans, loan loss reserves, tax credits and/or other financing tools envisioned under the HFFI program. Demonstration of the types of Technical Assistance that will most benefit underserved areas with low- and moderate-income populations; rural communities; women- and minority-owned businesses; and local or regional food systems.

Experience across all types of assistance envisioned under the HFFI program and experience that is more evenly spread across the types (rather than being concentrated in one type of assistance) will help boost an applicant's score.

B. Outreach and Collaboration (Maximum 20 Points)

If people do not know about the HFFI program, few will apply and the HFFI program will not be successful. Therefore, it is critical that there is a good roll-out of the HFFI program. Further, successful collaboration with such entities as national food access organizations will be valuable to the success of the HFFI program. A CDFI with good, established relations is more likely to be able to leverage that experience for better program implementation.

Outreach and collaboration will be primary responsibilities of the NFM (although the Agency will assist and the Agency expects that national food access organizations will also provide valuable assistance).

In evaluating applicants for the NFM position, the Agency will score applications commensurate with the applicant's:

- Approaches to reaching out to underserved areas with low- and moderate-income populations, rural communities, tribal communities, women- and minority-owned businesses, and local or regional food systems that will be served by the HFFI program and the effectiveness of such approaches;
- Successful collaboration with CDFIs, national food access organizations, and other stakeholders to market such programs;
- Proven track record in working with federal agencies, including the U.S. Department of Agriculture; and
- Vision of the role that national organizations and other healthy food stakeholders should play in support of the HFFI program, its approach to accessing these stakeholders, and how the NFM will work with them in order to facilitate HFFI investments.

C. Financing/Capital (Maximum 20 Points)

The ability of the NFM to raise private capital will be critical to funding HFFI projects. In addition, the Agency anticipates that the HFFI program will be a large program, and the experience of the NFM in successfully managing and administering large amounts of capital in a cost-efficient manner will be important.

An applicant's score under this criterion will be commensurate with the applicant's:

- Experience in raising significant amount of private capital;
- Experience in successfully managing large pools of capital in a cost-efficient manner, including management fees; and
- Approach for raising private capital for this HFFI effort and for making successful HFFI investments, especially in rural areas.

D. Project Management Capacity (Maximum 15 Points)

An applicant's score under this criterion will be commensurate with qualifications of the applicant's management team (including experience related to financial management, healthy foods, experience with the U.S. Department of Agriculture and other federal agencies and offices), demonstration of the CDFI's financial stability, how long the CDFI has been in existence, and the CDFI's strategy for being a successful National Fund Manager. In addition to the material supplied by the applicant, the Agency may use current Department of the Treasury data on the CDFI to assess the applicants' financial stability. By applying for this position, the applicant is consenting to the Department of the Treasury's release of such information to the Agency for the purpose of evaluating your application.

The NFM may enter into contracts in order to better implement the HFFI program (*e.g.,* in servicing loans or grants once awards are made; providing technical assistance in a specialized topic). Even though the extent the NFM will need to enter into such contracts in order to implement the HFFI program is unknown and is likely to vary from CDFI to CDFI, an applicant's score will be commensurate with its experience in administering multiple contracts and subcontractors.

Demonstrating an understanding of barriers faced by HFFI and successful and innovative approaches to overcome such barriers will help boost an applicant's score. Management experience relevant to healthy foods, especially in connection with public-private partnerships; underserved areas with low- and moderate-income populations; rural communities; tribal communities; and women- and minority-owned businesses will also help boost the applicant's score under this criterion.

E. Rural Experience (Maximum 10 Points)

There are unique challenges to providing funding and technical assistance to rural communities. To be most effective as the NFM, the applicant should have substantial experience is providing funding and/or technical assistance to rural communities. An applicant's score under this criterion will be commensurate with the amount of the applicant's experience with rural communities and its approach to ensure successful implementation of the HFFI program in rural areas.

F. Rural Project Awards (Maximum 20 Points)

Under this criterion, the Agency will award points commensurate with the applicant's percentages of rural projects and the applicant's reasonable justification for those percentages. The Agency will require the selected NFM to meet or exceed this percentage in the third Federal fiscal year and each Federal fiscal year thereafter.

- If the applicant commits to funding 50 percent or higher of the total number of projects in rural areas in the third Federal fiscal year, the Agency will award up to 20 points.
- If the applicant commits to funding between at least 25 percent and up to 50 percent of the total number of projects in rural areas in the third Federal fiscal year, the Agency will award up to 10 points.
- If the applicant commits to funding less than 25 percent of the total number of projects in rural areas in the third Federal fiscal year, the Agency will award 0 points.

G. Program Evaluation (Maximum 10 Points)

Being able to evaluate the performance of the HFFI program will require the collection and analysis of program outcome metrics. In selecting the NFM, the Agency will score applicants commensurate with (1) their experience in creating outcome metrics applicable to HFFI (or similar) projects or similar projects to include developing, tracking, and reporting project performance targets and metrics, especially with regards to projects associated with healthy food projects; and (2) their recommendation of outcome metrics for evaluating the extent that projects funded have met the statutory objectives of the HFFI program.

H. Local and Regional Food (Maximum 5 Points)

Supporting local and regional supply chains promises to multiply the economic impact of the HFFI program, and ensure that it increases access to the healthiest foods. But, as with providing assistance to rural communities, there are unique challenges associated with projects that support local and regional supply chains. To be most effective as the NFM, the CDFI should have tangible experience providing funding and/or technical assistance to projects in local and regional food systems and have an understanding of the financial and logistical challenges facing local and regional food systems, especially as they pertain to low-income consumers' access to staple foods, creating quality jobs, and other support of community economic development. An applicant's score under this criterion will be commensurate with the amount of the applicant's experience in this area and understanding of the challenges facing local and regional food systems.

VI. Selection of the NFM

The Agency will rank applicants based on their scores, with the highest

ranking applicant receiving first consideration.

The Agency will notify, in writing, each applicant as to whether or not they were selected as the NFM. Applicants not selected for the NFM position will be provided appeal rights.

VII. Agency and National Fund Manager Agreement

The Agency will enter into an appropriate Agreement with the selected applicant. The Agency will work with the selected applicant to clearly define the NFM's roles and responsibilities in accordance with this notice and section 4206. The Agreement will detail final provisions between the selected applicant and the Agency. If the Agency cannot reach agreement with the selected applicant on the terms and conditions for the Agreement, the Agency will approach the next best applicant to become the NFM.

VIII. For Further Information

If you wish further information concerning this Notice and the solicitation of the NFM, please contact: James Barham, Agricultural Economist, 202–690–1411, *james.barham@wdc.usda.gov.*

IX. Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Dated: November 21, 2016.

Samuel H. Rikkers,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2016–28475 Filed 11–25–16; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of commission business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a Business Meeting of the U.S. Commission on Civil Rights will be convened at 11 a.m. on Friday, December 2, 2016.

DATES: Friday, December 2, 2016, at 11 a.m. EST.

ADDRESSES: National Place Building, 1331 Pennsylvania Ave. NW., 11th Floor, Suite 1150, Washington, DC 20425 (Entrance on F Street NW.).

FOR FURTHER INFORMATION CONTACT: Brian Walch, Communications and Public Engagement Director. Telephone: (202) 376–8371; TTY: (202) 376–8116; Email: *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This business meeting is open to the public. If you would like to listen to the business meeting, please contact the above for the call-in information.

Hearing-impaired persons who will attend the briefing and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at signlanguage@usccr.gov at least three business days before the scheduled date of the meeting.

Meeting Agenda

I. Approval of Agenda
II. Business Meeting
  A. Program Planning
  - Update on Status of 60th Anniversary Plans
  B. State Advisory Committees
  - Presentation by the Chair of the Michigan State Advisory Committee on the Committee's report on civil forfeiture in Michigan
  - Presentation by Regional Program Unit Coordinator David Mussatt on Status of Regional Program Offices
  - State Advisory Committee Appointments
  - California
  - New Mexico
  - Wyoming
  - Indiana
  C. Management and Operations
  - Staff Director's Report
III. Adjourn Meeting

Dated: November 23, 2016.

Brian Walch,

Director, Communications and Public Engagement.

[FR Doc. 2016–28695 Filed 11–23–16; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[11/1/2016 through 11/21/2016]

Firm name	Firm address	Date accepted for investigation	Product(s)
Gulfstream Services, Inc	723 Point Street, Houma, LA 70360.	11/14/2016	This firm provides global oilfield services, to include rental and occassional sales of high pressure frack iron and other equipment.
Union Packaging, LLC	6250 Baltimore Street, Suite 1, Yeadon, PA 19050.	11/21/2016	The firm manufactures FDA-compliant paperboard packaging for the food service industry, specifically folding cartons.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2016–28453 Filed 11–25–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–47–2016]

Foreign-Trade Zone (FTZ) 249—Pensacola, Florida; Authorization of Production Activity; GE Renewables North America, LLC (Wind Turbine Nacelles, Hubs, and Drivetrains); Pensacola, Florida

On July 22, 2016, GE Renewables North America, LLC submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within Subzone 249A, in Pensacola, Florida.

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 (81 FR 49618–49619, July 28, 2016). 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.

Dated: November 21, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–28559 Filed 11–25–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of the Antidumping Duty Administrative Review; 2011–2012

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective October 21, 2016.

SUMMARY: The Department of Commerce (the Department) is notifying the public that the Court of International Trade's (the Court's) final judgment in this case is not in harmony with the Department's final results and is therefore rescinding the antidumping administrative review with respect to Baoding Mantong Fine Chemistry Co. Ltd. (Baoding Mantong).

FOR FURTHER INFORMATION CONTACT: Madeline Heeren or Brian Davis, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–9179 or (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 2013, the Department published the *Final Results,*[1] in which it found Baoding Mantong failed to demonstrate that extraordinary circumstances prevented it from filing a timely withdrawal of review request pursuant to the Department's interpretation of 19 CFR 351.213(d)(1).[2] On November 3, 2015, the Court remanded the *Final Results* to the Department holding that the Department overlooked the true purpose of the 19 CFR 351.213(d)(1), which was to allow parties an opportunity to know the results of the preceding review.[3] In the *Remand Redetermination,* the Department, under protest, stated that it intended to extend the deadline for withdrawing a request for an administrative review, accept Baoding Mantong's untimely withdrawal request, and rescind the review with respect to Baoding Mantong.[4] On October 11, 2016, the Court affirmed the *Remand Redetermination.*[5]

Timken Notice

In its decision 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 United States Court of Appeals for the Federal Circuit 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 Court's October 11, 2016 final judgment affirming the *Remand Redetermination* constituted the Court's final decision which is not in harmony with the *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the

[1] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012,* 78 FR 20891 (April 8, 2013) (*Final Results*).

[2] *See Final Results* and accompanying Issues and Decision Memorandum.

[3] *See Glycine & More* v. *United States,* Court No. 13–00167, Slip Op. 15–124 (Ct. Int'l Trade Nov. 3, 2015).

[4] *See Final Results of Remand Redetermination Pursuant to Glycine & More* v. *United States,* Court No. 13–00167, Slip Op. 15–124 (Ct. Int'l Trade Nov. 3, 2015), dated February 2, 2016 (*Remand Redetermination*).

[5] *See Glycine & More, Inc.,* v. *United States,* Court No. 13–00167, Slip Op. 16–96 (Ct. Int'l Trade Oct. 11, 2016).

suspension of liquidation of the subject merchandise pending a final and conclusive court decision.

Amended Final Results of Review

Because there is now a final court decision, the Department is amending the *Final Results* by accepting Baoding Mantong's untimely withdrawal request, and rescinding the review with respect to Baoding Mantong.

In the event the Court's ruling is not appealed or, if appealed, upheld by a final and conclusive court decision, the Department will instruct the U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise based on the rescission of the review with respect to Baoding Mantong.

Cash Deposit Requirements

Since the *Final Results,* the Department established a new cash deposit rate for Baoding Mantong. Therefore, the cash deposit rate for Baoding Mantong will remain the company-specific rate established for the subsequent and most recent period for a completed administrative review during which Baoding Mantong was reviewed.[6]

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: November 22, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–28504 Filed 11–25–16; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 62026, 62028 (Oct. 15, 2015).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967]

Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on aluminum extrusions from the People's Republic of China (PRC). The period of review (POR) is May 1, 2014 through April 30, 2015. These final results cover 46 companies for which an administrative review was initiated and not rescinded. The Department selected the following companies as mandatory respondents: Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd. (collectively, Jangho) and Guang Ya Aluminium Industries Co., Ltd., Foshan Guangcheng Aluminium Co., Ltd., Kong Ah International Company Limited, and Guang Ya Aluminium Industries (Hong Kong) Ltd. (collectively, Guang Ya Group); Guangdong Zhongya Aluminium Company Limited, Zhongya Shaped Aluminium (HK) Holding Limited, and Karlton Aluminum Company Ltd. (collectively, Zhongya); and Xinya Aluminum & Stainless Steel Product Co., Ltd. (Xinya) (collectively, Guang Ya Group/Zhongya/Xinya). The Department finds that Jangho, Guang Ya Group/Zhongya/Xinya, and 23 other companies subject to this review did not demonstrate eligibility for a separate rate, and, accordingly, are to be considered part of the PRC-wide entity. We also determine for these final results that two companies, Xin Wei Aluminum Company Limited and Permasteelisa Hong Kong Limited, had no shipments during the POR. Finally, we find that eight companies, including JMA (HK) Company Limited (JMA), continue to be eligible for a separate rate.

DATES: Effective November 28, 2016.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2657 or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated this review on July 1, 2015.[1] On June 14, 2016, the Department published the *Preliminary Results* of this administrative review.[2] At that time, we invited interested parties to comment on the *Preliminary Results.* On July 6, 2016, JMA submitted a letter stating that it was officially withdrawing from participation in this review and requesting that the Department remove all of JMA's submissions from the record.[3] On July 14, 2016, we received a case brief from the Aluminum Extrusions Fair Trade Committee (Petitioner).[4] On July 19, 2016, we received a rebuttal brief from Jangho.[5] On October 3, 2016, the Department extended the deadline for the final results of this administrative review until November 21, 2016.[6]

These final results cover 46 companies for which an administrative review was initiated and not rescinded.[7]

Scope of the Order

The merchandise covered by the *Order*[8] is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents).[9]

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30,

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 37588 (July 1, 2015) (*Initiation Notice*).

[2] *See Aluminum Extrusions From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2014–2015,* 81 FR 38664 (June 14, 2016) (*Preliminary Results*), and accompanying preliminary decision memorandum (Preliminary Decision Memorandum).

[3] *See* Letter from JMA to the Department, ''Aluminum Extrusions from China; Withdrawal from Participation,'' dated July 6, 2016.

[4] *See* Letter from Petitioner to the Department, ''Aluminum Extrusions from the People's Republic of China: Case Brief,'' dated July 14, 2016 (Petitioner's Case Brief).

[5] *See* Letter from Jangho to the Department, ''Aluminum Extrusions from the People's Republic of China: Rebuttal Brief,'' dated July 19, 2016 (Jangho's Rebuttal Brief).

[6] *See* Memorandum from Chelsey Simonovich to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Aluminum Extrusions from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review,'' dated October 3, 2016.

[7] This administrative review initially covered 175 companies. *See Initiation Notice.* However, the Department rescinded this review with respect to 129 companies for which all administrative review requests were timely withdrawn. *See Preliminary Results,* 81 FR at 38665.

[8] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011) (*Order*).

[9] For a complete description of the scope of the *Order, see* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Final Results of the 2014–2015 Administrative Review of the Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China,'' dated concurrently with this notice (Issues and Decision Memorandum).

7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum, which is incorporated herein by reference. A list of the issues which parties raised, and to which we respond in the Issues and Decision Memorandum, follows in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

The Department reconsidered the necessity of applying adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Tariff Act of 1930 (the Act), in the *Preliminary Results* with respect to Jangho and Guang Ya Group/Zhongya/Xinya [10] in light of the Department's policy concerning the conditional review of the PRC-wide entity.[11] For additional explanation, *see* the Issues and Decision Memorandum at ''Application of Facts Available and Use of Adverse Inference.'' In addition, one company, JMA, withdrew from participation in this administrative review after the *Preliminary Results.*

Companies Eligible for a Separate Rate

In our *Preliminary Results,* we determined that nine companies were eligible for a separate rate.[12] These companies are: Allied Maker Limited; Birchwoods (Lin'an) Leisure Products Co., Ltd.; Changzhou Changzheng Evaporator Co., Ltd.; Dongguan Aoda Aluminum Co., Ltd.; JMA (HK) Company Limited (JMA); Kam Kiu Aluminium Products Sdn. Bhd.; Metaltek Group Co., Ltd.; Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.; and Tianjin Jinmao Import & Export Corp., Ltd. We received no information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of this determination. Therefore, the Department continues to find that these nine companies are eligible for a separate rate. For further discussion with respect to the application of a separate rate to JMA, *see* the Issues and Decision Memorandum at Comment 2.

Rate for Non-Examined Companies Which Are Eligible for a Separate Rate

The separate rate for non-selected companies is normally the amount equal to the weighted average of the calculated weighted-average dumping margins established for mandatory respondents, excluding any margins that are zero, *de minimis,* or based entirely on adverse facts available.[13] In the *Preliminary Results,*[14] consistent with the Department's practice when addressing such a factual scenario,[15] we

[10] In prior segments of this proceeding, the Department found that Guang Ya Group, Zhongya, and Xinya were affiliated with each other and should be treated as a single entity. *See, e.g., Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12,* 79 FR 96 (January 2, 2014) (*2010–2012 Final Results*); *Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 78784 (December 31, 2014) (*2012–2013 Final Results*); and *Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 75060 (December 1, 2015) (*2013–2014 Final Results*). *See also Zhaoqing New Zhongya Aluminium Co., Ltd.* v. *United States,* 70 F. Supp. 3d 1298 (CIT May 27, 2015) and *Zhaoqing New Zhongya Aluminum Co., Ltd. et al.* v. *United States,* 887 F. Supp. 2d 1301, 1310 (CIT 2012).

[11] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013) (*Conditional Review of NME Entity Notice*).

[12] *See Preliminary Results,* 81 FR at 38666.

[13] Neither the Tariff Act of 1930, as amended (the Act) nor the Department's regulations address the establishment of the rate applied to individual separate rate companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in administrative reviews involving limited selection based on exporters accounting for the largest volumes of exports has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an antidumping investigation.

[14] *See Preliminary Results,* 81 FR at 38666.

[15] *See Narrow Woven Ribbons With Woven Selvedge From Taiwan; Final Results of Antidumping Duty Administrative Review; 2013–2014,* 81 FR 22578 (April 18, 2016) and accompanying Issues and Decision Memorandum at Comment 1; *see also Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 16. This is also

Continued

assigned the non-examined, separate-rate companies a rate that was not zero, *de minimis,* or based entirely on facts available. Specifically, we assigned the non-examined, separate-rate companies a margin of 86.01 percent, the sole margin calculated in the most recently completed segment of this proceeding for the mandatory respondent and applied to the non-examined separate-rate respondents in that segment of the proceeding.[16] No parties commented on the methodology for calculating this separate rate.[17] For the final results, we continue to apply this approach in accordance with section 735(c)(5) of the Act.[18]

Determination of No Shipments

In the *Preliminary Results,* the Department determined that Xin Wei Aluminum Company Limited and Permasteelisa Hong Kong Limited had no shipments during the POR.[19] No party commented on that determination and we have received no information to contradict this determination. Therefore, the Department continues to determine that Xin Wei Aluminum Company Limited and Permasteelisa Hong Kong Limited had no shipments of subject merchandise during the POR, and will issue appropriate liquidation instructions to U.S. Customs and Border Protection (CBP) that are consistent with our ''automatic assessment'' clarification, for these final results.[20]

PRC-Wide Entity

For purposes of these final results, the Department finds that Jangho and Guang Ya Group/Zhongya/Xinya are not eligible for a separate rate and are part of the PRC-wide entity. For a full explanation, *see* the Issues and Decision Memorandum at 5–6.

In addition, the Department found in the *Preliminary Results* that 21 companies subject to this review were not eligible for separate-rate status because they did not submit separate-rate applications or certifications; those companies are: Belton (Asia) Development Ltd.; Classic & Contemporary Inc.; Danfoss Micro Channel Heat Exchanger (Jia Xing) Co., Ltd.; Dongguan Golden Tiger Hardware Industrial Co., Ltd.; Ever Extend Ent. Ltd.; Fenghua Metal Product Factory; FookShing Metal & Plastic Co. Ltd.; Foshan Golden Source Aluminum Products Co., Ltd.; Global Point Technology (Far East) Limited; Gold Mountain International Development Limited; Golden Dragon Precise Copper Tube Group, Inc.; Hebei Xusen Wire Mesh Products Co., Ltd.; Jackson Travel Products Co., Ltd.; New Zhongya Aluminum Factory; Shanghai Automobile Air-Conditioner Accessories Co., Ltd.; Southwest Aluminum (Group) Co., Ltd.; Suzhou NewHongJi Precision Part Co., Ltd.; Union Aluminum (SIP) Co.; Whirlpool Canada L.P.; Whirlpool Microwave Products Development Ltd.; and Xin Wei Aluminum Co.[21] The Department also found in the *Preliminary Results* that two companies subject to this review, Atlas Integrated Manufacturing Ltd. and Genimex Shanghai, Ltd., submitted separate-rate applications that did not demonstrate eligibility for a separate rate.[22] As a result, the Department found in the *Preliminary Results* that these 23 companies are also part of the PRC-wide entity.[23] For purposes of these final results, the Department continues to find that these 23 companies are not eligible for a separate rate and are part of the PRC-wide entity.

Under the Department's policy regarding conditional review of the PRC-wide entity, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity.[24] Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate from the previous administrative review (*i.e.,* 33.28 percent) is not subject to change.[25]

Adjustments for Countervailable Subsidies

Because no mandatory respondent established eligibility for an adjustment under section 777A(f) of the Act for countervailable domestic subsidies, the Department, for these final results, did not make an adjustment pursuant to section 777A(f) of the Act for countervailable domestic subsidies for the separate-rate recipients.[26]

Pursuant to section 772(c)(1)(C) of the Act, the Department made an adjustment for countervailable export subsidies for the separate-rate recipients. Specifically, we adjusted the assigned separate rate by deducting the simple average of the countervailable export subsidies determined for the individually examined respondents in the 2013 countervailing duty administrative review.[27]

consistent with the Department's determination in prior segments of this proceeding. *See 2010–2012 Final Results,* 79 FR at 99; *2012–2013 Final Results,* 79 FR at 78786; and *2013–2014 Final Results,* 80 FR at 75062. *See also Yangzhou Bestpak Gifts & Crafts Co., Ltd.* v. *United States,* 716 F.3d 1370, 1374 (Fed. Cir. 2013) (recognizing and affirmatively discussing the Department's normal methodology for calculating a separate rate).

[16] *See 2013–2014 Final Results,* 80 FR at 75062–75063.

[17] We note that, while Petitioner commented on the rate to assign to one company found to be eligible for a separate rate, JMA, Petitioner's comments were specific to circumstances involving JMA, not the Department's overall methodology for determining the rate to assign to non-examined separate-rate companies. For further discussion with respect to the application of a separate rate to JMA, *see* the Issues and Decision Memorandum at Comment 2.

[18] As explained in the Issues and Decision Memorandum in the section ''Application of Facts Available and Use of Adverse Inference,'' the Department finds for these final results that the application of AFA to the two mandatory respondents in this review, Jangho and Guang Ya Group/Zhongya/Xinya, is not necessary in light of the Department's recent change in practice concerning the conditional review of the PRC-wide entity. Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. *See Conditional Review of NME Entity Notice,* 78 FR at 65970. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate from the most-recently completed administrative review (*i.e.,* 33.28 percent) is not subject to change. *See 2013–2014 Final Results,* 80 FR at 75063. While we no longer find it necessary to apply AFA to Jangho and Guang Ya Group/Zhongya/Xinya, we note that the 33.28 percent rate applicable to the PRC-wide entity (which includes to Jangho, Guang Ya Group/Zhongya/Xinya, and 23 other companies subject to this review) was determined on the basis of AFA. *See Aluminum Extrusions From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 18524, 18529 (April 4, 2011).

[19] *See Preliminary Results,* 81 FR at 38666. We note that we did not make a preliminary determination of no shipments with regard to Permasteelisa South China Factory because Permasteelisa South China Factory was not granted separate rate status in a prior segment of this proceeding. *See, e.g., 2013–2014 Final Results,* 80 FR at 75063, footnote 30. Our determination concerning Permasteelisa South China Factory remains unchanged for these final results.

[20] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65695 (October 24, 2011) (*Assessment Practice Refinement*).

[21] *Id.,* 81 FR at 38665. We note that one company, Zhaoqing New Zhongya Aluminum Co., Ltd. (New Zhongya), was determined to have been succeeded by Guangdong Zhongya Aluminum Company Limited (Guangdong Zhongya) in a changed circumstances review. *See Aluminum Extrusions From the People's Republic of China: Final Results of Changed Circumstances Review,* 77 FR 54900 (September 6, 2012). Thus, despite the fact that a review was initiated of New Zhongya, it is not being included among these 21 companies because its successor in interest, Guangdong Zhongya, is part of the Guang Ya Group/Zhongya/Xinya single entity.

[22] *See Preliminary Results,* 81 FR at 38665.

[23] *Id.,* 81 FR at 38667.

[24] *See Conditional Review of NME Entity Notice,* 78 FR at 65970.

[25] *See 2013–2014 Final Results,* 80 FR at 75063.

[26] *See* Preliminary Decision Memorandum at 20.

[27] *See Aluminum Extrusions From the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013,* 80 FR 77325 (December 14, 2015) and *Aluminum Extrusions From the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2013,* 81 FR 15238 (March 22, 2016), as corrected in *Aluminum Extrusions from the People's Republic of China:*

For the PRC-wide entity, since the entity is not currently under review, no adjustments were warranted to its rate, as it is not subject to change.[28]

Final Results of Review

The Department determines that the following weighted-average dumping margins exist for the 2014–2015 POR:

Exporter	Weighted-Average dumping margin (percent)	Margin adjusted for liquidation and cash deposit purposes (percent)
Allied Maker Limited	86.01	85.94
Birchwoods (Lin'an) Leisure Products Co., Ltd	86.01	85.94
Changzhou Changzheng Evaporator Co., Ltd	86.01	85.94
Dongguan Aoda Aluminum Co., Ltd	86.01	85.94
JMA (HK) Company Limited	86.01	85.94
Kam Kiu Aluminium Products Sdn Bhd[29]	86.01	85.94
Metaltek Group Co., Ltd	86.01	85.94
Tianjin Jinmao Import & Export Corp., Ltd	86.01	85.94

Additionally,[29] the Department determines for these final results that the following companies are part of the PRC-wide entity: Jangho (which includes Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd.); Guang Ya Group/Zhongya/Xinya (which includes Guang Ya Aluminium Industries Co., Ltd.; Foshan Guangcheng Aluminium Co., Ltd.; Kong Ah International Company Limited; Guang Ya Aluminium Industries (Hong Kong) Ltd.; Guangdong Zhongya Aluminium Company Limited; Zhongya Shaped Aluminium (HK) Holding Limited; Karlton Aluminum Company Ltd.; and Xinya Aluminum & Stainless Steel Product Co., Ltd.); Atlas Integrated Manufacturing Ltd.; Belton (Asia) Development Ltd.; Classic & Contemporary Inc.; Danfoss Micro Channel Heat Exchanger (Jia Xing) Co., Ltd.; Dongguan Golden Tiger Hardware Industrial Co., Ltd.; Ever Extend Ent. Ltd.; Fenghua Metal Product Factory; FookShing Metal & Plastic Co. Ltd.; Foshan Golden Source Aluminum Products Co., Ltd.; Genimex Shanghai, Ltd.; Global Point Technology (Far East) Limited; Gold Mountain International Development Limited; Golden Dragon Precise Copper Tube Group, Inc.; Hebei Xusen Wire Mesh Products Co., Ltd.; Jackson Travel Products Co., Ltd.; New Zhongya Aluminum Factory; Shanghai Automobile Air-Conditioner Accessories Co., Ltd.; Southwest Aluminum (Group) Co., Ltd.; Suzhou NewHongJi Precision Part Co., Ltd.; Union Aluminum (SIP) Co.; Whirlpool Canada L.P.; Whirlpool Microwave Products Development Ltd.; and Xin Wei Aluminum Co. The rate established for the PRC-wide entity in the previous administrative review is 33.28 percent.[30]

Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review in the **Federal Register**. Consistent with the Department's assessment practice in NME cases, if the Department determines that an exporter under review had no shipments of subject merchandise, any suspended entries that entered under the exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[31] For the companies eligible for a separate rate, the Department will instruct CBP to assess antidumping duties on the company's entries of subject merchandise at the rates listed above in the section ''Final Results of Review.''

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the companies eligible for a separate rate, the cash deposit rate will that listed above in the section ''Final Results of Review;'' (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most-recently completed segment of this proceeding in which the exporter was reviewed; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be that established for the PRC-wide entity, which is 33.28 percent;[32] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter with the subject merchandise.

Notice of Correction to Amended Final Results of Countervailing Duty Administrative Review; 2013, 81 FR 31227 (May 18, 2016). *See also* Preliminary Decision Memorandum at Attachment 1 for the calculation of the countervailable export subsidies deducted from the assigned separate rate.

[28] *See Conditional Review of NME Entity Notice,* 78 FR at 65970. As the rate for the PRC-wide entity is not subject to change in the instant review, the adjusted margin we are applying to the PRC-wide entity in the instant review, 33.18 percent, is net of the countervailable domestic and export subsidies determined in the *2012–2013 Final Results. See 2012–2013 Final Results,* 79 FR at 78787; *see also 2013–2014 Final Results,* 80 FR at 75063, footnote 27.

[29] Although the Department initiated a review for both Taishan City Kam Kiu Aluminium Extrusion Co., Ltd. and Kam Kiu Aluminium Products Sdn Bhd, it is apparent from the company's separate-rate certification that Kam Kiu Aluminium Products Sdn Bhd is the exporter and Taishan City Kam Kiu Aluminium Extrusion Co., Ltd. is a producer only; thus, Kam Kiu Aluminium Products Sdn Bhd is the appropriate party to which to grant the separate rate status.

[30] *See 2013–2014 Final Results,* 80 FR at 75063–75064.

[31] *See Assessment Practice Refinement,* 76 FR at 65694.

[32] *See 2013–2014 Final Results,* 80 FR at 75063.

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: November 21, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

Summary
Background
Scope of the Order
Application of Facts Available and Use of Adverse Inference
Discussion of the Issues
  Comment 1: Rate to Assign to Jangho
  Comment 2: Rate to Assign to JMA
Conclusion

[FR Doc. 2016–28502 Filed 11–25–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–854]

Supercalendered Paper From Canada: Preliminary Results of Countervailing Duty Expedited Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an expedited review of the countervailing duty (CVD) order on supercalendered paper (SC paper) from Canada. The period of expedited review (POR) is January 1, 2014, through December 31, 2014. We preliminarily determine that Irving Paper Limited received countervailable subsidies during the POR. We also preliminarily determine that Catalyst Paper received *de minimis* countervailable subsidies. Interested parties are invited to comment on these preliminary results.

DATES: Effective November 28, 2016.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski or Toby Vandall, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1395 and (202) 482–1664, respectively.

Scope of the Order

The product covered by this order is SC paper. A full description of the scope of the order is contained in the Preliminary Decision Memorandum, which is hereby adopted by this notice.[1]

Methodology

On December 10, 2015, the Department issued a countervailing duty order on SC paper from Canada.[2] The Department is conducting this CVD expedited review in accordance with 19 CFR 351.214(k). For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum. The list of topics discussed in the Preliminary Decision Memorandum is included as an Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

We calculated a CVD rate for each producer/exporter of the subject merchandise that requested an expedited review.

Preliminary Results of Review

As a result of this review, we preliminarily determine the countervailable subsidy rates to be:

Company	Subsidy rate
Catalyst Paper Corporation (Catalyst).	0.79 percent (*de minimis*)
Irving Paper Limited (Irving).	7.99 percent

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in connection with these preliminary results within five days publication of this notice.[3] Interested parties may submit case briefs within 30 days of publication of these preliminary results and rebuttal briefs no later than five days after the deadline for filing case briefs.[4] Rebuttal briefs must be limited to issues raised in the case briefs.[5] Parties who submit case or rebuttal briefs are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and, (3) a table of authorities.[6] Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. Requests should contain the

[1] *See* Memorandum from James Maeder, Senior Director, Office I, for Antidumping and Countervailing Duty Operations, to Gary Taverman, Associate Deputy Assistant Secretary for Enforcement and Compliance, ''Preliminary Results of Expedited Review of the Countervailing Duty Order on Supercalendered Paper from Canada,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[2] *See Supercalendered Paper From Canada: Countervailing Duty Order,* 80 FR 76668 (December 10, 2015).

[3] *See* 19 CFR 351.224(b).

[4] *See* 19 CFR 351.309(c)(1)(ii) and (d)(1).

[5] *See* 19 CFR 351.309(d)(2).

[6] *See* 19 CFR 351.309(c)(2) and (d)(2).

party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless the deadline is extended pursuant to 19 CFR 351.214(h)(i)(2), the Department will issue the final results of this expedited review, including the results of its analysis of issues raised in any written briefs, within 90 days after the date of publication of these preliminary results.

Cash Deposit Instructions

Pursuant to section 19 CFR 351.214(k)(iii), the final results of this expedited review will not be the basis for the assessment of countervailing duties. Upon issuing the final results, the Department intends to instruct Customs and Border Protection (CBP) to collect cash deposits of estimated countervailing duties for the companies subject to this expedited review, at the rates shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this expedited review. These cash deposit requirements, when imposed, shall remain in effect until further notice. Pursuant to 19 CFR 351.214(k)(iv), however, if either Catalyst and/or Irving has a final estimated net subsidy rate that is zero or *de minimis,* they will be excluded from the order.

This determination is issued and published pursuant to sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.214(h) and (k).

Dated: November 22, 2016.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Subsidies Valuation
V. Analysis of Programs
VI. Disclosure and Public Comment
VII. Conclusion

[FR Doc. 2016–28505 Filed 11–25–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF059

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council and its Committees.

DATES: The meeting will be held on Monday December 12 through Thursday, December 15, 2016. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings will be held at: Royal Sonesta Harbor Court, 550 Light Street, Baltimore, MD 21202, telephone: (410) 234–0550.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's Web site when possible).

Agenda

Monday, December 12, 2016

Executive Committee (CLOSED MEETING)

Discuss Council awards and process and MAFMC/NEFMC joint management issue.

Mackerel, Squid, Butterfish Meeting as a Committee of the Whole Squid Amendment

Review Committee and Advisory Panel input and adopt alternatives for the public hearing document.

Lenfest Ecosystem Task Force Report

Industry-Funded Monitoring Amendment—Final Action

Review public comments and select final preferred alternatives.

Law Enforcement Report

Consideration of NJ Request for SMZ Status

Final action.

BOEM New York Energy Area Presentation

Tuesday, December 13, 2016

Council Photo

Monkfish Specifications

Review Committee recommendations and select final preferred alternatives.

HMS Amendment

Receive a presentation on Dusky Shark Management Measures and consider developing Council comments.

Observer Safety Program Review

National Standard 1 Guidelines

Meeting with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Boards.

Scup Commercial Quota Framework/ Addendum

Review initial analysis and Monitoring Committee and Advisory Panel comments.

Summer Flounder Allocation Review Study

Review and discuss commercial/ recreational allocation model results and peer review summary.

Sex-Specific Summer Flounder Assessment Model Update

Wednesday, December 14, 2016

Meeting with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Boards.

Summer Flounder Amendment

Update progress, discuss amendment timeline and action plan.

Effects of Ocean Acidification on Summer Flounder Reproduction and Productivity

Summer Flounder, Scup, Black Sea Bass Recreational Specifications

Review Monitoring Committee and Advisory Panel recommendations, adopt recommendations for 2017 management measures, BSB discussion on state-by-state recreational performance relative to regional targets and ASMFC Addendum for summer flounder (Board action).

Thursday, December 15, 2016

2017 Implementation Plan

Review and adopt 2017 Implementation Plan.

Business Session

The day will conclude with brief reports from the National Marine Fisheries Service's GARFO and the Northeast Fisheries Science Center, NOAA's Office of General Counsel, the ASMFC, the New England and South Atlantic Fishery Council's liaisons and the Regional Planning Body Report. The Council will also receive the Council's Executive Director's Report, the Science Report, Committee Reports, and discuss any continuing and/or new business.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: November 22, 2016.

Tracey L. Thompson,

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

[FR Doc. 2016–28510 Filed 11–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF037

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Cost Recovery Programs

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

ACTION: Notice of standard prices and fee percentage.

SUMMARY: NMFS publishes standard prices and fee percentages for cost recovery for the Amendment 80 Program, the American Fisheries Act (AFA) Program, the Aleutian Islands Pollock (AIP) Program, and the Western Alaska Community Development Quota (CDQ) groundfish and halibut Programs. The fee percentage for 2016 is 0.37 percent for the Amendment 80 Program, 0.10 percent for the AFA inshore cooperatives, 0.10 percent for the AFA catcher/processor sector, 0.17 percent for the AFA mothership cooperative, 0 percent for the AIP program, and 0.29 percent for the CDQ groundfish and halibut Programs. This action is intended to provide the 2016 standard prices and fee percentages to calculate the required payment for cost recovery fees due by December 31, 2016.

DATES: Effective November 28, 2016.

FOR FURTHER INFORMATION CONTACT: Carl Greene, Fee Coordinator, 907–586–7105.

SUPPLEMENTARY INFORMATION:

Background

Section 304(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes and requires the collection of cost recovery fees for limited access privilege programs and the CDQ Program. Cost recovery fees recover the actual costs directly related to the management, data collection, and enforcement of the programs. Section 304(d) of the Magnuson-Stevens Act mandates that cost recovery fees not exceed three percent of the annual ex-vessel value of fish harvested by a program subject to a cost recovery fee, and that the fee be collected either at the time of landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

NMFS manages the Amendment 80 Program, AFA Program, and AIP Program as limited access privilege programs. On January 5, 2016, NMFS published a final rule to implement cost recovery for these three limited access privilege programs and the CDQ groundfish and halibut programs (81 FR 150). The designated representative (for the purposes of cost recovery) for each program is responsible for submitting the fee payment to NMFS on or before the due date of December 31 of the year in which the landings were made. The total dollar amount of the fee due is determined by multiplying the NMFS published fee percentage by the ex-vessel value of all landings under the program made during the fishing year. NMFS publishes this notice of the fee percentages for the Amendment 80, AFA, AIP, and CDQ groundfish and halibut fisheries in the **Federal Register** by December 1 each year.

Standard Prices

The fee liability is based on the ex-vessel value of fish harvested in each program. For purposes of calculating cost recovery fees, NMFS calculates a standard ex-vessel price (standard price) for each species. A standard price is determined using information on landings purchased (volume) and ex-vessel value paid (value). For most groundfish species, NMFS annually summarizes volume and value information for landings of all fishery species subject to cost recovery in order to estimate a standard price for each species. The standard prices are described in U.S. dollars per pound for landings made during the year. The standard prices for all species in the Amendment 80, AFA, AIP, and CDQ groundfish and halibut programs are listed in Table 1. Each landing made under each program is multiplied by the appropriate standard price to arrive at an ex-vessel value for each landing. These values are summed together to arrive at the ex-vessel value of each program (fishery value).

Fee Percentage

NMFS calculates the fee percentage each year according to the factors and methods described in Federal regulations at 50 CFR 679.33(c)(2), 679.66(c)(2), 679.67(c)(2), and 679.95(c)(2). NMFS determines the fee percentage that applies to landings made during the year by dividing the total costs directly related to the management, data collection, and enforcement of each program (direct program costs) during the year by the fishery value. NMFS captures direct program costs through an established accounting system that allows staff to track labor, travel, contracts, rent, and procurement. For 2016, the direct program costs were tracked from February 4, 2016 (the effective date of the rule), to September 30, 2016 (the end of the fiscal year). In subsequent years, direct program costs will be calculated based on a full fiscal year. NMFS will provide an annual report that summarizes direct program costs for each of the programs in early 2017. NMFS calculates the fishery value as described under the section ''Standard Prices.''

Amendment 80 Program Standard Prices and Fee Percentage

The Amendment 80 Program allocates total allowable catches (TACs) of groundfish species, other than Bering Sea pollock, to identified trawl catcher/

processors in the Bering Sea and Aleutian Islands (BSAI). The Amendment 80 Program allocates a portion of the BSAI TACs of six species: Atka mackerel, Pacific cod, flathead sole, rock sole, yellowfin sole, and Aleutian Islands Pacific ocean perch. Participants in the Amendment 80 sector have established cooperatives to harvest these allocations. Each Amendment 80 cooperative is responsible for payment of the cost recovery fee for fish landed under the Amendment 80 Program. Cost recovery requirements for the Amendment 80 Program are at 50 CFR 679.95.

For most Amendment 80 species, NMFS annually summarizes volume and value information for landings of all fishery species subject to cost recovery in order to estimate a standard price for each fishery species. For rock sole, NMFS calculates a separate standard price for two periods—January 1 through March 31, and April 1 through October 31. The volume and value information is obtained from the First Wholesale Volume and Value Report, and the Pacific Cod Ex-Vessel Volume and Value Report.

Using the fee percentage formula described above, the estimated percentage of direct program costs to fishery value for the 2016 calendar year is 0.37 percent for the Amendment 80 Program. For 2016, NMFS applied the fee percentage to each Amendment 80 species landing that was debited from an Amendment 80 cooperative quota allocation between February 4 and December 31 to calculate the Amendment 80 fee liability for each Amendment 80 cooperative. The 2016 fee payments must be submitted to NMFS on or before December 31, 2016. Payment must be made in accordance with the payment methods set forth in 50 CFR 679.95(a)(3)(iv).

AFA Standard Price and Fee Percentages

The AFA allocates the Bering Sea directed pollock fishery TAC to three sectors—catcher/processor, mothership, and inshore. Each sector has established cooperatives to harvest the sector's exclusive allocation. These cooperatives are responsible for paying the fee for Bering Sea pollock landed under the AFA. Cost recovery requirements for the AFA sectors are at 50 CFR 679.66.

NMFS calculates the standard price for pollock using the most recent annual value information reported to the Alaska Department of Fish & Game for the Commercial Operator's Annual Report and compiled in the Alaska Commercial Fisheries Entry Commission Gross Earnings data for Bering Sea pollock. Due to the time required to compile the data, there is a one-year delay between the gross earnings data year and the fishing year to which it is applied. For example, NMFS used 2015 gross earnings data to calculate the standard price for 2016 pollock landings.

Using the fee percentage formula described above, the estimated percentage of direct program costs to fishery value for the 2016 calendar year is 0.10 percent for the AFA inshore sector, 0.10 percent for the AFA catcher/processor sector, and 0.17 percent for the AFA mothership sector. For 2016, NMFS applied the fee percentage to each AFA inshore cooperative, AFA mothership cooperative, and AFA catcher/processor sector landing of Bering Sea pollock debited from its AFA pollock fishery allocation between February 4 and December 31 to calculate the AFA fee liability for each AFA cooperative. The 2016 fee payments must be submitted to NMFS on or before December 31, 2016. Payment must be made in accordance with the payment methods set forth in 50 CFR 679.66(a)(4)(iv).

AIP Program Standard Price and Fee Percentage

The AIP Program allocates the Aleutian Islands directed pollock fishery TAC to the Aleut Corporation, consistent with the Consolidated Appropriations Act of 2004 (Pub. L. 108–109), and its implementing regulations. Annually, prior to the start of the pollock season, the Aleut Corporation provides NMFS with the identity of its designated representative for harvesting the Aleutian Islands directed pollock fishery TAC. The same individual is responsible for the submission of all cost recovery fees for pollock landed under the AIP Program. Cost recovery requirements for the AIP Program are at 50 CFR 679.67.

NMFS calculates the standard price for pollock using the most recent annual value information reported to the Alaska Department of Fish & Game for the Commercial Operator's Annual Report and compiled in the Alaska Commercial Fisheries Entry Commission Gross Earnings data for Aleutian Islands pollock. Due to the time required to compile the data, there is a one-year delay between the gross earnings data year and the fishing year to which it is applied. For example, NMFS used 2015 gross earnings data to calculate the standard price for 2016 pollock landings.

For the 2016 fishing year, the Aleut Corporation did not select any participants to harvest or process the Aleutian Islands directed pollock fishery TAC, and most of that TAC was reallocated to the Bering Sea directed pollock fishery TAC. Using the fee percentage formula described above, the estimated percentage of direct program costs to fishery value for the 2016 calendar year is 0 percent for the AIP Program.

CDQ Standard Price and Fee Percentage

The CDQ Program was implemented in 1992 to provide access to BSAI fishery resources to villages located in Western Alaska. Section 305(i) of the Magnuson-Stevens Act identifies 65 villages eligible to participate in the CDQ Program and the six CDQ groups to represent these villages. CDQ groups receive exclusive harvesting privileges of the TACs for a broad range of crab species, groundfish species, and halibut. NMFS implemented a CDQ cost recovery program for the BSAI crab fisheries in 2005 (70 FR 10174, March 2, 2005) and published the cost recovery fee percentage for the 2016/2017 crab fishing year on July 14, 2016 (81 FR 45458). This notice provides the cost recovery fee percentage for the CDQ groundfish and halibut programs. Each CDQ group is subject to cost recovery fee requirements for landed groundfish and halibut, and the designated representative of each CDQ group is responsible for submitting payment for their CDQ group. Cost recovery requirements for the CDQ Program are at 50 CFR 679.33.

For most CDQ groundfish species, NMFS annually summarizes volume and value information for landings of all fishery species subject to cost recovery in order to estimate a standard price for each fishery species. The volume and value information is obtained from the First Wholesale Volume and Value Report and the Pacific Cod Ex-Vessel Volume and Value Report. For CDQ halibut and fixed-gear sablefish, NMFS calculates the standard prices using information from the Individual Fishing Quota (IFQ) Ex-Vessel Volume and Value Report, which collects information on both IFQ and CDQ volume and value.

Using the fee percentage formula described above, the estimated percentage of direct program costs to fishery value for the 2016 calendar year is 0.29 percent for the CDQ groundfish and halibut programs. For 2016, NMFS applied the calculated CDQ fee percentage to all CDQ groundfish and halibut landings made between February 4 and December 31 to calculate the CDQ fee liability for each CDQ group. The 2016 fee payments must be submitted to NMFS on or before December 31, 2016. Payment must be

made in accordance with the payment methods set forth in 50 CFR 679.33(a)(3)(iv).

TABLE 1—STANDARD EX-VESSEL PRICES BY SPECIES FOR THE 2016 FISHING YEAR

Species	Gear type	Reporting period	Standard ex-vessel price per pound ($)
Arrowtooth flounder	All	February 4, 2016–October 31, 2016	$0.21
Atka mackerel	All	February 4, 2016–October 31, 2016	0.26
Flathead sole	All	February 4, 2016–October 31, 2016	0.20
Greenland turbot	All	February 4, 2016–October 31, 2016	0.46
CDQ halibut	Fixed gear	October 1, 2015–September 30, 2016	6.02
Pacific cod	Fixed gear	February 4, 2016–October 31, 2016	0.29
	Trawl gear	February 4, 2016–October 31, 2016	0.26
Pacific ocean perch	All	February 4, 2016–October 31, 2016	0.19
Pollock	All	January 1, 2015–December 31, 2015	0.15
Rock sole	All	February 4, 2016–March 31, 2016	0.18
	All	April 1, 2016–October 31, 2016	0.14
Sablefish	Fixed gear	October 1, 2015–September 30, 2016	5.11
	Trawl gear	February 4, 2016–October 31, 2016	1.08
Yellowfin sole	All	February 4, 2016–October 31, 2016	0.14

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

Dated: November 22, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–28598 Filed 11–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF019

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold its 158th meeting.

DATES: The meeting will be held on December 13–14, 2016. The Council will convene on Tuesday, December 13, 2016, from 9 a.m. to 5:30 p.m., and will reconvene on Wednesday, December 14, 2016, from 9 a.m. to 5 p.m.

ADDRESSES: The Frenchman's Reef & Morning Star Marriott Beach Resort, 5 Estate Bakkeroe, St. Thomas, USVI

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918, telephone (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 158th regular Council Meeting to discuss the items contained in the following agenda:

December 13, 2016, 9 a.m.–5:30 p.m.

- Call to Order
- Adoption of Agenda
- Consideration of 157th Council Meeting Verbatim Transcriptions
- Executive Director's Report
- Scientific and Statistical Committee Report—Dr. Richard Appeldoorn
- SEDAR 2017 Update on Life History Workshop and Spiny Lobster
- Accountability Measure Timing-Update on Status Following Secretarial Submission
- Island-based Fishery Management Plans
  - —Review of Proposed Actions and Alternatives
  - —Timeline Status, SSC and DAP Meeting Schedule, Next Council Steps
  - —Goals and Objectives
  - —Puerto Rico
  - —St. Thomas/St. John
  - —St. Croix
- Outcomes from public hearings on the development of a permit program for harvest of Snapper Unit 2 from the Puerto Rico EEZ
- Developing an alternative annual catch limit (ACL) benchmark for application of accountability measures (AMs)
- Initiating development of a Fishery Ecosystem Plan for the U.S. Caribbean
- Identification of ACL overages and the need to apply AMs in the 2017 fishing year
- Ocean Economics of Puerto Rico and the U.S. Virgin Islands—Jeffery Adkins
- Other Business
  - —Exempted Fishing Permit for Puerto Rico—Department of Natural and Environmental Resources

PUBLIC COMMENT PERIOD (5-minutes presentations)

- Administrative Matters
  - —CY–2017
  - —Closed Session

December 14, 2016, 9 a.m.–5 p.m.

- Puerto Rico Fishers Spiny Lobster Data Collection Initiative
- Marine Recreational Information Program-Status of Regional Implementation Plan
- Atlantic HMS Fisheries—Delisse Ortíz/Jen Cudney
- SEAMAP Update
- Outreach and Education Report—Dr. Alida Ortíz
- Update on Ongoing Reef Fish and Spiny Lobster Endangered Species 7 Consultation—Jennifer Lee—SERO/PRD
- Enforcement Issues:
  - —Puerto Rico-DNER
  - —U.S. Virgin Islands-DPNR
  - —U.S. Coast Guard
  - —NMFS/NOAA
- Meetings Attended by Council Members and Staff

PUBLIC COMMENT PERIOD (5-minute presentations)

- Other Business
- Next Meeting(s)

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: November 22, 2016.

Tracey L. Thompson,

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

[FR Doc. 2016–28509 Filed 11–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE74

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Waterfront Improvement Projects

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the U.S. Department of the Navy (Navy) to incidentally harass, by Level A and Level B harassment, marine mammals during construction activities associated with a waterfront improvement project at the Portsmouth Naval Shipyard (Shipyard) in Kittery, Maine.

DATES: This authorization is effective from January 1, 2017 through December 31, 2017.

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Navy's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth.

Under section 101(a)(5)(D), NMFS after providing notice and opportunity for public comment may authorize such incidental taking by harassment only, for periods of not more than one year, pursuant to the mitigation, monitoring, and reporting requirements contained within an IHA. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).''

Summary of Request

On February 17, 2016, NMFS received an application from the Navy for the taking of marine mammals incidental to a waterfront improvement project. NMFS determined that the application was adequate and complete on April 1, 2016. The Navy is proposing to restore and modernize waterfront infrastructure associated with Dry Docks 1 and 3 at the Shipyard in Kittery, York County, Maine. The proposed action will include two waterfront improvement projects, structural repairs to Berths 11, 12, and 13, and replacement of the Dry Dock 3 caisson. The waterfront improvement projects will be constructed between October 2016 and October 2022, with in-water work expected to begin no earlier than January 2017. The requested IHA will be effective from January 1, 2017 through December 31, 2017. According to the project schedule work during the IHA period will only cover work occurring at Berth 11.

Use of vibratory and impact pile driving for pile installation and removal as well as drilling is expected to produce underwater sound at levels that have the potential to result in limited injury and behavioral harassment of marine mammals. The term ''pile driving'' throughout this document includes vibratory driving, impact pile driving, vibratory pile extraction as well as pile drilling unless specified otherwise. Take, by Level B Harassment, may impact individuals of five species of marine mammals including harbor porpoise (*Phocoena phocoena),* gray seal (*Halichoerus grypus*), harbor seal (*Phoca vitulina*), hooded seal (*Crystphora cristata*) and harp seal (*Pagophilus groenlandicus*). As the next paragraph explains, we have determined, based on the best available information, that there may also be small numbers of take by Level A harassment of harbor porpoise, harbor seal, and gray seal.

In August 2016, NMFS released its Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Guidance). This new Guidance established new

thresholds for predicting auditory injury, which equates to Level A harassment under the MMPA. In the August 4, 2016, **Federal Register** Notice (81 FR 51694), NMFS explained the approach it would take during a transition period, wherein we balance the need to consider this new best available science with the fact that some applicants have already committed time and resources to the development of analyses based on our previous thresholds and have constraints that preclude the recalculation of take estimates, as well as consideration of where the action is in the agency's decision-making pipeline. In that Notice, we included a non-exhaustive list of factors that would inform the most appropriate approach for considering the new Guidance, including: the scope of effects; how far in the process the applicant has progressed; when the authorization is needed; the cost and complexity of the analysis; and the degree to which the Guidance is expected to affect our analysis.

In this case, the Navy initially submitted a request for authorization on February 17, 2016, which NMFS found adequate and complete on April 1, 2016. The Navy requires issuance of the authorization in order to ensure that this critical national security infrastructure project is able to meet its necessary start date. The Guidance indicates that there is a greater likelihood of auditory injury for phocid pinnipeds (*i.e.,* harbor seals, gray seals, hooded seals, and harp seals) and for high- frequency cetaceans (*i.e.,* harbor porpoise) than was considered in our notice of proposed authorization (81 FR 52614; August 9, 2016) because the Level A harassment zones are larger for impact driving. To account for the larger Level A zone that exists for harbor porpoises and the seal species, we authorize the taking by Level A harassment of 10 harbor porpoises, 4 harbor seals and 2 gray seals. Level A take for hooded and harp seals is not anticipated or authorized (since the likelihood of even Level B take for these species is small). We also increased the shutdown zones from 10 m to 75 m during impact driving and from 10 meter (m) to 55 m during vibratory driving. With these changes, the required mitigation measures, and a robust monitoring and mitigation program NMFS believes impacts to the affected species or stocks will be minimized.

In this analysis, we considered the potential for small numbers of harbor porpoises, harbor seals, and gray seals to incur auditory injury and found that it would not impact our determinations, including negligible impact determination. In summary, we have considered the new Guidance and believe that the likelihood of injury is adequately addressed in the analysis contained herein and appropriate mitigation measures are in place in the IHA.

Description of the Specified Activity

Overview

The Navy is proposing to restore and modernize infrastructure associated with Dry Docks 1 and 3 at the Shipyard in Kittery, York County, Maine (See Figure 1–1 in the Application). The proposed action will include two waterfront improvement projects, structural repairs to Berths 11, 12, and 13 and replacement of the Dry Dock 3 caisson.

The purpose of the proposed action is to modernize and maximize dry dock capabilities for performing current and future missions efficiently and with maximum flexibility. The need for the proposed action is to correct deficiencies associated with the pier structure at Berths 11, 12, and 13 and the Dry Dock 3 caisson and concrete seats to ensure that the Shipyard can continue to support its primary mission to service, maintain, and overhaul submarines. By supporting the Shipyard's mission, the proposed action will assist in meeting the larger need for the Navy to provide capabilities for training and equipping combat-capable naval forces ready to deploy worldwide. Proposed activities included as part of the waterfront improvement project with potential to affect marine mammals within the waterways adjacent to the Shipyard include vibratory and impact pile driving, vibratory extraction and pile drilling operations in the project area.

Dates and Duration

In-water construction associated with the proposed action will occur in phases over a six-year construction period. In-water construction is scheduled to begin in January 2017 and be completed by October 2022. This IHA is for the first year of in-water construction from January 1, 2017 to December 31, 2017. No seasonal limitations will be imposed on the construction timeline. This IHA covers all in-water construction planned for Berth 11 structural repairs. The Navy intends to apply for sequential IHAs to cover each of the subsequent years of construction.

Table 1 below summarizes the in-water construction activities scheduled to take place during the timeframe covered by this IHA. Note that the proposed **Federal Register** notice (81 FR 52614) contained an error in Table 1. That **Federal Register** notice stated that the contractor would drill rock sockets, which could take about one day per socket. King piles would be regularly spaced along the berths and grouted into sockets drilled into the bedrock. The footnote in Table 1 indicated that ten king piles would be installed per day. However, only one socket and one king pile will actually be installed per day. Thus, the number of days of activities for the sockets to be drilled for the 94 king piles will be 94 days. Therefore, the total number of days of activity will increase from 72 to 156 and include the installation of 327 piles and removal of 141 piles. Note that impact driving, vibratory driving and drilling may occur on the same day. As such, 156 total days of pile-related activity can be considered a conservative projection. Table 1 below contains updated information.

TABLE 1—REVISED ACTIVITY SUMMARY FOR YEAR 1 OF THE WATERFRONT IMPROVEMENT PROJECTS

Activity/Method	Timing	Number of days	Pile type	Number of piles installed	Number of piles extracted
Berth 11 (A, B, and C) Structural Repairs					
Extract timber piles/vibratory hammer.	January 2017 to December 2017	[1] 10	15-inch timber pile		77
Install temporary sister piles for trestle system/vibratory hammer.	January 2017 to December 2017	[2] 16	14-inch steel H-type	64	
Install permanent king piles for bulkhead/auger drilling.	January 2017 to December 2017	94	36-inch steel H-type piles.	94	

TABLE 1—REVISED ACTIVITY SUMMARY FOR YEAR 1 OF THE WATERFRONT IMPROVEMENT PROJECTS—Continued

Activity/Method	Timing	Number of days	Pile type	Number of piles installed	Number of piles extracted
Install steel sheet-pile bulkhead/vibratory hammer (sheet piles and sheet pile returns).	January 2017 to December 2017	6	24-inch steel sheet-piles.	112	
Install permanent sister piles/impact hammer.	January 2017 to December 2017	[2] 13	14-inch steel H-type	50	
Install timber dolphin/vibratory hammer.	January 2017 to January 2017	[1] 1	15-inch timber piles	7	
Extract temporary sister piles for trestle system/vibratory hammer.	January 2017 to December 2017	[2] 16	14-inch steel H-type		64
Totals		156		327	141

[1] Estimate based on assumption of 30 minutes to drive each pile and 30-minute transition and set up time, resulting in one pile per hour and eight piles per day (ICF Jones and Strokes and Illingworth and Rodkin, Inc. 2012).
[2] Estimate based on assumption of a one-hour transition and set up time, resulting in one pile per two hours and four piles per day (ICF Jones and Strokes and Illingworth and Rodkin, Inc. 2012).
King Piles—estimate of 1 socket drilled per day.
Sheet piles—estimate of 20 per day, based on 20 piles in 8 hours (*i.e.,* one day) because they will be installed two at a time.

Specified Geographic Region

The Shipyard is located along the Piscataqua River in Kittery, Maine (see Figure 1 in the application). The Shipyard occupies the whole of Seavey Island, encompassing 1.16 kilometers (km)^2 (278 acres) on what were originally five separate islands (Seavey, Pumpkin, Dennett's, Clarks, and Jamaica). Over the past 200 years, as a result of expansion from land-making activity, four of these islands (Seavey, Pumpkin, Dennett's, and Jamaica) were consolidated into one large island, which kept the name Seavey Island. Clarks Island is now attached to Seavey Island by a causeway. Seavey Island is located in the lower Piscataqua River approximately 500 m (547 yards (yd)) from its southwest bank, 200 m (219 yd) from its north bank, and approximately 4.02 km (2.5 miles (mi)) from the mouth of the river.

Detailed Description of Activities

This IHA covers the Navy's planned in-water construction activities that will occur during the first year of construction, including completion of the king pile and concrete shutter panel bulkhead at Berth 11. Additional applications will be submitted for each subsequent year of in-water construction at Berths 11, 12, and 13 as well as for the replacement of the Dry Dock 3 caisson.

Pile Driving Operations

Piles of differing sizes will be utilized during construction activities including: 25-inch steel sheet piles driven by vibratory hammer; 14-inch steel H-type piles driven using impact hammer; 15-inch timber piles installed via vibratory hammer to reconstruct dolphins at the corner; and 36-inch steel H-type piles. Additionally, 14-inch steel H-type piles will be used to align and construct the trestle that will be extracted using vibratory hammer and 15-inch timber fender piles will be extracted using a vibratory hammer (see Table 1). The number of piles that can be driven per day varies for different project elements and is subject to change based on site conditions at the time. All activities covered under the issued IHA will occur at Berth 11.

At the beginning of the in-water work, existing timber piles will be removed from the berth faces and from the timber dolphin at the western end of the berth. The contractor will either construct a temporary construction trestle or place a jack-up barge alongside the berths to provide additional construction workspace. Pile driving and extraction will also be needed to construct and disassemble the temporary construction trestle if the construction contractor selects this method over use of a jack-up barge, which will require no pile driving. The trestle system has been included in this analysis in order to model a conservative, worst-case scenario. If a jack-up barge is used instead of a trestle system, less pile driving will be needed, resulting in fewer marine mammal takes than predicted in this application.

For the proposed king pile and concrete shutter panel bulkhead (see Figures 2–1 and 2–2 in Application), the contractor will likely create templates and work in increments along the berth from the trestle or jack-up barge. For example, an approximately 50-foot-long template will allow installation of about 10 king piles and 20 sheet piles (along segments of the berths where sheet piles will be installed). The work will consist of setting a template (including temporary piles and horizontal members), which could take one or two days. Then the contractor will drill the rock sockets, which will take about one day per socket. One king pile per day will be driven and they will be regularly spaced along the berths and grouted into sockets.

The concrete shutter panels will then be installed in stacks between the king piles along most of the length of Berth 11. Installation of the concrete piles is not included in the noise analysis because no pile driving will be required. Along an approximately 4.8 m (16 ft) section at the eastern end of Berth 11A and an additional 30.8 m (101 ft) between Berths 11A and 11B, the depth to bedrock is greater, thus allowing a conventional sheet-pile bulkhead to be constructed. The steel sheet-piles will be driven to bedrock using a vibratory hammer. Sheet piles installed with a vibratory hammer also will be used to construct ''returns,'' which will be shorter bulkheads connecting the new bulkheads to the existing bulkhead under the pier. Installation of the sheeting with a vibratory hammer is estimated to take less than one hour per pair of sheets. The contractor will probably install two sheets at a time and so the time required install the sheeting (10 pairs = 20 sheets) using vibratory hammers will only be about 8 hours per 10 pairs of sheets. Time requirements for all other pile types were estimated based on information compiled from ICF Jones and Strokes and Illingworth and Rodkin, Inc. (2012).

If sufficient construction funds are available, the Navy may install a king pile and concrete shutter panel

bulkhead at Berth 11C as part of Phase 1. The bulkhead will extend from the western end of Berth 11B to the southern end of Berth 12. The in-water construction process will be the same as the process described above. Once the Berth 11 bulkheads are complete, the timber dolphins at the western end of the berth will be replaced with a single dolphin constructed of approximately seven piles.

The Navy will also install steel H-type sister piles at the location of the inboard portal crane rail beam at Berth 11, including Berth 11C. The sister piles will provide additional support for the portal crane rail system and restore its load-bearing capacity. The sister piles will be driven into the bedrock below the pier, in water generally less than 10 ft deep, using an impact hammer. The timing of this work depends on operational schedules at the berths. The sister piles may be installed either before or after the bulkheads are constructed.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to the Navy was published in the **Federal Register** on August 9, 2016 (81 FR 52614). That notice described, in detail, the Navy's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the public comment period, NMFS received comments from the Marine Mammal Commission (Commission) which are listed below. The Commission ultimately recommended that NMFS issue the IHA, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

Comment #1: The Commission recommended that NMFS include its new thresholds for permanent threshold shift (PTS) and/or temporary threshold shift (TTS) in all relevant proposed incidental take authorizations rather than when the final authorization is issued.

Response: On August 4, 2016, NMFS published a **Federal Register** notice announcing the new Guidance. The notice of NMFS' proposal to issue an IHA to the Navy was published in the **Federal Register** on August 9, 2016 (81 FR 52614). However, the proposed IHA had been finalized and submitted for publication prior to the publication date of the Guidance. In the **Federal Register** notice, NMFS explained the approach it would take towards implementation of the new Guidance during a transition period. This approach was described previously in the *Summary of Request* section. As explained previously, NMFS fully considered the new Guidance in this IHA, which led to expanded Level A harassment zones, increased shut-down zones, and authorization of a small number of Level A harassment takes for a few species. These changes did not notably change our earlier analysis or findings. All new IHA requests will be evaluated using the thresholds established in the new Guidance.

Comment #2: The Commission recommended that NMFS (1) follow its policy of a 24-hour reset for enumerating the number of each species that could be taken during the proposed activities, (2) apply standard rounding rules before summing the numbers of estimated takes across days, and (3) for species that have the potential to be taken but model-estimated or calculated takes round to zero, use group size to inform the take estimates—these methods should be used consistently for all future incidental take authorizations.

Response: Calculating predicted take is not an exact science, and there are arguments for taking different mathematical approaches in different situations and for making qualitative adjustments in other situations. NMFS is currently engaged in developing a protocol to guide more consistent take calculation given certain circumstances. However, the method for estimating take incidental to this action considered duration of activities, marine mammal group size, and previous monitoring reports.

Comment #3: The Commission recommended that NMFS require the Navy to implement full-time monitoring of Level A and B harassment zones during all pile-driving (including drilling rock sockets) and removal activities.

Response: NMFS shall require the Navy to monitor shutdown and Level A harassment zones during all impact pile driving activities. The Level B zone will be monitored during two-thirds of all pile-driving days. If a marine mammal is observed entering the Level B zone, a take will be recorded and behaviors documented. The Navy will extrapolate data collected during monitoring days and calculate total takes for all pile-driving days. NMFS is confident that this approach will provide an adequate representation of total takes.

Description of Marine Mammals in the Area of the Specified Activity

Five marine mammal species, including one cetacean and four pinnipeds, may inhabit or transit the waters near the Shipyard in the lower Piscataqua River during the specified activity. These include the harbor porpoise (*Phocoena phocoena*), gray seal (*Halichoerus grypus*), harbor seal (*Phoca vitulina*), hooded seal (*Crystphora cristata*), and harp seal (*Pagophilus groenlandicus*). None of the marine mammals that may be found in the Piscataqua River are listed under the Endangered Species Act (ESA). Table 2 lists the marine mammal species that could occur in the vicinity of the Shipyard and their estimated densities within the project area. As there are not specific density data for any of the species in the Piscataqua River, density data from the nearshore zone outside the mouth the Piscataqua River in the Atlantic Ocean have been used to calculate take.

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PISCATAQUA RIVER IN THE VICINITY OF THE SHIPYARD

Species	Stock abundance [1]	Relative occurrence in Piscataqua River	Season(s) of occurrence	Approximate density in the vicinity of the project area (individuals per km^2) [3]			
				Winter	Spring	Summer	Fall
Harbor Porpoise *Phocoena phocoena* Gulf of Maine/Bay of Fundy stock.	79,883 (CV = 0.32).	Occasional use	Spring to Fall (April to December) [4].	1.2122	1.1705	0.7903	0.9125

TABLE 2—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PISCATAQUA RIVER IN THE VICINITY OF THE SHIPYARD—Continued

Species	Stock abundance [1]	Relative occurrence in Piscataqua River	Season(s) of occurrence	Approximate density in the vicinity of the project area (individuals per km²) [3]			
				Winter	Spring	Summer	Fall
Gray Seal *Halichoerus grypus* Western North Atlantic stock.	331,000 [2]	Common	Year-round	0.2202	0.2202	0.2202	0.2202
Harbor Seal *Phoca vitulina* Western North Atlantic stock.	75,834 (CV = 0.15).	Common	Year-round	0.1998	0.1998	0.1998	0.1998
Hooded Seal *Crystphora cristata* Western North Atlantic stock.	592,100 [2]	Rare	Winter to Spring (January–May).	N/A	N/A	N/A	N/A
Harp Seal *Pagophilus groenlandicus* Western North Atlantic stock.	7,100,000	Rare	Winter to Spring (January–May).	0.0125	0.0125	0.0125	0.0125

Source: Waring *et al.,* 2015, except where noted.
Notes:
[1] No population estimate is available for the U.S. western North Atlantic stock; therefore, the best population estimates are those for the Canadian populations as reported in Waring *et al.,* 2015.
[2] Source: Waring *et al.,* 2007. The population estimate for the Western North Atlantic hooded seal population was not updated in Waring *et al.,* 2015.
[3] Density data are taken from the Navy Marine Species Density Database (Crain 2015; Krause 2015).
[4] Densities shown for seasons when each species would not be likely to occur in the river.
N/A = No data available.
Key:
CV = coefficient of variation.
km² = square kilometer.

A detailed description of species likely to be affected by the Navy's project, including brief introductions to the species and relevant stocks, as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (81 FR 52614) and are not repeated here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals/*) for generalized species accounts.

Potential Effects of the Specified Activity on Marine Mammals

The effects of underwater noise from pile driving, drilling, and extraction activities for the Navy's project have the potential to result in injury to and behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (81 FR 52614) included a discussion of the potential behavioral effects of anthropogenic noise on marine mammals and, therefore, that information is not repeated here. Level A harassment, in the form of PTS may also occur.

Anticipated Effects on Marine Mammal Habitat

The main impact associated with the Navy's waterfront improvement project will be temporarily elevated sound levels and the associated direct effects on marine mammals. The project will not result in permanent impacts to habitats used directly by marine mammals, such as haulout sites, but may have potential short-term impacts to food sources such as forage fish and minor impacts to the immediate substrate during installation and removal of piles during the project. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA (81 FR 52614). Therefore, that information is not repeated here.

Mitigation Measures

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, ''and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking'' for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat (50 CFR 216.104(a)(11)). For this project, the Navy worked with NMFS to develop the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity. The primary purposes of these mitigation measures are to minimize sound levels from the activities, avoid unnecessary exposure to elevated sound levels, and to monitor marine mammals within designated zones of influence corresponding to NMFS' Level A and B harassment thresholds which are depicted in Tables 3 and 4 found later in the *Estimated Take by Incidental Harassment* section.

In addition to the measures described later in this section, the Navy will employ the following standard mitigation measures:

Time Restrictions—Pile driving/removal (vibratory as well as impact) will only be conducted during daylight hours so that marine mammals can be adequately monitored to determine if mitigation measures are to be implemented.

Establishment of Shutdown zone—During pile driving and removal, shutdown zones shall established to prevent injury to marine mammals as determined under the thresholds in NMFS' new Guidance. During all pile driving and removal activities, regardless of predicted sound pressure levels (SPLs), the entire shutdown zone will be monitored to prevent injury to marine mammals from their physical interaction with construction equipment during in-water activities. The shutdown zone during impact driving will extend to 75 m for all authorized species. The shutdown during vibratory driving will extend to 55 m for all authorized species. Pile driving and removal operations will cease if a marine mammal approaches the shutdown zone. Pile driving and removal operations will restart once the marine mammal is visibly seen leaving the zone or after 15 minutes have passed with no pinnipeds sightings or 30 minutes with no cetacean sightings.

During all in-water construction other than pile-driving (*e.g.,* using standard barges, tug boats), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

Establishment of Level A Harassment Zone—The Level A harassment zone is an area where animals may be exposed to sound levels that could result in PTS injury. The primary purpose of the Level A zone is monitoring for documenting incidents of Level A harassment. The Level A zones will extend from the 75 m shutdown zone out to 340 m for harbor porpoises and out to 155 m for gray and harbor seals during all impact driving activities. Determination of Level A zones is described later in the section *Estimated Take by Harassment.* The Level A injury zone will be monitored during all impact driving activities. Animals observed in the Level A harassment zone will be recorded as Level A takes.

Establishment of Level B Zone—The Level B zones are areas in which SPLs equal or exceed 160 decibal root mean square (dB rms) for impact driving and 120 dB rms for vibratory driving but are less than the Level A zone. The shutdown zone during all vibratory driving is 55 m. The primary purpose of the Level B zone is monitoring for documenting incidents of Level B harassment. Monitoring of the Level B zone is discussed in greater detail later (see ''Monitoring and Reporting''). The entire Level B zone will be monitored during two-thirds of all pile driving days. If a marine mammal is observed entering the Level B zone, a take will be recorded and behaviors documented. The Navy will extrapolate data collected during monitoring days and calculate total takes for all pile driving days.

All shutdown and disturbance zones will initially be based on the distances from the source that were predicted for each threshold level. However, threshold distances may be changed as necessary depending on results from the required hydroacoustic monitoring. This may require a modification to the issued IHA.

Soft Start—The use of a soft start procedure is believed to provide additional protection to marine mammals by providing a warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. The Navy will use soft-start techniques recommended by NMFS for impact driving. Soft start must be conducted at beginning of day's activity and at any time pile driving has ceased for more than 30 minutes. For impact hammer driving, contractors are required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 30-second waiting period, then two subsequent 3-strike sets. The 30-second waiting period is proposed based on the Navy's recent experience and consultation with NMFS on a similar project at Naval Base Kitsap at Bangor (Department of the Navy 2010).

Mitigation Conclusions

NMFS has established various mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. We included measures in the IHA which consider the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, our determination is that the mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that would result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of pile driving that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Acoustic Monitoring

The Navy will implement in situ acoustic monitoring efforts to measure SPLs from in-water construction activities. The Navy will collect and evaluate sound level measurements for 10 percent of the pile-driving activities conducted, sufficient to confirm measured contours associated with the acoustic zones of influence (ZOI). The Navy will conduct acoustic monitoring at the source (33 feet) and, where the potential for Level A harassment exists (out to 340 meters for harbor porpoises and out to 155 m for gray and harbor seals for impact pile driving), at a second representative monitoring location at an intermediate distance between the cetacean and pinniped shutdown zones (75 m for impact, 55 m for vibratory). In conjunction with measurements of SPLs, shutdown monitoring locations, Level A monitoring locations there will also be intermittent verification for impact driving or pile driving and extraction to determine the actual distances to the Level B 160 dB re rms (impact) and 120 re rms (vibratory) isopleths. Acoustic measurements will continue during subsequent years of in-water construction for the Project. The Navy shall initiate acoustic monitoring and submit preliminary findings to NMFS within 45 days of commencement of pile driving activities.

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of construction. Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. NMFS requires that the observers have no other construction-related tasks while conducting monitoring. Qualified observers are trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

The Navy will monitor the shutdown zone and Level A zone before, during, and after pile driving activities. The Level B zone will be monitored during two-thirds of pile driving. Based on NMFS requirements, the Marine Mammal Monitoring Plan shall include the following procedures:

- A minimum of two marine mammal observers (MMOs) will be in place during all pile-driving operations. MMOs designated by the contractor will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to equipment operators. The MMOs shall be separated and spread out, looking in opposite directions across the ZOIs;
- The individuals shall scan the waters within each monitoring zone activity using big-eye binoculars (25× or equivalent), hand held binoculars (7×) and visual observation;
- Monitoring distances will be measured with range finders;
- Bearing to animals will be determined using a compass;
- The MMOs shall have no other construction-related tasks while conducting monitoring and will be trained on the observation zones, species identification, how to observe, and how to fill out the data sheets by the Navy Natural Resources Manager prior to any pile driving activities;
- The Navy shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, acoustical monitoring team prior to the start of all pile driving activities, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. All personnel working in the project area will watch the Navy's Marine Species Awareness Training video. An informal guide will be included with the monitoring plan to aid in identifying species if they are observed in the vicinity of the Project area;
- Monitoring shall take place from 15 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pre-activity monitoring shall be conducted for 15 minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may commence when observers have declared the shutdown zone clear of marine mammals;
- Pile driving shall only take place when the entire shutdown and Level A zones are visible and can be adequately monitored. If conditions (*e.g.,* fog) prevent the visual detection of marine mammals, activities with the potential to result in Level A harassment will not be initiated. If such conditions arise after the activity has begun, impact pile driving will be curtailed, but vibratory pile driving or extraction will be allowed to continue;
- If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location shall be halted. If pile driving is halted or delayed at a specific location due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal; and
- Shutdown will occur if a species for which authorization has not been granted or for which the authorized numbers of takes have been met approaches or is observed within the Level B harassment zone. The Navy will then contact NMFS immediately.

Data Collection

MMOs will use NMFS' approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. At a minimum, the following information will be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);

• Species, numbers, and, if possible, sex and age class of marine mammals;
• Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
• Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
• Locations of all marine mammal observations; and
• Other human activity in the area.

Reporting Measures

The Navy will provide NMFS with a draft monitoring report within 90 days after completion of pile driving activities or 60 days prior to any subsequent authorization, whichever is sooner. A monitoring report is required before another authorization can be issued to the Navy. This report will detail the monitoring protocol, summarize the acoustic and marine mammal data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments. The report will include data and information listed in Section 13.3 of the application.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not authorized by the IHA (*e.g.,* equipment interaction, ship-strike) the Navy shall immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northeast/Greater Atlantic Regional Stranding Coordinator. The report will include the following information:
• Time, date, and location (latitude/longitude) of the incident;
• Description of the incident;
• Status of all sound source use in the 24 hours preceding the incident;
• Water depth;
• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
• Description of all marine mammal observations in the 24 hours preceding the incident;
• Species identification or description of the animal(s) involved;
• Fate of the animal(s); and
• Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with the Navy to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Navy will not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the Navy discovers an injured or dead marine mammal, and the lead MMO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), the Navy will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northeast/Greater Atlantic Regional Stranding Coordinator. The report will include the same information identified in the paragraph above. Activities will be able to continue while NMFS reviews the circumstances of the incident. NMFS will work with the Navy to determine whether modifications in the activities are appropriate.

In the event that the Navy discovers an injured or dead marine mammal, and the lead MMO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Navy will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northeast/Greater Atlantic Regional Stranding Coordinator within 24 hours of the discovery. The Navy will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).''

All anticipated takes will be from impact and vibratory pile driving and involve PTS (Level A) and temporary changes in behavior (Level B). The proposed notice of authorization (81 FR 52614) describes Level A and Level B impacts, including PTS. Low level responses to sound (*e.g.,* short-term avoidance of an area, short-term changes in locomotion or vocalization) are less likely to result in fitness effects on individuals that will ultimately affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individual animals could potentially be significant and could potentially translate to effects on annual rates of recruitment or survival (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007).

Specific understanding of the activity and the effected species are necessary to predict the severity of impacts and the likelihood of fitness impacts. However, we start with the estimated number of takes, understanding that additional analysis is needed to understand what those takes mean. Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound, taking the duration of the activity into consideration. This practice provides a good sense of the number of instances of take, but potentially overestimates the numbers of individual marine mammals taken. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.,* because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The Navy has requested authorization for the incidental taking of small numbers of harbor porpoises, harbor seals, gray seals, hooded seals and harp seals near the Shipyard that may result from pile driving during construction activities associated with waterfront improvement project. We described applicable sound thresholds for determining Level B effects to marine mammals before describing the information used in estimating the sound fields; the available marine mammal density or abundance information; and the method of estimating potential incidents of take in detail in our **Federal Register** notice of proposed authorization (81 FR 52614). Information on applicable sound thresholds for determining Level A auditory injury harassment may be

found in the new Guidance document (81 FR 51694; August 4, 2016). NMFS' calculation of the Level A harassment zones utilized the methods presented in Appendix D of the new Guidance and the accompanying Optional User Spreadsheet. The spreadsheet accounts for a marine mammal hearing group's potential susceptibility to noise-induced hearing loss at different frequencies (*i.e.,* auditory weighting functions) using Weighting Factor Adjustments (WFAs). NMFS' new acoustic thresholds use dual metrics of cumulative sound exposure level and peak sound level for impulsive sounds (*e.g.,* impact pile driving) and cumulative sound exposure level for non-impulsive sounds (*e.g.,* vibratory pile driving). NMFS used source level measurements from similar pile driving events coupled with practical spreading loss (15 log R), and applied the updated PTS onset thresholds for impulsive peak sound pressure and cumulative sound exposure level (SEL_{cum}) metric using the Optional User spreadsheet derived from the new acoustic guidance to determine distance to the isopleth for PTS onset for impact pile driving. In the case of the duel metric acoustic thresholds for impulsive sound, the larger of the two isopleths for calculating PTS onset is used. Similarly, for vibratory pile driving, NMFS used the Optional User Spreadsheet to determine isopleth estimates for PTS onset using the SEL_{cum} metric (*http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm*). In determining the cumulative sound exposure levels, the Guidance considers the duration of the activity within a 24-h period, and the associated adjustment from the WFAs by hearing group. All calculated distances to marine mammal sound thresholds are provided in Tables 3 and 4. These values were then used to develop mitigation measures for proposed pile driving activities.

The new Guidance indicates that there is a greater likelihood of auditory injury for phocid pinnipeds (*i.e.,* seals) and for high-frequency cetaceans (*i.e.,* harbor porpoise) than was considered in our **Federal Register** notice of proposed authorization. In order to address this increased likelihood, we increased the shutdown zones required from 10 m to 75 m during impact driving and 10 m to 55 m during vibratory driving. In addition, to account for the potential that animals may occur in the Level A harassment zones, we authorize the taking by Level A harassment of 10 harbor porpoises, 4 harbor seals and 2 gray seals.

TABLE 3—LEVEL A HARASSMENT ISOPLETHS FROM IMPACT AND VIBRATORY PILE DRIVING

Functional hearing group	High-frequency cetaceans (harbor porpoises)	Phocid pinnipeds (seals)
Impact Pile Driving:		
PTS SEL_{cum}* threshold (dB)	155	185.
PTS Isopleth to threshold (meters)	340 (336 rounded)	155 (151 rounded).
Vibratory Pile Driving:		
PTS SEL_{cum}* threshold (dB)	173	201.
PTS Isopleth to threshold (meters)	55	23.

* Cumulative Sound Exposure Level

TABLE 4—LEVEL B HARASSMENT ISOPLETHS FROM IMPACT AND VIBRATORY PILE DRIVING

Drilling activity	Behavioral thresholds for cetaceans and pinnipeds	Propagation model	Attenuation distance to threshold
Impact Hammer	160 dB RMS	Cylindrical Spreading Loss (<3 m water depth)	1.58 km (0.984 mi).
Vibratory Hammer	120 dB RMS	Practical Spreading Loss (3 m to 15 m water depth)	7.35 km (4.57 mi).

Note: All source levels are referenced to 1 microPascal (re 1 μPa).

No sound is expected to fully attenuate to the 120 dB rms threshold for vibratory pile driving because topographic features (*e.g.* islands, shorelines) in the river will prevent attenuation to the full distance of 7.35 km. No sound will reach the 160 dB rms threshold at the full distance of 1.58 km for the impact hammer due to these same sound-blocking topographical features.

Animals do occasionally haul-out on rocks/jetties and could be flushed into the water. However, it is assumed that any hauled out animals within the disturbance zone will also enter the water and be exposed to underwater noise. Therefore, to avoid possible double-counting, acoustic disturbance to pinnipeds resulting from airborne sounds from pile driving was not considered.

Description of Take Calculation

The take calculations presented here relied on the best data currently available for marine mammal populations within close proximity to the Piscataqua River. There are not population data for any marine mammal species specifically within the Piscataqua River, therefore, the population data used are from the most recent NMFS Stock Assessment Reports (SAR) for the Atlantic Ocean. The most recent SAR population number was used for each species. The specific SAR used is discussed within each species take calculation in Sections 6.6.1 through 6.6.5 of the application. The formula was developed for calculating take due to pile driving, extraction, and drilling and applied to the species-specific noise-impact threshold. The formula is founded on the following assumptions:

- All piles to be installed will have a noise disturbance distance equal to the pile that causes the greatest noise disturbance;
- Pile driving could potentially occur every day of the in-water work window; however, it is estimated no more than a few hours of pile driving will occur per day; and
- An individual can only be taken once per day due to sound from pile driving, whether from impact or vibratory pile driving.

The conservative assumption is made that all pinnipeds within the ZOI will be underwater during at least a portion of the noise generating activity and, hence, exposed to sound at the predicted levels.

The calculation for marine mammal takes is estimated by the following unless stated otherwise:

Take estimate = (n * ZOI) * X days of total activity

Where:
n = density estimate used for each species
X = number of days of pile driving, estimated based on the total number of piles and the average number of piles that the contractor can install per day.
ZOI = noise threshold zone of influence (ZOI) impact area.

The calculation n * ZOI produces an estimate of the abundance of animals that could be present in the area of exposure per day. The abundance is then multiplied by the total number of days of pile driving to determine the take estimate. Because the estimate must be a whole number, this value was rounded up.

The ZOI impact area is the estimated range of impact on marine mammals during in-water construction. The ZOI is the area in which in-water sound will exceed designated NMFS thresholds. The formula for determining the area of a circle ($\pi * radius^2$) was used to calculate the ZOI around each pile, for each threshold. The distances specified were used for the radius in the equation. The ZOI impact area does not encompass landforms that may occur within the circle. The ZOI also took into consideration the possible affected area of the Piscataqua River from the furthest pile driving/extraction site with attenuation due to land shadowing from islands in the river as well as the river shoreline.

Harbor Porpoise

Harbor porpoises may be present in the project area during spring, summer, and fall, from April to December. Based on density data from the Navy Marine Species Density Database (NMSDD), their presence is highest in spring, decreases in summer, and slightly increases in fall. Average density for the predicted seasons of occurrence was used to determine abundance of animals that could be present in the area for exposure, using the equation abundance = n * ZOI. Estimated abundance for harbor porpoises was 0.96 animals per day generated from the equation (0.9445 km² Level B zone * 1.02 animals/km²). Therefore, the number of Level B harbor porpoise exposures within the ZOIs is (156 days * 0.96 animals/day) resulting in up to 150 Level B takes of harbor porpoises.

To estimate potential take from beyond the 75 m shutdown zone out to 340 m (isopleth for full Level A injury zone), the density of harbor porpoises in the area of the full Level A injury zone (0.354673 km²) was estimated at 1.02 harbor porpoises/km². The area of the 75 meter shutdown zone, 0.01767 km² was subtracted from the full Level A injury zone to obtain the area of the Level A take zone (0.337003 km².) Using the density of harbor porpoises potentially present (1.02 animal/km²) and the area of the Level A take zone (0.337003 km²), less than one (0.3437) harbor porpoise was estimated to be exposed to injury a day over the 13 days of impact pile driving. While the calculated take for harbor porpoises is 4.47 animals (0.3437 harbor porpoise/day * 13 days), NMFS conservatively authorizes 10 takes of harbor porpoises that could be exposed to injurious noise levels during impact pile driving.

Gray Seal

Gray seals may be present year-round in the project vicinity, with constant densities throughout the year. Gray seals are less common in the Piscataqua River than the harbor seal.

As with gray seals, NMFS originally used density data from NMSDD to calculate exposures for the proposed **Federal Register** notice. As noted previously, the NMSDD data pertains to offshore waters. Local information regarding the density and abundance of harbor seals is not available in the immediate vicinity of the shipyard, but seals are likely to be attracted to nearby haulout locations. Therefore, it is likely that gray seal densities may be greater than those listed in NMSDD. Given this information, NMFS estimates that one gray seal may be taken, by Level B harassment, per day resulting in a final authorized take of 156 gray seals.

To estimate potential take from past the 75 m shutdown zone to 155 m (isopleth for full Level A injury zone), the density of gray seals as provided by the NMSDD in the area of the full Level A injury zone (0.0716314 km²) was estimated at 0.2202 grey seals/km². The area of the 75 meter shutdown zone, 0.01767 km², was subtracted from the full Level A injury zone to obtain an area of 0.0539 km². Using the density of gray seals potentially present (0.2202 animal/km²) and the area of the Level A take zone (0.0539 km²), less than one gray seal was estimated to be exposed to injury a day (0.0118 animals/day) with less than one injury exposure (0.1545) animals) during 13 days of impact driving. However, given that the NMSDD may underrepresent local density information NMFS will conservatively authorize the Level A take of two gray seals for the life of the IHA.

Harbor Seal

Harbor seals may be present year-round in the project vicinity, with constant densities throughout the year. Harbor seals are the most common pinniped in the Piscataqua River near the Shipyard. In the proposed **Federal Register** notice NMFS used density data from NMSDD to calculate exposures. However, the NMSDD provides density data pertaining to offshore waters and is not generally intended to be applied to inshore locations. Local information regarding density and abundance of gray seals is not available in the immediate vicinity of the shipyard. Therefore, it is likely that local densities may be far greater than those listed in NMSDD. They are also likely to occur more frequently than gray seals. Given this information, NMFS authorizes the take, by Level B harassment of two harbor seals per day resulting in a final of 312 harbor seals.

To estimate potential take from past the 75 m shutdown zone to 155 m (isopleth for full Level A injury zone), the density of harbor seals in the area of the full Level A injury zone (0.0716314 km²) was estimated at 0.1998 harbor seals/km². The area of the 75 m shutdown zone (0.01767 km²) was subtracted from the full Level A injury zones to obtain a Level A take zone area of 0.0539 km². Using the density of harbor seal potentially present (0.1998 animal/km²) and the area of the Level A take zone (0.0539 km²), less than one harbor seal was estimated to be exposed to injury per day (0.0107 seals/day) during the 13 days of impact driving resulting in a total calculated take of 0.1401 seals. However, since the NMSDD likely underrepresents density and NMFS assumed that harbor seals are more likely to occur in the project area compared to gray seals, NMFS authorizes the Level A take of four harbor seals, which is twice the amount authorized for gray seals.

Harp Seal

Harp seals may be present in the Project vicinity during the winter and spring, from January through February. In general, harp seals are observed far less frequently than the harbor seal and gray seal in the Piscataqua River. These animals are conservatively assumed to be present within the underwater Level B harassment zone during each day of in-water pile driving. Average density for the predicted seasons of occurrence was used to determine abundance of animals that could be present in the area for exposure, using the equation abundance = n * ZOI. Abundance for harp seals was 0.0118/day (0.9945 km² * 0.0125 animals/km²). Therefore, the number of Level B harp seal takes within the ZOI is (156 days * 0.0118 animals/day) resulting in up to 2 level B exposures of harp seals within the ZOI. NMFS is, however, conservatively

authorizing a total of 5 harp seal Level B takes and zero Level A takes.

Hooded Seal

Hooded seals may be present in the project vicinity during the winter and spring, from January through May, though their exact seasonal densities are unknown. In general, hooded seals are much rarer than the harbor seal and gray seal in the Piscataqua River. Anecdotal sighting information indicates that two hooded seals were observed from the Shipyard in August 2009, but no other observations have been recorded (Trefry, November 20, 2015). Information on the average density for hooded seals was not available. Given the low likelihood of occurrence NMFS is conservatively authorizing a total of 5 hooded seal Level B takes and no Level A takes.

The total number of takes authorized for the five marine mammal species that may occur within the Navy's project area during the duration of in-water construction activities are presented in Table 5.

TABLE 5—AUTHORIZED LEVEL A AND LEVEL B HARASSMENT TAKES OVER 156 DAYS

Species	Level B takes	Level A takes
Harbor Porpoise	150	10
Gray Seal	156	2
Harbor Seal	312	4
Harp Seal	5	0
Hooded Seal	5	0

Analysis and Determinations

Negligible Impact

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A and Level B harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

To avoid repetition, the discussion of our analyses applies to all the species listed in Table 2. There is little information about the nature of severity of the impacts or the size, status, or structure of any affected species or stock that would lead to a different analysis for this activity. Pile driving and pile extraction activities associated with the Navy project as outlined previously have the potential to injure, disturb or displace marine mammals. Specifically, the specified activities may result in Level B harassment (behavioral disturbance) for all species authorized for take, from underwater sound generated from pile driving. Level A injury may also occur to limited numbers of three marine mammal species. Takes could occur if individuals of these species are present in the Level A and Level B ensonified zones when pile driving activities are under way.

Any takes from Level A harassment will potentially be in the form of PTS and may affect small numbers of harbor porpoise, harbor seal, and gray seal. As described previously, because of the proximity to the source in which the animals would have to approach, or the longer time in which they would need to stay in a farther proximity to the source (four hours at the outer perimeter of Level A zone), we believe this unlikely, but have acknowledged it could occur—however, any PTS incurred as a result of this activity would not be expected to be of a severe degree. That would necessitate even more time in the vicinity of the source, which is considered unlikely given required mitigation and general anticipated behaviors of avoidance around loud sounds. Furthermore, death is unlikely for all authorized species as the Navy will enact required monitoring and mitigation measures and sound levels generated from the specified activities are not anticipated to cause mortality. The Navy will monitor shutdown and Level A zones during all pile driving activities, which will limit potential injury to these species. The Navy will also record all occurrences of marine mammals in specified Level A zones. In this analysis, we considered the potential for limited numbers of harbor porpoise, harbor seal and gray seal to incur auditory injury and found that it would not change our previous determinations.

Any takes from Level B harassment will be due to behavioral disturbance. The potential for these outcomes is greatly reduced through the implementation of the following planned mitigation measures. The Navy will employ a ''soft start'' when initiating impact driving activities. Given sufficient ''notice'' through use of soft start, marine mammals are expected to move away from a pile driving source. The Navy will monitor shutdown and disturbance zones where the likelihood of marine mammal detection by trained observers is high under the environmental conditions described for waters around the project area. Shutdowns will occur if animals come within 10 meters of operational activities other than pile driving to avoid injury, serious injury, or mortality. Furthermore, the Navy's proposed activities are highly localized impacting a small portion of the Piscataqua River which is only a subset of the ranges of species for which take is authorized.

The project also is not expected to have significant adverse effects on marine mammal habitat, as analyzed in detail in the ''Anticipated Effects on Marine Mammal Habitat'' section in the proposed **Federal Register** notice (81 FR 52614). No important feeding and/or reproductive areas for marine mammals are known to be near the project area. Project-related activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the relatively small area of the habitat range utilized by each species that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Exposures to elevated sound levels produced during pile driving activities may cause brief startle reactions or short-term behavioral modification by the animals. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. These reactions and behavioral changes are expected to subside quickly when the exposures cease. The pile driving activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment here are unlikely to result in permanent hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the species is unlikely to result in any realized decrease in fitness for the affected individuals, and thus will not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein. Finally, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

In summary, the negligible impact analysis is based on the following: (1) The possibility of mortality is reasonably considered discountable; (2) the area of potential impacts is highly localized; (3) anticipated incidents of Level B harassment consist of temporary modifications in behavior; (4) anticipated incidences of Level A harassment would be in the form of a small degree of PTS to limited numbers of three species; (5) the absence of any significant habitat within the project area, including rookeries, or known areas or features of special significance for foraging or reproduction; and (6) the anticipated efficacy of the required mitigation measures in reducing the effects of the specified activity. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival of marine mammal species or stocks. Therefore, based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that the total marine mammal take from the Navy's proposed waterfront improvement project will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

Table 6 illustrates the numbers of animals that could be exposed to Level A and Level B harassment thresholds from work associated with the waterfront improvement project. The analyses provided represents that the numbers of authorized Level A and Level B takes account for <0.01% of the populations of these stocks that could be affected. These are small numbers of marine mammals relative to the sizes of the affected species and population stocks under consideration.

TABLE 6—ESTIMATED NUMBER OF EXPOSURES AND PERCENTAGE OF STOCKS THAT MAY BE SUBJECT TO LEVEL A AND LEVEL B HARASSMENT

Species	Authorized takes	Stock(s) abundance estimate	Percentage of total stock
Harbor Porpoise	150 Level B, 10 Level A	79,883	<0.01
Gulf of Maine/Bay of Fundy stock			
Gray Seal	156 Level B, 2 Level A	331,000	<0.01
Western North Atlantic stock			
Harbor Seal	312 Level B, 4 Level A	75,834	<0.01
Western North Atlantic stock			
Harp Seal	5	7,100,000	<0.01
Western North Atlantic stock			
Hooded Seal	5	592,100	<0.01

Based on the methods used to estimate take, and taking into consideration the implementation of the mitigation and monitoring measures, we find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No species listed under the ESA are expected to be affected by these activities and none are authorized to be taken in the IHA. Therefore, NMFS determined that issuance of the IHA has no effect on ESA-listed species and section 7 consultation under the ESA was not required to issue the IHA

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), the Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the waterfront improvement project. NMFS made the Navy's EA available to the public for review and comment,

concurrently with the publication of the proposed IHA, on the NMFS Web site (at *www.nmfs.noaa.gov/pr/permits/incidental/*), in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to the Navy. In compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6, NMFS has reviewed the Navy's EA, determined it to be sufficient, adopted that EA and signed a Finding of No Significant Impact (FONSI) on November 8, 2016.

Authorization

As a result of these determinations, NMFS has issued an IHA to the Navy for a waterfront improvement project at the Portsmouth Naval Shipyard in Kittery, Maine, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 18, 2016.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–28451 Filed 11–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF018

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Puerto Rico Fishers Spiny Lobster Data Collection Initiative will meet in December in St. Thomas, USVI.

DATES: The meeting will be held on December 13, 2016, from 7:30 p.m. to 9:30 p.m.

ADDRESSES: The meeting will be held at the The Frenchman's Reef & Morning Star Marriott Beach Resort, 5 Estate Bakkeroe, St. Thomas, USVI.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Puerto Rico Fishers Spiny Lobster Data Collection Initiative will meet to discuss the items contained in the following agenda:

The meeting objective is to discuss the following questions:

1. What are the data needed to adequately populate assessment models (data limited to data rich models)
2. What data are currently being collected,
3. What data are important, and
4. What new data are needed to improve the Data Collection System and Analyses

Special Accommodations

The meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: November 22, 2016.

Tracey L. Thompson,

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

[FR Doc. 2016–28508 Filed 11–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; Deposit of Biological Materials

The United States Patent and Trademark Office (USTPO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office, Commerce.

Title: Deposit of Biological Materials.

OMB Control Number: 0651–0022.

Form Number(s): None.

Type of Request: Renewal.

Number of Respondents: 901 responses per year.

Average Hours per Response: The USPTO estimates that it will take the public between 1 hour and 5 hours to gather the necessary information, prepare the appropriate form or documents, and submit the information to the USPTO.

Burden Hours: 905 burden hours per year.

Cost Burden: $2,674,644.45 per year.

Needs and Uses: Information on the deposit of biological materials in depositories is required for (a) the USPTO determination of compliance with 35 U.S.C. 2(b)(2) and 112, and 37 CFR 1.801–1.809 and 1.14, where inventions sought to be patented rely on biological material subject to the deposit requirement, including notification to the interested public about where to obtain samples of deposits; and (b) in compliance with 37 CFR 1.803 to demonstrate that the depositories are qualified to store and test the biological material submitted to them. This collection is used by the USPTO to determine whether or not the applicant has met the requirements of the patent regulations. In addition, the USPTO uses this information to determine the suitability of a respondent depository based upon administrative and technical competence and the depository's agreement to comply with the requirements set forth by the USPTO.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Kimberly R. Keravouri, email: *Kimberly_R_Keravuori@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0022 copy request'' in the subject line of the message.
- *Mail:* Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before December 28, 2016 to Kimberly R. Keravouri, OMB Desk Officer, via email to *Kimberly_R_Keravouri@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Kimberly R. Keravouri.

Dated: November 18, 2016.

Marcie Lovett,

Records Management Division Director, OCIO, United States Patent and Trademark Office.

[FR Doc. 2016–28481 Filed 11–25–16; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the United States-Colombia Trade Promotion Agreement (''U.S.-Colombia TPA'')

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3–B of the U.S.-Colombia TPA.

DATES: *Effective Date:* November 28, 2016

SUMMARY: The Committee for the Implementation of Textile Agreements (''CITA'') has determined that certain 100% rayon twill challis fabric, as specified below, is not available in commercial quantities in a timely manner in the territory of either the United States or Colombia. The product will be added to the list in Annex 3–B of the U.S.-Colombia TPA in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Laurie Mease, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2043.

FOR FURTHER INFORMATION ON-LINE: *http://web.ita.doc.gov/tacgi/PeruTPAReqTrack.nsf/ColombiaPetitionsApproved* under ''Approved Requests,'' Reference number: *7.2016.10.17. Fabric.JustFabulous,Inc.*

SUPPLEMENTARY INFORMATION:

Authority: The U.S.-Colombia TPA; Section 203(o)(4) of the United States-Colombia Trade Promotion Agreement Implementation Act (''U.S.-Colombia TPA Implementation Act''), Public Law 112–42 (October 21, 2011); the Statement of Administrative Action, accompanying the U.S.-Colombia TPA Implementation Act; and Presidential Proclamation No. 8818, 77 FR 29519 (May 18, 2012).

Background

The U.S.-Colombia TPA provides a list in Annex 3–B for fabrics, yarns, and fibers that the Parties to the U.S.-Colombia TPA have determined are not available in commercial quantities in a timely manner in the territory of any Party. The U.S.-Colombia TPA and the U.S.-Colombia TPA Implementation Act provide that this list may be modified when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party or if no interested entity objects to the request. *See* Article 3.3.5 and Annex 3–B of the U.S.-Colombia TPA; *see also* section 203(o)(4) of the U.S.- Colombia TPA Implementation Act.

The U.S.-Colombia TPA Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamation 8818, the President delegated to CITA the authority under section 203(o)(4) of the U.S.-Colombia TPA Implementation Act for modifying the Annex 3–B list. Pursuant to this authority, on November 6, 2012, CITA published interim procedures it would follow in considering requests to modify the Annex 3–B list of products determined to be not commercially available in the territory of either the United States or Colombia (*Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States-Colombia Trade Promotion Agreement,* 77 FR 66588) (''CITA's procedures''). On October 17, 2016, the Chairman of CITA received a request for a Commercial Availability determination (''Request'') from Just Fabulous, Inc. for certain 100% rayon twill challis fabric, as specified below. On October 18, 2016, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for U.S.-Colombia TPA Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by October 31, 2016, and any Rebuttal Comments to a Response must be submitted by November 4, 2016, in accordance with sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4) of the U.S.-Colombia TPA Implementation Act, and section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and providing an offer to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3–B of the U.S.-Colombia TPA.

The subject product has been added to the list in Annex 3–B of the U.S.-Colombia TPA in unrestricted quantities. A revised list has been posted on the dedicated Web site for U.S.-Colombia TPA Commercial Availability proceedings.

Specifications: Certain 100% Rayon Twill Challis Fabric

HTSUS: 5516.12.0020; 5516.13.0000; 5516.14.0025; 5516.14.0030
Fabric Type: Twill Challis
Fiber Content: 100% Rayon
Yarn Size:
Weft 27–33 denier x Warp 27–33 denier/
97.2–118.8 warp ends x 61.2–74.8 weft filling yarns per square inch (English)
627–767 warp ends x 394–483 weft filling yarns per square centimeter (metric)
* range represents a ± 10% tolerance.
Weave Type: Twill
Weight: 152 to 168 grams per square meter—this is the equivalent of ± 5% tolerance of 160 grams per square meter used in due diligence
Width:
55 in to 56 in (English)
139.7 to 142.24 centimeters (metric)
Coloration Process:
Various (including bleaching, piece dyed, yarn dyed, and/or printed)
Finishing Process: Various
Ranges: Ranges in these specifications reflect a tolerance from the target figures of up to five % (equal to range of 152–168 grams per square meter) for fabric weight. Yarn size is a tolerance of ten % (equal to range of 627–767 warp ends x 394–483 weft filling yarns per square centimeter).

Felicia Pullam,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2016–28596 Filed 11–25–16; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: 12/25/2016.

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.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN(s)—Product Name(s);
5180–00–NIB–0025—Kit, Refrigeration Tools, Individual
5180–00–NIB–0026—Kit, Refrigeration Tools, Base
Mandatory for: U.S. Army, Warren, MI
Mandatory Source(s) of Supply: Wiscraft, Inc., Milwaukee, WI
Contracting Activity: U.S.Army—TACOM LCMC ILSC—SKOT Group
Distribution: C-List

NSN(s)—Product Name(s):
7520–00–NIB–2353 File Folder, Expandable, 3 Ring Binder, Hook and Loop, Clear, 11½″ x 9″
7520–00–NIB–2354 File Folder, Expandable, Hook and Loop, Clear, 9¾″ x 11⅝″
7520–00–NIB–2393 Project Jacket, Poly, Translucent Assorted Colors, 11¾″ x 9¼″
7520–00–NIB–2397 Project Jacket, Poly, Slash Cut, 3-Hole Punch, Translucent Assorted Colors, 11¼″ x 9¼″
7520–00–NIB–2398 Project Jacket, Poly, Slash Cut, 3-Hole Punch, Clear, 11¼″ x 9¼″
7520–00–NIB–2399 Project Jacket, Poly, Assorted Colors with Clear Front, 11¾″ x 9¼″
7520–00–NIB–2400 Booklet Envelope, Poly, String and Button, Side Loading, Clear, 11⅝″ x 9¾″
7520–00–NIB–2401 Booklet Envelope, Poly, String and Button, Side Loading, Blue, 11⅝″ x 9¾″
7520–00–NIB–2402 Booklet Envelope, Poly, String and Button, Side Loading, Green, 11⅝″ x 9¾″
7520–00–NIB–2403 Booklet Envelope, Poly, String and Button, Side Loading, Red, 11⅝″ x 9¾″
7520–00–NIB–2404 Booklet Envelope, Poly, String and Button, Top Loading, Clear, 11⅝″ x 9¾″
7520–00–NIB–2409 Envelope, Poly, Hook and Loop, Side Loading, Translucent Assorted Colors, 11⅝″ x 9 3/4″
7520–00–NIB–2410 Envelope, Poly, Hook and Loop, Top Loading, Clear, 11⅝″ x 9¾″

Mandatory for: Total Government Requirement
Mandatory Source(s) of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY
Contracting Activity: General Services Administration, New York, NY
Distribution: A–List

Services

Service Type: Administrative Support Service
Mandatory for: Federal Aviation Administration, Regional Offices (Except Burlington, MA), Fort Worth, TX, 10101 Hillwood Parkway, Fort Worth, TX
Mandatory Source(s) of Supply: ServiceSource, Inc., Oakton, VA, 15000 Aviation Blvd., Lawndale, CA
Mandatory Source(s) of Supply: Goodwill Industries of Southern California, Panarama City, CA, 901 Locust Street, Kansas City, MO
Mandatory Source(s) of Supply: JobOne, Independence, MO, 2300 East Devon Avenue, Des Plaines, IL
Mandatory Source(s) of Supply: Jewish Vocational Service and Employment Center, Chicago, IL
Contracting Activity: Dept of Transportation, Federal Aviation Administration

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s): Combat Identification Panel (CIP) Kits and Components
2320–01–484–7838
2590–01–540–1552
2590–01–539–4003
2320–00–NSH–0003
2320–01–398–5161
2350–01–398–5164
2350–01–398–5165
2350–01–398–5166
2350–01–398–5167
2350–01–398–5169
2350–01–398–5172
2350–01–398–5175
2350–01–398–5176
2350–01–398–5177
2350–01–398–5179
2320–01–398–7187
2320–01–398–7189
2320–01–398–7191
2320–01–398–7192
2320–01–398–7193
2320–01–398–7194
2320–01–398–7195
2320–01–398–7196
2350–01–398–7198
2320–01–406–0481
2320–01–411–2566
2320–01–411–4390
2320–01–411–4391
2320–01–411–4393
2320–01–483–9051
2320–01–484–7833
2320–01–484–7836
2320–01–484–8700
2320–01–501–9531
2350–01–392–1565
2350–01–394–2530
2350–01–394–7838
2590–01–421–7060
2350–01–421–7067
2590–01–392–0285
2590–01–392–0286
2590–01–392–0287
2590–01–392–6898
2590–01–394–5635
2590–01–394–5638
2590–01–394–7635
2590–01–394–7636
2590–01–398–3172
2590–01–398–3836
2590–01–398–3838
2590–01–398–3839
2590–01–398–3841
2590–01–398–3843
2590–01–398–3844
2590–01–398–3846
2590–01–398–6291
2590–01–398–6718
2590–01–398–6723
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2590–01–398–6741
2590–01–398–6742
2590–01–398–6745
2590–01–398–6747
2590–01–398–6749
2590–01–398–8072
2590–01–398–8073
2590–01–398–8074
2590–01–398–8076
2590–01–398–8077

2590–01–398–8079
2590–01–398–8081
2590–01–398–8082
2590–01–398–8084
2590–01–398–8085
2590–01–398–8087
2590–01–398–8088
2590–01–398–8090
2590–01–399–1362
2590–01–399–1363
2590–01–399–1364
2590–01–399–1365
2590–01–399–2933
2590–01–399–2934
2590–01–399–5100
2590–01–399–5863
2590–01–399–5864
2590–01–399–5865
2590–01–399–5866
2590–01–399–5867
2590–01–399–7502
2590–01–400–0372
2350–01–400–1810
2590–01–411–3170
2590–01–411–3171
2590–01–411–3172
2590–01–411–3174
2590–01–420–2877
2590–01–420–2878
2590–01–420–5984
2590–01–484–8507
2590–01–501–9505
2590–01–501–9557
2590–01–501–XXXX
2590–01–507–XXXX
2320–01–398–7198
2350–01–398–5174
2350–01–399–6773
2350–01–598–5170
2590–01–394–2530
2590–01–398–5161
2590–01–398–5164
2590–01–398–5165
2590–01–398–5166
2590–01–398–5172
2590–01–398–7187
2590–01–398–7189
2590–01–398–7191
2590–01–398–7192
2590–01–398–7193
2590–01–398–7194
2590–01–398–7195
2590–01–398–7196
2590–01–398–8083
2590–01–399–6773
2590–01–406–0481
2590–01–411–2566
2590–01–411–4390
2590–01–411–4391
2590–01–411–4393
2590–01–421–7067
2590–00–NSH–0001
2590–00–NSH–0002
2590–00–NSH–0003
2590–00–NSH–0013
2590–01–420–2875
2320–01–472–5882
2590–01–472–5889
2530–01–547–3597

Mandatory Source(s) of Supply: Crossroads Rehabilitation Center, Inc., Indianapolis, IN
Contracting Activity: W4GG HQ US ARMY TACOM, Warren, MI
NSN(s)—Product Name(s): 4220–01–181–3154—Fishing Kit, Emergency
Mandatory Source(s) of Supply: Opportunity Resources, Inc., Missoula, MT
Contracting Activity: Defense Logistics Agency Troop Support

Services

Service Type: Mail Delivery Service
Mandatory for: 11 Army Secure Operating Systems: 22019 53rd Street, Building 22019, Fort Hood, TX
712 Army Secure Operating Systems: 22020 53rd Street, Building 22020, Fort Hood, TX
9 Army Secure Operating Systems & 3 WS: 90042 Clarke Road, Building 90042, Fort Hood, TX
Dormitory: Building 91220, Fort Hood, TX
III Corps Building: 1001 761st Tank Battalion Avenue, Fort Hood, TX
Mandatory Source(s) of Supply: Professional Contract Services, Inc., Austin, TX
Contracting Activity: DEPT OF THE AIR FORCE, FA4608 2 CONS LGC
Service Type: Secure Document Destruction Service
Mandatory for: Internal Revenue Service Offices at the following locations: 24 South Tennessee, Lakeland, FL 129 Hibiscus Boulevard, Melbourne, FL
Mandatory Source(s) of Supply: Brevard Achievement Center, Inc., Rockledge, FL
Mandatory for: 10 Spiral Drive, Florence, KY
Mandatory Source(s) of Supply: Employment Solutions, Inc., Lexington, KY
Contracting Activity: Dept of the Treasury/Internal Revenue Service, Washington, DC

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–28557 Filed 11–25–16; 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 Deletions from the Procurement List.

SUMMARY: This action adds products to the Procurement List that will be furnished by the nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: Effective December 25, 2016.

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 10/7/2016 (81 FR 69789–69790), 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 the 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 a 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)

6530–00–NIB–0186—Cap, Pharmaceutical Bottle, 38/400, White, CRC, Foil Liner, VA Logo
6530–00–NIB–0268—Cap, Pharmaceutical Bottle, 38/400, White, CRC, Foam Liner, VA Logo

Mandatory for: 100% of the requirements of the Department of Veterans Affairs National Centralized Mail-Order Pharmacy (CMOP) Program
Mandatory Source(s) of Supply: Alphapointe, Kansas City, MO
Contracting Activity: Department of Veterans Affairs National Centralized Mail-Order Pharmacy Office
Distribution: C–List

Deletions

On 10/14/2016 (81 FR 71086–71087), 10/21/2016 (81 FR 72784–72785), and 10/28/2016 (81 FR 75050), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are 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 entities to furnish the products and services 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 and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN(s)—Product Name(s): 8340–01–026–6096—Shelter Half, Tent, Complete
Mandatory Source(s) of Supply: ORC Industries, Inc., La Crosse, WI
Contracting Activity: Defense Logistics Agency Troop Support
NSN(s)—Product Name(s): 7510–01–600–8030—Dated 2016 12-Month 2-Sided Laminated Wall Planner, 24″ x 37″
Mandatory Source(s) of Supply: Chicago Lighthouse Industries, Chicago, IL
Contracting Activity: General Services Administration, Philadelphia, PA
NSN(s)—Product Name(s): 7510–01–600–8036—Dated 2016 18-month Paper Wall Planner, 24″ x 37″
Mandatory Source(s) of Supply: Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL
Contracting Activity: General Services Administration, Philadelphia, PA

NSN(s)—Product Name(s)

7530–01–600–7573—Daily Desk Planner, Dated 2016, Wire bound, Non-refillable, Black Cover
7530–01–600–7591—Weekly Desk Planner, Dated 2016, Wire Bound, Non-refillable, Black Cover
7530–01–600–7599—Weekly Planner Book, Dated 2016, 5″ x 8″ , Black
7530–01–600–7607—Monthly Desk Planner, Dated 2016, Wire Bound, Non-refillable, Black Cover
7510–01–600–7562—Monthly Wall Calendar, Dated 2016, Jan–Dec, 8½″ x 11″
7510–01–600–7614—Wall Calendar, Dated 2016, Wire Bound w/Hanger, 12″ x 17″
7510–01–600–7632—Wall Calendar, Dated 2016, Wire Bound w/hanger, 15.5″ x 22″
Mandatory Source(s) of Supply: Chicago Lighthouse Industries, Chicago, IL
Contracting Activity: General Services Administration, Philadelphia, PA
NSN(s)—Product Name(s): 7510–01–565–9539—Tape, Double-Sided
Mandatory Source(s) of Supply: Alphapointe, Kansas City, MO
Contracting Activity: General Services Administration, New York, NY
NSN(s)—Product Name(s): 7530–00–290–0600—Paper, Xerographic, Dual Purpose, White, U.S. Federal Watermarked, 8.5″ x 14″
Mandatory Source(s) of Supply: Louisiana Association for the Blind, Shreveport, LA
Contracting Activity: General Services Administration, New York, NY

NSN(s)—Product Name(s)

MR 764—Pillow, Fiber Fill
MR 765—Pillow, Fiber Fill
Mandatory Source(s) of Supply: Georgia Industries for the Blind, Bainbridge, GA
Contracting Activity: Defense Commissary Agency

Services

Service Type: Grounds Maintenance Service
Mandatory for: U.S. Army Reserve Center: AMSA 68(G) 42 Albion Road, Lincoln, RI
Mandatory Source(s) of Supply: The Fogarty Center, North Providence, RI
Contracting Activity: Dept of the Army, W40M NORTHEREGION Contract OFC
Service Type: Janitorial/Custodial Service
Mandatory for: U.S. Army, AMSA 163 (BMA) 48 Albion Rd, Lincoln, RI
Mandatory Source(s) of Supply: The Fogarty Center, North Providence, RI
Contracting Activity: Dept of the Army, W6QK ACC–PICA
Service Type: Janitorial/Custodial Service
Mandatory for: Department of the Air Force, Buildings 529 and 575, Randolph AFB, TX
Mandatory Source(s) of Supply: Relief Enterprise, Inc., Austin, TX
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK
Service Type: Operation of Postal Service Center Service
Mandatory for: Robins Air Force Base, Robins AFB, GA
Mandatory Source(s) of Supply: Good Vocations, Inc., Macon, GA
Contracting Activity: Dept of the Air Force, FA8501 AFSC PZIO
Service Type: Custodial Service
Mandatory for: Defense Finance and Accounting Service (DFAS)—Denver Center, 6760 E. Irvington Place, Denver, CO
Mandatory Source(s) of Supply: North Metro Community Services for Developmentally Disabled, Westminster, CO
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2016–28545 Filed 11–25–16; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Western Hemisphere Institute for Security Cooperation (WHINSEC) Board of Visitors. This meeting is open to the public.

DATES: The WHINSEC Board of Visitors will meet from 8:00 a.m. to 12:30 p.m. on Thursday, December 15, 2016.

ADDRESSES: Western Hemisphere Institute for Security Cooperation, Bradley Hall, 7301 Baltzell Avenue, Building 396, Fort Benning, GA 31905.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Procell, Acting Executive Secretary for the Committee, in writing at USACGSC, 100 Stimson Avenue, Fort Leavenworth, KS 66027–2301, by email at *richard.d.procell2.civ@mail.mil,* or by telephone at (913) 684–2963.

SUPPLEMENTARY INFORMATION: The committee 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), 41 CFR 102–3.140(c), and 41 CFR 102–3.150.

Purpose of the Meeting: The Western Hemisphere Institute for Security Cooperation (WHINSEC) Board of Visitors (BoV) is a non-discretionary Federal Advisory Committee chartered to provide the Secretary of Defense, through the Secretary of the Army, independent advice and recommendations on matters pertaining to the curriculum, instruction, physical equipment, fiscal affairs, and academic

methods of the Institute; other matters relating to the Institute that the Board decides to consider; and other items that the Secretary of Defense determines appropriate. The Board reviews curriculum to determine whether it adheres to current U.S. doctrine, complies with applicable U.S. laws and regulations, and is consistent with U.S. policy goals toward Latin America and the Caribbean. The Board also determines whether the instruction under the curriculum of the Institute appropriately emphasizes human rights, the rule of law, due process, civilian control of the military, and the role of the military in a democratic society. The Secretary of Defense may act on the Committee's advice and recommendations.

Agenda: Status briefing on the Institute from the Commandant; update briefings from the Office of the Under Secretary of Defense (Policy); Department of State; U.S. Northern Command; and U.S. Southern Command; presentation of other information appropriate to the board's interests, and a public comments period.

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 Mr. Procell, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Because the meeting of the committee 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. Bradley 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 Mr. Procell at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and 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 Committee, in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted to Mr. Procell, 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. Written comments or statements being submitted in response to the agenda set forth in this notice must be received at least seven business days prior to the meeting to be considered by the Committee. The Designated Federal Officer will review all timely submitted written comments or statements with the Committee Chairperson, and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date may not be provided to the Committee until its next meeting. Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to Mr. Procell, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Requests will be logged in the order received. The Designated Federal Officer in consultation with the Committee Chair will determine whether the subject matter of each comment is relevant to the Committee's mission and/or the topics to be addressed in this public meeting. A 30-minute period between 10:30 to 11:00 a.m. will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–28482 Filed 11–25–16; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–58]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Young, DSCA/SE&E–RAN, (703) 697–9107.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–58 with attached Policy Justification and Sensitivity of Technology.

Dated: November 22, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

NOV 17 2016

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-58 concerning the Department of the Air Force's and Navy's proposed Letter(s) of Offer and Acceptance to the Government of Qatar for defense articles and services estimated to cost $21.1 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 16–58

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Government of Qatar

(ii) *Total Estimated Value:*

Major Defense Equipment *	$11.5 billion.
Other	9.6 billion.
Total	21.1 billion.

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Seventy-two (72) F–15QA Aircraft
One hundred and forty-four (144) F–110–GE–129 Aircraft Engines
Eighty (80) Advanced Display Core Processor II (ADCP II)
Eighty (80) Digital Electronic Warfare Suites (DEWS)
Eighty (80) M61A ''Vulcan'' Gun Systems
Eighty (80) Link-16 Systems
One hundred and sixty (160) Joint Helmet Mounted Cueing Systems (JHMCS)
Three hundred and twelve (312) LAU–128 Missile Launchers
Eighty (80) AN/APG–82(V)1 Active Electronically Scanned Array (AESA) Radars
One hundred and sixty (160) Embedded GPS/Inertial Navigation Systems (INS) (EGI)
Eighty (80) AN/AAQ–13 LANTIRN Navigation Pods w/Containers
Eighty (80) AN/AAQ–33 SNIPER Advanced Targeting Pods w/

containers (MDE Determination Pending)
Eighty (80) AN/AAS–42 Infrared Search and Track Systems (IRST) (MDE Determination Pending)
Two hundred (200) AIM–9X Sidewinder Missiles
Seventy (70) AIM–9X Captive Air Training Missiles (CATM)
Eight (8) AIM–9X Special Training Missiles
Twenty (20) CATM AIM–9X Missile Guidance Units
Twenty (20) AIM–9X Tactical Guidance Kits
Two hundred and fifty (250) AIM–120C7 Advanced Medium Range Air-to-Air Missiles (AMRAAM)
Five (5) AIM–120C7 Spare Guidance Kits
One hundred (100) AGM–88 High Speed Anti-Radiation Missiles (HARM)
Forty (40) AGM–88 HARM CATMs
Two hundred (200) AGM–154 Joint Standoff Weapons (JSOW)
Eighty (80) AGM–84L–1 Standoff Strike Anti-Ship Missiles (Harpoon) Ten (10) Harpoon Exercise Missiles
Two hundred (200) AGM–65H/K (Maverick) Missiles
Five hundred (500) GBU–38 Joint Direct Attack Munitions (JDAM) Guidance Kits
Five hundred (500) GBU–31 (V1) JDAM Guidance Kits
Two hundred and fifty (250) GBU–54 Laser JDAM Guidance Kits
Two hundred and fifty (250) GBU–56 Laser JDAM Guidance Kits
Five hundred (500) BLU–11lB Bombs
Five hundred (500) BLU–117B Bombs
Six (6) MK–82 Inert Bombs
One thousand (1,000) FMU–152 Joint Programmable Fuses
Non-MDE include:

ACMI (P5) Training Pods, Reece Pods (DB–110), Conformal Fuel Tanks (CFTs), Identification Friend/Foe (IFF) system, AN/AVS–9 Night Vision Goggles (NVG), ARC–210 UHF/UVF radios, LAU–118(v)1/A, LAU–117–AV2A, associated ground support, training materials, mission critical resources and maintenance support equipment, the procurement for various weapon support and test equipment spares, technical publications, personnel training, simulators, and other training equipment, U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (X7–D–SAC and X7–D–YAB) and Navy (QA–P–AAB).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* November 17, 2016.

Policy Justification

Government of Qatar—F–15QA Aircraft With Weapons and Related Support

The Government of Qatar requested to purchase seventy-two (72) F–15QA multi-role fighter aircraft and associated weapons package; the provision for continental United States based Lead-in-Fighter-Training for the F–15QA; associated ground support;, training materials; mission critical resources and maintenance support equipment; the procurement for various weapon support and test equipment spares; technical publications; personnel training; simulators and other training equipment; U.S. Government and contractor engineering; technical and logistics support services; and other related elements of logistical and program support. The estimated total program value is $21.1 billion.

This proposed sale enhances the foreign policy and national security of the United State by helping to improve the security of a friendly country and strengthening our strategically important relationship. Qatar is an important force for political stability and economic progress in the Persian Gulf region. Our mutual defense interests anchor our relationship and the Qatar Emiri Air Force (QEAF) plays a predominant role in Qatar's defense.

The proposed sale improves Qatar's capability to meet current and future enemy air-to-air and air-to-ground threats. Qatar will use the capability as a deterrent to regional threats and to strengthen its homeland defense. Qatar will have no difficulty absorbing these aircraft into its armed forces.

The proposed sale of this aircraft, equipment, training, and support services will not alter the basic military balance in the region.

The prime contractor will be Boeing Corporation of Chicago, IL. The Purchaser typically requests offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor. Additional contractors include:

Astronautics Corporation of America, Arlington VA
BAE Systems, Arlington, VA
Elbit Systems of America, Fort Worth, TX
General Electric Aviation of Cincinnati, OH
Honeywell Aerospace, Phoenix, AZ
Lockheed Martin Aeronautics Company, Fort Worth, TX
L3 Communications, Arlington, TX
NAVCOM, Torrance, CA Raytheon, Waltham, MA
Rockwell Collins, Cedar Rapids, IA
Teledyne Electronic Safety Products, Thousand Oaks, CA
UTC Aerospace Systems, Charlotte, NC

Implementation of this sale requires the assignment of approximately 24 additional U.S. Government and approximately 150 contractor representatives to Qatar.

There is no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–58

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(l) of the Arms Export Control Act

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. This sale involves the release of sensitive technology to Qatar. The F–15QA weapons system is classified up to SECRET. The F–15QA aircraft uses the F–15E airframe and features advanced avionics and other technologically sensitive systems. The F–15QA contains the General Electric F–110–GE–129; an AN/APG–82(V)l Active Electronically Scanned Array (AESA) radar; internal and external electronic warfare and self-protection equipment; identification, friend or foe (IFF) system; operational flight program; and software computer programs.

2. Sensitive and classified (up to SECRET) elements of the proposed F–15QA include hardware, accessories, components, and associated software: AESA radar, Digital Electronic Warfare Suite (DEWS), Missile Warning System (MWS), Non-Cooperative Threat Recognition (NCTR), Advanced Display Core Processor (ADCP) II, the AN/AAQ–33 SNIPER targeting system, Joint Helmet Mounted Cueing System (JHMCS), Infrared Search and Track system (IRST), APX–114/119 IFF, Link-16 Datalink Terminals, ARC–210 UHF/VHF, DB–110, EGI, AN/AVS–9 Night Vision Goggles (NVG), and associated air-to-air and air-to-ground weapons. Additional sensitive areas include operating manuals and maintenance technical orders containing performance information, operating and test procedures, and other information related to support operations and repair. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance

parameters and other similar critical information.

3. The AN/APG–82(V) 1 is an AESA radar upgrade for the F–15. It includes higher processor power, higher transmission power, more sensitive receiver electronics, and synthetic aperture radar, which creates higher-resolution ground maps from a greater distance than existing mechanically scanned array radars. The upgrade features an increase in detection range of air targets, increases in processing speed and memory, as well as significant improvements in all modes. The highest classification of the radar is SECRET.

4. DEWS provides passive radar warning, wide spectrum radio frequency jamming, and control and management of the entire electronic warfare (EW) system. It is an internally mounted suite. The commercially developed system software and hardware is UNCLASSIFIED. The system is classified SECRET when loaded with a U.S. derived EW database.

5. The AAR–57(v)2 uses electro-optical sensors to warn the aircrew of threatening missile launch and approach which is integrated within DEWS. This system detects and performs data hand-off so countermeasures can be automatically dispensed. The system, hardware components and software, are classified up to SECRET.

6. The ADCP II is the F–15 aircraft central computer. It serves as the hub for all aircraft subsystems and avionics data transfer. The hardware and software are classified SECRET.

7. The SNIPER (AN/AAQ–33) targeting system is UNCLASSIFIED and contains technology representing the latest state-of-the-art in electro-optical clarity and haze and low light targeting capability. Information on performance and inherent vulnerabilities is classified SECRET. Software (object code) is classified CONFIDENTIAL. Overall system classification is SECRET.

8. The LANTIRN (AN/AAQ–13) is a navigation pod and provides high-speed penetration and precision attack assistance in all flying conditions. The pod uses a terrain-following radar and a fixed infrared sensor to display an image of the terrain in front of the aircraft on a heads-up display. System components, countermeasures and vulnerabilities are classified up to SECRET. Overall system classification is SECRET.

9. The AN/AAS–42 IRST system is a long-wave, high resolution, passive, infrared sensor system that searches and detects heat sources within its field of regard. The AN/AAS–42 is classified CONFIDENTIAL, components and subsystems range from UNCLASSIFIED to CONFIDENTIAL, and technical data and other documentation are classified up to SECRET.

10. A combined transponder interrogator system is UNCLASSIFIED unless Mode IV or V operational evaluator parameters, which are SECRET, are loaded into the equipment.

11. An advanced Link-16 command, control, communications, and intelligence (C3I) system incorporating high-capacity, jam-resistant, digital communication links is used for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements. The terminal hardware, publications, performance specifications, operational capability, parameters, vulnerabilities to countermeasures, and software documentation are classified CONFIDENTIAL. The classified information to be provided consists of that which is necessary for the operation, maintenance, and repair (through intermediate level) of the data link terminal, installed systems, and related software.

12. JHMCS is a modified HGU–55/P helmet that incorporates a visor-projected Heads Up Display to cue weapons and aircraft sensors to air and ground targets. This system projects visual targeting and aircraft performance information on the back of the helmet's visor, enabling the pilot to monitor this information without interrupting his field of view through the cockpit canopy. This provides improvement for close combat targeting and engagement. Hardware is UNCLASSIFIED.

13. The AN/AVS–9 NVG is a 3rd generation aviation NVG offering higher resolution, high gain, and photo response to near infrared. Hardware is UNCLASSIFIED, and technical data and documentation to be provided are UNCLASSIFIED.

14. The ARC–210 UHF/VHF secure radios with HAVE QUICK II is a voice communications radio system that can operate in either normal, secure, or jam-resistant modes. It can employ cryptographic technology that is classified SECRET. Classified elements include operating characteristics, parameters, technical data, and keying material.

15. The DB–110 is a tactical airborne reconnaissance system. This capability permits reconnaissance missions to be conducted from very short range to long range by day or night. It is an under-the-weather, podded system that produces high resolution, dual-band electro optical and infrared imagery. The DB–110 system is UNCLASSIFIED.

16. Embedded GPS INS (EGI) is a navigation platform that combines an inertial sensor assembly with a fixed reception pattern antenna (FRPA) GPS receiver and a common Kalman filter. The EGI system is the primary source for position information. The EGI is UNCLASSIFIED. The GPS crypto variable keys needed for highest GPS accuracy are classified up to SECRET.

17. Software, hardware, and other data and information, which is classified or sensitive, is reviewed prior to release to protect system vulnerabilities, design data, and performance parameters. Some end-item hardware, software, and other data identified above are classified at the CONFIDENTIAL and SECRET level. Potential compromise of these systems is controlled through management of the basic software programs of highly sensitive systems and software-controlled weapon systems on a case-by-case basis.

18. The following munitions are part of the F–15QA configuration:

19. AIM–9X Sidewinder missile is an air-to-air guided missile that employs a passive infrared target acquisition system that features digital technology and micro miniature solid-state electronics. The AIM–9X tactical and captive air training missile (CATM) guidance units are subsets of the overall missile. The AIM–9X is overall classified CONFIDENTIAL; major components and subsystems range from UNCLASSIFIED to CONFIDENTIAL. However, technical data and other documentation are classified up to SECRET.

20. The AIM–9X is launched from the aircraft using a LAU–128 guided missile launcher. The LAU–128 provides mechanical and electrical interface between missile and aircraft. The LAU–128 system is UNCLASSIFIED.

21. AIM–120C7 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a guided missile featuring digital technology and micro-miniature solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high-and low-flying and maneuvering targets. The AMRAAM is classified CONFIDENTIAL; major components and subsystems range from UNCLASSIFIED to CONFIDENTIAL. However, technical data and other documentation are classified up to SECRET.

22. The AIM–120C7 is launched from the aircraft using a LAU–128 guided

missile launcher. The LAU–128 provides the mechanical and electrical interface between missile and aircraft. The LAU–128 system is UNCLASSIFIED.

23. Joint Direct Attack Munition (JDAM) is an air-to-ground weapon with a guidance tail kit that converts unguided free-fall bombs into accurate, adverse weather ''smart'' munitions. With the addition of a laser guidance nose kit, the JDAM provides a capability to engage moving targets. The GPS-only guided JDAMs are GBU–38/31 (500 and 2000lbs respectively) and the Laser/OPS guided JDAMs are GBU–54/56 for the 500 and 2000lbs variants. The JDAM is UNCLASSIFIED; technical data for JDAM is classified up to SECRET. Overall system classification is SECRET.

24. JDAMs use the Global Positioning System (GPS) Precise Positioning System (PPS), which provides for a more accurate capability than the commercial version of GPS. Countries approved for GPS PPS will be provided Group Unique Variable (GUV) keys or unique country keys.

25. The AGM–154 is a family of low-cost standoff weapons that are modular in design and incorporate either a sub-munition or a unitary warhead. Potential targets for Joint Standoff Weapon (JSOW) range from soft targets, such as troop concentration, to hardened point targets like bunkers. AGM–154C is used by the US Navy, Marine Corps, and Air Force, and allows aircraft to attack well-defended targets in day, night, and adverse weather conditions. AGM–154C is a penetrator weapon that carries a BROACH warhead and pay load.

26. AGM–154 uses the Global Positioning System (GPS) Precise Positioning System (PPS), which provides for a more accurate capability than the commercial version of GPS.

27. The AGM–84L–1 Harpoon is a non-nuclear tactical weapon system currently in service in the U.S. Navy and in 28 other foreign nations. It provides a day, night, and adverse weather, standoff air-to-surface capability. Harpoon Block II is an effective Anti-Surface Warfare missile.

28. AGM–84L–l uses the Global Positioning System (GPS) Precise Positioning System (PPS), which provides for a more accurate capability than the commercial version of GPS. The following Harpoon components being conveyed by the proposed sale that are considered sensitive and are classified CONFIDENTIAL include: IIR seeker, INS, OPP software and, missile operational characteristics and performance data. The overall system classification is SECRET.

29. The AGM–65H/K Maverick is an air-to-ground close air support missile with a lock on before launch day or night capability. The H model uses an optical device guidance system that has the capability to penetrate haze and provides high contrast and longer range target identification. The K model uses the same guidance with a heavyweight penetrator warhead. Maverick hardware is UNCLASSIFIED. The SECRET aspects of the Maverick system are tactics, information revealing its vulnerability to countermeasures, and counter-countermeasures. Manuals and technical documents that are necessary for operational use and organizational maintenance are classified CONFIDENTIAL. Performance and countermeasure design are SECRET. Overall system classification is SECRET.

30. The AGM–65 is launched from the aircraft using a LAU–117 guided missile launcher. The LAU–117 provides the mechanical and electrical interface between missile and aircraft. The LAU–117 system is UNCLASSIFIED.

31. The AGM–88 High Speed Anti-Radiation Missiles (HARM) weapon system is an air-to-ground missile intended to suppress or destroy land or sea-based radar emitters associated with enemy air defenses and provides tactical air forces with a kinetic countermeasure to enemy radar-directed, surface-to-air missiles, and air defense artillery weapons systems. Destruction or suppression of enemy radars denies the enemy the use of air defense systems and therefore improving the survivability of our tactical aircraft. General capabilities, performance characteristics and support requirements are classified up to CONFIDENTIAL. The overall system classification is SECRET.

32. The AGM–88 is launched from the aircraft using a LAU–118 guided missile launcher. The LAU–118v l/A provides the mechanical and electrical interface between missile and aircraft. The LAU–118 system is UNCLASSIFIED.

33. M61Al 20mm Vulcan Cannon: The 20mm Vulcan cannon is a six barreled automatic cannon chambered with 20x120mm ammunition with a cyclic rate of fire from 2,500–6,000 shots per minute. This weapon is a hydraulically powered air-cooled gatlin gun used to damage/destroy aerial targets, suppress/incapacitate personnel targets and damage or destroy moving and stationary light materiel targets. The M61Al and its components are UNCLASSIFIED.

34. Qatar is both willing and able to protect United States classified military information. Qatari physical and document security standards are equivalent to U.S. standards. Qatar demonstrated its willingness and capability to protect sensitive military technology and information released to its military in the past. Qatar is firmly committed to its relationship with the United States and to its promise to protect classified information and prevent its transfer to a third party. This sale is needed in furtherance of USG foreign policy and national security interests by helping to improve the security of a vital partner in the CENTCOM AOR.

35. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software source code in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of systems with similar or advance capabilities. The benefits to be derived from this sale in the furtherance of the U.S. foreign policy and national security objectives, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

36. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Qatar.

[FR Doc. 2016–28493 Filed 11–25–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Government-Industry Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), Department of Defense (DoD).

ACTION: Federal advisory committee meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Government-Industry Advisory Panel. This meeting is open to the public.

DATES: The meeting will be held from 9:00 a.m. to 5:00 p.m. on Tuesday and Wednesday, December 13–14, 2016. Public registration will begin at 8:45 a.m. on each day. For entrance into the meeting, you must meet the necessary requirements for entrance into the Pentagon. For more detailed information, please see the following link: *http://www.pfpa.mil/access.html.*

ADDRESSES: Pentagon Library, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155. The meeting will be held in Room M2. The Pentagon Library is located in the Pentagon Library and Conference Center (PLC2) across the Corridor 8 bridge.

FOR FURTHER INFORMATION CONTACT: LTC Andrew Lunoff, Office of the Assistant Secretary of Defense (Acquisition), 3090 Defense Pentagon, Washington, DC 20301–3090, email: *andrew.s.lunoff.mil@mail.mil,* phone: 571–256–9004.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (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. The Government-Industry Advisory Panel will review sections 2320 and 2321 of title 10, United States Code (U.S.C.), regarding rights in technical data and the validation of proprietary data restrictions and the regulations implementing such sections, for the purpose of ensuring that such statutory and regulatory requirements are best structured to serve the interest of the taxpayers and the national defense. The scope of the panel is as follows: (1) Ensuring that the Department of Defense (DoD) does not pay more than once for the same work, (2) Ensuring that the DoD contractors are appropriately rewarded for their innovation and invention, (3) Providing for cost-effective reprocurement, sustainment, modification, and upgrades to the DoD systems, (4) Encouraging the private sector to invest in new products, technologies, and processes relevant to the missions of the DoD, and (5) Ensuring that the DoD has appropriate access to innovative products, technologies, and processes developed by the private sector for commercial use.

Agenda: This will be the eleventh meeting of the Government-Industry Advisory Panel with a series of meetings planned through January 19, 2016. The panel will cover details of 10 U.S.C. 2320 and 2321, begin understanding the implementing regulations and detail the necessary groups within the private sector and government to provide supporting documentation for their review of these codes and regulations during follow-on meetings. Agenda items for this meeting will include the following: (1) Final discussions and deliberations on 10 U.S.C. 2320 and 2321 tension points; (2) Report framework and collaboration; (3) Comment Adjudication and Planning for follow-on meeting.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the December 13–14 meeting will be available as requested or at the following site: *https://database.faca.gov/committee/meetings.aspx?cid=2561.* It will also be distributed upon request.

Minor changes to the agenda will be announced at the meeting. All materials will be posted to the FACA database after the meeting.

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. Registration of members of the public who wish to attend the meeting will begin upon publication of this meeting notice and end three business days (December 8) prior to the start of the meeting. All members of the public must contact LTC Lunoff at the phone number or email listed in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements for Pentagon escort, if necessary. Public attendees should arrive at the Pentagon's Visitor's Center, located near the Pentagon Metro Station's south exit and adjacent to the Pentagon Transit Center bus terminal with sufficient time to complete security screening no later than 8:30 a.m. on December 13. To complete security screening, please come prepared to present two forms of identification of which one must be a pictured identification card. Government and military DoD CAC holders are not required to have an escort, but are still required to pass through the Visitor's Center to gain access to the Building. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number to the Designated Federal Officer (DFO) listed in the **FOR FURTHER INFORMATION CONTACT** section. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access.

Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact LTC Lunoff, the committee DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

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 Government-Industry Advisory Panel about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to LTC Lunoff, the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO at least five (5) business days prior to the meeting so that they may be made available to the Government-Industry Advisory Panel for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the panel until its next meeting. Please note that because the panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the panel's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the

process described in this paragraph, will be allotted no more than five (5) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

Dated: November 22, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–28499 Filed 11–25–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–21]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Young, DSCA/SA&E/RAN, (703) 697–9107.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–21 with attached Policy Justification and Sensitivity of Technology.

Dated: November 22, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

NOV 17 2016

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-21, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Kuwait for defense articles and services estimated to cost $10.1 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 16–21

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Kuwait

(ii) *Total Estimated Value:*

Major Defense Equipment *	$6.3 billion
Other	3.8 billion
TOTAL	10.1 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Thirty-two (32) F/A–18E aircraft, with F414–GE–400 engines
Eight (8) F/A–18F aircraft, with F414–GE–400 engines
Eight (8) spare F414–GE–400 engines and Twenty-four (24) engine modules
Forty-one (41) AN/APG–79 Active Electronically Scanned Array (AESA) Radars
Forty-four (44) M61A2 20mm Gun Systems
Forty-five (45) AN/ALR–67(V)3 Radar Warning Receivers
Two hundred and forty (240) LAU–127E/A Guided Missile Launchers
Forty-five (45) AN/ALE–47 Airborne Countermeasures Dispenser Systems
Twelve (12) AN/AAQ–33 SNIPER Advanced Targeting Pods
Forty-eight (48) Joint Helmet Mounted Cueing Systems (JHMCS)
Forty-five (45) AN/ALQ–214 Radio Frequency Counter-Measures Systems
Forty-five (45) AN/ALE–55 Towed Decoys
Forty-eight (48) Link-16 Systems
Eight (8) Conformal Fuel Tanks
Fourteen (14) AN/ASQ–228 ATFLIR Systems

Non-MDE includes: ARC–210 radio (aircraft), Identification Friend or Foe (IFF) systems, AN/AVS–9 Night Vision Goggles (NVG), Launchers (LAU–115D/A, LAU–116B/A, LAU-l 18A), Command Launch Computer (CLC) for Air to Ground Missile 88 (AGM–88), ANAV/MAGR GPS Navigation, Joint Mission Planning System (JMPS), aircraft spares, Aircraft Armament Equipment (AAE), support equipment, aircrew/maintenance training, contractor engineering technical service, logistics technical services, engineering technical services, other technical assistance, contractor logistics support, flight test services, storage and preservation, aircraft ferry, Repair of Repairable (RoR), support systems and associated logistics, training aides and devices, spares, technical data Engineering Change Proposals, avionics software support, software, technical publications, engineering and program support, U.S. Government and contractor engineering, technical and logistic support services.

(iv) *Military Department:* Navy (KU–P–SBG)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex Attached.

(viii) *Date Report Delivered to Congress:* November 17, 2016

* as defined in Section 47(6) of the Arms Export Control Act.

Policy Justification

The Government of Kuwait—F/A–18E/F Super Hornet Aircraft with Support

The Government of Kuwait has requested to purchase thirty-two (32) F/A–18E aircraft, with F414–GE–400 engines; eight (8) F/A–18F aircraft, with F414–GE–400 engines; eight (8) spare F414–GE–400 engines and twenty-four (24) engine modules; forty-one (41) AN/APG–79 Active Electronically Scanned Array (AESA) Radars; forty-four (44) M61A2 20mm Gun Systems; forty-five (45) AN/ALR–67(V)3 Radar Warning Receivers; two hundred and forty (240) LAU–127E/A Guided Missile Launchers; forty-five (45) AN/ALE–47 Airborne Countermeasures Dispenser Systems; twelve (12) AN/AAQ–33 SNIPER Advanced Targeting Pods; forty-eight (48) Joint Helmet Mounted Cueing Systems (JHMCS); forty-five (45) AN/ALQ–214 Radio Frequency Counter-Measures Systems; forty-five (45) AN/ALE–55 Towed Decoys; forty-eight (48) Link-16 Systems; eight (8) Conformal Fuel Tanks; and fourteen (14) AN/ASQ–228 ATFLIR Systems. Also included in the sale are ARC–210 radio (aircraft); Identification Friend or Foe (IFF) systems; AN/AVS–9 Night Vision Goggles (NVG); Launchers (LAU- 115D/A, LAU–116B/A, LAU-l 18A); Command Launch Computer (CLC) for Air to Ground Missile 88 (AGM–88); ANAV/MAGR GPS Navigation; Joint Mission Planning System (JMPS); aircraft spares; Aircraft Armament Equipment (AAE); support equipment; aircrew/maintenance training; contractor engineering technical service; logistics technical services; engineering technical services; other technical assistance; contractor logistics support; flight test services; storage and preservation; aircraft ferry; Repair of Repairable (RoR); support systems and associated logistics; training aides and devices; spares; technical data Engineering Change Proposals; avionics software support; software; technical publications; engineering and program support; U.S. Government and contractor engineering; technical and logistic support services. The estimated total program cost is $10.1 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a Major Non-NATO Ally that has been, and continues to be, an important force for political and economic progress in the Middle East. Kuwait is a strategic partner in maintaining stability in the region. The acquisition of the F/A–18E/F Super Hornet aircraft will allow for greater interoperability with U.S. forces, providing benefits for training and possible future coalition operations in support of shared regional security objectives.

The proposed sale of the F/A- l8E/F Super Hornet aircraft will improve Kuwait's capability to meet current and future warfare threats. Kuwait will use the enhanced capability to strengthen its homeland defense. The F/A–18E/F Super Hornet aircraft will supplement and eventually replace the Kuwait Air Force's aging fighter aircraft. Kuwait will have no difficulty absorbing this aircraft into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be The Boeing Company, St. Louis, Missouri; Northrop Grumman in Los Angeles, California; Raytheon Company in El Segundo, California; and General Electric in Lynn, Massachusetts. Offsets agreements associated with this proposed sale are expected; however, specific agreements are undetermined and will be defined during negotiations between the purchaser and contractor. Kuwait requires contractors to satisfy an offset obligation equal to 35 percent of the main contract purchase price for any sale of defense articles in excess of three million Kuwait Dinar, (approximately $10 million USD).

Implementation of this proposed sale will require the assignment of contractor representatives to Kuwait on an intermittent basis over the life of the case to support delivery of the F/A–18E/F Super Hornet aircraft and provide support and equipment familiarization.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–21

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(l) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The F/A–18E/F Super Hornet is a single and two-seat, twin-engine, multi-mission fighter/attack aircraft that can operate from either aircraft carriers or land bases. The F/A–18 fills a variety of roles: air superiority, fighter escort, suppression of enemy air defenses, reconnaissance, forward air control, close and deep air support, and day and night strike missions. The F/A–18E/F Weapons System is classified SECRET.

2. The AN/APO–79 Active Electronically Scanned Array (AESA) Radar System is classified SECRET. The radar provides the F/A–18 aircraft with all-weather, multi-mission capability for performing air-to-air and air-to-ground targeting and attack. Air-to-air modes provide the capability for all-aspect target detection, long-range search and track, automatic target acquisition, and tracking of multiple targets. Air-to-surface attack modes provide high-resolution ground mapping navigation, weapon delivery, and sensor cueing. The system component hardware (Antenna, Transmitter, Radar Data Processor, and Power Supply) is UNCLASSIFIED. The Receiver-Exciter hardware is CONFIDENTIAL. The radar Operational Flight Program (OFP) is classified SECRET. Documentation provided with the AN/APO–79 radar set is classified SECRET.

3. The AN/ALR–67(V)3 Electric Warfare Countermeasures Receiving Set is classified CONFIDENTIAL. The AN/ALR–67(V)3 provides the F/A–18F aircrew with radar threat warnings by detecting and evaluating friendly and hostile radar frequency threat emitters and providing identification and status information about the emitters to on-board Electronic Warfare (EW) equipment and the aircrew. The OFP and User Data Files (UDF) used in the AN/ALR- 67(V)3 are classified SECRET. Those software programs contain threat parametric data used to identify and establish priority of detected radar emitters.

4. The AN/ALE–47 Countermeasures Dispensing System is classified SECRET. The AN/ALE–47 is a threat-adaptive dispensing system that dispenses chaff, flares, and expendable jammers for self-protection against airborne and ground-based Radio Frequency and Infrared threats. The AN/ALE–47 Programmer is classified CONFIDENTIAL. The OPP and Mission Data Files used in the AN/ALE–47 are classified SECRET. Those software programs contain algorithms used to calculate the best defense against specific threats.

5. The AN/ALQ–214 is an advanced air-borne Integrated Defensive Electronic Countermeasures (IDECM) programmable modular automated system capable of intercepting, identifying, processing received radar signals (pulsed and continuous) and applying an optimum countermeasures technique in the direction of the radar signal, thereby improving individual aircraft probability of survival from a variety of surface-to-air and air-to-air RF threats. The ALQ- 214 was designed to operate in a high-density Electromagnetic Hostile Environment with the ability to identify and counter a wide variety of multiple threats, including those with Doppler characteristics. Hardware within the AN/ALQ–214 is classified CONFIDENTIAL.

6. The Identification Friend or Foe (IFF) Combined Interrogator/Transponder (CIT) with the Conformal Antenna System (CAS) is classified SECRET. The CIT is a complete MARK–XIIA identification system compatible with (IFF) Modes l, 2, 3/A, C4 and 5 (secure).

7. The Joint Helmet Mounted Cueing System (JHMCS) is a modified HGU–55/P helmet that incorporates a visor-projected Heads-Up Display (HUD) to cue weapons and aircraft sensors to air and ground targets. In close combat, a pilot must currently align the aircraft to shoot at a target. JHMCS allows the pilot to simply look at a target to shoot Hardware is UNCLASSIFIED; technical data and documents are classified up to SECRET.

8. The AN/AAQ–33 SNIPER Pod is a multi-sensor, electro-optical targeting pod incorporating infrared, low-light television camera, laser range-finder/target designator, and laser spot tracker. It is used to provide navigation and targeting for military aircraft in adverse weather and using precision-guided weapons such as laser-guided bombs. It offers much greater target resolution and imagery accuracy than previous systems. The AN/AAQ–33 is UNCLASSIFIED.

9. The Joint Mission Planning System (JMPS) is SECRET. JMPS will provide mission planning capability for support of military aviation operations. The JMPS will be tailored to the specific releasable configuration for the F/A–18 Super Hornet.

10. The AN/AVS–9 NVG is a 3rd generation aviation NVG offering higher resolution, high gain, and photo response to near infrared. Hardware is UNCLASSIFIED, and technical data and documentation to be provided are UNCLASSIFIED.

11. The AN/ALE–55 towed decoy improves aircraft survivability by providing an enhanced, coordinated onboard/off-board countermeasure response to enemy threats. When threat libraries are installed, the AN/ALE–55 is classified SECRET.

12. Link-16 is a secure data and voice communication network. The system provides enhanced situational communication awareness, positive identification of participants within the network, secure fighter-to-fighter connectivity, and secure voice capability. It can be classified up to CONFIDENTIAL.

13. The LAU–127E/A Guided Missile Launchers is designed to enable F/A–18 aircraft to carry and launch missiles. It provides the electrical and mechanical interface between the missile and launch aircraft as well as the two-way data transfer between missile and cockpit controls and displays to support preflight orientation and control circuits to prepare and launch the missile. The LAU–127E/A is UNCLASSIFIED.

14. ANAV Global Positioning System (GPS) is a 24-channel Selective Availability Anti- Spoofing Module (SAASM) based pulse-per-second GPS receiver built for next generation GPS technology.

15. Command Launch Computer (CLC) is an electronics subsystem installed on the airframe to interface with the AGM–88 NBIC HARM Missile. The CLC and associated software package are compatible with all AGM–88 A/B/C missiles. The CLC receives target data from the missile and onboard avionics, processes the data for display to the aircrew to the appropriate display, determines target priority, and collects aircraft data for pre-launch hand-off to the AGM–88 HARM missile.

16. The AN/ASQ–228 Advanced Targeting Forward-Looking Infrared (ATFLIR) is a multi-sensor, electro-optical targeting pod incorporating thermographic camera, low-light television camera, target laser rangefinder/laser designator, and laser spot tracker developed and manufactured by Raytheon. It is used to provide navigation and targeting for military aircraft in adverse weather and using precision-guided munitions such as laser-guided bombs.

17. A determination has been made that the Government of Kuwait, can provide substantially the same degree of protection for the classified and

sensitive technology being released as the U.S. Government.

18. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

19. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Kuwait.

[FR Doc. 2016–28487 Filed 11–25–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2013–OS–0197]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 27, 2017.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Assistant Secretary of Defense, (Energy, Installations, & Environment) 3400 Defense Pentagon, Suite 5C646, ATTN: Phyllis Newton, Washington, DC 20301–3400 or call 703–571–9060.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for DoD Homeowners Assistance Program (HAP); DD Form 1607, ''Application for DoD Homeowners Assistance Program''; OMB Control Number 0704–0463.

Needs and Uses: The information collection requirement is necessary to determine applicants' eligibility for benefits and to process the requests for the DoD Homeowners Assistance Program (HAP). Information provided on this form may be disclosed outside the DoD as a routine use to the General Services Administration when assuming custody of acquired homes, to manage and dispose of such properties on behalf of the Secretary of Defense; Department of Veterans Affairs in accepting subsequent purchaser in private sales when property is encumbered by a mortgage loan guaranteed or insured by them; Department of Justice to review final title and deeds of conveyance to the Government for properties acquired under the program; and the Internal Revenue Service to determine tax liability for sale of property to the Government.

Affected Public: Individuals or Households.

Annual Burden Hours: 50.

Number of Respondents: 50.

Responses per Respondent: 1.

Annual Responses: 50.

Average Burden per Response: 1 Hour.

Frequency: As Required.

Respondents are eligible Department of Defense and U.S. Coast Guard homeowners serving or employed at or near military installations which were ordered closed or partially closed, realigned, or were ordered to reduce the scope of operations under the Base Realignment and Closure (BRAC) authority. Respondents will use the prescribed form to apply for HAP financial assistance when affected by a BRAC announcement, or a wound, injury, or illness incurred while in the line of duty, or the surviving spouse of a fallen warrior. Although the completion of the application is voluntary, failure to provide the requested information will hinder the verification of employment and homeowner information and may result in delay or denial of HAP benefits provided under the law.

Dated: November 22, 2016.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2016–28560 Filed 11–25–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0128]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Child Care Access Means Parents in School Application Package

AGENCY: Office of Postsecondary Education (OPE), 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 reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before December 28, 2016.

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–2016–ICCD–0128. 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 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Antoinette Clark, 202–453–7121.

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: Child Care Access Means Parents in School Application Package.

OMB Control Number: 1840–0737.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 350.

Total Estimated Number of Annual Burden Hours: 8,750.

Abstract: The Child Care Access Means Parents In School (CCAMPIS) application requests information from applicants during the competitive phase. The information collected is reviewed by non-federal reviewers to determine which applicants meet the eligibility criteria to be awarded funds under the CCAMPIS program to assist awardees with subsidizing the child care fees of qualifying student-parents enrolled at the awarded institution.

Dated: November 22, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–28503 Filed 11–25–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–433]

Application To Export Electric Energy; SocïVolta Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: SocïVolta Inc. (SocïVolta or Applicant) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before December 28, 2016.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C.§ 824a(e)).

On November 10, 2016, DOE received an application from SocïVolta for authority to transmit electric energy from the United States to Canada as a power marketer for five years using existing international transmission facilities. SocïVolta has applied for market-based rate authority from the Federal Energy Regulatory Commission (FERC) to engage in the sale and purchase of electric energy to and from Independent System Operators and Regional Transmission Organizations.

In its application, SocïVolta states that it does not own or operate any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that SocïVolta proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by SocïVolta have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning SocïVolta's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–433. An additional copy is to be provided directly to Ruta Kalvaitis Skučas, Pierce Atwood LLC, 1875 K. St., Suite 700, Washington, DC 20006.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on November 21, 2016.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–28500 Filed 11–25–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Orders Granting Authority To Import and Export Natural Gas, To Export Liquefied Natural Gas, Vacating Authority, Denying Request for Rehearing, and Denying Motion for Opinion and Order on Application During October 2016

TRANSCANADA PIPELINES LIMITED	FE Docket No. 15–124–NG
SABINE PASS LIQUEFACTION, LLC	FE Docket No. 15–63–LNG
CAMERON LNG, LLC	FE Docket No. 16–34–LNG
SEAONE GULFPORT, LLC	FE Docket No. 16–22–CGL
CLEANCOR ENERGY SOLUTIONS	FE Docket No. 16–132–LNG
KOCH ENERGY SERVICES, LLC	FE Docket No. 16–138–NG
UNITED STATES GYPSUM COMPANY	FE Docket No. 16–133–NG
SPARK ENERGY GAS, LLC	FE Docket No. 16–164–NG
TRANSCANADA PIPELINES LIMITED	FE Docket No. 16–157–NG
SENECA RESOURCES CORPORATION	FE Docket No. 16–118–NG
CIMA ENERGY, LTD.	FE Docket No. 16–134–NG
PLYMOUTH ROCK ENERGY, LLC	FE Docket No. 16–135–NG
CITY OF GLENDALE WATER AND POWER	FE Docket No. 16–136–NG
DTE GAS COMPANY	FE Docket No. 16–137–NG
ALLIANCE CANADA MARKETING LP	FE Docket No. 16–139–NG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during October 2016, it issued orders granting authority to import and export natural gas, to export liquefied natural gas (LNG), vacating authority, denying request for rehearing, and denying motion for opinion and order on application. These orders are summarized in the attached appendix and may be found on the FE Web site at *http://energy.gov/fe/listing-doefe-authorizationsorders-issued-2016.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation and International Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 18, 2016.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

3714–A	10/28/16	15–124–NG	TransCanada Pipelines Limited	Order vacating blanket authority to import/export natural gas from/to Canada.
3792–A	10/20/16	15–63–LNG	Sabine Pass Liquefaction, LLC	Opinion and Order Denying Request for Rehearing of Order granting Long-term, Multi-contract authority to export LNG by vessel from Sabine Pass LNG Terminal located in Cameron Parish, Louisiana, to Non-Free Trade Agreement Nations.
3904	10/02/16	16–34–LNG	Cameron LNG, LLC	Order granting blanket authority to export LNG by vessel from the Cameron LNG Terminal located in Cameron and Calcaseiu Parishes, Louisiana.
3905	10/17/16	16–22–CGL	SeaOne Gulfport, LLC	Order denying Motion for Opinion and Order on Application.
3906	10/11/16	16–132–LNG	Cleancor Energy Solutions	Order granting blanket authority to export LNG to Canada/Mexico by truck.
3907	10/13/16	16–138–NG	Koch Energy Services, LLC	Order granting blanket authority to import/export natural gas from/to Mexico.
3908	10/13/16	16–133–NG	United States Gypsum Company.	Order granting blanket authority to import natural gas from Canada.
3910	10/28/16	16–164–NG	Spark Energy Gas, LLC	Order granting blanket authority to import natural gas from Canada.
3911	10/28/16	16–157–NG	TransCanada Pipelines Limited	Order granting blanket authority to import/export natural gas from/to Canada.
3912	10/31/16	16–118–NG	Seneca Resources Corporation	Order granting blanket authority to export natural gas to Canada.
3913	10/31/16	16–134–NG	CIMA Energy, Ltd.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3914	10/31/16	16–135–NG	Plymouth Rock Energy, LLC	Order granting blanket authority to import natural gas from Canada.
3915	10/31/16	16–136–NG	City of Glendale Water and Power.	Order granting blanket authority to import natural gas from Canada.
3916	10/31/16	16–137–NG	DTE Gas Company	Order granting blanket authority to import/export natural gas from/to Canada.
3917	10/31/16	16–139–NG	Alliance Canada Marketing LP	Order granting blanket authority to import natural gas from Canada.

[FR Doc. 2016–28501 Filed 11–25–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–1844–003.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Report Filing: 2016–11–21_Submittal of refund report related to ITC PARs Order to be effective N/A.
Filed Date: 11/21/16.
Accession Number: 20161121–5141.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: ER17–55–001.
Applicants: South Carolina Electric & Gas Company.
Description: Compliance filing: Order Nos 827 and 828 Attachment N to be effective 10/14/2016.
Filed Date: 11/21/16.
Accession Number: 20161121–5059.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: ER17–90–001.
Applicants: Public Service Company of Colorado.
Description: Compliance filing: Order 827 and 828 Compliance Amendment to be effective 10/14/2016.
Filed Date: 11/21/16.
Accession Number: 20161121–5061.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: ER17–396–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 2933, Queue No. W2–076 to be effective 1/17/2017.
Filed Date: 11/21/16.
Accession Number: 20161121–5060.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: ER17–397–000.
Applicants: Pacific Wind Lessee, LLC.
Description: § 205(d) Rate Filing: Revised Shared Transmission Facilities Agreement & Request for Waiver to be effective 9/14/2016.
Filed Date: 11/21/16.
Accession Number: 20161121–5097.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: ER17–398–000.
Applicants: Westar Energy, Inc.
Description: § 205(d) Rate Filing: Ironwood Certificate of Concurrence for Amended and Restated Sub. Use Agreement to be effective 12/23/2016.
Filed Date: 11/21/16.
Accession Number: 20161121–5114.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: ER17–399–000.
Applicants: Midcontinent Independent System Operator, Inc., Duke Energy Indiana, LLC.
Description: § 205(d) Rate Filing: 2016–11–21_SA 2285 Duke Energy-AEP WDS (Hagerstown) to be effective 2/1/2017.
Filed Date: 11/21/16.
Accession Number: 20161121–5137.
Comments Due: 5 p.m. ET 12/12/16.

Docket Numbers: ER17–400–000.
Applicants: Kelly Creek Wind, LLC.
Description: § 205(d) Rate Filing: Filing of Kelly Creek Rate Schedule FERC No. 1 re Reactive Power Compensation to be effective 2/1/2017.
Filed Date: 11/21/16.
Accession Number: 20161121–5184.
Comments Due: 5 p.m. ET 12/12/16.

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: November 21, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–28465 Filed 11–25–16; 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: EC17–36–000.
Applicants: TransCanada Hydro Northeast Inc., Great River Hydro NE., LLC.
Description: Joint Application of TransCanada Hydro Northeast Inc., et al. for Dispositions of Jurisdictional Facilities under Section 203 of the FPA and Requests for Waivers, et al.
Filed Date: 11/18/16.
Accession Number: 20161118–5232.
Comments Due: 5 p.m. ET 12/9/16.

Docket Numbers: EC17–37–000.
Applicants: Westar Energy, Inc.
Description: Application of Westar Energy, Inc. for Authorization for Consolidation of Jurisdictional Facilities, et al.
Filed Date: 11/18/16.
Accession Number: 20161118–5238.
Comments Due: 5 p.m. ET 12/9/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1946–013.
Applicants: Broad River Energy LLC.
Description: Notice of Change in Status of Broad River Energy LLC.
Filed Date: 11/18/16.
Accession Number: 20161118–5246.
Comments Due: 5 p.m. ET 12/9/16.

Docket Numbers: ER16–2493–001.
Applicants: South Carolina Electric & Gas Company.
Description: Tariff Amendment: SCPSA Interchange Agreement Additional Info to be effective 8/26/2016.
Filed Date: 11/18/16.
Accession Number: 20161118–5198.
Comments Due: 5 p.m. ET 12/9/16.

Docket Numbers: ER16–2730–001.
Applicants: LSC Communications US, LLC.
Description: Tariff Amendment: LSCC MBRA App Supplement to be effective 10/1/2016.
Filed Date: 11/18/16.
Accession Number: 20161118–5105.
Comments Due: 5 p.m. ET 12/9/16.

Docket Numbers: ER17–157–001.
Applicants: Moapa Southern Paiute Solar, LLC.
Description: Tariff Amendment: Supplement to Application for Order Accepting Initial Market-Based Rate Tariff to be effective 10/22/2016.
Filed Date: 11/18/16.
Accession Number: 20161118–5119.
Comments Due: 5 p.m. ET 11/28/16.

Docket Numbers: ER17–391–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: PJM Submits Revisions to OATT and OA to Add Tie Line Definition to be effective 1/19/2017.
Filed Date: 11/18/16.
Accession Number: 20161118–5170.
Comments Due: 5 p.m. ET 12/9/16.

Docket Numbers: ER17–392–000.
Applicants: City of Pasadena, California.
Description: § 205(d) Rate Filing: Transmission Revenue Requirement Revision to be effective 11/21/2016.

Filed Date: 11/18/16.
Accession Number: 20161118–5192.
Comments Due: 5 p.m. ET 12/9/16.

Docket Numbers: ER17–393–000.
Applicants: ITC Midwest LLC.
Description: § 205(d) Rate Filing: Filing of Joint Use Pole Agreement with Great River Energy to be effective 12/5/2016.
Filed Date: 11/18/16.
Accession Number: 20161118–5196.
Comments Due: 5 p.m. ET 12/9/16.

Docket Numbers: ER17–394–000.
Applicants: KMC Thermo, LLC.
Description: § 205(d) Rate Filing: Notice of Change in Status and Proposed Revisions to Market-Based Rate Schedule to be effective 1/18/2017.
Filed Date: 11/18/16.
Accession Number: 20161118–5199.
Comments Due: 5 p.m. ET 12/9/16.

Docket Numbers: ER17–395–000.
Applicants: Ironwood Windpower, LLC.
Description: § 205(d) Rate Filing: Ironwood-Westar Substation Use Agreement RS No. 1 to be effective 12/23/2016.
Filed Date: 11/18/16.
Accession Number: 20161118–5200.
Comments Due: 5 p.m. ET 12/9/16.

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: November 21, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–28464 Filed 11–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP17–181–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) Rate Filing: Expired Contracts to be effective 12/19/2016.

Filed Date: 11/17/16.

Accession Number: 20161117–5002.

Comments Due: 5 p.m. ET 11/29/16.

Docket Numbers: RP17–182–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Compliance filing Annual Operational Flow Order Report 2016.

Filed Date: 11/17/16.

Accession Number: 20161117–5022.

Comments Due: 5 p.m. ET 11/29/16.

Docket Numbers: RP17–183–000.

Applicants: Empire Pipeline, Inc.

Description: Compliance filing CF to RP16–300—Settlement Rates (2016) to be effective 7/1/2016.

Filed Date: 11/17/16.

Accession Number: 20161117–5032.

Comments Due: 5 p.m. ET 11/29/16.

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: November 17, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–28462 Filed 11–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–380–000]

Stored Solar J&WE, 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 Stored Solar J&WE, 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 December 12, 2016.

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: November 21, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–28463 Filed 11–25–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2016–0485; FRL–9955–35]

Certain New Chemicals; Receipt and Status Information for October 2016

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA) to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN); an application for a test marketing exemption (TME), both pending and/or expired; and a periodic status report on any new chemicals under EPA review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document covers the period from October 3, 2016 to October 31, 2016.

DATES: Comments identified by the specific case number provided in this document, must be received on or before December 28, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2016–0485, and the specific PMN number or TME number for the chemical related to your comment, 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:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 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 technical information contact: Jim Rahai (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: 202–564–8593; email address: *rahai.jim@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.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the actions addressed in this document.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the Agency taking?

This document provides receipt and status reports, which cover the period from October 3, 2016 to October 31, 2016, and consists of the PMNs and TMEs both pending and/or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. What is the Agency's authority for taking this action?

Under TSCA, 15 U.S.C. 2601 *et seq.,* EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory, please go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.*

Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic reports on the status of new chemicals under review and the receipt of NOCs to manufacture those chemicals.

IV. Receipt and Status Reports

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that the information in the table is generic information because the specific information provided by the submitter was claimed as CBI.

For the 36 PMNs received by EPA during this period, Table 1 provides the following information (to the extent that such information is not claimed as CBI): The EPA case number assigned to the PMN; The date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer/importer; the potential uses identified by the manufacturer/importer in the PMN; and the chemical identity.

TABLE 1—PMNS RECEIVED FROM OCTOBER 3, 2016 TO OCTOBER 31, 2016

Case No.	Received date	Projected notice end date	Manufacturer importer	Use	Chemical
P–16–0180	10/11/2016	1/9/2017	CBI	(S) Component Of Industrial And Maintenance Coatings.	(G) Isocyanic acid, polymethylenepolyphenyl ene ester, polymer with a-hydro-w-0;hydroxypoly[oxy(methyl-1,2-ethanediyl)] and alkylene oxide polymer, alkylamine initiated.
P–16–0271	10/27/2016	1/25/2017	Oxea Corporation	(S) Flexible Pvc Plasticizer For Wire Insulation.	(S) 1,2,4-benzenetricarboxylic acid, 1,2,4-trinonyl ester.
P–16–0308	10/21/2016	1/19/2017	Itaconix Corp	(G) Reactive Monomer	(S) Butanedioic acid, 2-methylene-, 1,4-bis (2-methylpropyl) ester.
P–16–0330	10/6/2016	1/4/2017	H.B. Fuller Company	(G) Industrial Adhesive	(G) Hydroxy functional triglyceride polymer with glycerol mono-ester and 1,1′-methylenebis[4-isocyanatobenzene].
P–16–0331	10/6/2016	1/4/2017	H.B. Fuller Company	(G) Industrial Adhesive	(G) Hydroxy functional triglyceride polymer with glycerol mono-ester and 1,1′-methylenebis [isocyanatobenzene].
P–16–0336	10/25/2016	1/23/2017	CBI	(G) Fuel Additive—Destructive Use.	(G) Polyolefin ester.
P–16–0363	10/24/2016	1/22/2017	CBI	(G) Open, Non-Dispersive.	(G) Blocked polyester polyurethane, neutralized.
P–16–0372	10/5/2016	1/3/2017	CBI	(G) Wetting And Dispersing Additive.	(G) Polyester phosphate alkyl alkyl esters.
P–16–0427	10/3/2016	1/1/2017	CBI	(G) Adhesive	(G) Alkanedioic acid polymer with ethenylbenzene alky-2-alkenoate, alkanediol, .alpha. ã¿â¬ã¿â ã¡¿â¡¡-hydro-.omega.-hydroxypoly[oxyalkyl-alkanediyl)], hydroxyalkyl-alkyl-alkenoate, and aromatic isocyanate.
P–16–0509	10/20/2016	1/18/2017	CBI	(G) For Packaging Application.	(G) Modified ethylene-vinyl alcohol copolymer.
P–16–0541	10/6/2016	1/4/2017	Specialty Organics, Inc	(S) Adhesive For Wood Particle/Chip/Fiberboard.	(S) Soybean meal, reaction products with phosphoric trichloride.
P–16–0578	10/21/2016	1/19/2017	CBI	(G) Reactive Polymer For Waterborne Coating Applications.	(G) Alkenoic acid, alkyester, polymer with n-(dialkyl-oxoalkyl)-alkenamide, alkenylbenzene, alkyl alkenoate and alkenoic acid.
P–16–0582	10/25/2016	1/23/2017	CBI	(S) Lubricity Additive For Industrial Oils And Other Lubricants; (S) Lubricity Additive For Automotive Engine Oil.	(G) Carboxylic acids, polyalkyl unsaturated, oligomers, polymers with substituted alkyl alkenol and alkylpolyol.
P–16–0583	10/14/2016	1/12/2017	CBI	(S) Sealant For Head Lamps Of Cars.	(G) Aromatic hydrocarbon resin.
P–16–0591	10/4/2016	1/2/2017	CBI	(G) Component Of Colorants; (G) Component Of Printing Ink.	(G) Alkyl bis-phenol.
P–16–0597	10/25/2016	1/23/2017	CBI	(G) Component Of Inkjet Printer Ink.	(G) Substituted carbopolycyclic disulfonic acid, substituted disulfocarbomonocycle diazenyl-substituted sulfocarbomonocycle diazenyl, alkali metal salt.
P–16–0601	10/5/2016	1/3/2017	CBI	(S) Export; (S) Active Component In Cross Linking Agent (Metal Passivator).	(G) Antimony based compound.
P–17–0001	10/5/2016	1/3/2017	CBI	(G) Colorant Additive	(G) 2,5-furandione, telomer with ethenylbenzene and (1-methylethyl)benzene, reaction products with polyethylene-polypropylene glycol alkyl amino ether.
P–17–0002	10/24/2016	1/22/2017	CBI	(G) Printing Ink Applications.	(G) Styrene(ated) copolymer with alkyl(meth)acrylate, and (meth)acrylic acid.
P–17–0003	10/24/2016	1/22/2017	CBI	(G) Printing Ink Applications.	(G) Styrene(ated) copolymer with alkyl(meth)acrylate, and (meth)acrylic acid.
P–17–0007	10/18/2016	1/16/2017	CBI	(S) Intermediate	(G) Alkyl substituted-dioxa thio substituted-ether diene.
P–17–0009	10/13/2016	1/11/2017	CBI	(S) Intermediate For Use In The Manufacture Of Polymers.	(G) Depolymerized waste plastics.

TABLE 1—PMNS RECEIVED FROM OCTOBER 3, 2016 TO OCTOBER 31, 2016—Continued

Case No.	Received date	Projected notice end date	Manufacturer importer	Use	Chemical
P–17–0010	10/14/2016	1/12/2017	Allnex Usa Inc	(S) Uv Curable Coating Resin.	(G) Alkyl substituted alkenoic acid, alkyl ester, polymer with alkyl substituted alkenoate and alkenoic acid, hydroxy substituted[(oxoalkyl) oxy]alkyl ester, reaction products with alkanoic acid, dipentaerythritol and isocyanate substituted carbomonocycle, compds. with alkylamine.
P–17–0011	10/18/2016	1/16/2017	Colonial Chemical, Inc	(S) Creams And Lotions.	(S) Octadecanoic acid, ester with 2,2′,2″-nitrilotris[ethanol].
P–17–0015	10/24/2016	1/22/2017	CBI	(G) Precursor For Photochromic Substance.	(G) Heteromonocycle ester with alkanediol.
P–17–0016	10/27/2016	1/25/2017	CBI	(G) Polymer For Coatings.	(G) Hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, peroxide initiated.
P–17–0017	10/27/2016	1/25/2017	CBI	(G) Polymer For Coatings.	(G) Hydroxyl alkyl acrylate ester, polymer with acrylates, aromaticvinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, peroxide initiated.
P–17–0018	10/27/2016	1/25/2017	CBI	(G) Polymer For Coatings.	(G) Hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphaticlactone, and alkyl carboxylic acid, azobis[aliphatic nitrile] initiated.
P–17–0019	10/27/2016	1/25/2017	CBI	(G) Polymer For Coatings.	(G) Hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, peroxide initiated.
P–17–0020	10/27/2016	1/25/2017	CBI	(G) Polymer For Coatings.	(G) Hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, peroxide initiated.
P–17–0021	10/27/2016	1/25/2017	CBI	(G) Polymer For Coatings.	(G) Hydroxyl alkyl acrylate ester, polymer with acrylates, aromatic vinyl monomer, cycloaliphatic lactone, and alkyl carboxylic acid, azobis[aliphatic nitrile] initiated.
P–17–0022	10/26/2016	1/24/2017	Miwon North America, Inc.	(S) Reactive Diluent For Optical Film Coating.	(G) 2-propenoic acid, mixed esters with heterocyclic dimethanol and heterocyclic methanol.
P–17–0023	10/26/2016	1/24/2017	CBI	(S) An Additive In Customized Electrolyte Formulations For Lithium Ion Batteries.	(S) 1,3,2-dioxathiolane, 2,2-dioxide.
P–17–0024	10/26/2016	1/24/2017	CBI	(G) Urethane Component.	(G) Aromatic isocyanate, polymer with alkyloxirane polymer with oxirane ether with alkyldiol (2:1), and alkyloxirane polymer with oxirane ether with alkyltrioll (3:1).
P–17–0025	10/26/2016	1/24/2017	CBI	(G) Urethane Component.	(G) Aromatic isocyanate polymer with alkyloxirane, alkyloxirane polymer with oxirane ether with alkanetriol and oxirane.
P–17–0026	10/26/2016	1/24/2017	CBI	(G) Industrial Ink Printing Applications.	(G) Cycloaliphatic diamine, polymer with .alpha-hydro-.omega.-hydroxypoly(oxy-alkanediyl), .alpha-hydro-.omega.-hydroxypoly(oxy-alkanediyl), and cycloaliphatic diisocyanate.

For the 12 NOCs received by EPA during this period, Table 3 provides the following information (to the extent that such information is not claimed as CBI): The EPA case number assigned to the NOC; the date the NOC was received by EPA; the projected date of commencement provided by the submitter in the NOC; and the chemical identity.

TABLE 2—NOCS RECEIVED FROM OCTOBER 3, 2016 TO OCTOBER 31, 2016

Case No.	Received date	Commencement date	Chemical
J–16–0010	10/21/2016	9/23/2016	(G) Genetically modified saccharomyces yeast.
P–13–0239	10/12/2016	4/15/2014	(G) Substituted cycloalkanemethanamine with [(morpholinyl)propylidene].

TABLE 2—NOCS RECEIVED FROM OCTOBER 3, 2016 TO OCTOBER 31, 2016—Continued

Case No.	Received date	Commencement date	Chemical
P–14–0098	10/18/2016	10/15/2016	(G) Polyalkylene polymer, anhydride reaction products, imidated.
P–14–0712	10/19/2016	9/26/2016	(S) Waste plastics, pyrolyzed, c5–55 fraction.
P–15–0524	10/27/2016	10/2/2016	(S) Benzamide, 2-amino-5-cyano-n,3-dimethyl-.
P–16–0001	10/13/2016	9/25/2016	(G) Poly[oxy(alkanediyl)],.alpha.,.alpha.′,.alpha.″-1,2,3-propanetriyltris[.omega.-(2-hydroxy-3-mercaptopropoxy)-.
P–16–0170	10/3/2016	9/30/2016	(S) Carbon nanotubes.
P–16–0181	10/11/2016	7/22/2016	(S) 2-butenoic acid, 3-amino-, 1,1′-(thiodi-2,1-ethanediyl) ester.
P–16–0182	10/15/2016	10/12/2016	(S) Manganese, tris[-(2-ethylhexanoato-o:o′)]bis(octahydro-1,4,7-trimethyl-1h-1,4,7-triazonine-n1,n4,n7)- manganese, [-(acetato-o:o′)]bis[-(2-ethylhexanoato-o:o′)]bis(octahydro-1,4,7-trimethyl-1h-1,4,7-triazonine- n1,n4,n7)- manganese, bis[-(acetato-o:o′)][-(2-ethylhexanoato-o:o′)]bis(octahydro-1,4,7-trimethyl-1h-1,4,7-triazonine-n1,n4,n7)- manganese, tris[-(acetato-o:o′)]bis(octahydro-1,4,7-trimethyl-1h-1,4,7-triazonine-n1,n4,n7)-.
P–16–0240	10/6/2016	9/29/2016	(G) Styrene(ated) copolymer with alkylmethacrylate, hydroxyalkylacrylate and acrylic acid.
P–16–0268	10/26/2016	10/19/2016	(S) Fatty acids, c18-unsaturated, dimers, hydrogenated, polymers with n-[3-(dimethylamino)propyl] coco amides, n1,n1-dimethyl-1,3-dipropanediamine and epichlorohydrin.
P–16–0391	10/10/2016	10/3/2016	(G) Polyester polyol polymer with aliphatic isocyanate and phenol derivatives.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: November 17, 2016.

Pamela Myrick,

Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2016–28568 Filed 11–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0120; FRL–9955–70–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), ''Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings'' (EPA ICR No. 1765.08, OMB Control No. 2060–0353) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through November 30, 2016. Public comments were previously requested via the **Federal Register** (81 FR 31629) on May 19, 2016, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before December 28, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0120, to (1) the EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Teal, Office of Air and Radiation, Office of Air Quality Planning and Standards, Mail Code D243–04, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5580; fax number: (919) 541–5450; email address: *teal.kim@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about the EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The EPA is required under section 183(e) of the Clean Air Act (CAA) to regulate volatile organic compound emissions from the use of consumer and commercial products. Pursuant to CAA section 183(e)(3), the EPA published a list of consumer and commercial products and a schedule for their regulation (60 FR 15264). Automobile refinish coatings were included on the list, and the standards for such coatings are codified at 40 CFR part 59, subpart B. The reports required under the standards enable the EPA to identify all coating and coating component manufacturers and importers in the United States and to determine which coatings and coating components are subject to the standards, based on dates of manufacture.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action as respondents are manufacturers and importers of automobile refinish coatings and coating components.

Respondent's obligation to respond: Mandatory, 40 CFR part 59 subpart B.

Estimated number of respondents: 30 (total).

Frequency of response: Annually.

Total estimated burden: 14 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,038 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the estimates: There is no increase in hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2016–28516 Filed 11–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9955–63-Region 9]

Notice of Approval of Clean Air Act Prevention of Significant Deterioration Permit for Ocotillo Power Plant

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of final agency action.

SUMMARY: This notice announces that the Maricopa County Air Quality Department (MCAQD) issued a final permit decision to Arizona Public Service (APS) for a major modification of a Clean Air Act Prevention of Significant Deterioration (PSD) permit (Permit No. PSD16–01). The PSD permit decision authorizes a major modification at the Ocotillo Power Plant, located in Tempe, Arizona, primarily for the purposes of constructing five simple cycle natural gas-fired combustion turbines, including ancillary equipment. The MCAQD is authorized to issue PSD permit decisions pursuant to a delegation agreement with the EPA, in which the MCAQD ''stands in the shoes'' of the EPA when administering certain elements of the PSD permitting program. This MCAQD-issued PSD permit decision is considered to be a federally-issued PSD permit decision, and serves as a final agency action by the EPA.

DATES: The MCAQD issued a final PSD permit decision for the Ocotillo Power Plant on September 9, 2016. The permit became effective on that date. Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this final permit decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of November 28, 2016.

ADDRESSES: Documents relevant to the above-referenced permit are available for public inspection during normal business hours at the following addresses:

(1) Maricopa County Air Quality Department, 1001 North Central Avenue, Suite 124, Phoenix, Arizona 85004. To arrange for viewing of these documents, please call (602) 506–6010 or visit online at *http://www.maricopa.gov/aq/contact_us/public_records/Default.aspx.*

(2) U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901. To arrange for viewing of these documents, call Eugene Chen at (415) 947–4304, *chen.eugene@epa.gov.* Due to building security procedures, at least 48 hours advance notice is required.

FOR FURTHER INFORMATION CONTACT: Eugene Chen, EPA Region 9, (415) 947–4304, *chen.eugene@epa.gov.* Anyone who wishes to review the EPA Environmental Appeals Board's (EAB) decision described below or documents in the EAB's electronic docket for its decision can obtain them at *http://www.epa.gov/eab/.*

NOTICE OF FINAL ACTION AND SUPPLEMENTARY INFORMATION: The MCAQD issued a final PSD permit to APS on March 22, 2016, authorizing a major modification to the Ocotillo Power Plant. EPA regulations at 40 CFR 124.19 provided an opportunity for administrative review by the EPA's EAB of this initial permit decision.

The EPA's EAB received one petition for review of the permit, and on September 1, 2016, the EAB issued an Order denying the petition for review. *See In re Arizona Public Service Company Ocotillo Power Plant,* PSD Appeal No. 16–01 (EAB, September 1, 2016) (Order Denying Review). Following the EAB's action, pursuant to 40 CFR 52.21(u) and the MCAQD's PSD delegation agreement with the EPA, the MCAQD issued a final permit decision on September 9, 2016. All conditions of PSD Permit No. PSD16–01, as initially issued by the MCAQD on March 22, 2016, were final and effective as of September 9, 2016.

Dated: November 3, 2016.

Elizabeth Adams,

Acting Director, Air Division, Region IX.

[FR Doc. 2016–28435 Filed 11–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0078; FRL–9955–34–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Pesticide Environmental Stewardship Program Annual Measures Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Pesticide Environmental Stewardship Program Annual Measures Reporting'' (EPA ICR No. 2415.03, OMB Control No. 2070–0188) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through November 30, 2016. Public comments were previously requested via the **Federal Register** (81 FR 15105) on March 21, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before December 28, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OPP–2016–0078, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *OPP_Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Lily G. Negash, Office of Pesticide Programs,

Field & External Affairs Division, 7605P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–347–8515; email address: *negash.lily@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA is requesting renewed approval to offer voluntary participation in the Pesticide Environmental Stewardship Program (PESP). The program uses the information collected to establish partner membership, develop stewardship strategies, measure progress towards stewardship goals, and award incentives. PESP is an EPA partnership program that encourages the use of integrated pest management (IPM) strategies to reduce pests and pesticide risks. IPM is an approach that involves making the best choices from among a series of pest management practices that are both economical and pose the least possible hazard to people, property, and the environment.

While most PESP members are entities that are pesticide end-users, several others are organizations which focus on training, educating, or influencing pesticide users. To become a PESP member, a pesticide user entity or an organization submits an application and a five-year strategy. The strategy outlines how environmental and human health risk reduction goals will be achieved through IPM implementation or education. The program encourages PESP members to track progress towards IPM goals such as: Reductions in unnecessary use of pesticides, cost reductions, and knowledge shared about IPM methodologies. Entities participating in PESP also benefit from technical assistance, and through incentives for achievements at different levels.

PESP is EPA's non-regulatory approach to meeting the goals of the Pollution Prevention Act (PPA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Food Quality Protection Act (FQPA) to reduce pesticide risks in agricultural and non-agricultural settings. Section 2(b) of the PPA of 1990, 42 U.S.C. 13101(b), sets forth ''the national policy of the United States that pollution should be prevented or reduced at the source whenever feasible.'' Section 3 defines source reduction as any practice that ''reduces the amount of any hazardous substance . . . released into the environment'' and ''reduces the hazards to public health and the environment associated with the release of such substances.''

Section 3 of FIFRA requires EPA to regulate pesticides to prevent ''unreasonable adverse effects'' on human health and the environment. Further, FQPA of 1996 (7 U.S.C. 136r–1) requires the U.S. Department of Agriculture and EPA to implement programs in research, demonstration, and education to support the adoption of IPM, make information on IPM widely available to pesticide users, use IPM techniques in carrying out pest management activities, as well as promote IPM through procurement, regulatory policies and other activities.

Form Numbers: Strategy/Progress Reporting Form for PESP Members that are Not Commercial/Residential Pest Control Services (EPA Form No. 9600–01); PESP Membership Application Form (EPA Form 9600–02); and PESP Strategy/Progress Reporting Form for Residential/Commercial Pest Control Service Providers (EPA Form No. 9600–03).

Respondents/affected entities: Entities potentially affected by this ICR are pesticide user companies and organizations, or entities that practice IPM or promote the use of IPM through education and training.

Respondent's obligation to respond: Voluntary, required to obtain or retain a benefit.

Estimated number of respondents: 419 (total).

Frequency of response: Annually and on occasion.

Total estimated burden: 47,665 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $3,126,949 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the estimates: There is an increase of 4,642 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is an adjustment of EPA's projection based on historical information about PESP membership.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2016–28517 Filed 11–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9955–68–ORD]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of One New Equivalent Method

AGENCY: Environmental Protection Agency(EPA).

ACTION: Notice of the designation of a new equivalent method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, one new equivalent method for measuring concentrations of nitrogen dioxide (NO_2) in ambient air.

FOR FURTHER INFORMATION CONTACT: Robert Vanderpool, Exposure Methods and Measurement Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Email: *Vanderpool.Robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining compliance with the NAAQSs. A list of all reference or equivalent methods that have been previously designated by EPA may be found at *http://www.epa.gov/ttn/amtic/criteria.html.*

The EPA hereby announces the designation of one new equivalent method for measuring concentrations of NO_2 in ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on October 26, 2015 (80 FR 65291–65468).

The new equivalent method for NO_2 is an automated method (analyzer) utilizing the measurement principle based on gas phase chemiluminescence reaction of nitric oxide (NO) with ozone, using a photolytic NO_2 to NO converter and the calibration procedure specified in the operation manual. This newly designated equivalent method is identified as follows:

EQNA–1016–241, ''Teledyne Advanced Pollution Instrumentation Model T200P chemiluminescence Nitrogen Oxides Analyzer,'' operated on any full scale range between 0–50 ppb and 0–1000 ppb, with a PTFE filter element or a Kynar® DFU installed in the filter assembly, with any range mode (Single or Dual), at any operating temperature in the range of 15°C to 35°C, with the high efficiency photolytic converter, with software Temperature and Pressure compensation ON, in accordance with the associated instrument manual; and with or without any of the following options: Zero/Span valves, internal Zero/Span permeation oven (IZS), Nafion-type sample gas conditioner, external communication and data monitoring interfaces; and the NumaView™ software.

This application for an equivalent method determination for this candidate method was received by the Office of Research and Development on September 19, 2016. This analyzer is commercially available from the applicant, Teledyne Advanced Pollution Instrumentation, Inc., 9480 Carroll Park Drive, San Diego, CA 92121–2251.

A representative test analyzer has been tested in accordance with the applicable test procedures specified in 40 CFR part 53, as amended on October 26, 2015. After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method.

As a designated equivalent method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, this method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.,* configuration or operational settings) specified in the designated method description (see the identification of the method above).

Use of the method also should be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program,'' EPA–454/B–13–003, (both available at *http://www.epa.gov/ttn/amtic/qalist.html*). Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

Consistent or repeated noncompliance with any of these conditions should be reported to: Director, Exposure Methods and Measurement Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Dated: November 18, 2016.

Jennifer Orme-Zavaleta,

Director, National Exposure Research Laboratory.

[FR Doc. 2016–28562 Filed 11–25–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request (3064–0112, –0125, –0127 & –0175)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on renewal of the information collections described below.

DATES: Comments must be submitted on or before January 27, 2017.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Jennifer Jones (202–898–6768), Counsel, MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Real Estate Lending Standards.

OMB Number: 3064–0112.

Form Number: None.

Affected Public: Insured State Nonmember Banks and State Savings Associations.

Burden Estimate:

	Type of burden	Estimated number of respondents	Estimated number of responses	Estimated time per response (hours)	Frequency of response	Total annual estimated burden (hours)
Real Estate Lending Standards ...	Recordkeeping	3,878	1	20	On Occasion	77,560

General Description of Collection: Institutions use real estate lending policies to guide their lending operations in a manner that is consistent with safe and sound banking practices and appropriate to their size and nature and scope of their operations. These policies should address certain lending considerations, including loan-to-value limits, loan administration policies, portfolio diversification standards, and

documentation, approval, and reporting requirements.

2. *Title:* Foreign Banking and Investment by Insured State Nonmember Banks.

OMB Number: 3064–0125.

Form Number: None.

Affected Public: Insured State Nonmember Banks.

Burden Estimate:

	Type of burden	Estimated number of respondents	Estimated number of responses	Estimated time per response (hours)	Frequency of response	Total annual estimated burden (hours)
Notice of foreign branch establishment or foreign branch closure (303.182(a) and (d)).	Reporting	1	1	2	On Occasion	2
Prior notice (45 days) of foreign branch establishment (303.182(b)).	Reporting	1	1	6	On Occasion	6
Application to establish a foreign branch or to engage in certain activities through a foreign branch (303.182(b)).	Reporting	1	1	40	On Occasion	40
Notice of foreign investment (303.183(a)).	Reporting	1	1	2	On Occasion	2
Prior notice (45 days) of investment in foreign organizations (303.183(b)).	Reporting	1	1	6	On Occasion	6
Application to invest in foreign organizations, or to engage in certain activities through foreign organizations (303.183(b)).	Reporting	2	1	60	On Occasion	120
Notice of foreign divestiture (303.183(d)).	Reporting	2	1	1	On Occasion	2
Total Reporting Burden Hours.						178
Supervision and Recordkeeping of Foreign Activities.	Recordkeeping	20	1	400	On Occasion	8,000
Total Recordkeeping Burden Hours.						8,000

General Description of Collection: The Federal Deposit Insurance (FDI) Act requires state nonmember banks to obtain FDIC consent to establish or operate a branch in a foreign country, or to acquire and hold, directly or indirectly, stock or other evidence of ownership in any foreign bank or other entity. The FDI Act also authorizes the FDIC to impose conditions for such consent and to issue regulations related thereto. This collection is a direct consequence of those statutory requirements.

3. *Title:* Occasional Qualitative Surveys.

OMB Number: 3064–0127.

Form Number: None.

Affected Public: Insured Depository Institutions and Their Customers.

Burden Estimate:

	Type of burden	Estimated number of respondents	Estimated number of responses	Estimated time per response (hours)	Frequency of response	Total annual estimated burden (hours)
Occasional generic qualitative surveys.	Reporting	850	15	1	On Occasion	12,750

General Description of Collection: The FDIC is requesting renewal of this approved collection to use occasional qualitative surveys to gather information from the public. In general, these surveys do not involve more than 850 respondents, do not require more than one hour per respondent, and are completely voluntary in nature. It is not contemplated that more than 15 such surveys will be conducted in any given year. The purpose of the surveys is, in general terms, to obtain anecdotal information about regulatory burden, problems or successes in the bank supervisory process (including both safety-and-soundness and consumer-related exams), the perceived need for regulatory or statutory change, and similar concerns. The information in these surveys is anecdotal in nature, that is, samples are not necessarily random, the results are not necessarily representative of a larger class of potential respondents, and the goal is not to produce a statistically valid and reliable database. Rather, the surveys are expected to yield anecdotal information about the particular experiences and opinions of members of the public,

primarily staff at respondent banks or bank customers. The information is used to improve the way FDIC relates to its clients, to develop agendas for regulatory or statutory change, and in some cases simply to learn how particular policies or programs are working, or are perceived in particular cases.

4. *Title:* Interagency Guidance on Sound Incentive Compensation Practices.

OMB Number: 3064–0175.

Form Number: None.

Affected Public: Insured State Nonmember Banks and State Savings Associations.

Burden Estimate:

	Type of burden	Estimated number of respondents	Estimated number of responses	Estimated time per response (hours)	Frequency of response	Total annual estimated burden (hours)
Annual maintenance of policies and procedures.	Recordkeeping	3,878	1	40	Annual	155,120

General Description of Collection: The Guidance on Sound Incentive Compensation Practices helps ensure that incentive compensation policies at insured state nonmember banks and state savings associations do not encourage excessive risk-taking and are consistent with the safety and soundness of the organization. Under the Guidance, banks are required to: (i) Have policies and procedures that identify and describe the role(s) of the personnel and units authorized to be involved in incentive compensation arrangements, identify the source of significant risk-related inputs, establish appropriate controls governing these inputs to help ensure their integrity, and identify the individual(s) and unit(s) whose approval is necessary for the establishment or modification of incentive compensation arrangements; (ii) create and maintain sufficient documentation to permit an audit of the organization's processes for incentive compensation arrangements; (iii) have any material exceptions or adjustments to the incentive compensation arrangements established for senior executives approved and documented by its board of directors; and (iv) have its board of directors receive and review, on an annual or more frequent basis operation of the organization's incentive compensation system in providing risk-taking incentives that are consistent with the organization's safety and soundness.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, 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 collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 22nd day of November 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–28468 Filed 11–25–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, December 1, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Draft Advisory Opinion 2016–20: Christoph Mlinarchik, JD, CFCM.

Draft Advisory Opinion 2016–21: Great America PAC.

Proposed Amendments to Directive 52.

Proposed Final Audit Report on the Utah Republican Party (A13–16).

2016 Legislative Recommendations.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shelley E. Garr, Deputy Secretary, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2016–28727 Filed 11–23–16; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 16–17]

Notice of Filing of Complaint and Assignment

Connie Lane Christy and Christy Collection International Inc. on behalf of the Annie Grace Foundation for the Children of Bali Indonesia v. Air 7 Seas Transport Logistics Inc.

Notice is given that a Complaint has been filed with the Federal Maritime Commission (Commission) by Connie Lane Christy and Christy Collection International Inc. on behalf of The Annie Grace Foundation for the Children of Bali Indonesia, hereinafter ''Complainants,'' against Air 7 Seas Transport Logistics Inc., hereinafter ''Respondent.'' Complainants alleges that Respondent is an ocean freight forwarder located in California.

Complainant alleges that Respondent has violated the Shipping Act of 1984 in connection with a shipment of personal effects shipped from Charleston, South Carolina to Bali, Indonesia. Complainants allege they entered into a contract for ''door to door'' service, but such service was not provided, the goods were never delivered and are now ''lost''. Complainant seeks reparations of $520,000 ''for the loss of goods, and the loss of the efforts involved in forming this Foundation.''

Complainants allege that ''the service performed as an Ocean Freight Forwarder were in violation of definitions set forth in that Act.'' The complainant requests ''the courts judgement in this case.''

The full text of the complaint can be found in the Commission's Electronic Reading Room at *www.fmc.gov/16-17*.

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by November 21, 2017 and the final

decision of the Commission shall be issued by June 4, 2018.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–28474 Filed 11–25–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 22, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *NATCOM Bancshares, Inc., Superior, Wisconsin;* to acquire 49 percent of the shares of Republic Bancshares, Inc., Duluth, Minnesota, and thereby indirectly acquire Republic Bank, Inc., Duluth, Minnesota.

B. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *United Community Financial Corp, Youngstown, Ohio;* to become a bank holding company by acquiring Ohio Legacy Corp, North Canton, Ohio, and thereby acquire Premier Bank and Trust Company, North Canton, Ohio.

Board of Governors of the Federal Reserve System, November 22, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–28571 Filed 11–25–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 12, 2016.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Grand Capital Corporation, Tulsa, Oklahoma;* to engage in extending credit and servicing loans, pursuant to section 225.28(b)(1).

Board of Governors of the Federal Reserve System, November 22, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–28570 Filed 11–25–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED

[September 1, 2016 Thru September 30, 2016]

09/01/2016		
20161610	G	S&P Global Inc.; Dr. Gary N. Ross; S&P Global Inc.
20161656	G	FR XIII Charlie AIV, L.P.; Chesapeake Energy Corporation; FR XIII Charlie AIV, L.P.
20161662	G	Exelon Corporation; Entergy Corporation; Exelon Corporation.

EARLY TERMINATIONS GRANTED—Continued

[September 1, 2016 Thru September 30, 2016]

09/06/2016		
20160982	G	Eugenie Patri Sabastien EPS, SA; Mountain View Brewery, LLC; Eugenie Patri Sabastien EPS, SA.
20160984	G	Jorge Paulo Lemann; Mountain View Brewery, LLC; Jorge Paulo Lemann.
20161430	G	Oak Hill Capital Partners IV (Onshore), L.THRUP.; Oxford Networks Holdings, Inc.; Oak Hill Capital Partners IV (Onshore), L.P.
20161582	G	Mr. Shi Yuzhu; Hamlet Holdings LLC; Mr. Shi Yuzhu.
20161584	G	Scopia PX LLC; Forest City Realty Trust, Inc.; Scopia PX LLC.
20161586	G	The Scopia International Trust; Forest City Realty Trust, Inc.; The Scopia International Trust.
20161587	G	Avnet, Inc.; Premier Farnell plc; Avnet, Inc.
20161591	G	Mitsubishi UFJ Financial Group, Inc.; Guggenheim Capital, LLC; Mitsubishi UFJ Financial Group, Inc.
20161599	G	Krona Acquisition S. a. r. l.; Sami Sagol; Krona Acquisition S. a. r. l.
20161600	G	Krona Acquisition S. a. r. l.; Itzhak Sagol; Krona Acquisition S. a. r. l.
20161625	G	James L. Dolan and Kristin A. Dolan; The Madison Square Garden Company; James L. Dolan and Kristin A. Dolan.
20161628	G	Carlyle Europe Technology Partners III, L.P.; Clearlake Capital Partners II, L.P.; Carlyle Europe Technology Partners III, L.P.
20161637	G	Verizon Communications Inc.; Fleetmatics Group PLC; Verizon Communications Inc.
20161658	G	Golden Gate Capital Opportunity Fund, L.P.; Levine Leichtman Capital Partners IV, L.P.; Golden Gate Capital Opportunity Fund, L.P.
20161664	G	Genstar Capital Partners VII, L.P.; Marlin Equity III, L.P.; Genstar Capital Partners VII, L.P.
20161670	G	Vincent Johnson; Takata Corporation; Vincent Johnson.
20161674	G	Teleperformance S.A.; ABRY Partners IV, L.P.; Teleperformance S.A.
20161675	G	Bravo TopCo LP; WSHP JLL Holdings, LLC; Bravo TopCo LP.
20161677	G	Ares Corporate Opportunities Fund IV, L.P.; Smart & Final Stores, Inc.; Ares Corporate Opportunities Fund IV, L.P.
20161678	G	Ares Corporate Opportunities Fund III, L.P.; Smart & Final Stores, Inc.; Ares Corporate Opportunities Fund III, L.P.
20161679	G	Holly Energy Partners, L.P.; HollyFrontier Corporation; Holly Energy Partners, L.P.
20161682	G	GTCR Fund XI/B LP; Richard Hogrefe, Ph.D.; GTCR Fund XI/B LP.
20161684	G	TA NIPA Parent, LLC; Vizient, Inc.; TA NIPA Parent, LLC.
20161685	G	LSF9 Pharaoh LP; Sterling Group Partners III, L.P.; LSF9 Pharaoh LP.
20161694	G	Mill Road Capital II, L.P.; Skullcandy, Inc.; Mill Road Capital II, L.P.
09/07/2016		
20161422	G	OSI Systems, Inc.; American Science and Engineering, Inc.; OSI Systems, Inc.
20161619	G	Lonza Group Ltd.; Kainos Capital Partners, L.P.; Lonza Group Ltd.
20161640	G	Baker Brothers Life Sciences, L.P.; Seattle Genetics, Inc.; Baker Brothers Life Sciences, L.P.
20161660	G	Palladium Equity Partners IV, L.P.; Del Real, LLC; Palladium Equity Partners IV, L.P.
20161683	G	Aurora Equity Partners V L.P.; Lab Holdings, Inc.; Aurora Equity Partners V L.P.
09/08/2016		
20161681	G	American Securities Partners VII, L.P.; Graham Partners III, L.P.; American Securities Partners VII, L.P.
09/09/2016		
20161646	G	TPG VII DE AIV II, LP; ABRY Partners VI, L.P.; TPG VII DE AIV II, LP.
09/12/2016		
20161650	G	General Electric Company; Bonsall Hart; General Electric Company.
20161668	G	ZF Friedrichshafen AG; Haldex AB; ZF Friedrichshafen AG.
20161688	G	New Mountain Partners III Cayman (AIV–B), L.P.; New Mountain Partners III, L.P.; New Mountain Partners III Cayman (AIV–B), L.P.
20161695	G	Sheehy Auto Stores, Inc.; Ronald F. Rosner; Sheehy Auto Stores, Inc.
09/13/2016		
20161653	G	Celgene Corporation; Dr. Erich Hunziker; Celgene Corporation.
20161697	G	Koch Industries, Inc.; Golden Gate Capital Opportunity Fund, L.P.; Koch Industries, Inc.
20161714	G	Z Capital Affinity Holdings, LLC; Affinity Gaming, LLC; Z Capital Affinity Holdings, LLC.
20161721	G	Pilot Corporation; PFJ Southeast LLC; Pilot Corporation.
09/14/2016		
20161717	G	AEA Investors Small Business Fund III LP; Transgroup Express Seller, Inc.; AEA Investors Small Business Fund III LP.
20161720	G	Carlyle U.S. Equity Opportunity Fund II, L.P.; Nielsen Holdings plc; Carlyle U.S. Equity Opportunity Fund II, L.P.
09/15/2016		
20160740	G	Nexstar Broadcasting Group, Inc.; Media General, Inc.; Nexstar Broadcasting Group, Inc.
20161709	G	UnitedHealth Group Incorporated; UANT Ventures, L.P.; UnitedHealth Group Incorporated.

EARLY TERMINATIONS GRANTED—Continued

[September 1, 2016 Thru September 30, 2016]

09/16/2016		
20161638	G	Aristeia International Limited; Yahoo! Inc.; Aristeia International Limited.
20161705	G	Post Holdings, Inc.; National Pasteurized Eggs, Inc.; Post Holdings, Inc.
09/19/2016		
20161680	G	Xylem, Inc.; The Resolute SIE, L.P.; Xylem, Inc.
20161686	G	Wells Fargo & Company; Harindra de Silva; Wells Fargo & Company.
20161710	G	ValueAct Capital Master Fund, L.P.; Seagate Technology plc; ValueAct Capital Master Fund, L.P.
20161730	G	Paine & Partners Capital Fund IV, L.P.; Inverness Graham Investments II, L.P.; Paine & Partners Capital Fund IV, L.P.
20161734	G	Boral Limited; Bricks Holdings LLC; Boral Limited.
20161735	G	LSF9 Stardust Holdings, LP; Bricks Holdings LLC; LSF9 Stardust Holdings, LP.
20161736	G	The Southern Company; Calpine Corporation; The Southern Company.
20161738	G	Roark Capital Partners IV AIV I–U, LP; James John Liautaud; Roark Capital Partners IV AIV I–U, LP.
20161741	G	EOG Resources, Inc.; Yates Petroleum Corporation; EOG Resources, Inc.
20161746	G	Pioneer Super Holdings, Inc.; Spectrum Tracer Services, LLC; Pioneer Super Holdings, Inc.
09/20/2016		
20161711	G	GI Partners Fund IV L.P.; Pamlico Capital III, L.P.; GI Partners Fund IV L.P.
20161731	G	Kainos Capital; The Thomas H. Brown Family Trust; Kainos Capital.
20161732	G	Kainos Capital; The Jerry P. Brown Family Trust; Kainos Capital.
20161737	G	TSG7 A L.P.; GI Partners Fund II, L.P.; TSG7 A L.P.
09/21/2016		
20161751	G	Filtration Group Equity LLC; Essentra plc; Filtration Group Equity LLC.
20161752	G	Tailwind Capital Partners II, L.P.; Corinthian Equity Fund, L.P.; Tailwind Capital Partners II, L.P.
20161757	G	LSF9 Stardust Holdings, LP; Roxanne Fie Anderson; LSF9 Stardust Holdings, LP.
09/22/2016		
20160301	S	TDK Corporation; Hutchinson Technology Incorporated; TDK Corporation
09/23/2016		
20161583	G	LogMeIn, Inc.; Citrix Systems, Inc.; LogMeIn, Inc.
20161696	G	Phillips 66; Chevron Corporation; Phillips 66.
20161756	G	Diane M. Hendricks; USG Corporation; Diane M. Hendricks.
20161762	G	Seismic Holding LLC; Energy Future Holdings Corp.; Seismic Holding LLC.
20161763	G	Sinocare Inc.; Shenzhen Xinnuo Health Industry Investment Limited; Sinocare Inc.
20161770	G	Hangzhou Liaison Interactive Information Technology Co., Ltd; Fred Chang; Hangzhou Liaison Interactive Information Technology Co., Ltd.
20161771	G	Koch Industries, Inc.; Energy Future Holdings Corp.; Koch Industries, Inc.
20161774	G	Clayton Dubilier & Rice Fund IX, L.P.; Medical Depot Holdings, Inc.; Clayton Dubilier & Rice Fund IX, L.P.
20161775	G	Patriot Supply Holdings, Inc.; CHS Private Equity V LP; Patriot Supply Holdings, Inc.
20161777	G	Green Plains, Inc.; Stone Canyon Industries II, Inc.; Green Plains, Inc.
20161784	G	John Bean Technologies Corporation; Michael E. Miller; John Bean Technologies Corporation.
20161791	G	Canada Pension Plan Investment Board; Star Atlantic Waste Holdings, L.P.; Canada Pension Plan Investment Board.
20161798	G	Parexel International Corporation; Maria Larson; Parexel International Corporation.
09/26/2016		
20161667	G	Oracle Corporation; NetSuite Inc.; Oracle Corporation.
20161747	G	Arch Capital Group Ltd.; American International Group, Inc.; Arch Capital Group Ltd.
20161753	G	Astellas Pharma Inc.; Cytokinetics, Incorporated; Astellas Pharma Inc.
09/27/2016		
20161764	G	International Flavors & Fragrances Inc.; David Michael & Co., Inc 2015 Voting Trust; International Flavors & Fragrances Inc.
20161776	G	Crestview Partners III, L.P.; Accuride Corporation; Crestview Partners III, L.P.
20161789	G	ArcLight Energy Partners Fund VI, L.P.; GS Road Investors, L.L.C.; ArcLight Energy Partners Fund VI, L.P.
09/28/2016		
20161698	G	Easterly Acquisition Corp; Sungevity, Inc.; Easterly Acquisition Corp.
20161779	G	Vantage Energy Investment II, LLC; Vantage Energy Investment, LLC; Vantage Energy Investment II, LLC.
20161785	G	TPG Partners VII–AIV II, L.P.; Codan Trust Company (Cayman) Limited; TPG Partners VII–AIV II, L.P.
20161788	G	Canada Pension Plan Investment Board; Codan Trust Company (Cayman) Limited; Canada Pension Plan Investment Board.

EARLY TERMINATIONS GRANTED—Continued

[September 1, 2016 Thru September 30, 2016]

09/29/2016		
20161733	G	Inception Topco, Inc.; Rackspace Hosting, Inc.; Inception Topco, Inc.
20161754	G	Starboard Value and Opportunity Fund Ltd.; Perrigo Company plc; Starboard Value and Opportunity Fund Ltd.
20161755	G	Starboard Leaders Fund LP; Perrigo Company plc; Starboard Leaders Fund LP.
20161766	G	R. Daniel Peed; United Insurance Holdings Corp.; R. Daniel Peed.
20161767	G	United Insurance Holdings Corp.; R. Daniel Peed; United Insurance Holdings Corp.
20161768	G	Warburg Pincus Private Equity XII, L.P.; Intelligent Medical Objects, Inc.; Warburg Pincus Private Equity XII, L.P.
09/30/2016		
20161729	G	New Mountain Partners IV, L.P.; Comvest Investment Partners III, LP; New Mountain Partners IV, L.P.
20161780	G	Cap Vest Equity Partners III, L.P.; Mallinckrodt plc; Cap Vest Equity Partners III, L.P.
20161805	G	Nucor Corporation; David Grohne; Nucor Corporation.
20161807	G	The Goldman Sachs Group, Inc.; Gryphon Partners 3.5, L.P.; The Goldman Sachs Group, Inc.
20161808	G	Beijing Miteno Communication Technology; Zhiyong Zhang; Beijing Miteno Communication Technology.

FOR FURTHER INFORMATION CONTACT: Theresa Kingsberry Program Support Specialist, Federal Trade Commission Premerger Notification Office Bureau of Competition, Room CC–5301, Washington, DC 20024, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–28473 Filed 11–25–16; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED

[October 1, 2016 thru October 31, 2016]

10/03/2016		
20161722	G	Hainan Cihang Charitable Foundation, Blackstone Capital Partners (Cayman II) VI L.P., Hainan Cihang Charitable Foundation.
20161727	G	Wellforce Inc., Hallmark Health Corporation, Wellforce Inc.
10/04/2016		
20161821	G	Oaktree Power Opportunties Fund IV, L.P., Sheikh Hamad Bin Jassim Al Thani, Oaktree Power Opportunties Fund IV, L.P.
10/05/2016		
20161818	G	Unilever N.V., Seventh Generation, Inc., Unilever N.V.
10/12/2016		
20161750	G	Komatsu Ltd., Joy Global Inc., Komatsu Ltd.
20161765	G	Greeneden Topco S.C.A., Interactive Intelligence Group, Inc., Greeneden Topco S.C.A.
20161801	G	Madison Dearborn Capital Partners VII–A, L.P., Oak Hill Capital Partners III, L.P., Madison Dearborn Capital Partners VII–A, L.P.
20161804	G	Google Inc., Apigee Corporation, Google Inc.
20161809	G	Vista Foundation Fund III, L.P., Actua Corporation, Vista Foundation Fund III, L.P.
10/13/2016		
20161786	G	AT&T Inc., Deutsche Telekom AG, AT&T Inc.
20161787	G	Deutsche Telekom AG, AT&T Inc., Deutsche Telekom AG.
20161822	G	Harbert Power Fund V, LLC, FREI Bravo AIV, L.P., Harbert Power Fund V, LLC.

EARLY TERMINATIONS GRANTED—Continued

[October 1, 2016 thru October 31, 2016]

20161823	G	Liaoyang Zhongwang Industry Development Center L.P., OCM Opportunities ALS Holdings, L.P., Liaoyang Zhongwang Industry Development Center L.P.
20161825	G	Inversiones Angelini y Compania Limitada, Delek US Holdings, Inc., Inversiones Angelini y Compania Limitada.
20161826	G	DTE Energy, M3 Midstream LLC, DTE Energy.
20161829	G	GTCR Fund XI/B LP, Riverchase Holdings MSO, LLC, GTCR Fund XI/B LP.
20161831	G	Accenture plc, Management Consulting Group PLC, Accenture plc.
20161833	G	Energy Trading Innovations LLC, Anadarko Petroleum Corporation, Energy Trading Innovations LLC.
20161838	G	TMC Parent Corp., Terra Millennium Corporation, TMC Parent Corp.
20161839	G	Vista Equity Partners Fund VI, L.P., Infoblox, Inc., Vista Equity Partners Fund VI, L.P.
20161842	G	Altaris Health Partners III, L.P., Levine Leichtman Capital Partners SBIC Fund, L.P., Altaris Health Partners III, L.P.
20161848	G	Ronald O. Perelman, SIGA Technologies, Inc., Ronald O. Perelman.
20170001	G	Constellation Brands, Inc., High West Holdings, LLC, Constellation Brands, Inc.
10/14/2016		
20161792	G	Providence Equity L.L.C., Nicholas S. Schorsch, Providence Equity L.L.C.
20170014	G	KBR, Inc., Crown Enterprises, L.L.C., KBR, Inc.
10/17/2016		
20161795	G	Pershing Square, L.P., Chipotle Mexican Grill, Inc., Pershing Square, L.P.
20161796	G	Pershing Square International, Ltd., Chipotle Mexican Grill, Inc., Pershing Square International, Ltd.
20161797	G	Pershing Square Holdings, Ltd., Chipotle Mexican Grill, Inc., Pershing Square Holdings, Ltd.
20161828	G	Total S.A., Chesapeake Energy Corporation, Total S.A.
20161830	G	John Menzies plc, BBA Aviation plc, John Menzies plc.
20170006	G	Tempe Holdco Corporation, DTS Inc., Tempe Holdco Corporation.
20170016	G	Argonaut Private Equity Fund III, L.P., Wynnchurch Capital Partners II, L.P., Argonaut Private Equity Fund III, L.P.
20170024	G	Rice Energy Inc., Vantage Energy Holdings, LLC, Rice Energy Inc.
20170025	G	Ferdinand Porsche Familien-Privatstiftung, Navistar International Corporation, Ferdinand Porsche Familien-Privatstiftung.
20170031	G	Frank's International N.V., Bain Capital Fund X, L.P., Frank's International N.V.
20170033	G	Rice Midstream Partners LP, Rice Energy Inc., Rice Midstream Partners LP.
20170037	G	Quantum Energy Partners V, LP, Rice Energy Inc., Quantum Energy Partners V, LP.
20170038	G	Quantum Energy Partners IV, LP, Rice Energy Inc., Quantum Energy Partners IV, LP.
20170050	G	Graham Partners IV, L.P., Frontenac IX Private Capital Limited Partnership, Graham Partners IV, L.P.
10/18/2016		
20161832	G	Roche Holding Ltd., AT Impf GmbH, Roche Holding Ltd.
20170009	G	Allergan plc, Tobira Therapeutics, Inc., Allergan plc.
10/19/2016		
20170018	G	Winnebago Industries, Inc., Grand Design RV, LLC, Winnebago Industries, Inc.
20170021	G	Constellation Brands, Inc., Charles Smith, Constellation Brands, Inc.
20170028	G	John Bean Technologies Corporation, Dover Corporation, John Bean Technologies Corporation.
20170047	G	Ardian LBO Fund VI A S.L.P., Daniel Weber, Ardian LBO Fund VI A S.L.P.
10/21/2016		
20161820	G	Great Plains Energy Incorporated, Westar Energy, Inc., Great Plains Energy Incorporated.
20161841	G	Lovell Minnick Equity Partners IV LP, Blake Johnson, Lovell Minnick Equity Partners IV LP.
20170049	G	Global Via Infraestructuras, S.A., Macquarie Group Limited, Global Via Infraestructuras, S.A.
20170056	G	Eldorado Resorts, Inc., Isle of Capri Casinos, Inc., Eldorado Resorts, Inc.
20170062	G	Aon plc, New Mountain Partners III, L.P., Aon plc.
20170063	G	Michael J. Angelakis, Providence Equity Partners VII–A L.P., Michael J. Angelakis.
20170064	G	KAMC Holdings, Inc., Cortec Group Fund IV, L.P., KAMC Holdings, Inc.
10/24/2016		
20160842	G	AEA Investors Fund V LP, Walgreens Boots Alliance, Inc., AEA Investors Fund V LP.
20161815	G	Anadarko Petroleum Corporation, Freeport-McMoRan Inc., Anadarko Petroleum Corporation.
20161817	G	Renesas Electronics Corporation, Intersil Corporation, Renesas Electronics Corporation.
20170075	G	Montagu V LP, L'Air Liquide S.A., Montagu V LP.
10/25/2016		
20161835	G	Platinum Equity Capital Partners III, L.P., Emerson Electric Co., Platinum Equity Capital Partners III, L.P.
20170032	G	salesforce.com, inc., Krux Digital, Inc., salesforce.com, inc.
20170034	G	Tench Coxe, NVIDIA Corporation, Tench Coxe.
20170036	G	Accenture plc, DayNine Consulting, Inc., Accenture plc.
20170078	G	Odyssey Investment Partners Fund IV AIV I, L.P., Evergreen Pacific Partners II, L.P., Odyssey Investment Partners Fund IV AIV I, L.P.

EARLY TERMINATIONS GRANTED—Continued

[October 1, 2016 thru October 31, 2016]

10/26/2016		
20170011	G	Manta Holdings, L.P., Intel Corporation, Manta Holdings, L.P.
20170041	G	ArcLight Energy Partners Fund VI, L.P., American Electric Power Company, Inc., ArcLight Energy Partners Fund VI, L.P.
20170046	G	Hitachi, Ltd., Bradken Limited, Hitachi, Ltd.
20170076	G	WellCare Health Plans, Inc., California Physicians' Service, WellCare Health Plans, Inc.
20170077	G	Consolidated Edison, Inc., Renewable Energy Trust Capital, Inc., Consolidated Edison, Inc.
20170079	G	Calpine Corporation, Noble Group Limited, Calpine Corporation.
10/27/2016		
20170012	G	Bertram Growth Capital II, L.P., Trademark Games Holdings, LLC, Bertram Growth Capital II, L.P.
20170040	G	Carlyle Partners VI, L.P., ProKarma, Inc., Carlyle Partners VI, L.P.
20170057	G	Kendall Automotive Group, Inc., Cal Worthington Trust, Kendall Automotive Group, Inc.
20170070	G	Integral 2 Limited Partnership, Aderans Company Limited, Integral 2 Limited Partnership.
20170072	G	Aralez Pharmaceuticals Inc., AstraZeneca PLC, Aralez Pharmaceuticals Inc.
20170087	G	AMETEK, Inc., Main Street Hi-Rel, LLC, AMETEK, Inc.
20161845	G	Elliott International Limited, Mentor Graphics Corporation, Elliott International Limited.
20161846	G	Elliott Associates, L.P., Mentor Graphics Corporation, Elliott Associates, L.P.
20161847	G	Windjammer Senior Equity Fund IV, L.P., Advanced Instruments, Inc., Windjammer Senior Equity Fund IV, L.P.
20170074	G	ABRY Partners VII, L.P., Kenneth A. Barnett, ABRY Partners VII, L.P.
20170086	G	Polaris Industries Inc., ORIX Corporation, Polaris Industries Inc.
20170088	G	Al Aqua (Cayman) Holdings Limited, Centerbridge Capital Partners (Cayman), L.P., Al Aqua (Cayman) Holdings Limited.
20170090	G	Dril-Quip, Inc., Pearce Industries, Inc., Dril-Quip, Inc.
20170092	G	Kirin Holdings Company, Ltd., The Brooklyn Brewery Corporation, Kirin Holdings Company, Ltd.
20170094	G	Packaging Corporation of America, Robert W. Haddad, Sr. and Helen L. Haddad, Packaging Corporation of America.
20170099	G	QUIKRETE Holdings, Inc., Contech Holdings, Inc., QUIKRETE Holdings, Inc.
20170100	G	LAL Family Partners L.P., Luxory Brand Partners (BVI) Limited, LAL Family Partners L.P.
20170106	G	CGI Group, Inc., William C. Robichaud, Sr., CGI Group, Inc.

FOR FURTHER INFORMATION CONTACT: Theresa Kingsberry, Program Support Specialist, Federal Trade Commission Premerger Notification Office Bureau of Competition, Room CC–5301, Washington, DC 20024, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–28472 Filed 11–25–16; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10490]

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: The necessity and utility of the proposed information collection for the proper performance of the agency's functions; the accuracy of the estimated burden; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by January 24, 2017.

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–10490 Program Integrity and Additional State Information Collections

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:* Program Integrity and Additional State Information Collections; *Use:* On June 19, 2013, HHS published the proposed rule CMS–9957–P: *Program Integrity: Exchanges, SHOP, Premium Stabilization Programs, and Market Standards* (78 FR 37302) (Program Integrity Proposed Rule). Among other things, the Program Integrity Proposed Rule sets forth financial integrity provisions and protections against fraud and abuse. On January 30, 2013, CMS published *Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges under the Affordable Care Act* (CMS–2334–P) (E&E II Proposed Rule). On August 30, 2013, HHS published the final rule CMS–9957–F*: Program Integrity: Exchanges, SHOP, Eligibility Appeals* (Program Integrity final rule), finalizing a number of the provisions from the Program Integrity and E&E II Proposed Rules. The third party disclosure requirements and data collections in the Program Integrity final rule support the oversight of qualified health plan (QHP) issuers in Federally-facilitated Exchanges (FFEs) and other provisions. The data collections will assist HHS in adjudicating eligibility appeals of Exchange eligibility determinations, in accordance with Federal standards. *Form Number:* CMS–10490 (OMB control number 0938–1213). *Frequency:* Once, Yearly; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 39; *Number of Responses:* 39,475; *Total Annual Hours:* 2,296,860. (For policy questions regarding this collection, contact Lisa Eggleston at 410–786–8990)

Dated: November 21, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–28434 Filed 11–25–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10628]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid 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 December 28, 2016.

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:* New collection (Request for a new OMB control number); *Title of Information Collection:* Initial Request for State Implemented Moratorium Form; *Use:* The CMS promulgated 42 CFR 424.570 in order to comply with that statute, which requires that prior to implementing state Medicaid moratoria the state Medicaid agency must notify the Secretary in writing, including all of the details of the moratoria, and obtain the Secretary's concurrence with the imposition of the moratoria. The above regulation is promulgated from 1866 (j)(7) of the Social Security Act, which allows for the imposition of temporary moratorium. The Initial Request for State Medicaid Implemented Moratorium, named the ''Initial Request

for State Medicaid Implemented Moratorium'' was created to collect that data, in a uniform manner, which the states report to CMS when they request a moratorium. Currently, CMS is collecting this data on an ad-hoc basis, however this process needs to be standardized so that moratoria decisions are being made based on the same criteria each time.

The goal of the Initial Request for State Medicaid Implemented Moratorium form is to provide a uniform application process that all of the states may follow so that CMS is able to administer the Medicaid or Children's Health Insurance Program moratorium process in a standardized and repeatable manner. This form creates a standardized process so that moratoria decisions are being made with the same criteria each time. *Form Number:* CMS–10628 (OMB control number: 0938–NEW); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 15; *Total Annual Responses:* 15; *Total Annual Hours:* 75. (For policy questions regarding this collection contact Cheryl Cooper at 410–786–8624.)

Dated: November 21, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–28433 Filed 11–25–16; 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

Title: National Survey of Child and Adolescent Well-Being-Third Cohort (NSCAW III): Data Collection

OMB No.: 0970–0202

Description: The Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS) intends to collect data on a third cohort of children and families for the National Survey of Child and Adolescent Well-Being (NSCAW III). NSCAW is the only source of nationally representative, longitudinal, firsthand information about the functioning and well-being, service needs, and service utilization of children and families who come to the attention of the child welfare system. Information is collected about children's cognitive, social, emotional, behavioral, and adaptive functioning, as well as family and community factors that are likely to influence their functioning. Family service needs and service utilization also are addressed in the data collection.

A previous notice provided the opportunity for public comment on the proposed Phase 1 recruitment and sampling process (FR V.81, 4/8/2016). This notice is specific to the Phase 2 data collection activities: (1) baseline and (2) 18-month follow-up data collection. Data collection includes child interviews and direct assessments, as well as caregiver and caseworker interviews. The overall goal is to maintain the strengths and continuity of the prior surveys while better positioning the study to address changes in the child welfare population.

Respondents: Children, and their associated caregivers and caseworkers.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents (rounded)	Number of responses per respondent	Average burden hours per response	Annual burden hours
Baseline					
Child Interview and Direct Assessments	4,565	1,522	1	1.33	2,024
Caregiver Interview	4,565	1,522	1	1.67	2,542
Caseworker Interview	1,826	609	3	.75	1,370
18-Month Follow-up					
Child Interview and Direct Assessment	3,650	1,217	1	1.33	1,619
Caregiver Interview	3,650	1,217	1	1.67	2,032
Caseworker Interview	840	280	3	1.0	840
Estimated Total Annual Burden Hours:					10,427

In compliance with the requirements of Section 3506(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, 330 C Street SW., Washington, DC 20201, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@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.

Mary Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2016–28431 Filed 11–25–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–3083]

Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Requirements and Commitments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: Under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), the Food and Drug Administration (FDA or Agency) is required to report annually in the **Federal Register** on the status of postmarketing requirements (PMRs) and postmarketing commitments (PMCs) required of, or agreed upon by, holders of approved drug and biological products. This notice is the Agency's report on the status of the studies and clinical trials that applicants have agreed to, or are required to, conduct. A supplemental report containing additional information and analyses on the status of PMRs and PMCs is available on FDA's Web site.[1]

FOR FURTHER INFORMATION CONTACT: Cathryn C. Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6484, Silver Spring, MD 20993–0002, 301–796–0700; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

A. Postmarketing Requirements and Commitments

A PMR is a study or clinical trial that an applicant is required by statute or regulation to conduct postapproval. A PMC is a study or clinical trial that an applicant agrees in writing to conduct postapproval, but that is not required by statute or regulation. PMRs and PMCs can be issued upon approval of a drug[2] or postapproval, if warranted.

FDA can require application holders to conduct postmarketing studies and clinical trials:

- To assess a known serious risk, assess signals of serious risk, or identify an unexpected serious risk related to the use of a drug product (section 505(o)(3) of the FD&C Act (21 U.S.C. 355(o)(3)), as added by the Food and Drug Administration Amendments Act of 2007 (FDAAA)).
- Under the Pediatric Research Equity Act (PREA), to study certain new drugs for pediatric populations, when these drugs are not adequately labeled for children. Under section 505B(a)(3) of the FD&C Act (21 U.S.C. 355c), the initiation of these studies may be deferred until required safety information from other studies in adults has first been submitted and reviewed.
- To verify and describe the predicted effect or other clinical benefit for drugs approved in accordance with the accelerated approval provisions in section 506(c)(2)(A) of the FD&C Act (21 U.S.C. 356(c)(2)(A)) (§§ 314.510 and 601.41 (21 CFR 314.510 and 601.41)).
- For a drug that was approved on the basis of animal efficacy data because human efficacy trials are not ethical or feasible (§§ 314.610(b)(1) and 601.91(b)(1)). PMRs for drug products approved under the animal efficacy rule[3] can be conducted only when the drug product is used for its indication and when an exigency (or event or need) arises. In the absence of a public health emergency, these studies or clinical trials will remain pending indefinitely.

B. Reporting Requirements

Under the regulations (§§ 314.81(b)(2)(vii) and 601.70), applicants of approved drugs are required to submit annually a report on the status of each clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology study or clinical trial either required by FDA or that they have committed to conduct, either at the time of approval or after approval of their new drug application (NDA), abbreviated new drug application (ANDA), or biologics license application (BLA). Applicants are required to report to FDA on these requirements and commitments made for NDAs and ANDAs under § 314.81(b)(2)(viii). The status of PMCs concerning chemistry, manufacturing, and production controls and the status of other studies or clinical trials conducted on an applicant's own initiative are not required to be reported under §§ 314.81(b)(2)(vii) and 601.70 and are not addressed in this report. Furthermore, section 505(o)(3)(E) of the FD&C Act requires that applicants report periodically on the status of each required study or clinical trial and each study or clinical trial ''otherwise undertaken * * * to investigate a safety issue * * * .''

An applicant must report on the progress of the PMR/PMC on the anniversary of the drug product's approval[4] until the PMR/PMC is completed or terminated and FDA determines that the PMR/PMC has been fulfilled or that the PMR/PMC is either no longer feasible or would no longer provide useful information. The annual status report (ASR) must include a description of the PMR/PMC, a schedule for completing the PMR/PMC, and a characterization of the current status of the PMR/PMC. The report must also provide an explanation of the PMR/PMC status by describing briefly the progress of the PMR/PMC. A PMR/PMC schedule is expected to include the actual or projected dates for the following: (1) Submission of the final protocol to FDA; (2) completion of the study or clinical trial; and (3) submission of the final report to FDA.

C. PMR/PMC Status Categories

The status of the PMR/PMC must be described in the ASR according to the terms and definitions provided in §§ 314.81 and 601.70. For its own reporting purposes, FDA has also established terms to describe when the conditions of the PMR/PMC have been met, and when it has been determined that a PMR/PMC is no longer necessary.[5] The PMR/PMC status categories are summarized in the following list. As reflected in the definitions, the status of a PMR/PMC is generally determined based on the original schedule.[6]

[1] *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PostmarketingPhaseIVCommitments/ucm064436.htm.*

[2] For the purposes of this notice, references to ''drugs'' or ''drug products'' include drugs approved under the FD&C Act and biological products licensed under the Public Health Service Act, other than biological products that also meet the definition of a device in section 201(h) of the FD&C Act (21 U.S.C. 321(h)).

[3] 21 CFR 314.600 for drugs; 21 CFR 601.90 for biological products.

[4] An applicant must submit an annual status report on the progress of each open PMR/PMC within 60 days of the anniversary date of U.S. approval of the original application or on an alternate reporting date that was granted by FDA in writing. Some applicants have requested and been granted by FDA alternate annual reporting dates to facilitate harmonized reporting across multiple applications.

[5] See the guidance for industry entitled ''Reports on the Status of Postmarketing Study Commitments—Implementation of Section 130 of the Food and Drug Administration Modernization Act of 1997.'' We update guidances periodically. To make sure you have the most recent version of a guidance, check the FDA Drugs guidance Web page at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

[6] The definitions for the terms ''pending,'' ''ongoing,'' ''delayed,'' ''terminated,'' and ''submitted'' are adapted from §§ 314.81 and 601.70; the definitions for the terms ''fulfilled'' and

Continued

• *Pending:* The study or clinical trial has not been initiated (*i.e.,* no subjects have been enrolled or animals dosed), but does not meet the criteria for delayed (*i.e.,* the original projected date for initiation of subject accrual or initiation of animal dosing has not passed).[7]

• *Ongoing:* The study or clinical trial is proceeding according to or ahead of the original schedule.

• *Delayed:* The study or clinical trial is behind the original schedule.[8]

• *Terminated:* The study or clinical trial was ended before completion, but a final report has not been submitted to FDA.

• *Submitted:* The study or clinical trial has been completed or terminated, and a final report has been submitted to FDA.

• *Fulfilled:* The final report for the study or clinical trial was submitted to FDA and FDA notified the applicant that the requirement or commitment was fulfilled through written correspondence.

• *Released:* FDA has informed the applicant in writing that it is released from its obligation to conduct the study or clinical trial because the study or clinical trial is no longer feasible, would no longer provide useful information, or the underlying application has been formally withdrawn.

In addition to the above statuses, PMRs/PMCs may also be characterized as closed or open. *Open* PMRs/PMCs comprise those that are pending, ongoing, delayed, submitted, or terminated; whereas *closed*[9] PMRs/PMCs are either fulfilled or released. Open PMRs are also described by whether they are on- or off-schedule. *On-schedule* PMRs/PMCs are those that are pending, ongoing, or submitted. *Off-schedule* PMRs/PMCs are those that have missed one of the milestone dates in the original schedule and are categorized as either delayed or terminated.

D. Additional Requirements

If an applicant fails to comply with the original schedule for completion of postmarketing studies or clinical trials required under section 505(o)(3) of the FD&C Act (*i.e.,* under the FDAAA authorities), or fails to submit periodic reports on the status of the studies or clinical trials, the applicant is considered to be in violation of section 505(o)(3), unless it has demonstrated good cause for its noncompliance or other violation. Failure to meet an original milestone and, as a result, falling behind the original schedule is one type of noncompliance with a PMR issued under FDAAA. In these circumstances, the FDAAA PMR is considered delayed, with or without good cause.

Section 505B(a)(3)(B) of the FD&C Act, as amended by the Food and Drug Administration Safety and Innovation Act, authorizes FDA to grant an extension of the deferred pediatric assessments that are required under PREA.[10] On its own initiative or upon request, FDA may grant an extension of a pediatric assessment deferral, provided that certain applicable PREA criteria for deferral are still met and the applicant submits certain materials in support of the extension.[11] Applicants must submit requests for deferral extensions to FDA not less than 90 days before the date the deferral would otherwise expire. If FDA grants the extension of a pediatric study deferral, this new deferral date is considered the original due date of the PMR. Consequently, the status of PREA PMRs would be determined based on the new deferral date (and not the original PREA PMR schedule).

FDA may take enforcement action against applicants who are noncompliant with or otherwise fail to conduct studies and clinical trials required under FDA statutes and regulations (see, for example, sections 505(o)(1), 502(z), and 303(f)(4) of the FD&C Act (21 U.S.C. 355(o)(1), 352(z), and 333(f)(4))).

II. Understanding FDA's Data on Postmarketing Studies and Clinical Trials

A. FDA's Internal PMR/PMC Databases

Databases containing information on PMRs/PMCs are maintained at the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER). The information in these databases is periodically updated as new PMRs/PMCs are issued, upon FDA review of PMR/PMC ASRs or other PMR/PMC correspondence, upon receipt of final reports from completed studies and clinical trials, and after the final reports are reviewed and FDA determines that the PMR/PMC has been fulfilled, or when FDA determines that the PMR/PMC is either no longer feasible or would no longer provide useful information. Because applicants typically report on the status of their PMRs/PMCs annually, and because updating the status of PMRs/PMCs in FDA's databases involves FDA review of received information, there is an inherent lag in updating the data (that is, the data are not real time). FDA strives to maintain as accurate information as possible on the status of PMRs/PMCs.

Both CDER and CBER have established policies and procedures to help ensure that FDA's data on PMRs/PMCs are current and accurate. When identified, data discrepancies are addressed as expeditiously as possible and/or are corrected in later reports.

B. Publicly Available PMR/PMC Data

FDA also maintains an online searchable and downloadable database that contains information about PMRs/PMCs that is *publicly reportable* (*i.e.,* for which applicants must report on the status of the study or clinical trial, as required under section 506B of the FD&C Act (21 U.S.C. 356b)). The data are a subset of all PMRs/PMCs and reflect only those postmarketing studies and clinical trials that, at the time of data retrieval, either had an open status or were closed within the past year. Information on PMRs/PMCs closed more than a year before the date the data are extracted (*i.e.,* September 30, 2015) are not included on the public Web site. The FDA Web site is updated quarterly.[12] The FDA Web site does not include information about PMCs concerning chemistry, manufacturing, and controls. It is FDA policy not to post information on the Web site until it has been verified and reviewed for suitability for public disclosure.

III. About This Report

This report is published to fulfill the annual reporting requirement under section 506B(c) of the FD&C Act. Information in this report covers any PMR/PMC that was made, in writing, at the time of approval or after approval of an application or a supplement to an application (see section I.A), and summarizes the status of PMRs/PMCs in fiscal year (FY) 2015 (FY2015) (*i.e.,* as of September 30, 2015). Specifically, the report summarizes the status of all open

"released" are described in the guidance for industry entitled "Reports on the Status of Postmarketing Study Commitments—Implementation of Section 130 of the Food and Drug Administration Modernization Act of 1997."

[7] It is important to note that PMRs/PMCs that are in pending status are not yet delayed; that is, per the milestones, the studies or clinical trials are indeed on schedule and are not expected to be underway yet.

[8] In some instances, an applicant may have justifiable reasons for delay of its PMR/PMC (see section I.D).

[9] Previous FDA reports on the status of PMRs/PMCs used the term "completed" to refer to PMRs/PMCs that are closed.

[10] This provision does not apply to PMRs required under other provisions, or to PMCs.

[11] See section 505B(a)(3)(B) of the FD&C Act.

[12] *http://www.accessdata.fda.gov/scripts/cder/pmc/index.cfm.*

PMRs/PMCs through the end of the fiscal year, and the status of only those PMRs/PMCs that were closed in the fiscal year. If a requirement or commitment did not have a schedule, or an ASR was not received in the previous 12 months, the PMR/PMC is categorized according to the most recent information available to the Agency.[13]

This report reflects combined data from CDER and CBER. Information summarized in the report includes the following: (1) The number of applicants with open PMRs/PMCs;[14] (2) the number of open PMRs/PMCs; (3) the number of applications for which an ASR was expected but was not submitted within 60 days of the anniversary date of U.S. approval or an alternate reporting date that was granted by FDA; (4) FDA-verified status of open PMRs/PMCs reported in §§ 314.81(b)(2)(vii) or 601.70 ASRs; (5) the status of closed PMRs/PMCs; and (6) the distribution of the status by fiscal year of establishment[15] (FY2009 to FY2015) for PMRs and PMCs open at the end of FY2015, or those closed within FY2015. The tables in this report distinguish between PMRs and PMCs, PMRs/PMCs for NDAs and BLAs, and on-schedule and off-schedule PMRs/PMCs, according to the original schedule milestones. A more detailed summary of this information and additional information about PMRs/PMCs is provided on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PostmarketingPhaseIVCommitments/default.htm.* In the supplemental report on FDA's Web site, information is presented separately for CDER and CBER.

Numbers published in this report and in the supplemental report on FDA's Web site cannot be compared with the numbers resulting from searches of the publicly accessible and downloadable database. This is because this report incorporates data for all PMRs/PMCs in FDA databases as of the end of the fiscal year, including PMRs/PMCs undergoing review for accuracy. The publicly accessible and downloadable database includes a subset of PMRs/PMCs, specifically those that, at the time of data retrieval, either had an open status or were closed within the past 12 months. In addition, the status information in this report is updated annually while the downloadable database is updated quarterly (*i.e.,* in January, April, July, and October).

IV. Summary of Information on PMR/PMC Status

This report provides information on PMRs/PMCs as of September 30, 2015 (*i.e.,* for FY2015). It is important to note that a comparison of the number of open and on-schedule or off-schedule PMRs/PMCs over time can be misleading because it does not take into account that the cohort of open PMRs/PMCs is not static from year to year. New PMRs/PMCs are continually being established for studies and clinical trials with varying start dates and durations; and other PMRs/PMCs are closed because they are either fulfilled or released. Also, ongoing PMRs/PMCs are carried forward into the subsequent fiscal year. Therefore, the number of on- and off-schedule PMRs/PMCs can vary from year to year, and a year-to-year comparison of on- or off-schedule PMRs (*e.g.,* to assess for a potential trend) is not appropriate. Finally, due to rounding, the percentages in the tables may not add up to 100 percent.

A. Applicants With Open PMRs/PMCs

An applicant may have multiple approved drug products, and an approved drug product may have multiple PMRs and/or PMCs. Table 1 shows that as of September 30, 2015, there were 269 unique applicants with open PMRs/PMCs under 856 unique NDAs and BLAs. There were 194 unique NDA applicants (and 716 associated applications) and 75 unique BLA applicants (and 140 associated applications) with open PMRs/PMCs.

B. Annual Status Reports Received

As previously mentioned, applicants must submit an ASR on the progress of each open PMR/PMC within 60 days of the anniversary date of U.S. approval of the original application or an alternate reporting date that was granted by FDA (§§ 314.81 and 21 CFR 601.70).[16] Table 2 shows that there were 575 NDAs and BLAs with an ASR due in FY2015 (451 NDAs and 124 BLAs).[17] Of the 451 NDA ASRs due in that fiscal year, 67 percent (304/451) were received on time, 14 percent (62/451) were not received on time, and 19 percent (85/451) were not received during FY2015. Of the 124 BLA ASRs due, 78 percent (97/124) were received on time, 13 percent (16/124) were not received on time, and 9 percent (11/124) were not received during FY2015.

C. Overview of On- and Off-Schedule Open PMRs/PMCs

Table 3 shows that as of September 30, 2015, most open PMRs (88 percent for NDAs and 91 percent for BLAs) and most open PMCs (69 percent for NDAs and 78 percent for BLAs) were progressing on schedule.

D. Open and On-Schedule PMRs

Table 4 shows that as of September 30, 2015, the majority of PMRs were pending (53 percent (535/1,010) of open NDA PMRs and 45 percent (100/223) of open BLA PMRs). PREA PMRs and FDAAA PMRs comprised 53 percent (336/635) and 43 percent (270/635) of pending PMRs, respectively. The next largest category of open and on-schedule PMRs comprised those that were ongoing (29 percent (288/1,010) of NDA PMRs and 36 percent (80/223) of BLA PMRs).

E. Open and Off-Schedule PMRs

Table 5 provides additional information on the status of open and off-schedule (*i.e.,* delayed and terminated) PMRs. At the end of September 30, 2015, 12 percent (123/1,010) of the open NDA PMRs and 9 percent (20/223) of the open BLA PMRs were off-schedule. Of the off-schedule NDA PMRs, 97 percent (119/123) were off-schedule because they were delayed and the remaining 3 percent (4/123) were terminated. Similarly, 90 percent of the off-schedule BLA PMRs were delayed (18/20).

In certain situations, the original PMR schedules were adjusted for unanticipated delays in the progress of the study or clinical trial (*e.g.,* difficulties with subject enrollment in a clinical trial for a marketed drug or need for additional time to analyze results).

[13] Although the data included in this report do not include a summary of reports that applicants have failed to file by their due date, the Agency notes that it may take appropriate regulatory action in the event reports are not filed on a timely basis.

[14] At the end of FY2015, there were no PMRs/PMCs for ANDAs that met the reporting requirements under the Food and Drug Administration Modernization Act of 1997. Therefore, this report reflects information for NDAs and BLAs only.

[15] The establishment date is the date of the formal FDA communication to the applicant that included the final FDA required (PMR) or requested (PMC) postmarketing study or clinical trial.

[16] An applicant must submit an ASR on the progress of each open PMR/PMC within 60 days of the anniversary date of U.S. approval of the original application or on an alternate reporting date that was granted by FDA in writing. Some applicants have requested and been granted by FDA alternate annual reporting dates to facilitate harmonized reporting across multiple applications.

[17] The number of ASRs that were expected is different from the total number of unique applications with open PMRs/PMCs because not all applications had an ASR due during FY2015. Applicants with PMRs/PMCs associated with multiple applications may have submitted the ASR to only one of the applications. In addition, if all of the PMRs/PMCs for an application were established in the preceding fiscal year, or if all PMRs/PMCs for an application were closed before the ASR due date, submission of an ASR would not have been expected.

In this report, study or clinical trial status reflects the status in relation to the original[18] study or clinical trial schedule regardless of whether FDA has acknowledged that additional time was required to complete the study or clinical trial.

F. Open On-Schedule and Off-Schedule PMCs

Table 6 provides the status of open on-schedule and off-schedule PMCs and shows that as of September 30, 2015, the largest category of all open NDA PMCs were those that were pending (36 percent; 71/197). Most of the open BLA PMCs were ongoing at the end of FY2015 (39 percent; 80/204). Off-schedule PMCs accounted for 31 percent (62/197) of open NDA PMCs and 22 percent (45/204) of open BLA PMCs. The majority of off-schedule NDA and BLA PMCs were delayed according to the original schedule milestones.

G. Closed PMRs and PMCs

Table 7 provides details about PMRs and PMCs that were closed (released or fulfilled) within FY2015. The majority of closed PMRs were fulfilled (69 percent of NDA PMRs and 90 percent of BLA PMRs at the end of FY2015). Similarly, the majority of closed PMCs within FY2015 were fulfilled.

H. Distribution of the Status of PMRs and PMCs

Tables 8 and 9 show the distribution of the statuses of PMRs/PMCs as of September 30, 2015, presented by the year that the PMR/PMC was established[19] (FY2009 to FY2015).[20] [21] Note that the data shown for closed (fulfilled or released) PMRs/PMCs are for all PMRs/PMCs that were closed as of FY2015. Therefore, data for PMRs/PMCs that were closed in prior fiscal years are included. Based on the data shown in table 8, an average of 254 PMRs were established each year since FY2009.[22] Most PMRs that were established in the earlier years were either fulfilled or released. For example, as of September 30, 2015, 44 percent (109/248) of the PMRs that were established in FY2009 were fulfilled, and 22 percent (55/248) were released. The majority of PMRs that were established in more recent years were either pending (*i.e.,* not yet underway) or ongoing (*i.e.,* still in progress and on schedule). For example, as of September 30, 2015, 89 percent (250/280) of the PMRs established in FY2015 were pending, and 6 percent (16/280) were ongoing. Overall, of the PMRs that were pending as of September 30, 2015, 86 percent (527/616) were created within the past 3 years (FY2013, FY2014, and FY2015). Finally, table 8 shows that, on average, 6 percent of the PMRs established since FY2009 were delayed as of September 30, 2015. Table 9 provides an overview of PMCs in a similar manner as table 8 does for PMRs and shows similar results for PMCs as those for PMRs as described above and in table 8.

TABLE 1—APPLICANTS AND APPLICATIONS (NDA/BLA) WITH OPEN POSTMARKETING REQUIREMENTS AND COMMITMENTS

[Numbers as of September 30, 2015]

	NDA [1]	BLA [2]	Total (NDA and BLA)
Number of unique applicants with open PMRs/PMCs	194	75	269
Number of applications with open PMRs/PMCs	716	140	856

[1] Includes two NDAs with associated PMRs/PMCs managed by CBER.
[2] Includes BLAs managed by both CDER and CBER.

TABLE 2—ANNUAL STATUS REPORTS RECEIVED

[Numbers as of September 30, 2015] [1]

	Expected [2]	Received, on time [3] (% of expected)	Received, not on time [4] (% of expected)	Expected but not received (% of expected)
NDA	451	304 (67%)	62 (14%)	85 (19%)
BLA	124	97 (78%)	16 (13%)	11 (9%)
Total	575	401 (70%)	78 (14%)	96 (17%)

[1] Percentages may not total 100 due to rounding.
[2] ASR expected during fiscal year (within 60 days (before or after) of the anniversary of original approval date or alternate agreed-upon date).
[3] ASR was received within 60 days (before or after) of the anniversary of the original approval date or alternate agreed-upon date.
[4] ASR was received, but not within 60 days (before or after) of the anniversary of the original approval date or alternate agreed-upon date.

[18] With the exception of PREA PMRs for which a deferral extension of the final report submission date has been granted.

[19] The establishment date is the date of the formal FDA communication to the applicant that included the final FDA required (PMR) or requested (PMC) postmarketing study or clinical trial.

[20] Tables 8 and 9 include data for only the past 7 fiscal years. Data on the distribution of statuses for PMRs/PMCs established in FY2008 and as of FY2014 are presented in the FY2014 status of postmarketing requirements and commitments report (81 FR 75411) (*https://www.gpo.gov/fdsys/pkg/FR-2016-10-31/html/2016-26247.htm*).

[21] The total number of PMRs/PMCs established in FY2009 through FY2014 reflects the data in FDA's databases as of September 30, 2015. As a result of data corrections, as well as improvements in ascertainment of the PMR/PMC establishment date, some of the total numbers of PMRs/PMCs established in each fiscal year are different from those reported in the prior fiscal year's (FY 2014) **Federal Register** report.

[22] The number of PMRs issued at any particular period is determined by a variety of factors including but not necessarily limited to: (1) The number of NDAs approved in that period; (2) whether additional efficacy or clinical benefit issues were evaluated; (3) if any drug-associated serious risk(s) have been identified; and (4) whether or not FDA determines that a postmarketing study or clinical trial is necessary to further assess risk(s) or efficacy issues.

TABLE 3—SUMMARY OF ON- AND OFF-SCHEDULE POSTMARKETING REQUIREMENTS AND COMMITMENTS

[Numbers as of September 30, 2015] [1]

	Open PMRs N = 1,233		Open PMCs N = 401	
	NDA (% of Open NDA PMRs)	BLA (% of Open BLA PMRs)	NDA (% of Open NDA PMCs)	BLA (% of Open BLA PMCs)
On-schedule	887 (88%)	203 (91%)	135 (69%)	159 (78%)
Off-schedule	123 (12%)	20 (9%)	62 (31%)	45 (22%)
Total	1,010	223	197	204

[1] Percentages may not total 100 due to rounding.

TABLE 4—SUMMARY OF OPEN AND ON-SCHEDULE POSTMARKETING REQUIREMENTS

[Numbers as of September 30, 2015] [1]

Reporting authority/PMR status	NDA *N = 1,010* (% of Open NDA PMRs)			BLA N = 223 (% of Open BLA PMRs)		
	Pending	Ongoing	Submitted	Pending	Ongoing	Submitted
Accelerated approval	12 (1%)	25 (3%)	3 (<1%)	7 (3%)	7 (2%)	1 (<1%)
PREA [2]	290 (29%)	121 (12%)	18 (2%)	46 (20%)	18 (8%)	9 (4%)
Animal efficacy [3]	4 (<1%)	0	1 (<1%)	6 (3%)	0	0
FDAAA safety [4] (since March 25, 2008)	229 [3] (23%)	142 (14%)	42 (4%)	41 (18%)	55 (25%)	13 (6%)
Total	535 (53%)	288 (29%)	64 (6%)	100 (45%)	80 (36%)	23 (10%)

[1] Percentages may not total 100 due to rounding.

[2] Many PREA studies have a pending status. PREA studies are usually deferred because the drug product is ready for approval in adults. Initiation of these studies may be deferred until additional safety information from other studies has first been submitted and reviewed before beginning the studies in pediatric populations.

[3] PMRs for drug products approved under the animal efficacy rule (§ 314.600 for drugs; § 601.90 for biological products) can be conducted only when the drug product is used for its indication and when an exigency (or event or need) arises. In the absence of a public health emergency, these studies or clinical trials will remain pending indefinitely.

[4] Includes one NDA PMR FDAAA safety study from CBER in pending status.

TABLE 5—SUMMARY OF OPEN AND OFF-SCHEDULE POSTMARKETING REQUIREMENTS

[Numbers as of September 30, 2015] [1]

Reporting authority/PMR status	NDA N = 1,010 (% of Open NDA PMRs)		BLA N = 223 (% of Open BLA PMRs)	
	Delayed	Terminated	Delayed	Terminated
Accelerated approval	3 (<1%)	2 (<1%)	1 (<1%)	0
PREA	64 (6%)	2 (<1%)	5 (2%)	2 (<1%)
Animal efficacy	0	0	0	0
FDAAA safety (since March 25, 2008)	52 (5%)	0	12 (5%)	0
Total	119 (12%)	4 (<1%)	18 (8%)	2 (<1%)

[1] Percentages may not total 100 due to rounding.

TABLE 6—SUMMARY OF OPEN POSTMARKETING COMMITMENTS

[Numbers as of September 30, 2015] [1]

	NDA N = 197 (% Open PMCs)	BLA N = 204 (% Open PMCs)
On-Schedule		
Pending	71 (36%)	54 (26%)
Ongoing	40 (20%)	80 (39%)
Submitted	24 (12%)	25 (12%)
Total	135 (68%)	159 (77%)
Off-Schedule		
Delayed	59 (30%)	43 (21%)

TABLE 6—SUMMARY OF OPEN POSTMARKETING COMMITMENTS—Continued

[Numbers as of September 30, 2015] [1]

	NDA N = 197 (% Open PMCs)	BLA N = 204 (% Open PMCs)
Terminated	3 (2%)	2 (1%)
Total	62 (31%)	45 (22%)

[1] Percentages may not total 100 due to rounding.

TABLE 7—SUMMARY OF CLOSED [1] POSTMARKETING REQUIREMENTS AND COMMITMENTS

[Numbers as of September 30, 2015] [2]

Postmarketing requirements	NDA N = 195	BLA N = 40
Closed PMRs (% of Total Closed PMRs)	.....	.....
Requirement met (fulfilled)	134 (69%)	36 (90%)
Requirement not met (released and new revised requirement issued)	31 (16%)	1 (2%)
Requirement no longer feasible or drug product withdrawn (released)	30 (15%)	3 (8%)
Postmarketing Commitments	**NDA *N = 56***	**BLA *N = 32***
Closed PMCs (% of Total Closed PMCs)	.....	.....
Requirement met (fulfilled)	46 (82%)	27 (84%)
Requirement not met (released and new revised requirement issued)	1 (2%)	2 (6%)
Requirement no longer feasible or drug product withdrawn (released)	9 (16%)	3 (9%)

[1] The table shows data for those PMRs/PMCs that were closed (fulfilled or released) within FY2015. Therefore, data for PMRs/PMCs that were closed in prior fiscal years are not included.
[2] Percentages may not total 100 due to rounding.

TABLE 8—SUMMARY OF STATUS OF POSTMARKETING REQUIREMENTS ESTABLISHED [1] BETWEEN FY2009 AND FY2015 [2]

[Numbers as of September 30, 2015] [3]

PMR Status as of FY2015 (% of total PMRs in each establishment year)	Fiscal year of PMR establishment						
	2009	2010	2011	2012	2013	2014	2015
Pending	14 (6%)	11 (5%)	27 (10%)	37 (17%)	91 (33%)	186 (68%)	250 (89%)
Ongoing	38 (15%)	40 (18%)	54 (21%)	59 (27%)	79 (28%)	46 (17%)	16 (6%)
Submitted	10 (4%)	16 (7%)	11 (4%)	14 (7%)	11 (4%)	9 (3%)	10 (4%)
Delayed	21 (8%)	18 (8%)	16 (6%)	19 (9%)	22 (8%)	7 (3%)	0
Terminated	1 (<1%)	0	0	0	0	0	0
Released	55 (22%)	27 (12%)	56 (22%)	28 (13%)	16 (6%)	7 (3%)	2 (1%)
Fulfilled	109 (44%)	112 (50%)	95 (37%)	58 (27%)	59 (21%)	19 (7%)	2 (1%)
Total [4]	248	224	259	215	278	274	280

[1] The establishment date is the date of the formal FDA communication to the applicant that included the final FDA required (PMR) or requested (PMC) postmarketing study or clinical trial.
[2] The table shows data for PMRs that were closed (fulfilled or released) as of FY2015. Therefore, data for PMRs that were closed in prior fiscal years are included.
[3] Percentages may not total 100 due to rounding.
[4] The total number of PMRs/PMCs established in FY2009 through FY2014 reflects the data in FDA's databases as of September 30, 2015. As a result of data corrections, as well as improvements in ascertainment of the PMR/PMC establishment date, some of the total numbers of PMRs/PMCs established in each fiscal year are different from those reported in the prior fiscal year's (FY2014) FEDERAL REGISTER report.

TABLE 9—SUMMARY OF STATUS OF POSTMARKETING COMMITMENTS ESTABLISHED [1] BETWEEN FY2009 AND FY2015 [2]

[Numbers as of September 30, 2015] [3]

PMC Status as of FY2015 (% of total PMCs in each establishment year)	Fiscal year of PMC establishment						
	2009	2010	2011	2012	2013	2014	2015
Pending	3 (6%)	2 (2%)	3 (4%)	1 (2%)	8 (17%)	35 (57%)	49 (90%)
Ongoing	3 (6%)	18 (19%)	23 (28%)	14 (30%)	15 (33%)	14 (23%)	1 (2%)
Submitted	1 (2%)	11 (12%)	3 (4%)	2 (4%)	4(9%)	2 (3%)	2 (4%)

TABLE 9—SUMMARY OF STATUS OF POSTMARKETING COMMITMENTS ESTABLISHED [1] BETWEEN FY2009 AND FY2015 [2]—Continued

[Numbers as of September 30, 2015] [3]

PMC Status as of FY2015 (% of total PMCs in each establishment year)	Fiscal year of PMC establishment						
	2009	2010	2011	2012	2013	2014	2015
Delayed	6 (13%)	12 (13%)	8 (10%)	6 (13%)	4 (9%)	0	0
Terminated	1 (2%)	0	0	0	0	0	0
Released	4 (8%)	7 (7%)	10 (12%)	1 (2%)	1 (2%)	0	1 (2%)
Fulfilled	30 (63%)	44 (47%)	35 (43%)	22 (48%)	14 (30%)	10 (16%)	1 (2%)
Total [4]	48	94	82	46	46	61	54

[1] The establishment date is the date of the formal FDA communication to the applicant that included the final FDA required (PMR) or requested (PMC) postmarketing study or clinical trial.

[2] The table shows data for PMCs that were closed (fulfilled or released) as of FY2015. Therefore, data for PMCs that were closed in prior fiscal years are included.

[3] Percentages may not total 100 due to rounding.

[4] The total number of PMRs/PMCs established in FY2009 through FY2014 reflects the data in FDA's databases as of September 30, 2015. As a result of data corrections, as well as improvements in ascertainment of the PMR/PMC establishment date, some of the total numbers of PMRs/PMCs established in each fiscal year are different from those reported in the prior fiscal year's (FY2014) **Federal Register** report.

Dated: November 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28442 Filed 11–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1064]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Application for Participation in the Medical Device Fellowship Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 28, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0551. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Application for Participation in the Medical Device Fellowship Program—OMB Control Number 0910–0551—Extension

Sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of Title 5 of the United States Code authorize Federal Agencies to rate applicants for Federal jobs. Collecting applications for the Medical Device Fellowship Program will allow FDA's Center for Devices and Radiological Health (CDRH) to easily and efficiently elicit and review information from students and health care professionals who are interested in becoming involved in CDRH activities. The process will reduce the time and cost of submitting written documentation to the Agency and lessen the likelihood of applications being misrouted within the Agency mail system. It will assist the Agency in promoting and protecting the public health by encouraging outside persons to share their expertise with CDRH.

In the **Federal Register** of September 6, 2016 (81 FR 61221), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA Form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Application Form (FDA 3608)	250	1	250	1	250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28443 Filed 11–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0769]

Notice of Listing of Members of the Food and Drug Administration's Performance Review Board

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the names of the members who will serve on its Performance Review Board (PRB). The purpose of the PRB is to provide fair and impartial review of senior executive service (SES), senior professional and Title 42 SES Equivalents performance appraisals, bonus recommendations, and pay adjustments.

DATES: Effective November 7, 2016.

FOR FURTHER INFORMATION CONTACT: Abu Sesay, Office of Human Resources Executive and Resources Management Staff, Food and Drug Administration, Three White Flint North, 05D04, 11601 Landsdown St., North Bethesda, MD 20852, 240–402–0440, *abu.sesay@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: This action is being taken pursuant to 5 U.S.C. 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

The following persons will serve on FDA's Performance Review Board, which oversees the evaluation of performance appraisals of FDA's senior executives: James Sigg, PRB Chair and member; Tania Tse, PRB Officiator; Glenda Barfell; Vincent Bunning; Mary Beth Clarke; Tracey Forfa; Leslie Kux; Deanna Murphy; Lynne Rice; and Richard Turman.

Dated: November 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28452 Filed 11–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages

AGENCY: Health Resources and Service Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting is scheduled for Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL). This meeting will be open to the public. Information about the ACICBL and the agenda for this meeting can be obtained by accessing the following Web site: *http://www.hrsa.gov/advisorycommittees/bhpradvisory/acicbl/index.html*. The agenda will be available 2 days prior to the meeting on the HRSA Web site listed above.

DATES: The meeting will be held on December 8, 2016 (10:00 a.m.–4:00 p.m.).

ADDRESSES: This meeting will be held via webinar and teleconference. Webinar information can be found on the Web site at: *https://hrsa.connectsolutions.com/acicbl* and below.

- The conference call-in number is 1–800–619–2521. The passcode is: 9271697.
- The Webinar link is *https://hrsa.connectsolutions.com/acicbl*.

FOR FURTHER INFORMATION CONTACT: Anyone requesting information regarding the ACICBL should contact Dr. Joan Weiss, Designated Federal Official, within the Bureau of Health Workforce, Health Resources and Services Administration, in one of three ways: (1) Send a request to the following address: Dr. Joan Weiss, Designated Federal Official, Bureau of Health Workforce, Health Resources and Services Administration, 5600 Fishers Lane, Room 15N39, Rockville, Maryland 20857; (2) call (301) 443–0430; or (3) send an email to *jweiss@hrsa.gov*.

SUPPLEMENTARY INFORMATION: The ACICBL provides advice and recommendations to the Secretary of HHS (Secretary) concerning policy, program development, and other matters of significance related to interdisciplinary, community-based training grant programs authorized under sections 750–759, Title VII, Part D of the Public Health Service (PHS) Act, as amended by the Affordable Care Act. The following sections of the PHS Act are included under Part D: 751—Area Health Education Centers; 752—Continuing Educational Support for Health Professionals Serving in Underserved Communities; 753—Geriatrics Workforce Enhancement; 754—Quentin N. Burdick Program for Rural Interdisciplinary Training; 755—Allied Health and Other Disciplines; 756—Mental and Behavioral Health Education and Training, and 759—Program for Education and Training in Pain Care.

Per the PHS Act section 757(d)(2), the Committee is responsible for publishing an annual report describing ''the activities of the Committee, including findings and recommendations made by the Committee concerning the activities under this part.'' The members of the ACICBL will discuss how they would like to proceed with and structure the statutorily mandated 17th report. They will also finalize the statutorily mandated 16th Annual Report to the Secretary and Congress on ''Enhancing Community-Based Training Sites: Challenges and Opportunities.''

Members of the public will have the opportunity to provide comments. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to make oral comments or provide written comments to the ACICBL should be sent to Dr. Joan Weiss, Designated Federal Official, using the address and phone number above at least 3 days prior to the meeting.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–28469 Filed 11–25–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From Metals & Controls Corp. in Attleboro, Massachusetts, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: NIOSH gives notice of a decision to evaluate a petition to designate a class of employees from Metals & Controls Corp. in Attleboro,

Massachusetts, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

SUPPLEMENTARY INFORMATION:

Authority: 42 CFR 83.9–83.12.

Pursuant to 42 CFR 83.12, the initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Metals & Controls Corp.

Location: Attleboro, Massachusetts.

Job Titles and/or Job Duties: All Facilities Construction & maintenance workers including Lubrication/Oilers, Industrial Pipefitters, Engineering Technicians (Mechanical, Electrical, Structural), Maintenance Supervisors, Electricians, Plumbers, Millwrights, Carpenters, Instrumentation Technicians, Chemical Handlers, Waste Treatment Operators, and Production Workers to include Machine Operators/Helpers, and Repair & Maintenance (commonly called R&M) workers.

Period of Employment: January 1, 1968 through March 21, 1997.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2016–28480 Filed 11–25–16; 8:45 am]

BILLING CODE 4163–19–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, Alzheimer's Disease Drug Development.

Date: January 19, 2017.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2W200, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *Parsadaniana@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 21, 2016.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–28417 Filed 11–25–16; 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 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: Center for Scientific Review Special Emphasis Panel; Small Business: Psycho/Neuropathology, Lifespan Development, and STEM Education.

Date: November 29, 2016.

Time: 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John H Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301) 435–0628, *newmanjh@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.

(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: November 21, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–28416 Filed 11–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Announcement of Requirements and Registration for ''Storytelling About Health and Wellness in American Indian and Alaska Native Communities'' Challenge

Authority: 15 U.S.C. 3719.

SUMMARY: In recognition of Native American Heritage Month, the Tribal Health Research Office in the Division of Program Coordination, Planning, and Strategic Initiatives, in the Office of the Director of the National Institutes of Health (NIH), announces the ''Storytelling about Health and Wellness in American Indian and Alaska Native Communities'' Challenge. The goal of this Challenge is to develop a brief digital story (*i.e.,* a video) that communicates how traditions and heritage promote health in American Indians and Alaska Natives (AI/AN).

DATES: The Challenge begins November 28, 2016.

Submission Period: November 28, 2016 to January 31, 2017.

Judging Period: February 1, 2017 to February 24, 2017.

Winners announced: Week of March 6, 2017.

FOR FURTHER INFORMATION CONTACT: Please contact NIH's Tribal Health Research Office at *NIHTribalCommittee@od.nih.gov* or 301–402–9852 with questions about this challenge.

SUPPLEMENTARY INFORMATION:

Statutory Authority to Conduct the Challenge: This challenge is consistent with the statutory authority of the Division of Program Coordination, Planning, and Strategic Initiatives, National Institutes of Health. The Division identifies research that represents important areas of emerging scientific opportunities, rising public

health challenges, or knowledge gaps that deserve special emphasis and would benefit from conducting or supporting additional research that involves collaboration between two or more national research institutes or national centers, or would otherwise benefit from strategic coordination and planning. As part of this authority, the Division oversees the Tribal Health Research Office, whose function includes managing information dissemination related to tribal health research coordination. The winning videos submitted for this challenge will help communicate about health and wellness of AI/AN communities. The NIH is also conducting this challenge under the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358), codified at 15 U.S.C. 3719.

Subject of Challenge: Tribal communities are revered for preserving their culture and passing on their history, customs, and traditions through their use of vivid, verbal narratives. Storytelling is an enriching tradition that serves to entertain, educate, and inspire.

To commemorate Native American Heritage Month, the NIH wishes to celebrate the use of storytelling to convey stories of health and wellness. The AI/AN population has long experienced a disparity in certain health conditions compared with other Americans. AI/AN communities have higher rates of diseases and disorders across several areas of health such as: diabetes, chronic liver disease, certain cancers, mental health, and substance use (*http://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_05.pdf* and *http://www.cancer.gov/cancertopics/factsheet/disparities/cancer-health-disparities*). Factors known to contribute to health status and disparities are complex, and include social and historical factors, ethnicity, culture, historical trauma, socioeconomic status, gender/sex, age, geographical access to care, and levels of insurance as well as underlying biology, physiology, and genetics. The NIH hopes that this Challenge will incentivize the public to showcase the strengths and resilience of these communities, their heritage and traditions, and how their culture promotes their health and well-being.

The NIH invites the public to participate in this challenge to share stories about: (1) How heritage and tradition leads to health and wellness in AI/AN communities; and (2) how future research can improve the health of American Indians and Alaska Natives. The videos will augment the agency's ongoing efforts to inform a strengthened research portfolio that advances AI/AN research needs. This challenge is also designed to attract more interest and attention to the research needs of these communities and communicate these needs in a culturally appropriate manner.

Eligibility Rules for Participating in the Challenge; Official Rules: The Challenge is open to any ''Contestant.'' A ''Contestant'' may be (i) an entity, or (ii) an individual or group of individuals (*i.e.,* a team), each of whom is a U.S. citizen or permanent resident of the United States and 18 years of age or older. For example, Contestants may be communities or community members, schools, organizations, research participants, and others. Contestants may submit more than one entry.

1. To be eligible to win a prize under this Challenge, the Contestant—

a. Shall have registered to participate in the Challenge under the rules promulgated by the NIH as published in this notice;

b. Shall have complied with all the requirements set forth in this notice;

c. In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States;

d. May not be a federal entity; Tribal governments and employees are eligible to submit;

e. May not be a federal employee acting within the scope of the employee's employment and, further, in the case of Department of Health and Human Services employees, may not work on their submission(s) during assigned duty hours. Federal employees seeking to participate in this Challenge outside the scope of their employment should consult their ethics official prior to developing their submission;

f. May not be an employee of the NIH, a member of the technical evaluation panel or judge of the Challenge, or any other party involved with the design, production, execution, or distribution of the Challenge or the immediate family of such a party (*i.e.,* spouse, parent, step-parent, sibling, step-sibling, child, or step-child).

2. Federal grantees may not use federal funds to develop their Challenge submissions.

3. Federal contractors may not use federal funds from a contract to develop their Challenge submissions or to fund efforts in support of their Challenge submissions.

4. Submissions must not infringe upon any copyright or any other rights of any third party.

5. By participating in this Challenge, a Contestant agrees to assume any and all risks and waive claims against the federal government and its related entities (as defined in the COMPETES Act), except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this Challenge, whether the injury, death, damage, or loss arises through negligence or otherwise.

6. Based on the subject matter of the Challenge, the type of work that it will possibly require, as well as an analysis of the likelihood of any claims for death, bodily injury, property damage, or loss potentially resulting from Challenge participation, Contestants are not required to obtain liability insurance or demonstrate financial responsibility in order to participate in this Challenge.

7. By participating in this Challenge, each Contestant agrees to indemnify the federal government against third-party claims for damages arising from or related to Challenge activities.

8. A Contestant shall not be deemed ineligible because the individual or entity used federal facilities or consulted with federal employees during the Challenge if the facilities and employees are made available to all Contestants participating in the Challenge on an equitable basis.

9. By participating in this Challenge, each Contestant grants to the NIH irrevocable, paid-up, royalty-free, nonexclusive worldwide license to post, link to, share, and display publicly on the web the submitted document. Each participant will retain all other intellectual property rights in their submissions, as applicable.

10. The NIH reserves the right to (a) cancel, suspend, modify the Challenge, and/or (b) not award any prizes if no entries are deemed worthy.

11. Each Contestant agrees to follow all applicable federal, state, and local laws, regulations, and policies.

12. Each Contestant participating in this Challenge must comply with all terms and conditions of these rules, and participation in this Challenge constitutes each such participant's full and unconditional agreement to abide by these rules. Winning is contingent upon fulfilling all requirements herein.

Registration and Submission Process for Participants: The registration and submission process for entering the Challenge can be found at: *https://dpcpsi.nih.gov/thro/news* and at *https://www.challenge.gov/.*

Submission Requirements: The submission is a video that describes: (1) How heritage and tradition leads to

health and wellness in AI/AN communities; and (2) how future research can improve the health of American Indians and Alaska Natives.

Submissions are limited to a video that may not exceed five minutes. Winning entries may be posted on the NIH Web site. Submissions must be substantially free of scientific jargon and understandable by viewers without scientific/technical backgrounds. The video must include at least one member of a federally recognized tribe(s) and address the following:

- A brief historical background that puts the story in context. For example, what is the traditional or cultural practice? How does it contribute to health and wellness in AI/AN populations?
- A description of how this tradition or culture affects people's lives. The impact could be lives saved, suffering reduced, fewer visits to health care facilities, adopting a healthier lifestyle, and similar such benefits. How is this practice promoted within tribal populations?
- Information about the unmet health and wellness needs of AI/AN communities. What is the unmet need? Is there an understanding of what interventions or actions may help address these needs?
- A discussion of how biomedical or behavioral research can further Tribal health and wellness. What are the current gaps in Tribal health research and opportunities for improving health in AI/AN communities? What are some of the barriers or challenges in closing these gaps? How would addressing them reduce mortality, improve quality of life, or otherwise positively affect Tribal communities? The video must convey the research question of interest as part of a holistic picture of Tribal health or AI/AN communities.

Contestants may submit more than one entry. However, the cultural and traditional practices and research described in each submission must be distinct. If a Contestant enters substantially similar submissions, as determined by the NIH, the agency may disqualify the later entries or require the Contestant to choose one entry to enter into the Challenge.

Contestants must include a link to a public or unlisted video on YouTube.com, Vimeo.com, or other internet accessible site. The submission may be disqualified if the video is commercially promotional, contains inappropriate material or language, or presents material unrelated to this challenge, as determined by the NIH. A video must:

- Be in English, if dialogue is present. Use of Native language is encouraged but must include an English caption or other method of translation to English.
- Be no longer than five minutes. The NIH recognizes that there may be a desire to prepare a longer video. However, any part of a video exceeding five minutes will be disregarded as part of the judging process.
- Not include copyrighted material, such as music or photos, unless the Contestant has obtained written permission to use such material.
- Not include proprietary information.
- Include captioning or submission of a written transcript in English for any video with dialogue, to ensure the video can be understood by viewers with disabilities.

○ The video must remain posted at the URL submitted with the entry for at least one year after the Challenge closes. The video (or the link to it) may be displayed publicly on the NIH Web site.

○ Before posting a video online, a Contestant must obtain consent from anyone appearing in the video. If a minor appears in the video, the contestant must obtain consent from the minor's parent or legal guardian.

Amount of the Prize: The Challenge will have no more than five winning submissions. Winning submissions will receive an award and recognition on the NIH Tribal Health Research Office Web site and possibly other NIH outlets. The first place winner will receive $4,000; second place will receive $3,000; third place will receive $2,000; and two honorable mentions will each receive $500. The first place winner will also be invited to an upcoming meeting of the NIH Tribal Consultation Advisory Committee. Travel will be reimbursed for those invitees. If two or more submissions describe the same general advance and are judged to be equally meritorious, the prize will go to either the first submitted submission or the prize will be split between or among the Contestants at the discretion of the NIH. If a team submits a winning entry, a single prize will be awarded to that team to divide amongst the winners, as determined by that entrant. Winning is contingent upon fulfilling all requirements of the Challenge rules. The name, city, state, and submission of winning Contestants will be posted on the NIH Tribal Health Research Office Web site.

The award-approving official will be the NIH Deputy Director for Program Coordination, Planning, and Strategic Initiatives. The winners will be notified by email, telephone, or mail after the date of the judging. Prizes awarded under this Challenge will be paid by electronic funds transfer and may be subject to federal income taxes. The NIH will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

Basis Upon Which Submissions Will Be Evaluated: This section describes judging criteria and the evaluation process. Submissions first will be assessed by a technical evaluation panel consisting of individuals who will review the relevance of the entry to the AI/AN communities, the accuracy of the advance and impact on AI/ANs, cultural sensitivity, and confirmation of the unmet research need(s) in AI/AN populations. The technical evaluation panel will forward its assessment of each submission to a qualified judging panel composed of NIH program directors and other federal employees involved in AI/AN research. The judging panel will evaluate all submissions and recommend winners based on the assessments from the technical evaluation panel and the following judging criteria:

- Quality, clarity, and historical accuracy. Is the information presented accurately and clearly?
- Impact. Is the story educational, inspiring, and persuasive? Does it clearly convey how the culture or tradition being practiced promotes health and wellness? Does it clearly convey where research could continue to improve health and well-being?
- Originality. The Challenge submission cannot have been previously published.
- Digital technology. Does the video effectively use lighting, sound, and editing to tell the story? Is the dialogue clear and easy to understand? Do visual effects (if any) contribute to the message or detract from it? Does the video convey the intended message in the five minute limit? Is the video of sufficient quality to be posted on the Web? Is captioning or English translation available?

Additional Information: If Contestants choose to provide the NIH with personal information by providing a submission to this Challenge, that information will be used to respond to Contestants in matters regarding their submission, announcements of entry, finalists, and winners of the Challenge.

Dated: November 19, 2016

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2016–28497 Filed 11–25–16; 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: Psychiatric Disorders and Addiction.

Date: December 13, 2016.

Time: 1:00 p.m. to 3:00 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: Samuel C Edwards, Ph.D., IRG Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Neurovirology, Neuroimmunology, Neurodevelopmental Disorders, and Anticancer Drugs.

Date: December 15, 2016.

Time: 1:00 p.m. to 3:00 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: Samuel C. Edwards, Ph.D., IRG Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@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: November 21, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–28415 Filed 11–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities Under Emergency Review by the Office of Management and Budget

The Substance Abuse and Mental Health Services Administration (SAMHSA) has submitted the following request (see below) for emergency OMB review under the Paperwork Reduction Act (44 U.S.C. Chapter 35). OMB approval has been requested by January 12, 2017. A copy of the information collection plans may be obtained by calling the SAMHSA Reports Clearance Officer at (240) 276–1243.

Title: Notification of Intent to Use Schedule III, IV, or V Opioid Drugs for the Maintenance and Detoxification Treatment of Opiate Addiction by a ''Qualifying Other Practitioner''—NEW.

OMB Number: 0930—New.

Frequency: On Going.

Affected public: Nurse Practitioners and Physician Assistants.

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting an emergency Office of Management and Budget (OMB) review and approval of the Notification of Intent to Use Schedule III, IV, or V Opioid Drugs for the Maintenance and Detoxification Treatment of Opiate Addiction by a ''Qualifying Other Practitioner. The Notification of Intent would allow SAMHSA to determine whether other practitioners are eligible to prescribe certain approved narcotic treatment medications for the maintenance or detoxification treatment of opioid addiction.

This Notification of Intent is a result of the Comprehensive Addiction and Recovery Act (Pub. L. 114–198), which was signed into law on July 22, 2016. The law establishes criteria for nurse practitioners (NPs) and physician assistants (PAs) to qualify for a waiver to prescribe covered medications. To be eligible for a waiver, the NP or PA must: be licensed under State law to prescribe schedule III, IV, or V medications for the treatment of pain; fulfill qualification requirements in the law for training and experience; and fulfill qualification requirements in the law for appropriate supervision by a qualifying physician. SAMHSA has the responsibility to receive, review, approve, or deny waiver requests.

Practitioners who meet the statutory requirements will be eligible to prescribe only those opioid treatment medications that are controlled in Schedules III, IV, or V, under the Controlled Substance Act (CSA), that are specifically approved by the Food and Drug Administration (FDA) for the treatment of opioid addiction, and are not the subject of an ''adverse determination.'' The only medications that currently fulfill these requirements are ones that contain the active ingredient buprenorphine.

Given the severity of the opioid epidemic, SAMHSA is requesting an emergency OMB approval. Emergency OMB approval will enable NPs and PAs to dramatically increase access to buprenorphine among individuals with opioid use disorder.

The following table is the estimated hour burden:

Purpose of submission	Number of respondents	Responses/ respondent	Burden hours	Total burden hours
Notification of Intent for Qualifying Other Practitioner to Use Schedule III, IV, or V Opioid Drugs for the Maintenance and Detoxification Treatment of Opiate Addiction by a ''Qualifying Other Practitioner'' under 21 USC § 823(g)(2)—Nurse Practitioners	816	1	.066	54
Notification of Intent for Qualifying Other Practitioner to Use Schedule III, IV, or V Opioid Drugs for the Maintenance and Detoxification Treatment of Opiate Addiction by a ''Qualifying Other Practitioner'' under 21 USC § 823(g)(2)—Physician Assistants	590	1	.066	39
Total	1,406			93

Written comments and recommendations concerning the proposed information collection should be sent by January 12, 2017 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, OMB. To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–5806. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2016–28569 Filed 11–25–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: National Mental Health Services Survey (N–MHSS) (OMB No. 0930–0119)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Behavioral Health Statistics and Quality (CBHSQ) is requesting a revision to the National Mental Health Services Survey (N–MHSS) (OMB No. 0930–0119), which expires on February 28, 2017. The N–MHSS provides annual national and state-level data on the number and characteristics of mental health treatment facilities in the United States and biennial national and state-level data on the number and characteristics of persons treated in these facilities.

The N–MHSS will provide updated information about facilities for SAMHSA's online Behavioral Health Treatment Services Locator (see: *https://findtreatment.samhsa.gov*), which was last updated with information from the abbreviated N–MHSS (N–MHSS-Locator Survey) in 2015. An abbreviated N–MHSS (N–MHSS-Locator Survey) will be conducted in 2017 and 2019 to update the information about facilities in the online Locator. A full-scale N–MHSS will be conducted in 2018 to collect (1) information about facilities needed for updating the online Locator, such as the facility name and address, specific services offered, and special client groups served and (2) additional information about client counts and the demographics of persons treated in these facilities. Three small surveys are proposed for adding new facilities to the online Locator as they become known to SAMHSA. Both the 2017 N–MHSS-Locator Survey and the addition of new facilities to the online Locator will use the same N–MHSS-Locator Survey instrument.

This request for a revision seeks to change the content of the currently approved abbreviated N–MHSS (*i.e.,* N–MHSS–Locator) survey instrument, and the previously approved 2014 and 2016 full-scale N–MHSS (OMB No. 0930–0119) to accommodate two related N–MHSS activities:

(1) collection of information from the total N–MHSS universe of mental health treatment facilities during 2017, 2018, and 2019; and

(2) collection of information on newly identified facilities throughout the year as they are identified so that new facilities can quickly be added to the online Locator.

The survey mode for both data collection activities will be web with telephone follow-up. A paper questionnaire will also be available to facilities who request one.

The database resulting from the N–MHSS will be used to update SAMHSA's online Behavioral Health Treatment Services Locator and to produce an electronic version of a national directory of mental health facilities, for use by the general public, behavioral health professionals, and treatment service providers. In addition, a data file derived from the survey will be used to produce a summary report providing national and state-level outcomes. The summary report and a public-use data file will be used by researchers, mental health professionals, State governments, the U.S. Congress, and the general public.

The request for OMB approval will include a request to conduct an abbreviated N–MHSS-Locator survey in 2017 and 2019, and the full-scale N–MHSS in 2018.

The following table summarizes the estimated annual response burden for the N–MHSS:

ESTIMATED ANNUAL RESPONSE BURDEN FOR THE N–MHSS

Type of respondent	Number of respondents	Responses per respondent	Average hours per response	Total burden hours
Facilities in N–MHSS-Locator Survey universe in 2017 and 2019	17,000	1	0.42	7,140
Newly identified facilities in Between-Survey Update in 2017, 2018, and 2019 [1]	1,700	1	0.42	714
Facilities in full-scale N–MHSS universe in 2018	17,000	1	0.75	12,750
Average Annual Total	18,700	1	0.62	9,724

[1] Collection of information on newly identified facilities throughout the year, as they are identified, so that new facilities can quickly be added to the Locator.

Written comments and recommendations concerning the proposed information collection should be sent by December 28, 2016 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to

send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2016–28470 Filed 11–25–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVCES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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.

Proposed Project—Talk. They Hear You.'' Campaign Evaluation: Case Studies—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) is requesting approval from the Office of Management and Budget (OMB) for a new data collection, ''*Talk. They Hear You.*'' *Campaign Evaluation: Case Studies* (the ''case studies''). This collection includes three instruments:

1. Parent/Caregiver Pre-Test/Post-Test Survey
2. Youth Pre-Test and Post-Test Survey
3. Parent/Caregiver Interview Guide

The case studies collection is part of a larger effort to evaluate the impact of the ''*Talk. They Hear You.*'' *Campaign.* These evaluations will help determine the extent to which the campaign has been successful in educating parents and caregivers nationwide about effective methods for reducing underage drinking. The Campaign is designed to educate and empower parents and caregivers to talk with children about alcohol. To prevent initiation of underage drinking, the campaign targets parents and caregivers of children aged 9–15, with the specific aims of:

1. Increasing parents' awareness of the prevalence and risk of underage drinking
2. Equipping parents with the knowledge, skills, and confidence to prevent underage drinking
3. Increasing parents' actions to prevent underage drinking.

For this evaluation, SAMHSA intends to measure knowledge and attitudes before and after a focused campaign outreach effort in areas that have not previously had significant exposure to the campaign. Participants in the evaluation will be recruited from a middle school community, and will include parents/caregivers and students. School administrators and partnering organization(s), such as parent organizations and/or local prevention organizations will assist in the dissemination of campaign materials and data collection efforts. There will be two sites selected for the case studies—one site will serve as the experimental group and the other site will serve as the control group. The experimental group will be exposed to the ''Talk. They Hear You.'' messages using standard campaign materials and dissemination strategies, which will be coordinated through a local partner organization. The control group will not be intentionally exposed to the campaign materials. The case studies will include baseline surveys of parents/caregivers and children of middle-school age in both the experimental and control communities, followed by exposure to campaign materials in the experimental community, and post-exposure surveys of parents and children in both communities. Additionally, SAMHSA will conduct 30 interviews with parents and caregivers following the post-exposure surveys at the experimental site to obtain more detailed information about the specific impact of the campaign.

ANNUALIZED HOURLY BURDEN

Instrument	Total No. of respondents	Total responses/ respondent	Total responses	Hrs. per response	Total hour burden
Pre-test survey for 9–15-year old youth	1,093	1	1,093	0.17	185.8
Post-test survey for 9–15-year old youth	1,093	1	1,093	0.17	185.8
Pre-test survey for parents and caregivers	690	1	690	0.17	117.3
Post-test survey for parents and caregivers	690	1	690	0.17	117.3
Individual interviews with parents and caregivers	30	1	30	1	30
Total	1,783		3,596		636.2

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 15E57–B, 5600 Fishers Lane, Rockville, MD 20857 *OR* email a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received by January 27, 2017.

Summer King,

Statistician.

[FR Doc. 2016–28496 Filed 11–25–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0012]

Agency Information Collection Activities: Lien Notice

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Lien Notice (CBP Form 3485). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before December 28, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, or via email (*CBP_PRA@cbp.dhs.gov*). Please note contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs please contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP Web site at *https://www.cbp.gov/*. For additional help: *https://help.cbp.gov/app/home/search/1*.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (81 FR 62518) on September 9, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Lien Notice.

OMB Number: 1651–0012.

Form Number: 3485.

Abstract: Section 564, Tariff Act of 19, as amended (19 U.S.C. 1564) provides that the claimant of a lien for freight can notify CBP in writing of the existence of a lien, and CBP shall not permit delivery of the merchandise from a public store or a bonded warehouse until the lien is satisfied or discharged. The claimant shall file the notification of a lien on CBP Form 3485, Lien Notice. This form is usually prepared and submitted to CBP by carriers, cartmen and similar persons or firms. The data collected on this form is used by CBP to ensure that liens have been satisfied or discharged before delivery of the freight from public stores or bonded warehouses, and to ensure that proceeds from public auction sales are distributed to the lienholder. CBP Form 3485 is provided for by 19 CFR 141.112, and is accessible at *http://forms.cbp.gov/pdf/CBP_Form_3485.pdf*.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours. There are no changes to the information collected or to Form 3485.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 112,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 28,000.

Dated: November 22, 2016.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2016–28547 Filed 11–25–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0088]

Agency Information Collection Activities: Passenger and Crew Manifest

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Passenger and Crew Manifest (Advance Passenger Information System). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before January 27, 2017 to be assured of consideration.

ADDRESSES: All submissions received must include the OMB Control Number 1651–0088 in the subject box, the agency name. To avoid duplicate

submissions, please use only *one* of the following methods to submit comments:

(1) Email. Submit comments to: *CBP_PRA@CBP.DHS.GOV,* email should include OMB Control number in Subject.

(2) Mail. Submit written comments to CBP PRA Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 10th Floor, 90 K St NE., Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, or via telephone (202) 325–0123. Please note contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs please contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP Web site at *https://www.cbp.gov/*. For additional help: *https://help.cbp.gov/app/home/search/1*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Passenger and Crew Manifest (Advance Passenger Information System)

OMB Number: 1651–0088

Form Number: None

Abstract: The Advance Passenger Information System (APIS) is an automated method in which U.S. Customs and Border Protection (CBP) receives information about passengers and crew onboard inbound and outbound international flights before their arrival in or departure from the United States. APIS data includes biographical information for international air passengers arriving in or departing from the United States, allowing the data to be checked against CBP databases. The information is submitted for both commercial and private aircraft flights.

APIS is authorized under the Aviation and Transportation Security Act, Public Law 107–71. Under this statute, air carriers operating a passenger flight in foreign air transportation to the United States must electronically transmit to CBP a passenger and crew manifest containing specific identifying data elements and any other information that DHS determines is reasonably necessary to ensure aviation safety. The specific passenger and crew identifying information required by statue consists of the following: Full name; date of birth; gender; citizenship; document type; passport number; country of issuance and expiration date; and alien registration number where applicable. The APIS regulatory requirements are specified in 19 CFR 122.49a, 122.49b, 122.49c, 122.75a, 122.75b, and 122.22. These provisions lists all the required APIS data.

Respondents submit their electronic manifest either through a direct interface with CBP, or using eAPIS which is a web-based system that can be accessed at *https://eapis.cbp.dhs.gov/*.

Current Actions: This submission is being made to request an extension with no change to the burden hours or to the information collected.

Type of Review: Extension with no change.

Affected Public: Businesses, Individuals.

Commercial Airlines:

Estimated Number of Respondents: 1,130.

Estimated Number of Total Annual Responses: 1,850,878.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 307,246.

Commercial Airline Passengers (3rd party):

Estimated Number of Respondents: 184,050,663.

Estimated Number of Total Annual Responses: 184,050,663.

Estimated Time per Response: 10 seconds.

Estimated Total Annual Burden Hours: 496,937.

Private Aircraft Pilots:

Estimated Number of Respondents: 460,000.

Estimated Number of Total Annual Responses: 460,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 115,000.

Dated: November 22, 2016.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2016–28548 Filed 11–25–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0086]

Agency Information Collection Activities: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers (CDSOA) (CBP Form 7401). CBP is proposing that this information collection be extended with a change to the burden hours. There is no change to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before December 28, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, or via email (*CBP_PRA@cbp.dhs.gov*). Please note contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs please contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP Web site at *https://www.cbp.gov/*. For additional help: *https://help.cbp.gov/app/home/search/1*.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (81 FR 62516) on September 9, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers.

OMB Number: 1651–0086.

Form Number: CBP Form 7401.

Abstract: This collection of information is used by CBP to make distributions of funds pursuant to the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA). 19 U.S.C. 1675c (repealed by the Deficit Reduction Act of 2005, Pub. L. 109–171, 7601 (Feb. 8, 2006)). This Act prescribes the administrative procedures under which antidumping and countervailing duties assessed on imported products are distributed to affected domestic producers that petitioned for or supported the issuance of the order under which the duties were assessed. The amount of any distribution afforded to these domestic producers is based on certain qualifying expenditures that they incur after the issuance of the order or finding up to the effective date of the CDSOA's repeal, October 1, 2007. This distribution is known as the continued dumping and subsidy offset. The claims process for the CDSOA program is provided for in 19 CFR 159.61 and 159.63.

A notice is published in the **Federal Register** in June of each year in order to inform claimants that they can make claims under the CDSOA. In order to make a claim under the CDSOA, CBP Form 7401 may be used. This form is accessible at *http://www.cbp.gov/xp/cgov/toolbox/forms/* and can be submitted electronically through *https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=8776895.*

Current Actions: This submission is being made to extend the expiration date and to revise the burden hours as a result of updated estimates of the number of CDSOA claims prepared on an annual basis. There are no changes to the information collected.

Type of Review: Extension (with a change to the burden hours).

Affected Public: Businesses.

Estimated Number of Respondents: 1,200.

Estimated Number of Responses per Respondent: 1.75.

Estimated Total Annual Responses: 2,100.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 2,100.

Dated: November 22, 2016.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2016–28549 Filed 11–25–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1653]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the

respective community map repository address listed in the table 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.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

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).

These 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. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table 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.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 16, 2016.

Roy E. Wright,

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

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Arizona:						
Pima	City of Tucson (15–09–2903P).	The Honorable Jonathan Rothschild, Mayor, City of Tucson, City Hall, 255 West Alameda Street, 10th Floor, Tucson, AZ 85701.	Planning and Development Services, 201 North Stone Avenue, 1st Floor, Tucson, AZ 85701.	*http://www.msc.fema.gov/lomc.*	Nov. 9, 2016	040076
Pima	City of Tucson (16–09–0706P).	The Honorable Jonathan Rothschild, Mayor, City of Tucson, City Hall, 255 West Alameda Street, 10th Floor, Tucson, AZ 85701.	Planning and Development Services, 201 North Stone Avenue, 1st Floor, Tucson, AZ 85701.	*http://www.msc.fema.gov/lomc.*	Dec. 14, 2016	040076
Pima	Town of Marana (15–09–2320P).	The Honorable Ed Honea, Mayor, Town of Marana, 11555 West Civic Center Drive, Marana, AZ 85653.	Pima County Flood Control District, 201 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	*http://www.msc.fema.gov/lomc.*	Nov. 9, 2016	040118
California:						
Los Angeles	City of Los Angeles (16–09–0471P).	The Honorable Eric Garcetti, Mayor, City of Los Angeles, 200 North Spring Street, Room 303, Los Angeles, CA 90012.	Department of Public Works, Bureau of Engineering, 1149 South Broadway Suite 700, Los Angeles, CA 90015.	*http://www.msc.fema.gov/lomc.*	Nov. 2, 2016	060137
Los Angeles	Unincorporated areas of Los Angeles County (16–09–0471P).	The Honorable Hilda L. Solis, Chair, Board of Supervisors, Los Angeles County, Kenneth Hahn Hall of Administration, 500 West Temple Street, Room 856, Los Angeles, CA 90012.	County of Los Angeles Department of Public Works, Annex Building, 900 South Fremont Avenue, 3rd Floor, Alhambra, CA 91803.	*http://www.msc.fema.gov/lomc.*	Nov. 2, 2016	065043
Napa	Town of Yountville (16–09–2592X).	The Honorable John Dunbar, Mayor, Town of Yountville, 6550 Yount Street, Yountville, CA 94599.	Town Hall, 6550 Yount Street, Yountville, CA 94599.	*http://www.msc.fema.gov/lomc.*	Dec. 27, 2016	060209
Orange	City of Irvine (16–09–1326P).	The Honorable Steven S. Choi, Ph.D., Mayor, City of Irvine, 1 Civic Center Plaza, Irvine, CA 92606.	City Hall, 1 Civic Center Plaza, Irvine, CA 92606.	*http://wwwmscfemagov/lomc.*	Dec. 9, 2016	060222

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Orange	Unincorporated areas of Orange County (16–09–1326P).	The Honorable Lisa A. Bartlett, Chair, Board of Supervisors, Orange County, 333 West Santa Ana Boulevard, Santa Ana, CA 92701.	Orange County Flood Control Division, 300 North Flower Street, Santa Ana, CA 92703.	*http://www.msc.fema.gov/lomc.*	Dec. 9, 2016	060212
Riverside	City of Moreno Valley (16–09–0597P).	The Honorable Yxstian Gutierrez, Mayor, City of Moreno Valley, 14177 Frederick Street, Moreno Valley, CA 92552.	City Hall, 14177 Frederick Street, Moreno Valley, CA 92552.	*http://www.msc.fema.gov/lomc.*	Dec. 16, 2016	065074
Sacramento	City of Elk Grove (15–09–1862P).	The Honorable Gary Davis, Mayor, City of Elk Grove, City Hall, 8401 Laguna Palms Way, Elk Grove, CA 95758.	Public Works Department, 8401 Laguna Palms Way, Elk Grove, CA 95758.	*http://www.msc.fema.gov/lomc.*	Nov. 10, 2016	060767
San Diego	City of San Diego (16–09–1837P).	The Honorable Kevin L. Faulconer, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101.	Development Services Department, 1222 1st Avenue, 3rd Floor, MS 301, San Diego, CA 92101.	*http://www.msc.fema.gov/lomc.*	Dec. 1, 2016	060295
San Diego	Unincorporated areas of San Diego County (16–09–0707P).	The Honorable Ron Roberts, Chairman, Board of Supervisors, San Diego County, 1600 Pacific Highway, Room 335, San Diego, CA 92101.	Department of Public Works, Flood Control, 5510 Overland Avenue, Suite 410, San Diego, CA 92123.	*http://www.msc.fema.gov/lomc.*	Nov. 14, 2016	060284
Shasta	Unincorporated areas of Shasta County (16–09–0884P).	The Honorable Pam Giacomini, Chair, Board of Supervisors, Shasta County, 1450 Court Street, Suite 308B, Redding, CA 96001.	Shasta County Public Works Department, 1855 Placer Street, Redding, CA 96001.	*http://www.msc.fema.gov/lomc.*	Oct. 31, 2016	060358
Nevada:						
Douglas	Unincorporated areas of Douglas County (16–09–1787X).	The Honorable Doug N. Johnson, Chairman, Board of Supervisors, Douglas County, P.O. Box 218, Minden, NV 89423.	Douglas County Public Works Department, 1615 8th Street, Minden, NV 89423.	*http://www.msc.fema.gov/lomc.*	Dec. 15, 2016	320008

[FR Doc. 2016–28526 Filed 11–25–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4285–DR; Docket ID FEMA–2016–0001]

North Carolina; Amendment No. 12 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 North Carolina (FEMA–4285–DR), dated October 10, 2016, and related determinations.

DATES: Effective November 3, 2016.

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 North Carolina 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 October 10, 2016.

Anson, Chatham, Northampton, Richmond, and Scotland Counties for Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct federal assistance under the Public Assistance program.

Carteret and Perquimans Counties for Individual Assistance (already designated for assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–28537 Filed 11–25–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@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 flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, 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.

This new or modified 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, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 16, 2016.

Roy E. Wright,

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

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Alabama:					
Jefferson (FEMA Docket No.: B–1637).	City of Birmingham (15–04–9138P).	The Honorable William A. Bell, Sr., Mayor, City of Birmingham, 710 North 20th Street, 3rd Floor, Birmingham, AL 35203.	City Hall, 710 North 20th Street, 3rd Floor, Birmingham, AL 35203.	Sep. 8, 2016	010116
Shelby (FEMA Docket No.: B–1635).	City of Alabaster (16–04–2252P).	The Honorable Marty Handlon, Mayor, City of Alabaster, 1953 Municipal Way, Alabaster, AL 35007.	Building Safety Department, 200 Depot Street, Alabaster, AL 35007.	Sep. 8, 2016	010192
Arkansas:					
Benton (FEMA Docket No.: B–1637).	City of Rogers (15–06–1737P).	The Honorable Greg Hines, Mayor, City of Rogers, 301 West Chestnut Street, Rogers, AR 72756.	City Hall, 301 West Chestnut Street, Rogers, AR 72756.	Sep. 12, 2016	050013
Washington (FEMA Docket No.: B–1635).	City of Johnson (15–06–2898P).	The Honorable Chris Keeney, Mayor, City of Johnson, P.O. Box 563, Johnson, AR 72704.	City Hall, 2904 Main Drive, Johnson, AR 72704.	Sep. 8, 2016	050218
Washington (FEMA Docket No.: B–1635).	City of Springdale (15–06–2898P).	The Honorable Doug Sprouse, Mayor, City of Springdale, 201 Spring Street, Springdale, AR 72764.	Planning and Community Development Department, 201 Spring Street, Springdale, AR 72764.	Sep. 8, 2016	050219
Florida:					
Bay (FEMA Docket No.: B–1628).	City of Panama City (16–04–1535P).	The Honorable Greg Brudnicki, Mayor, City of Panama City, 9 Harrison Avenue, Panama City, FL 32401.	Public Works Engineering Division, 9 Harrison Avenue, Panama City, FL 32401.	Aug. 11, 2016	120012
Bay (FEMA Docket No.: B–1628).	Unincorporated areas of Bay County (16–04–1535P).	The Honorable Mike Nelson, Chairman, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Division, 840 West 11th Street, Panama City, FL 32401.	Aug. 11, 2016	120004

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Brevard (FEMA Docket No.: B–1628).	City of Cocoa Beach (16–04–3178X).	The Honorable Tim Tumulty, Mayor, City of Cocoa Beach, P.O. Box 322430, Cocoa Beach, FL 32932.	Development Services Department, 2 South Orlando Avenue, Cocoa Beach, FL 32931.	Aug. 10, 2016	125097
Brevard (FEMA Docket No.: B–1628).	Unincorporated areas of Brevard County (16–04–3178X).	The Honorable Jim Barfield, Chairman, Brevard County Board of Commissioners, 2575 North Courtenay Parkway, Suite 200, Merritt Island, FL 32953.	Brevard County Public Works Department, 2725 Judge Fran Jamieson Way, Melbourne, FL 32940.	Aug. 10, 2016	125092
Broward (FEMA Docket No.: B–1637).	City of Dania Beach (16–04–1347P).	The Honorable Marco Salvino, Sr., Mayor, City of Dania Beach, 100 West Dania Beach Boulevard, Dania Beach, FL 33004.	City Hall, 100 West Dania Beach Boulevard, Dania Beach, FL 33004.	Sep. 14, 2016	120034
Broward (FEMA Docket No.: B–1635).	City of Hollywood (15–04–6825P).	The Honorable Peter J.M. Bober, Mayor, City of Hollywood, P.O. Box 229045, Hollywood, FL 33020.	Planning Division, 2600 Hollywood Boulevard, Hollywood, FL 33020.	Sep. 7, 2016	125113
Broward (FEMA Docket No.: B–1637).	City of Hollywood (16–04–1347P).	The Honorable Peter J.M. Bober, Mayor, City of Hollywood, P.O. Box 229045, Hollywood, FL 33022.	Planning Division, 2600 Hollywood Boulevard, Hollywood, FL 33020.	Sep. 14, 2016	125113
Broward (FEMA Docket No.: B–1637).	City of Pompano Beach (16–04–3054X).	The Honorable Lamar Fisher, Mayor, City of Pompano Beach, 100 West Atlantic Boulevard, Pompano Beach, FL 33060.	Building Inspections Department, 100 West Atlantic Boulevard, Pompano Beach, FL 33060.	Sep. 16, 2016	120055
Charlotte (FEMA Docket No.: B–1628).	Unincorporated areas of Charlotte County (16–04–1533P).	The Honorable Bill Truex, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	Aug. 11, 2016	120061
Gulf (FEMA Docket No.: B–1628).	Unincorporated areas of Gulf County (16–04–3116X).	The Honorable Ward McDaniel, Chairman, Gulf County Board of Commissioners, 1000 Cecil G. Costin, Sr. Boulevard, Port St. Joe, FL 32456.	Gulf County Planning Department, 1000 Cecil G. Costin, Sr. Boulevard, Port St. Joe, FL 32456.	Aug. 12, 2016	120098
Lee (FEMA Docket No.: B–1635).	Unincorporated areas of Lee County (16–04–2127P).	The Honorable Frank Mann, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	Sep. 5, 2016	125124
Lee (FEMA Docket No.: B–1635).	Unincorporated areas of Lee County (16–04–2912P).	The Honorable Frank Mann, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902..	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	Sep. 6, 2016	125124
Lee (FEMA Docket No.: B–1635).	Unincorporated areas of Lee County (16–04–9900P).	The Honorable Frank Mann, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	Sep. 7, 2016	125124
Miami-Dade (FEMA Docket No.: B–1635).	Village of Miami Shores Village (15–04–5104P).	The Honorable Alice Burch, Mayor, Village of Miami Shores Village, 10050 Northeast 2nd Avenue, Miami Shores Village, FL 33138.	Planning and Zoning Department, 10050 Northeast 2nd Avenue, Miami Shores Village, FL 33138.	Sep. 9, 2016	120652
Monroe (FEMA Docket No.: B–1635).	City of Key West (16–04–3139P).	The Honorable Craig Cates, Mayor, City of Key West, P.O. Box 1409, Key West, FL 33041.	Building Department, 3140 Flagler Avenue Key West, FL 33040.	Sep. 9, 2016	120168
Monroe (FEMA Docket No.: B–1635).	Unincorporated areas of Monroe County (16–04–3255P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Key West, FL 33050.	Sep. 1, 2016	125129
St. Johns (FEMA Docket No.: B–1635).	Unincorporated areas of St. Johns County (15–04–4235P).	The Honorable Jeb Smith, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32084.	Sep. 5, 2016	125147
St. Johns (FEMA Docket No.: B–1628).	Unincorporated areas of St. Johns County (16–04–0993P).	The Honorable Jeb Smith, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Administration Building, 4020 Lewis Speedway, St. Augustine, FL 32084.	Aug. 11, 2016	125147
Kentucky: Boyle (FEMA Docket No.: B–1637).	Unincorporated areas of Boyle County (16–04–3037P).	The Honorable Harold McKinney, Boyle County Judge/Executive, 321 West Main Street, Room 111, Danville, KY 40422.	Boyle County Public Works Department, 1858 South Danville Bypass, Danville, KY 40422.	Aug. 31, 2016	210322
Maryland:					
Frederick (FEMA Docket No.: B–1635).	City of Frederick (16–03–0095P).	The Honorable Randy McClement, Mayor, City of Frederick, 101 North Court Street, Frederick, MD 21701.	Engineering Department, 140 West Patrick Street, Frederick, MD 21701.	Aug. 31, 2016	240030
Montgomery (FEMA Docket No.: B–1637).	Unincorporated areas of Montgomery County (16–03–0003P).	The Honorable Isiah Leggett, Montgomery County Executive, 101 Monroe Street, 2nd Floor, Rockville, MD 20850.	Montgomery County Department of Permitting Services, 255 Rockville Pike, Rockville, MD 20850.	Sep. 15, 2016	240049
Massachusetts: Barnstable (FEMA Docket No.: B–1645).	Town of Dennis (16–01–0605P).	The Honorable Paul McCormick, Chairman, Town of Dennis Board of Selectmen, P.O. Box 2060, South Dennis, MA 02660.	Town Hall, 685 Route 134, South Dennis, MA 02660.	Sep. 16, 2016	250005

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Montana: Stillwater (FEMA Docket No.: B–1635).	Unincorporated areas of Stillwater County (15–08–0567P).	The Honorable Dennis Shupak, Chairman, Stillwater County Board of Commissioners, 400 East 3rd Avenue North, Columbus, MT 59019.	Floodplain Administrator's Office, 431 Quarry Road, Columbus, MT 59019.	Sep. 9, 2016	300078
North Carolina: Orange (FEMA Docket No.: B–1628).	Town of Chapel Hill (16–04–4141X).	The Honorable Pam Hemminger, Mayor, Town of Chapel Hill, 405 Martin Luther King Jr. Boulevard, Chapel Hill, NC 27514.	Public Works Department, Stormwater Division, 405 Martin Luther King Jr. Boulevard, Chapel Hill, NC 27514.	Aug. 18, 2016	370180
Oklahoma:					
Creek (FEMA Docket No.: B–1637).	City of Sapulpa (16–06–0371P).	The Honorable Reg Green, Mayor, City of Sapulpa, P.O. Box 1130, Sapulpa, OK 74067.	Urban Development Department, 425 East Dewey Avenue, Sapulpa, OK 74067.	Sep. 12, 2016	400053
Creek (FEMA Docket No.: B–1637).	Unincorporated areas of Creek County (16–06–0371P).	The Honorable Newt Stephens, Jr., Chairman, Creek County Board of Commissioners, 317 East Lee Avenue, Suite 103, Sapulpa, OK 74067.	Creek County Stormwater Management Department, 317 East Lee Avenue, Suite 102, Sapulpa, OK 74067.	Sep. 12, 2016	400490
Oklahoma (FEMA Docket No.: B–1637).	City of Edmond (15–06–1048P).	The Honorable Charles Lamb, Mayor, City of Edmond, P.O. Box 2970, Edmond, OK 73083.	Engineering/Drainage Utility Department, 10 South Littler Avenue, Edmond, OK 73084.	Sep. 12, 2016	400252
Oklahoma (FEMA Docket No.: B–1635).	City of Edmond (15–06–2036P).	The Honorable Charles Lamb, Mayor, City of Edmond, P.O. Box 2970, Edmond, OK 73083.	Engineering/Drainage Utility Department, 10 South Littler Avenue, Edmond, OK 73084.	Sep. 8, 2016	400252
Tulsa (FEMA Docket No.: B–1637).	City of Jenks (16–06–0371P).	The Honorable Kelly Dunkerley, Mayor, City of Jenks, P.O. Box 2007, Jenks, OK 74037.	Engineering Department, 211 North Elm Street, Jenks, OK 74037.	Sep. 12, 2016	400209
Tulsa (FEMA Docket No.: B–1637).	City of Tulsa (15–06–0631P).	The Honorable Dewey F. Bartlett, Jr., Mayor, City of Tulsa, 175 East 2nd Street, 15th Floor, Tulsa, OK 74103.	Planning and Development Department, 175 East 2nd Street, 4th Floor, Tulsa, OK 74103.	Sep. 13, 2016	405381
Tulsa (FEMA Docket No.: B–1637).	Unincorporated areas of Tulsa County (15–06–0631P).	The Honorable Karen Keith, Chair, Tulsa County Board of Commissioners, 500 South Denver Avenue, Tulsa, OK 74103.	Tulsa County Inspections Office, 633 West 3rd Street, Room 140, Tulsa, OK 74127.	Sep. 13, 2016	400462
Tulsa (FEMA Docket No.: B–1637).	Unincorporated areas of Tulsa County (16–06–0371P).	The Honorable Karen Keith, Chair, Tulsa County Board of Commissioners, 500 South Denver Avenue, Tulsa, OK 74103.	Tulsa County Inspections Office, 633 West 3rd Street, Room 140, Tulsa, OK 74127.	Sep. 12, 2016	400462
Pennsylvania:					
Dauphin (FEMA Docket No.: B–1637).	Township of Derry (15–03–0854P).	The Honorable Marc A. Moyer, Chairman, Township of Derry Board of Supervisors, 600 Clearwater Road, Hershey, PA 17033.	Community Development Department, 600 Clearwater Road, Hershey, PA 17033.	Sep. 9, 2016	420376
Dauphin (FEMA Docket No.: B–1637).	Township of Londonderry (15–03–0854P).	The Honorable Bart Shellenhamer, Chairman, Township of Londonderry Board of Supervisors, 783 South Geyers Church Road, Middletown, PA 17057.	Township Hall, 783 South Geyers Church Road, Middletown, PA 17057.	Sep. 9, 2016	420383
Dauphin (FEMA Docket No.: B–1637).	Township of Lower Swatara (15–03–0854P).	The Honorable Thomas L. Mehaffie III, President, Township of Lower Swatara Board of Commissioners, 1499 Spring Garden Drive, Middletown, PA 17057.	Township Municipal Building, 1499 Spring Garden Drive, Middletown, PA 17057.	Sep. 9, 2016	420385
South Dakota:					
Lawrence (FEMA Docket No.: B–1635).	City of Spearfish (16–08–0178P).	The Honorable Dana Boke, Mayor, City of Spearfish, 625 5th Street, Spearfish, SD 57783.	City Hall, 625 5th Street, Spearfish, SD 57783.	Sep. 5, 2016	460046
Meade (FEMA Docket No.: B–1637).	City of Sturgis (15–08–0375P).	The Honorable Mark Carstensen, Mayor, City of Sturgis, 1040 Harley-Davidson Way, Sturgis, SD 57785.	Planning and Permitting Office, 1040 Harley-Davidson Way, Sturgis, SD 57785.	Sep. 15, 2016	460055
Texas:					
Bexar (FEMA Docket No.: B–1628).	City of San Antonio (16–06–1080P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	Aug. 9, 2016	480045
Dallas (FEMA Docket No.: B–1628).	City of Dallas (15–06–4110P).	The Honorable Michael S. Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	Engineering Department, 320 East Jefferson Boulevard, Room 200, Dallas, TX 75203.	Aug. 8, 2016	480171
Ellis (FEMA Docket No.: B–1637).	City of Waxahachie (15–06–1366P).	The Honorable Kevin Strength, Mayor, City of Waxahachie, 401 South Rogers Street, Waxahachie, TX 75165.	City Hall, 401 South Rogers Street, Waxahachie, TX 75165.	Sep. 14, 2016	480211
Fort Bend (FEMA Docket No.: B–1637).	City of Sugar Land (15–06–1008P).	The Honorable James A. Thompson, Mayor, City of Sugar Land, P.O. Box 110, Sugar Land, TX 77487.	City Hall, 2700 Town Center Boulevard North, Sugar Land, TX 77479.	Sep. 13, 2016	480234
Fort Bend (FEMA Docket No.: B–1637).	Unincorporated areas of Fort Bend County (15–06–1008P).	The Honorable Robert Hebert, Fort Bend County Judge, 401 Jackson Street, Richmond, TX 77469.	Fort Bend County Engineering Department, 401 Jackson Street, Richmond, TX 77469.	Sep. 13, 2016	480228

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Harris (FEMA Docket No.: B–1628).	Unincorporated areas of Harris County (16–06–1373P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	Aug. 9, 2016	480287
Montgomery (FEMA Docket No.: B–1637).	Unincorporated areas of Montgomery County (15–06–4246P).	The Honorable Craig B. Doyal, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	Montgomery County Permitting Department, 501 North Thompson Street, Suite 100, Conroe, TX 77301.	Sep. 14, 2016	480483
Tarrant (FEMA Docket No.: B–1628).	City of Colleyville (15–06–4177P).	The Honorable David Kelly, Mayor, City of Colleyville, 100 Main Street, Colleyville, TX 76034.	Public Works Department, 100 Main Street, Colleyville, TX 76034.	Aug. 11, 2016	480590
Tarrant (FEMA Docket No.: B–1635).	Unincorporated areas of Tarrant County (15–06–4328P).	The Honorable B. Glen Whitley, Tarrant County Judge, 100 East Weatherford Street, Suite 501, Fort Worth, TX 76196.	Tarrant County Transportation Services Department, 100 East Weatherford Street, Suite 401, Fort Worth, TX 76196.	Sep. 8, 2016	480582
Travis (FEMA Docket No.: B–1635).	Unincorporated areas of Travis County (15–06–4241P).	The Honorable Sarah Eckhardt, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	Travis County Engineering Department, 700 Lavaca Street, 5th Floor, Austin, TX 78701.	Sep. 5, 2016	481026
Webb (FEMA Docket No.: B–1635).	City of Laredo (14–06–3761P).	The Honorable Pete Saenz, Mayor, City of Laredo, P.O. Box 579, Laredo, TX 78042.	Planning and Zoning Department, 1120 San Bernardo Avenue, Laredo, TX 78040.	Sep. 6, 2016	480651
Williamson (FEMA Docket No.: B–1637).	City of Georgetown (14–06–4362P).	The Honorable Dale Ross, Mayor, City of Georgetown, 113 East 8th Street, Georgetown, TX 78626.	Building Official's Office, 300 Industrial Avenue, Georgetown, TX 78626.	Sep. 15, 2016	480668
Williamson (FEMA Docket No.: B–1637).	Unincorporated areas of Williamson County (14–06–4362P).	The Honorable Dan A. Gattis, Williamson County Judge, 710 South Main Street, Georgetown, TX 78626.	Williamson County Road and Bridge Division, 3151 Southeast Inner Loop, Suite B, Georgetown, TX 78626.	Sep. 15, 2016	481079
Utah:					
Cache (FEMA Docket No.: B–1635).	City of Hyrum (16–08–0057P).	The Honorable Stephanie Miller, Mayor, City of Hyrum, 60 West Main Street, Hyrum, UT 84319.	City Hall, 60 West Main Street, Hyrum, UT 84319.	Sep. 7, 2016	490017
Salt Lake (FEMA Docket No.: B–1635).	City of Draper (15–08–1373P).	The Honorable Troy K. Walker, Mayor, City of Draper, 1020 East Pioneer Road, Draper, UT 84020.	City Hall, 1020 East Pioneer Road, Draper, UT 84020.	Sep. 7, 2016	490244
Utah (FEMA Docket No.: B–1618).	City of Alpine (16–08–0236P).	The Honorable Sheldon Wimmer, Mayor, City of Alpine, 20 North Main, Alpine, UT 84004.	Public Works Department, 181 East 200 North, Alpine, UT 84004.	Sep. 2, 2016	490228
Virginia:					
Loudoun (FEMA Docket No.: B–1635).	Unincorporated areas of Loudoun County (16–03–0299P).	The Honorable Phyllis J. Randall, Chair, Loudoun County Board of Supervisors, P.O. Box 7000, Leesburg, VA 20177.	Loudoun County Department of Building and Development, 1 Harrison Street Southeast, Leesburg, VA 20175.	Sep. 9, 2016	510090
Prince William (FEMA Docket No.: B–1628).	City of Manassas (15–03–2702P).	The Honorable Harry J. Parrish II, Mayor, City of Manassas, 9027 Center Street, Manassas, VA 20110.	City Hall, 9027 Center Street, Manassas, VA 20110.	Aug. 11, 2016	510122
Prince William (FEMA Docket No.: B–1637).	City of Manassas Park (16–03–0885P).	The Honorable Frank Jones, Mayor, City of Manassas Park, 1 Park Center Court, Manassas Park, VA 20111.	Department of Public Works, 331 Manassas Drive, Manassas Park, VA 20111.	Sep. 15, 2016	510123
Prince William (FEMA Docket No.: B–1628).	Unincorporated areas of Prince William County (15–03–2702P).	The Honorable Christopher E. Martino, Acting Prince William County Executive, 1 County Complex Court, Prince William, VA 22192.	Prince William County Department of Public Works, 5 County Complex Court, Prince William, VA 22192.	Aug. 11, 2016	510119
Prince William (FEMA Docket No.: B–1637).	Unincorporated areas of Prince William County (16–03–0885P).	Mr. Christopher E. Martino, Acting Prince William County Executive, 1 County Complex Court, Prince William, VA 22192.	Prince William County Department of Public Works, 5 County Complex Court, Prince William, VA 22192.	Sep. 15, 2016	510119
Washington, DC (FEMA Docket No.: B–1645)	District of Columbia (15–03–2388P).	The Honorable Muriel Bowser, Mayor, District of Columbia, 1350 Pennsylvania Avenue Northwest, Washington, DC 20004.	Department of Energy and Environmental Services, 1200 1st Street Northeast, Washington, DC 20002.	Sep. 14, 2016	110001

[FR Doc. 2016–28523 Filed 11–25–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1654]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table 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.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

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).

These 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. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table 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.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 16, 2016.

Roy E. Wright,

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

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alaska: Kenai Peninsula Borough.	City of Homer (16–10–0797P).	The Honorable Mary E. Wythe, Mayor, City of Homer, 491 East Pioneer Avenue, Homer, AK 99603.	City of Homer Planning and Zoning Office, 491 East Pioneer Avenue, Homer, AK 99603.	*http://www.msc.fema.gov/lomc*	Nov. 28, 2016	020107
Colorado:						
Eagle	Unincorporated Areas of Eagle County (16–08–0199P).	The Honorable Brent McFall, County Manager, Eagle County, 550 Broadway Street, Eagle, CO 81631.	Eagle County Building, Engineering Department, 500 Broadway Street, Eagle, CO 81631.	*http://www.msc.fema.gov/lomc*	Nov. 25, 2016	080051
Pitkin	Town of Basalt (16–08–0199P).	The Honorable Jacque Whitsitt, Mayor, Town of Basalt, Basalt Town Hall, 101 Midland Avenue, Basalt, CO 81621.	Town Hall, 101 Midland Avenue, Basalt, CO 81621.	*http://www.msc.fema.gov/lomc*	Nov. 25, 2016	080052

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Pitkin	Unincorporated Areas of Pitkin County (16–08–0199P).	The Honorable Jon Peacock, County Manager, Pitkin County, 530 East Main Street, 3rd Floor, Aspen, CO 81611.	Pitkin County, GIS Department, City Hall, 130 South Galena Street, Aspen, CO 81611.	*http://www.msc.fema.gov/lomc*	Nov. 25, 2016	080287
Idaho:						
Kootenai	Unincorporated Areas of Kootenai County (16–10–0771P).	The Honorable Dan Green, Chairman, Board of County Commissioners, Main County Administration Building, 451 Government Way, Coeur d'Alene, ID 83814.	Assessors Department, Kootenai County Court House, 451 Government Way, Coeur d'Alene, ID 83814.	*http://www.msc.fema.gov/lomc*	Dec. 9, 2016	160076
Illinois:						
Cook	City of Des Plaines (16–05–0956P).	The Honorable Matthew J. Bogusz, Mayor, City of Des Plaines, 1420 Miner Street, Des Plaines, IL 60016..	Civic Center, 1420 Miner Street, 5th Floor, Des Plaines, IL 60016.	*http://www.msc.fema.gov/lomc*	Nov. 25, 2016	170081
Cook	Village of Rosemont (16–05–0956P).	The Honorable Bradley A. Stephens, Village President, Village of Rosemont, 9501 West Devon Avenue, Rosemont, IL 60018.	Department of Public Works, 7048 North Barry Street, Rosemont, IL 60018.	*http://www.msc.fema.gov/lomc*	Nov. 25, 2016	170156
Cook and DuPage.	City of Chicago (16–05–0956P).	The Honorable Rahm Emanuel, Mayor, City of Chicago, City Hall, 121 North LaSalle Street, Room 406, Chicago, IL 60602.	Department of Buildings, Stormwater Management, 121 North LaSalle Street, Room 906, Chicago, IL 60602.	*http://www.msc.fema.gov/lomc*	Nov. 25, 2016	170074
DuPage	Village of Bensenville (16–05–0956P).	The Honorable Frank Soto, Village President, Village of Bensenville, 12 South Center Street, Bensenville, IL 60106.	Village Hall, 12 South Center Street, Bensenville, IL 60106.	*http://www.msc.fema.gov/lomc*	Nov. 25, 2016	170200
DuPage	Village of Elk Grove Village (16–05–0956P).	The Honorable Craig B. Johnson, Mayor, Village of Elk Grove Village, 901 Wellington Avenue, Elk Grove Village, IL, 60007.	Engineering and Community Development Department, 901 Wellington Avenue, Elk Grove Village, IL 60007.	*http://www.msc.fema.gov/lomc*	Nov. 25, 2016	170088
Lake	City of North Chicago (16–05–3391P).	The Honorable Leon Rockingham, Jr., Mayor, City of North Chicago, 1850 Lewis Avenue, North Chicago, IL 60064.	City Hall, 1850 Lewis Avenue, North Chicago, IL 60064.	*http://www.msc.fema.gov/lomc*	Dec. 16, 2016	170384
Lake	Unincorporated Areas of Lake County (16–05–2755P).	The Honorable Aaron Lawlor, Chairman, Lake County, Board, 18 North County Street, 10th Floor, Waukegan, IL 60085.	Central Permit Facility, 500 West Winchester Road, Unit 101, Libertyville, IL 60048.	*http://www.msc.fema.gov/lomc*	Dec. 23, 2016	170357
Lake	Village of Lincolnshire (16–05–2755P).	The Honorable Elizabeth, Brandt, Mayor, Village of Lincolnshire, 1 Olde Half Day Road, Lincolnshire, IL 60069.	Village Hall, 1 Olde Half Day Road, Lincolnshire, IL 60069.	*http://www.msc.fema.gov/lomc*	Dec. 23, 2016	170378
Lake	Village of Riverwoods (16–05–2755P).	The Honorable John Norris, Mayor, Village of Riverwoods, 300 Portwine Road, Riverwoods, IL 60015.	Village Hall, 300 Portwine Road, Riverwoods, IL 60015.	*http://www.msc.fema.gov/lomc*	Dec. 23, 2016	170387
Will	City of Naperville (16–05–2014P).	The Honorable Steve Chirico, Mayor, City of Naperville, 400 South Eagle Street, Naperville, IL 60540.	City Hall, 400 South Eagle Street, Naperville, IL 60540.	*http://www.msc.fema.gov/lomc*	Dec. 8, 2016	170213
Will	Unincorporated Areas of Will County (15–05–1059P).	The Honorable Lawrence M. Walsh, County Executive, Will County, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Land Use Department, 58 East Clinton Street, Suite 100, Joliet, IL 60432.	*http://www.msc.fema.gov/lomc*	Nov. 18, 2016	170695

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Will	Unincorporated Areas of Will County (16–05–2014P).	The Honorable Lawrence M. Walsh, County Executive, Will County, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Land Use Department, 58 East Clinton Street, Suite 100, Joliet, IL 60432.	*http://www.msc.fema.gov/lomc*	Dec. 8, 2016	170695
Will	Village of Mokena (15–05–1059P).	The Honorable Frank A. Fleischer, Village President, Village of Mokena, 11004 Carpenter Street, Mokena, IL 60448.	Village Hall, 11004 Carpenter Street, Mokena, IL 60448.	*http://www.msc.fema.gov/lomc*	Nov. 18, 2016	170705
Kansas:						
Johnson	City of Mission Hills (16–07–0831P).	The Honorable Richard Boeshaar, Mayor, City of Mission Hills, 6300 State Line Road, Mission Hills, KS 66208.	City Hall, 6300 State Line Road, Mission Hills, KS 66208.	*http://www.msc.fema.gov/lomc*	Dec. 21, 2016	200171
Johnson	City of Mission Woods (16–07–0831P).	The Honorable Robert Tietze, Mayor, City of Mission Woods, The Westwood City Hall, 4700 Rainbow Boulevard, Westwood, KS 66205.	City Hall, 4700 Rainbow Boulevard, Westwood, KS 66205.	*http://www.msc.fema.gov/lomc*	Dec. 21, 2016	200172
Kentucky: Fayette	Lexington-Fayette Urban County Government (16–04–4411P).	The Honorable Jim Gray, Mayor, City of Lexington, 200 East Main Street, Lexington, KY 40507.	Lexington-Fayette Urban County Government, 200 East Main Street 12th Floor, Government Center, Lexington, KY 40507.	*http://www.msc.fema.gov/lomc*	Dec. 14, 2016	210067
Minnesota: Anoka	City of Lino Lakes (16–05–3555P).	The Honorable Jeff Reinert, Mayor, City of Lino Lakes, 600 Town Center Parkway, Lino Lakes, MN 55014.	City Hall, 600 Town Center Parkway, Lino Lakes, MN 55014.	*http://www.msc.fema.gov/lomc*	Dec. 21, 2016	270015
Oregon: Jackson	Unincorporated Areas of Jackson County (16–10–0826P).	The Honorable Rick Dyer, Commissioner, Jackson County, 10 South Oakdale Avenue, Room 214, Medford, OR 97501.	Jackson County Roads Parks and Planning Services, 10 South Oakdale Avenue, Medford, OR 97501.	*http://www.msc.fema.gov/lomc*	Dec. 13, 2016	415589
Wisconsin: Dane	City of Middleton (16–05–2081P).	The Honorable Kurt Sonnentag, Mayor, City of Middleton, 7426 Hubbard Avenue, Middleton, WI 53562.	City Hall, 7426 Hubbard Avenue, Middleton, WI 53562.	*http://www.msc.fema.gov/lomc*	Oct. 28, 2016	550087

[FR Doc. 2016–28527 Filed 11–25–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: 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 February 17, 2017 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 tables 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: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@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 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and 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.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 16, 2016.

Roy E. Wright,

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

I. Non-watershed-based studies:

Community	Community map repository address
Adams County, Colorado and Incorporated Areas Docket No.: FEMA–B–1470	
Unincorporated Areas of Adams County	Adams County Government Center, 4430 South Adams County Parkway, Brighton, CO 80601.
Arapahoe County, Colorado and Incorporated Areas Docket No.: FEMA–B–1470	
City of Aurora	Public Works Department, 15151 East Alameda Parkway, Suite 3200, Aurora, CO 80012.
City of Centennial	Southeast Metro Stormwater Authority, 7437 South Fairplay Street, Centennial, CO 80112.
City of Greenwood Village	City Hall, 6060 South Quebec Street, Greenwood Village, CO 80111.
Unincorporated Areas of Arapahoe County	Public Works and Development, Lima Plaza, 6924 South Lima Street, Centennial, CO 80112.
Douglas County, Colorado and Incorporated Areas Docket No.: FEMA–B–1470	
City of Lone Tree	Public Works Department, 9222 Teddy Lane, Lone Tree, CO 80124.
Unincorporated Areas of Douglas County	Department of Public Works Engineering, 100 3rd Street, Castle Rock, CO 80104.
Whiteside County, Illinois and Incorporated Areas Docket No.: FEMA–B–1553	
City of Fulton	Fulton City Hall, 415 11th Avenue, Fulton, IL 61252.
Unincorporated Areas of Whiteside County	Whiteside County Courthouse, 200 East Knox Street, Morrison, IL 61270.
Loudoun County, Virginia and Incorporated Areas Docket No.: FEMA–B–1515	
Town of Hillsboro	Town Hall, 36966 Charles Town Pike, Hillsboro, VA 20132.
Town of Leesburg	Town Hall, 25 West Market Street, Leesburg, VA 20176.
Town of Lovettsville	Town Hall, 6 East Pennsylvania Avenue, Lovettsville, VA 20180.
Town of Middleburg	Town Office, 10 West Marshall Street, Middleburg, VA 20118.
Town of Purcellville	Town Hall, 221 South Nursery Avenue, Purcellville, VA 20132.
Town of Round Hill	Loudoun County Building, Building and Development Department, 1 Harrison Street, Southeast, Leesburg, VA 20177.
Unincorporated Areas of Loudoun County	Loudoun County Building, Building and Development Department, 1 Harrison Street, Southeast, Leesburg, VA 20177.
City of Norfolk, Virginia (Independent City) Docket No.: FEMA–B–1504	
City of Norfolk	Planning Department, 810 Union Street, Suite 508, Norfolk, VA 23510.

[FR Doc. 2016–28524 Filed 11–25–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@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 flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, 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.

This new or modified 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, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 16, 2016.

Roy E. Wright,

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

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community, No.
Colorado:					
Boulder (FEMA Docket No.: B–1628).	City of Boulder (16–08–0026P).	Ms. Jane Brautigam, Manager, City of Boulder, 1777 Broadway Street, Boulder, CO 80302.	Park Central Building, 1739 Broadway Street, Boulder, CO 80308.	Aug. 18, 2016	080024
Boulder (FEMA Docket No.: B–1628).	Unincorporated areas of Boulder County (16–08–0026P).	The Honorable Elise Jones, Chair, Boulder County Board of Commissioners, 1325 Pearl Street, 3rd Floor, Boulder, CO 80302.	Boulder County Transportation Department, 2525 13th Street, Suite 203, Boulder, CO 80306.	Aug. 18, 2016	080023
Connecticut: Fairfield (FEMA Docket No.: B–1635).	Town of Stratford (15–01–1945P).	The Honorable John A. Harkins, Mayor, Town of Stratford, 2725 Main Street, Stratford, CT 06615.	Engineering Department, 2725 Main Street, Stratford, CT 06615.	Aug. 5, 2016	090016
Florida:					
Bay (FEMA Docket No.: B–1628).	City of Panama City (16–04–0407P).	The Honorable Greg Brudnicki, Mayor, City of Panama City, 9 Harrison Avenue, Panama City, FL 32401.	Public Works Engineering Division, 9 Harrison Avenue, Panama City, FL 32401.	Aug. 19, 2016	120012
Bay (FEMA Docket No.: B–1628).	Unincorpo rated areas of Bay County (16–04–0407P).	The Honorable Mike Nelson, Chairman, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Division, 840 West 11th Street, Panama City, FL 32401.	Aug. 19, 2016	120004
Broward (FEMA Docket No.: B–1628).	City of Hallandale Beach (16–04–0173P).	The Honorable Joy F. Cooper, Mayor, City of Hallandale Beach, 400 South Federal Highway, Hallandale Beach, FL 33009.	Development Services Department, 400 South Federal Highway, Hallandale Beach, FL 33009.	Aug. 2, 2016	125110
Broward (FEMA Docket No.: B–1628).	Unincorporated areas of Broward County (16–04–0173P).	Ms. Bertha Henry, Broward County Administrator, 115 South Andrews Avenue, Fort Lauderdale, FL 33301.	Broward County Environmental Licensing and Building Permitting Division, 1 North University Drive, Plantation, FL 33324..	Aug. 2, 2016	125093

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community, No.
Hillsborough (FEMA Docket No.: B–1635).	City of Tampa (16–04–2659P).	The Honorable Bob Buckhorn, Mayor, City of Tampa, 306 East Jackson Street, Tampa, FL 33602..	Development Services Center, 1400 North Boulevard, Tampa, FL 33607.	Aug. 23, 2016	120114
Manatee (FEMA Docket No.: B–1628).	Unincorporated areas of Manatee County (15–04–9689P).	The Honorable Vanessa Baugh, Chair, Manatee County Board of Commissioners, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Building and Development Services Department, 1112 Manatee Avenue West, Bradenton, FL 34205.	Aug. 24, 2016	120153
Miami-Dade (FEMA Docket No.: B–1628).	Unincorporated areas of Miami-Dade County (16–04–2319P).	The Honorable Carlos A. Gimenez, Mayor, Miami-Dade County, 111 Northwest 1st Street, Miami, FL 33128.	Miami-Dade County Regulatory and Economic Resources Water Management Division, 701 Northwest 1st Court, 5th Floor, Miami, FL 33136.	Aug. 2, 2016	120635
Monroe (FEMA Docket No.: B–1628).	Unincorporated areas of Monroe County (16–04–0996P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Aug. 2, 2016	125129
Monroe (FEMA Docket No.: B–1628).	Unincorporated areas of Monroe County (16–04–2190P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Aug. 4, 2016	125129
Monroe (FEMA Docket No.: B–1635).	Unincorporated areas of Monroe County (16–04–3138P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Key West, FL 33050.	Aug. 25, 2016	125129
Orange (FEMA Docket No.: B–1628).	City of Orlando (16–04–0456P).	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32802.	Public Works Department, Engineering Division, 400 South Orange Avenue, 8th Floor, Orlando, FL 32801.	Aug. 19, 2016	120186
Orange (FEMA Docket No.: B–1628).	Unincorporated areas of Orange County (16–04–0456P).	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801..	Orange County Stormwater Division, 4200 South John Young Parkway, Orlando, FL 32839.	Aug. 19, 2016	120179
St. Johns (FEMA Docket No.: B–1628).	Unincorporated areas of St. Johns County (16–04–2611P).	The Honorable Jeb Smith, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Building Services Division, 4040 Lewis Speedway, St. Augustine, FL 32084.	Aug. 2, 2016	125147
Georgia:					
Bryan (FEMA Docket No.: B–1628).	City of Richmond Hill (16–04–2230P).	The Honorable E. Harold Fowler, Mayor, City of Richmond Hill, 40 Richard R. Davis Drive, Richmond Hill, GA 31324.	Planning and Zoning Department, 85 Richard R. Davis Drive, Richmond Hill, GA 31324.	Aug. 5, 2016	130018
Bryan (FEMA Docket No.: B–1628).	Unincorporated areas of Bryan County (16–04–2230P).	The Honorable Jimmy Burnsed, Chairman, Bryan County Board of Commissioners, 173 Davis Road, Richmond Hill, GA 31324.	Bryan County Planning and Zoning Department, 66 Captain Matthew Freeman Drive, Suite 201, Richmond Hill, GA 31324.	Aug. 5, 2016	130016
Grady (FEMA Docket No.: B–1635).	Unincorporated areas of Grady County (16–04–0690P).	The Honorable Charlie Norton, Chairman, Grady County Board of Commissioners, 250 North Broad Street, Cairo, GA 39828.	Grady County Code Enforcement Division, 250 North Broad Street, Cairo, GA 39828.	Aug. 18, 2016	130096
Kentucky: Jefferson (FEMA Docket No.: B–1628).	Louisville-Jefferson County Metropolitan Government (16–04–3003X).	The Honorable Greg Fischer, Mayor, City of Louisville, 527 West Jefferson Street, 4th Floor, Louisville, KY 40202.	Metropolitan Sewer District, 700 West Liberty Street, Louisville, KY 40203.	Aug. 1, 2016	210120
Louisiana:					
Bossier (FEMA Docket No.: B–1628).	City of Bossier City (15–06–2130P).	The Honorable Lorenz Walker, Mayor, City of Bossier City, P.O. Box 5337, Bossier City, LA 71171.	City Hall, 620 Benton Road, Bossier City, LA 71171.	Aug. 18, 2016	220033
Bossier (FEMA Docket No.: B–1628).	Unincorporated areas of Bossier Parish (15–06–2130P).	The Honorable William R. Altimus, Bossier Parish Administrator, P.O. Box 70, Benton, LA 71006.	Bossier Parish Courthouse, 204 Burt Boulevard, Benton, LA 71006.	Aug. 18, 2016	220031
Maryland:					
Cecil (FEMA Docket No.: B–1618).	Town of Port Deposit (15–03–2779P).	The Honorable Wayne L. Tome, Sr., Mayor, Town of Port Deposit, 64 South Main Street, Port Deposit, MD 21904.	Town Hall, 64 South Main Street, Port Deposit, MD 21904.	Aug. 1, 2016	240025
Cecil (FEMA Docket No.: B–1618).	Unincorporated areas of Cecil County (15–03–2779P).	The Honorable Tari Moore, Cecil County Executive, 200 Chesapeake Boulevard, Suite 2100, Elkton, MD 21921.	Cecil County Department of Planning and Zoning, 200 Chesapeake Boulevard, Suite 2300, Elkton, MD 21921.	Aug. 1, 2016	240019
Harford (FEMA Docket No.: B–1618).	Unincorporated areas of Harford County (15–03–2779P).	The Honorable Barry Glassman, Harford County Executive, 220 South Main Street, Bel Air, MD 21014.	Harford County Department of Planning and Zoning, 220 South Main Street, Bel Air, MD 21014.	Aug. 1, 2016	240040

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community, No.
Massachusetts:					
Barnstable (FEMA Docket No.: B–1628).	Town of Falmouth (16–01–0373P).	The Honorable Doug Jones, Chairman, Town of Falmouth Board of Selectmen, 59 Town Hall Square, Falmouth, MA 02540.	Town Hall, 59 Town Hall Square, Falmouth, MA 02540.	Aug. 15, 2016	255211
Mississippi:					
Rankin (FEMA Docket No.: B–1635).	City of Flowood (16–04–1696P).	The Honorable Gary Rhoads, Mayor, City of Flowood, P.O. Box 320069, Flowood, MS 39232.	Engineering Department, 109 Woodline Drive, Flowood, MS 39232.	Aug. 18, 2016	280289
Rankin (FEMA Docket No.: B–1635).	City of Jackson (16–04–1696P).	The Honorable Tony Yarber, Mayor, City of Jackson, P.O. Box 17, Jackson, MS 39205.	Public Works Department, 200 South President Street, Jackson, MS 39205.	Aug. 18, 2016	280072
North Carolina: Buncombe (FEMA Docket No.: B–1628).	Unincorporated Areas of Buncombe County (15–04–8908P).	The Honorable David Gantt, Chairman, Buncombe County Board of Commissioners, 200 College Street, Suite 316, Ashville, NC 28801.	Buncombe County Planning Department, 46 Valley Street, Ashville, NC 28801.	Aug. 5, 2016	370031
North Dakota:					
Dunn (FEMA Docket No.: B–1635).	City of Killdeer (16–08–0302X).	The Honorable Chuck Muscha, President, City of Killdeer Council, P.O. Box 270, Killdeer, ND 58640.	Planning and Zoning Department, 165 Railroad Street, Killdeer, ND 58640.	Jul. 18, 2016	380030
Dunn (FEMA Docket No.: B–1635).	Unincorporated areas of Dunn County (16–08–0302X).	The Honorable Reinhard Hauck, Chairman, Dunn County Board of Commissioners, 205 Owens Street, Manning, ND 58642.	Dunn County Planning and Zoning Department, 205 Owens Street, Manning, ND 58642.	Jul. 18, 2016	380026
Oklahoma: Payne (FEMA Docket No.: B–1628).	Unincorporated areas of Payne County (15–06–3395P).	The Honorable Kent Bradley, Chairman, Payne County Board of Commissioners, 506 Expo Circle South, Stillwater, OK 74074.	Payne County Floodplain Administrator's Office, 315 West 6th Avenue, Suite 203, Stillwater, OK 74074.	Aug. 22, 2016	400493
Pennsylvania:					
Montgomery (FEMA Docket No.: B–1628).	Borough of Ambler (15–03–2420P).	The Honorable Salvatore Pasceri, President, Borough of Ambler Council, 131 Rosemary Avenue, Ambler, PA 19002.	Borough Hall, 131 Rosemary Avenue, Ambler, PA 19002.	Aug. 1, 2016	420947
Montgomery (FEMA Docket No.: B–1628).	Township of Lower Gwynedd (15–03–2420P).	The Honorable Stephen J. Paccione, Chairman, Township of Lower Gwynedd Board of Supervisors, P.O. Box 625, Spring House, PA 19477.	Township Hall, 1130 North Bethlehem Pike, Spring House, PA 19477.	Aug. 1, 2016	420953
Montgomery (FEMA Docket No.: B–1628).	Township of Upper Dublin (15–03–2420P).	The Honorable Ira S. Tackel, President, Township of Upper Dublin Board of Commissioners, 801 Loch Alsh Avenue, Fort Washington, PA 19034.	Township Hall, 801 Loch Alsh Avenue, Fort Washington, PA 19034.	Aug. 1, 2016	420708
Montgomery (FEMA Docket No.: B–1628).	Township of Whitemarsh (15–03–2924P).	The Honorable Amy P. Grossman, Chair, Township of Whitemarsh Board of Supervisors, 616 Germantown Pike, Lafayette Hill, PA 19444.	Township Administrative Building, 616 Germantown Pike, Lafayette Hill, PA 19444.	Aug. 16, 2016	420712
Montgomery (FEMA Docket No.: B–1628).	Township of Whitpain (15–03–2420P).	The Honorable Adam Zucker, Chairman, Township of Whitpain Board of Supervisors, 960 Wentz Road, Blue Bell, PA 19422.	Township Hall, 960 Wentz Road, Blue Bell, PA 19422.	Aug. 1, 2016	420713
Rhode Island:					
Washington (FEMA Docket No.: B–1635).	Town of Charlestown (15–01–2168P).	The Honorable Thomas B. Gentz, President, Town of Charlestown Council, 4540 South County Trail, Charlestown, RI 02813.	Building Officials Office, 4540 South County Trail, Charlestown, RI 02813.	Aug. 26, 2016	445395
Washington (FEMA Docket No.: B–1635).	Town of Richmond (15–01–2168P).	The Honorable Henry Oppenheimer, President, Town of Richmond Council, 5 Richmond Townhouse Road, Wyoming, RI 02898.	Town Hall, 5 Richmond Townhouse Road, Wyoming, RI 02898.	Aug. 26, 2016	440031
Tennessee:					
Blount (FEMA Docket No.: B–1635).	City of Maryville (16–04–1499P).	The Honorable Tom Taylor, Mayor, City of Maryville, 404 West Broadway Avenue, Maryville, TN 37801.	Engineering and Public Works Department, 416 West Broadway Avenue, Maryville, TN 37801.	Aug. 24, 2016	475439
Hamilton (FEMA Docket No.: B–1628).	City of Chattanooga (15–04–3964P).	The Honorable Andy Berke, Mayor, City of Chattanooga, 101 East 11th Street, Chattanooga, TN 37402.	Planning Department, 1250 Market Street, Chattanooga, TN 37402.	Aug. 5, 2016	470072
Hamilton (FEMA Docket No.: B–1628).	City of East Ridge (15–04–3964P).	The Honorable Brent Lambert, Mayor, City of East Ridge, 1517 Tombras Avenue, East Ridge, TN 37412.	Codes Division, 1517 Tombras Avenue, East Ridge, TN 37412.	Aug. 5, 2016	475424
Texas:					
Comal (FEMA Docket No.: B–1628).	City of Fair Oaks Ranch (15-06-3044P).	The Honorable Cheryl Landman, Mayor, City of Fair Oaks Ranch, 7286 Dietz Elkhorn Road, Fair Oaks Ranch, TX 78015.	Public Works Department, 7286 Dietz Elkhorn Road, Fair Oaks Ranch, TX 78015.	Aug. 15, 2016	481644

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community, No.
Comal (FEMA Docket No.: B–1635).	Unincorporated areas of Comal County (15–06–4497P).	The Honorable Sherman Krause, Comal County Judge, 150 North Seguin Avenue, New Braunfels, TX 78130.	Comal County Engineering Department, 195 David Jonas Drive, New Braunfels, TX 78132.	Aug. 25, 2016	485463
Comal (FEMA Docket No.: B–1635).	Unincorporated areas of Comal County (16–06–0368P).	The Honorable Sherman Krause, Comal County Judge, 150 North Seguin Avenue, New Braunfels, TX 78130.	Comal County Engineering Department, 195 David Jonas Drive, New Braunfels, TX 78132.	Aug. 24, 2016	485463
Dallas (FEMA Docket No.: B–1635).	City of Grand Prairie (16–06–1120P).	The Honorable Ron Jensen, Mayor, City of Grand Prairie, P.O. Box 534045, Grand Prairie, TX 75053.	City Development Center, 206 West Church, Grand Prairie, TX 75050.	Aug. 22, 2016	485472
Denton (FEMA Docket No.: B–1628).	City of Carrollton (15–06–2940P).	The Honorable Matthew Marchant, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, TX 75011.	Engineering Department, 1945 East Jackson Road, Carrollton, TX 75011.	Aug. 22, 2016	480167
Fort Bend (FEMA Docket No.: B–1635).	City of Rosenberg (14–06–4590P).	The Honorable Cynthia A. McConathy, Mayor, City of Rosenberg, 2110 4th Street, Rosenberg, TX 77471.	City Hall, 2220 4th Street, Rosenberg, TX 77471.	Aug. 25, 2016	480232
Fort Bend (FEMA Docket No.: B–1628).	Unincorporated areas of Fort Bend County (16–06–1119P).	The Honorable Robert Hebert, Fort Bend County Judge, 401 Jackson Street, Richmond, TX 77469.	Fort Bend County Engineering Department, 301 Jackson Street, 4th Floor, Richmond, TX 77469.	Aug. 18, 2016	480228
Harris (FEMA Docket No.: B–1635).	City of Houston (16–06–1652P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management Office, 1002 Washington Avenue, 3rd Floor, Houston, TX 77002.	Aug. 26, 2016	480296
Hood (FEMA Docket No.: B–1635).	City of Granbury (15–06–0390P).	The Honorable Nin Hulett, Mayor, City of Granbury, 116 West Bridge Street, Granbury, TX 76048.	City Hall, 116 West Bridge Street, Granbury, TX 76048.	Aug. 18, 2016	480357
Hood (FEMA Docket No.: B–1635).	Unincorporated areas of Hood County (15–06–0390P).	The Honorable Darrell Cockerham, Hood County Judge, 100 East Pearl Street, Granbury, TX 76048.	Hood County Environmental Health Department, 201 West Bridge Street, Granbury, TX 76048.	Aug. 18, 2016	480356
Utah: Davis (FEMA Docket No.: B–1628).	City of North Salt Lake (15–08–1306P).	The Honorable Len Arave, Mayor, City of North Salt Lake, 10 East Center Street, North Salt Lake, UT 84054.	City Hall, 10 East Center Street, North Salt Lake, UT 84054.	Aug. 5, 2016	490048
Virginia:					
Loudoun (FEMA Docket No.: B–1635).	Unincorporated areas of Loudoun County (15–03–2804P).	The Honorable Phyllis J. Randall, Chair, Loudoun County Board of Supervisors, P.O. Box 7000, Leesburg, VA 20177.	Loudoun County Department of Building and Development, 1 Harrison Street Southeast, Leesburg, VA 20175.	Aug. 25, 2016	510090
Prince William (FEMA Docket No.: B–1628).	Unincorporated areas of Prince William County (15–03–1042P).	The Honorable Christopher E. Martino, Acting Prince William County Executive, 1 County Complex Court, Prince William, VA 22192.	Prince William County Department of Public Works, 5 County Complex Court, Prince William, VA 22192.	Aug. 4, 2016	510119

[FR Doc. 2016–28573 Filed 11–25–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@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 flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, 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.

This new or modified 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, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 17, 2016.

Roy E. Wright,

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

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Idaho:					
Canyon FEMA Docket No.: B–1609).	Unincorporated Areas of Canyon County (16–10–0071P).	Mr. Steven J. Rule, Commissioner, Canyon County, 1115 Albany Street, Caldwell, ID 83605.	Canyon County Courthouse, 1115 Albany Street, Caldwell, ID 83605.	May 4, 2016	160208
Latah (FEMA Docket No.: B–1609).	Unincorporated Areas of Latah County (15–10–0568P).	The Honorable Richard Walser, Chairman, Latah County Board of Commissioners, District One, P.O. Box 8068, Moscow, ID 83843.	Latah County Courthouse, 522 South Adams Street, Moscow, ID 83843.	Mar. 4, 2016	160086
Illinois:					
Douglas (FEMA Docket No.: B–1609).	Unincorporated Areas of Douglas County (16–05–0794X).	The Honorable Don Monson, Chairman, Douglas County Board, P.O. Box 467, Tuscola, IL 61953.	Douglas County Courthouse, 401 South Center Street, Tuscola, IL 61953.	Jun. 2, 2016	170194
Douglas (FEMA Docket No.: B–1609).					
Moultrie (FEMA Docket No.: B–1609).	Village of Arthur (16–05–0794X).	The Honorable Matt Bernius, Board President, Village of Arthur, 120 East Progress Street, Arthur, IL 61911.	Village Hall, 120 East Progress Street, Arthur, IL 61911.	Jun. 2, 2016	170520
La Salle (FEMA Docket No.: B–1609).	City of La Salle (16–05–0561P).	The Honorable Jeff Grove, Mayor, City of La Salle, 745 2nd Street, La Salle, IL 61301.	City Hall, 745 2nd Street, La Salle, IL 61301.	Jun. 13, 2016	170401
La Salle FEMA Docket No.: B–1609).	City of Peru (16–05–0561P).	The Honorable Scott J. Harl, Mayor, City of Peru, 1901 4th Street, Peru, IL 61354..	City Hall, 1901 4th Street, Peru, IL 61354.	Jun. 13, 2016	170406
Moultrie (FEMA Docket No.: B–1609).	Unincorporated Areas of Moultrie County (16–05–0794X).	The Honorable David McCabe, Chairman, Moultrie County Board, Moultrie County Courthouse, 10 South Main Street, Sullivan, IL 61951.	Moultrie County Courthouse, Planning and Zoning Department, 10 South Main Street, Suite 1, Sullivan, IL 61951.	Jun. 2, 2016	1 170998
Indiana:					
Allen (FEMA Docket No.: B–1609).	City of Fort Wayne (16–05–1027P).	The Honorable Tom Henry, Mayor, City of Fort Wayne, 200 East Berry Street, Suite 420, Fort Wayne, IN 46802.	Department of Planning Services, 200 East Berry Street, Suite 150, Fort Wayne, IN 46802.	May 3, 2016	180003
Allen (FEMA Docket No.: B–1609).	Unincorporated Areas of Allen County (16–05–1027P).	Mr. F. Nelson Peters, Commissioner, Allen County, 200 East Berry Street, Suite 410, Fort Wayne, IN 46802..	Department of Planning Services, 200 East Berry Street, Suite 150, Fort Wayne, IN 46802.	May 3, 2016	180302
Lake (FEMA Docket No.: B–1609).	Town of Munster (15–05–6638P).	Mr. Dustin Anderson, Town Manager, Town of Munster, 1005 Ridge Road, Munster, IN 46321.	Town Hall, 1005 Ridge Road, Munster, IN 46321.	Mar. 18, 2016	180139
Newton (FEMA Docket No.: B–1609).	Town of Kentland (16–05–0904P).	Mr. Lowell Mitchell, Town Council President, Town of Kentland, 300 North 3rd Street, Kentland, IN 47951.	Kentland Town Hall, 300 North 3rd Street, Kentland, IN 47951.	May 5, 2016	180182
Michigan:					
Lapeer (FEMA Docket No.: B–1609).	Township of Marathon (15–05–4470P).	Mr. Fred Moorhouse, Supervisor, Township of Marathon, 4575 Pine Street, Columbiaville, MI 48421.	Marathon Township, 4575 Pine Street, Columbiaville, MI 48421.	May 5, 2016	260609
Lapeer (FEMA Docket No.: B–1609).	Township of Oregon (15–05–4470P).	Mr. Eldon R. Card, Supervisor, Township of Oregon, 2525 Marathon Road, Lapeer, MI 48446.	Oregon Township Hall, 2525 Marathon Road, Lapeer, MI 48446.	May 5, 2016	261436

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Lapeer (FEMA Docket No.: B–1609).	Village of Columbiaville (15–05–4470P).	Mr. Tom Wood, President, Village of Columbiaville, 4605 Pine Street, Columbiaville, MI 48421.	Columbiaville Village Offices, 4605 Pine Street, Columbiaville, MI 48421.	May 5, 2016	260433
Minnesota: Kandiyohi (FEMA Docket No.: B–1609).	Unincorporated Areas of Kandiyohi County (15–05–8056P).	The Honorable Jim Butterfield, Chairman, Kandiyohi County Board of Commissioners, 400 Benson Avenue Southwest, Willmar, MN 56201.	H&H Services Building, 2200 23rd Street Northeast, Suite 2000, Willmar, MN 56201.	Mar. 10, 2016	270629
Missouri: Independent (FEMA Docket No.: B–1609).	City of St. Louis (15–07–1507P).	The Honorable Francis D. Slay, Mayor, City of St. Louis, 1200 Market Street, Room 200, St. Louis, MO 63103.	City Hall, 1200 Market Street, Room 400, St. Louis, MO 63103.	Mar. 16, 2016	290385
New York:					
Monroe (FEMA Docket No.: B–1609).	City of Rochester (15–02–1699P)..	The Honorable Lovely A. Warren, Mayor, City of Rochester, City Hall, 30 Church Street, Rochester, NY 14614.	City Hall, 30 Church Street, Rochester, NY 14614.	Jun. 16, 2016	360431
Westchester (FEMA Docket No.: B–1609).	City of Yonkers (15–02–1693P).	The Honorable Mike A. Spano, Mayor, City of Yonkers, City Hall Building, 40 South Broadway, Yonkers, NY 10701.	City Engineer, 40 South Broadway, Yonkers, NY 10701.	Jun. 16, 2016	360936
Ohio: Cuyahoga (FEMA Docket No.: B–1609).	Village of Bratenahl (15–05–6419P).	The Honorable John M. Licastro, Mayor, Village of Bratenahl, 411 Bratenahl Road, Bratenahl, OH 44108.	Village Hall, 411 Bratenahl Road, Bratenahl, OH 44108.	May 4, 2016	390734
Oregon:					
Clackamas (FEMA Docket No.: B–1609).	Unincorporated Areas of Clackamas County (15–10–1671P).	Mr. Don Krupp, County Administrator, Clackamas County, 2051 Kaen Road, Oregon City, OR 97045.	Sunnybrook Service Center, Planning Division, 9101 Southeast Sunnybrook Boulevard, Clackamas, OR 97015.	May 5, 2016	415588
Lake (FEMA Docket No.: B–1609).	Unincorporated Areas of Lake County (15–10–1142P).	The Honorable Dan Shoun, Commissioner, Lake County, 513 Center Street, Lakeview, OR 97630.	Lake County Courthouse, 513 Center Street, Lakeview, OR 97630.	May 5, 2016	410115
Marion (FEMA Docket No.: B–1609).	Unincorporated Areas of Marion County (15–10–1588P).	Mr. Sam Brentano, Commissioner, Marion County, P.O. Box 14500, Salem, OR 97309.	Department of Planning, 3150 Lancaster Drive Northeast, Salem, OR 97305.	May 26, 2016	410154
Multnomah (FEMA Docket No.: B–1609).	City of Portland (15–10–1671P).	The Honorable Charlie Hales, Mayor, City of Portland, 1221 Southwest 4th Avenue, Suite 340, Portland, OR 97204.	Bureau of Environmental Services, 1221 Southwest 4th Avenue, Room 230, Portland, OR 97204.	May 5, 2016	410183
Polk (FEMA Docket No.: B–1609).	City of Independence (15–10–1588P)..	The Honorable John McArdle, Mayor, City of Independence, 240 Monmouth Street, Independence, OR 97351.	City Hall, 240 Monmouth Street, Independence, OR 97351.	May 26, 2016	410189
Umatilla (FEMA Docket No.: B–1609).	City of Pendleton (15–10–0669P).	The Honorable Phillip Houk, Mayor, City of Pendleton, City Hall, 500 Southwest Dorion Avenue, Pendleton, OR 97801.	Planning and Building Department, 500 Southwest Dorion Avenue, Pendleton, OR 97801.	Jun. 3, 2016	410211
Umatilla (FEMA Docket No.: B–1609).	Unincorporated Areas of Umatilla County (15–10–0669P).	The Honorable George Murdock, Board Chair, Umatilla County, Umatilla County Courthouse, 216 Southeast 4th Street, Pendleton, OR 97801.	Umatilla County Courthouse, Planning Department, 216 Southeast 4th Street, Pendleton, OR 97801.	Jun. 3, 2016	410204
Texas:					
Dallas (FEMA Docket No.: B–1609).	City of Grand Prairie (15–06–1228P).	The Honorable Ron Jensen, Mayor, City of Grand Prairie, 317 West College Street, Grand Prairie, TX 75050.	City Development Center, 206 West Church Street, Grand Prairie, TX 75050.	Mar. 25, 2016	485472
Dallas (FEMA Docket No.: B–1609).	City of Irving (15–06–1228P).	The Honorable Beth Van Duyne, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060.	City Hall, 825 West Irving Boulevard, Irving, TX 75060.	Mar. 25, 2016	480180
Washington: King (FEMA Docket No.: B–1609).	City of Redmond (16–10–0139P).	The Honorable John Marchione, Mayor, City of Redmond, Redmond, WA 98073.	City Hall, 15670 Northeast 85th Street, Redmond, WA 98052.	May 25, 2016	530087

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Wisconsin: Washington (FEMA Docket No.: B–1609).	Unincorporated Areas of Washington County (16–05–1498P).	Mr. Herbert J. Tennies, Chairperson, Washington County, Board of Supervisors, 432 East Washington Street, Suite 3029, West Bend, WI 53095.	Washington County Government Center, 432 East Washington Street, West Bend, WI 53095.	Jun. 2, 2016	550471

[FR Doc. 2016–28563 Filed 11–25–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1660]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table 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.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

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).

These 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. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table 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.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 31, 2016.

Roy E. Wright,

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

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Arkansas:						
Drew	City of Monticello, (16–06–1501P).	The Honorable Zackery Tucker, Mayor, City of Monticello, P.O. Box 505, Monticello, AR 71655.	City Hall, 203 West Gaines Street, Monticello, AR 71655.	*http://www.msc.fema.gov/lomc*	Jan. 12, 2017	050074
Drew	Unincorporated areas of Drew County, (16–04–1501P).	The Honorable Robert Akin, Drew County Judge, 210 South Main Street, Monticello, AR 71655.	Drew County Courthouse, 210 South Main Street, Monticello, AR 71655.	*http://www.msc.fema.gov/lomc*	Jan. 12, 2017	050430
Colorado:						
Broomfield	City and County of Broomfield, (16–08–1117P).	The Honorable Randy Ahrens, Mayor, City and County of Broomfield, 1 Des Combes Drive, Broomfield, CO 80020.	Engineering Department, 1 Des Combes Drive, Broomfield, CO 80020.	*http://www.msc.fema.gov/lomc*	Jan. 27, 2017	085073
El Paso	City of Colorado Springs, (16–08–0643P).	The Honorable John Suthers, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Colorado Springs, CO 80903.	Pikes Peak Regional Building, 2880 International Circle, Colorado Springs, CO 80903.	*http://www.msc.fema.gov/lomc*	Dec. 23, 2016	080060
Jefferson	City of Arvada, (15–08–1159P).	The Honorable Marc Williams, Mayor, City of Arvada, P.O. Box 8101, Arvada, CO 80001.	Engineering Division, 8101 Ralston Road, Arvada, CO 80001.	*http://www.msc.fema.gov/lomc*	Jan. 27, 2017	085072
Jefferson	Unincorporated areas of Jefferson County, (15–08–1159P).	The Honorable Libby Szabo, Chair, Jefferson County, Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Golden, CO 80419.	*http://www.msc.fema.gov/lomc*	Jan. 27, 2017	080087
Larimer	City of Fort Collins, (16–08–0420P).	The Honorable Wade Troxell, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, CO 80522.	Utilities Department, 700 Wood Street, Fort Collins, CO 80521.	*http://www.msc.fema.gov/lomc*	Jan. 5, 2017	080102
Connecticut: Fairfield.	City of Stamford, (16–01–1994P).	The Honorable David Martin, Mayor, City of Stamford, 888 Washington Boulevard, Stamford, CT 06904.	City Hall, 888 Washington Boulevard, Stamford, CT 06904.	*http://www.msc.fema.gov/lomc*	Jan. 11, 2017	090015
Florida:						
Charlotte	Unincorporated areas of Charlotte County, (16–04–6938P).	The Honorable Bill Truex, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18400 Murdock Circle, Port Charlotte, FL 33948.	*http://www.msc.fema.gov/lomc*	Jan. 26, 2017	120061
Collier	City of Marco Island, (16–04–6989P).	The Honorable Bob Brown, Chairman, City of Marco Island Council, 50 Bald Eagle Drive, Marco Island, FL 34145.	Building Department, 50 Bald Eagle Drive, Marco Island, FL 34145.	*http://www.msc.fema.gov/lomc*	Jan. 19, 2017	120426
Collier	City of Naples (16–04–6987P).	The Honorable Bill Barnett, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Building Department, 295 Riverside Circle, Naples, FL 34102.	*http://www.msc.fema.gov/lomc*	Jan. 19, 2017	125130
Duval	City of Jacksonville, (16–04–3215P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Development Services Division, 214 North Hogan Street, Suite 2100, Jacksonville, FL 32202.	*http://www.msc.fema.gov/lomc*	Dec. 30, 2016	120077
Duval	City of Jacksonville, (16–04–6041P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Development Services Division, 214 North Hogan Street, Suite 2100, Jacksonville, FL 32202.	*http://www.msc.fema.gov/lomc*	Dec. 22, 2016	120077
Duval	City of Jacksonville, (16–04–6150P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Development Services Division, 214 North Hogan Street, Suite 2100, Jacksonville, FL 32202.	*http://www.msc.fema.gov/lomc*	Jan. 11, 2017	120077
Lee	City of Sanibel, (16–04–5162P).	The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Building Department, 800 Dunlop Road, Sanibel, FL 33957.	*http://www.msc.fema.gov/lomc*	Jan. 31, 2017	120402

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Lee	City of Sanibel, (16–04–6547P).	The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Building Department, 800 Dunlop Road, Sanibel, FL 33957.	*http://www.msc.fema.gov/lomc*	Jan. 26, 2017	120402
Lee	Unincorporated areas of Lee County, (16–04–7007P).	The Honorable Frank Mann, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	*http://www.msc.fema.gov/lomc*	Jan. 23, 2017	125124
Monroe	City of Key West, (16–04–4726P).	The Honorable Craig Cates, Mayor, City of Key West, P.O. Box 1409, Key West, FL 33041.	Building Department, 3140 Flagler Avenue, Key West, FL 33040.	*http://www.msc.fema.gov/lomc*	Jan. 24, 2017	120168
Monroe	City of Key West, (16–04–6755P).	The Honorable Craig Cates, Mayor, City of Key West, P.O. Box 1409, Key West, FL 33041.	Building Department, 3140 Flagler Avenue, Key West, FL 33040.	*http://www.msc.fema.gov/lomc*	Jan. 19, 2017	120168
Monroe	Unincorporated areas of Monroe County, (16–04–7359P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Marathon, FL 33050.	*http://www.msc.fema.gov/lomc*	Jan. 20, 2017	125129
Orange	City of Orlando, (16–04–5876P).	The Honorable Buddy W. Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32802.	Public Works Department, 400 South Orange Avenue, 8th Floor, Orlando, FL 32801.	*http://www.msc.fema.gov/lomc*	Jan. 20, 2017	120186
Orange	Unincorporated areas of Orange County, (16–04–2773P).	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Stormwater Management Department, 4200 South John Young Parkway, Orlando, FL 32839.	*http://www.msc.fema.gov/lomc*	Jan. 23, 2017	120179
Osceola	Unincorporated areas of Osceola County, (16–04–2860P).	The Honorable Viviana Janer, Chair, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 1400, Kissimmee, FL 34741.	Osceola County Community Development Department, 1 Courthouse Square, Suite 1100, Kissimmee, FL 34741.	*http://www.msc.fema.gov/lomc*	Jan. 20, 2017	120189
Louisiana: St. Tammany.	City of Mandeville, (16–06–1792P).	The Honorable Donald J. Villere, Mayor, City of Mandeville, 3101 East Causeway Approach, Mandeville, LA 70448.	Planning Department, 3101 East Causeway Approach, Mandeville, LA 70448.	*http://www.msc.fema.gov/lomc*	Jan. 13, 2017	220202
Massachusetts:						
Essex	Town of Manchester-by-the-Sea, (16–01–1155P).	The Honorable Eli G. Boling, Chairman, Town of Manchester-by-the-Sea, Board of Selectmen, 10 Central Street, Manchester-by-the-Sea, MA 01944.	Town Hall, 10 Central Street, Manchester-by-the-Sea, MA 01944.	*http://www.msc.fema.gov/lomc*	Jan. 2, 2017	250090
Suffolk	City of Boston, (16–01–1699P).	The Honorable Martin J. Walsh, Mayor, City of Boston, 1 City Hall Square, Suite 500, Boston, MA 02201.	Environment Department, 1 City Hall Square, Room 709, Boston, MA 02201.	*http://www.msc.fema.gov/lomc*	Jan. 6, 2017	250286
Mississippi:						
Madison	City of Madison, (16–04–6373P).	The Honorable Mary Hawkins Butler, Mayor, City of Madison, P.O. Box 40 Madison, MS 39110.	Community Development Department, 1004 Madison Avenue, Madison, MS 39110.	*http://www.msc.fema.gov/lomc*	Jan. 20, 2017	280229
Madison	Pearl River Valley Water Supply District (16–04–6373P).	Mr. Jack Winstead, President, Pearl River Valley Water Supply District Board of Directors, 115 Madison Landing Circle, Ridgeland, MS 39158.	Building Department, 1864 Spillway Road, Brandon, MS 39047.	*http://www.msc.fema.gov/lomc*	Jan. 20, 2017	280338
Madison	Unincorporated areas of Madison County, (16–04–6373P).	The Honorable Trey Baxter, Chairman, Madison County Board of Supervisors, P.O. Box 608, Canton, MS 39046.	Madison County Planning and Zoning Department, 125 West North Street, Canton, MS 39046.	*http://www.msc.fema.gov/lomc*	Jan. 20, 2017	280228
New Hampshire:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Hillsborough	Town of Amherst, (16–01–1614P).	Mr. James M. O'Mara, Jr., Town Administrator, Town of Amherst, P.O. Box 960, Amherst, NH 03031.	Planning Department, 2 Main Street, Amherst, NH 03031.	*http://www.msc.fema.gov/lomc*	Jan. 13, 2017	330081
Hillsborough	Town of Hudson, (16–01–1111P).	The Honorable Rick Maddox, Chairman, Town of Hudson Board of Selectmen, 12 School Street, Hudson, NH 03051.	Town Hall, 12 School Street, Hudson, NH 03051.	*http://www.msc.fema.gov/lomc*	Jan. 19, 2017	330092
Oklahoma: Oklahoma.	City of Oklahoma City, (16–06–1439P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, Oklahoma City, OK 73102.	Public Works Department, 420 West Main Street, Oklahoma City, OK 73102.	*http://www.msc.fema.gov/lomc*	Jan. 23, 2017	405378
Pennsylvania:						
Adams	Township of Hamilton, (16–03–0904P).	The Honorable Stephanie Egger, Chair, Township of Hamilton Board of Supervisors, 272 Mummerts Church Road, Abbottstown, PA 17301.	Township Hall, 272 Mummerts Church Road, Abbottstown, PA 17301.	*http://www.msc.fema.gov/lomc*	Dec. 20, 2016	420002
Bucks	Borough of New Hope, (16–03–1928P).	Mr. John Burke, Manager, Borough of New Hope, 123 New Street, New Hope, PA 18938.	Borough Hall, 123 New Street, New Hope, PA 18938.	*http://www.msc.fema.gov/lomc*	Jan. 12, 2017	420195
Montgomery	Borough of Conshohocken, (16–03–0726P).	Mr. Richard J. Manfredi, Manager, Borough of Conshohocken, 400 Fayette Street, Conshohocken, PA, 19428.	Borough Administration Building, 400 Fayette Street, Conshohocken, PA 19428.	*http://www.msc.fema.gov/lomc*	Jan. 30, 2017	420949
Montgomery	Borough of West Conshohocken, (16–03–0726P).	The Honorable Joseph Pignoli, President, Borough of West Conshohocken Council, 112 Ford Street, Conshohocken, PA 19428.	Borough Hall, 112 Ford Street, Conshohocken, PA 19428.	*http://www.msc.fema.gov/lomc*	Jan. 30, 2017	420710
Montgomery	Township of Plymouth, (16–03–0726P).	Ms. Karen B. Weiss, Manager, Township of Plymouth, 700 Belvoir Road, Plymouth Meeting, PA 19462.	Township Hall, 700 Belvoir Road, Plymouth Meeting, PA 19462.	*http://www.msc.fema.gov/lomc*	Jan. 30, 2017	420955
York	Township of Lower Chanceford, (16–03–2040P).	The Honorable David Glenn, Chairman, Township of Lower Chanceford, Board of Supervisors, 4120 Delta Road, Airville, PA 17302.	Township Hall, 4120 Delta Road, Airville, PA 17302.	*http://www.msc.fema.gov/lomc*	Jan. 23, 2017	420930
York	Township of Peach Bottom, (16–03–2040P).	The Honorable Janet L. Wiley, Chair, Township of Peach Bottom Board of Supervisors, 6880 Delta Road, Delta, PA 17314.	Municipal Office Building, 6880 Delta Road, Delta, PA 17314.	*http://www.msc.fema.gov/lomc*	Jan. 23, 2017	422229
South Carolina: Charleston.	City of Folly Beach, (16–04–6421P).	The Honorable Tim Goodwin, Mayor, City of Folly Beach, P.O. Box 48, Folly Beach, SC 29439.	Public Works Department, 21 Center Street, Folly Beach, SC 29439.	*http://www.msc.fema.gov/lomc*	Jan. 24, 2017	455415
Texas:						
Bexar	City of San Antonio, (16–06–1641P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Stormwater Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*http://www.msc.fema.gov/lomc*	Jan. 11, 2017	480045
Bexar	Unincorporated areas of Bexar County, (16–06–2962P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	*http://www.msc.fema.gov/lomc*	Jan. 11, 2017	480035
Collin	City of McKinney, (16–06–1250P).	The Honorable Brian Loughmiller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	Engineering Department, 221 North Tennessee Street, McKinney, TX 75069.	*http://www.msc.fema.gov/lomc*	Jan. 9, 2017	480135

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Collin	City of McKinney, (16–06–1435P).	The Honorable Brian Loughmiller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	Engineering Department, 221 North Tennessee Street, McKinney, TX 75069.	*http://www.msc.fema.gov/lomc*	Jan. 2, 2017	480135
Collin	City of McKinney, (16–06–2050P).	The Honorable Brian Loughmiller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	Engineering Department, 221 North Tennessee Street, McKinney, TX 75069.	*http://www.msc.fema.gov/lomc*	Jan. 9, 2017	480135
Collin	Unincorporated areas of Collin County, (16–06–1435P).	The Honorable Keith Self, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	*http://www.msc.fema.gov/lomc*	Jan. 2, 2017	480130
Montgomery	City of Conroe, (16–06–2103P).	The Honorable Toby Powell, Mayor, City of Conroe, 300 West Davis Street, Conroe, TX 77301.	Public Works Department, 300 West Davis Street, Conroe, TX 77301.	*http://www.msc.fema.gov/lomc*	Jan. 19, 2017	480484
Tarrant	City of Fort Worth, (16–06–1438P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 1000 Throckmorton Street, Fort Worth, TX 76102.	*http://www.msc.fema.gov/lomc*	Jan. 19, 2017	480596
Tarrant	City of Fort Worth, (16–06–1735P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Transportation and Public Works Department, 1000 Throckmorton Street, Fort Worth, TX 76102.	*http://www.msc.fema.gov/lomc*	Jan. 26, 2017	480596
Virginia:						
Rockingham	Unincorporated areas of Rockingham County, (16–03–2085P).	The Honorable William B. Kyger, Jr., Chairman, Rockingham County Board of Supervisors, 20 East Gay Street, Harrisonburg, VA 22802.	Rockingham County Administration Center, 20 East Gay Street, Harrisonburg, VA 22802.	*http://www.msc.fema.gov/lomc*	Dec. 23, 2016	510133
Independent City.	City of Hampton, (16–03–1592P).	The Honorable Donnie R. Tuck, Mayor, City of Hampton, 22 Lincoln Street, Hampton, VA 23669.	Public Works Division, 22 Lincoln Street, Hampton, VA 23669.	*http://www.msc.fema.gov/lomc*	Jan. 17, 2017	515527

[FR Doc. 2016–28533 Filed 11–25–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1652]

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 February 27, 2017.

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–1652, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@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: November 16, 2016.

Roy E. Wright,

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

Community	Community map repository address
Pueblo County, Colorado and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 13–08–0851S Preliminary Date: March 25, 2016	
City of Pueblo	Public Works, 211 East D Street, Pueblo, CO 81003.
Town of Boone	Town Hall, 421 East 1st Street, Boone, CO 81025.
Town of Rye	Water Plant, 8171 Park Road, Rye, CO 81069.
Unincorporated Areas of Pueblo County	Planning and Development Department, 229 West 12th Street, Pueblo, CO 81003.
Okaloosa County, Florida and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 11–04–1990S Preliminary Date: April 29, 2016	
City of Crestview	City Hall, 198 North Wilson Street, Crestview, FL 32536.
City of Destin	City Hall Annex, 4100 Indian Bayou Trail, Destin, FL 32541.
City of Fort Walton Beach	Engineering and Utility Services, City Hall Annex, 105 Miracle Strip Parkway Southwest, Fort Walton Beach, FL 32548.
City of Laurel Hill	City Hall, 8209 Highway 85 North, Laurel Hill, FL 32567.
City of Mary Esther	City Hall, 195 Christobal Road North, Mary Esther, FL 32569.
City of Niceville	Planning Office, 208 North Partin Drive, Niceville, FL 32578.
City of Valparaiso	City Hall, 465 Valparaiso Parkway, Valparaiso, FL 32580.
Town of Cinco Bayou	Town Hall, 10 Yacht Club Drive, Cinco Bayou, FL 32548.
Town of Shalimar	Town Hall, 2 Cherokee Road, Shalimar, FL 32579.
Unincorporated Areas of Okaloosa County	Okaloosa County Growth Management Department, 1250 North Eglin Parkway, Suite 301, Shalimar, FL 32579.
Lyon County, Kentucky and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 13–04–8739S Preliminary Date: February 26, 2016	
City of Eddyville	153 West Main Street, Eddyville, KY 42038.
City of Kuttawa	82 Cedar Street, Kuttawa, KY 42055.
Unincorporated Areas of Lyon County	500 West Dale Avenue, Eddyville, KY 42038.
Jefferson County, Texas and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	

Community	Community map repository address
Project: 06–06–BI80S Preliminary Date: December 11, 2015	
City of Beaumont	Planning and Community Development, 801 Main Street, Suite 201, Beaumont, TX 77701.

[FR Doc. 2016–28531 Filed 11–25–16; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: 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 4Agency'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 March 7, 2017 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 tables 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: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@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 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and 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.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 16, 2016.

Roy E. Wright,

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

I. Watershed-based studies:

Community	Community map repository address
Cuyahoga Watershed	
Portage County, Ohio and Incorporated Areas Docket No.: FEMA–B–1532	
City of Kent	Building Services Division, 930 Overholt Road, Kent, OH 44240.
Unincorporated Areas of Portage County	Portage County Building Department, 449 South Meridian Street, 1st Floor, Ravenna, OH 44266.

II. Non-watershed-based studies:

Community	Community map repository address
Sonoma County, California and Incorporated Areas Docket No.: FEMA–B–1553	
Unincorporated Areas of Sonoma County	County Permit and Resource Management, 2550 Ventura Avenue, Santa Rosa, CA 95403.

Community	Community map repository address
Sussex County, Delaware and Incorporated Areas Docket No.: FEMA–B–1530	
Town of South Bethany	Town Hall, Office of the Code Constable, 402 Evergreen Road, South Bethany, DE 19930.
Minnehaha County, South Dakota and Incorporated Areas Docket No.: FEMA–B–1543	
City of Sioux Falls	City Hall, 224 West 9th Street, Sioux Falls, SD 57117.
Unincorporated Areas of Minnehaha County	Minnehaha County Planning Department, 415 North Dakota Avenue, Sioux Falls, SD 57104.
Island County, Washington and Incorporated Areas Docket No.: FEMA–B–1532	
City of Langley	City Hall, 112 2nd Street, Langley, WA 98260.
City of Oak Harbor	City Hall, 865 Southeast Barrington Drive, Oak Harbor, WA 98260.
Town of Coupeville	Town Hall, 4 Northeast 7th Street, Coupeville, WA 98239.
Unincorporated Areas of Island County	Island County Annex, 1 Northeast 6th Street, Coupeville, WA 98239.
Pierce County, Washington and Incorporated Areas Docket No.: FEMA–B–1511	
City of Bonney Lake	Justice and Municipal Center, 9002 Main Street East, Suite 300, Bonney Lake, WA 98391.
City of Buckley	Planning and Building Department, 811 Main Street, Buckley, WA 98321.
City of Dupont	City Hall, 1700 Civic Drive, Dupont, WA 98327.
City of Edgewood	City Hall, 2224 104th Avenue East, Edgewood, WA 98372.
City of Fife	City Hall, 5411 23rd Street, Fife, WA 98424.
City of Fircrest	Planning and Building Department, 115 Ramsdell Street, Fircrest, WA 98466.
City of Gig Harbor	City Clerk's Office, 3510 Grandview Street, Gig Harbor, WA 98335.
City of Lakewood	City Hall, 6000 Main Street Southwest, Lakewood, WA 98499.
City of Milton	Public Works Department, 1000 Laurel Street, Milton, WA 98354.
City of Orting	City Hall, 110 Train Street Southeast, Orting, WA 98360.
City of Puyallup	City Hall, 333 South Meridian, Puyallup, WA 98371.
City of Roy	City Hall, 216 McNaught Street South, Roy, WA 98580.
City of Ruston	City Hall, 5117 North Winnifred Street, Ruston, WA 98407.
City of Sumner	City Hall, Public Works Counter, 1104 Maple Street, Sumner, WA 98390.
City of Tacoma	Munincipal Building, 747 Market Street, Tacoma, WA 98402.
City of University Place	City Hall, 3715 Bridgeport Way West, Suite B–1, University Place, WA 98466.
Town of Eatonville	Town Hall, 201 Center Street West, Eatonville, WA 98328.
Town of South Prairie	Town Hall, 121 Northwest Washington Street, South Prairie, WA 98385.
Town of Steilacoom	Public Works Building, 1030 Roe Street, Steilacoom, WA 98388.
Town of Wilkeson	Town Hall, 540 Church Street, Wilkeson, WA 98396.
Unincorporated Areas of Pierce County	Pierce County Annex, 2401 South 35th Street, Tacoma, WA 98409.
Kenosha County, Wisconsin and Incorporated Areas Docket No.: FEMA–B–1542	
Village of Pleasant Prairie	Village Hall, 9915 39th Avenue, Pleasant Prairie, WI 53158.

[FR Doc. 2016–28525 Filed 11–25–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1656]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency

Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table 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.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

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).

These 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. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table 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.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 16, 2016.

Roy E. Wright,

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

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama:						
Shelby	City of Pelham (16–04–3762P).	The Honorable Gary W. Waters, Mayor, City of Pelham, P.O. Box 1419, Pelham, AL 35124.	City Hall, 3162 Pelham Parkway, Pelham, AL 35124.	*http://www.msc.fema.gov/lomc*	Nov. 25, 2016	010193
Shelby	Unincorporated areas of Shelby County (16–04–3762P).	The Honorable Rick Shepherd, Chairman, Shelby County Commission, 200 West College Street, Columbiana, AL 35051.	Shelby County Engineering Department, 506 Highway 70, Columbiana, AL 35051.	*http://www.msc.fema.gov/lomc*	Nov. 25, 2016	010191
Connecticut: New Haven.	Town of Guilford (16–01–0895P).	The Honorable Joseph S. Mazza, First Selectman, Town of Guilford Board of Selectmen, 31 Park Street, Guilford, CT 06437.	Town Hall South, 50 Boston Street, Guilford, CT 06437.	*http://www.msc.fema.gov/lomc*	Dec. 23, 2016	090077
Florida:						
Brevard	City of Titusville (16–04–5333P).	The Honorable James H. Tulley, Jr., Mayor, City of Titusville, P.O. Box 2806, Titusville, FL 32781.	City Hall, 555 South Washington Avenue, Titusville, FL 32796.	*http://www.msc.fema.gov/lomc*	Dec. 15, 2016	125152

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Charlotte	Unincorporated areas of Charlotte County (16–04–3741P).	The Honorable Bill Truex, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18400 Murdock Circle, Port Charlotte, FL 33948.	*http://www.msc.fema.gov/lomc*	Dec. 9, 2016	020061
Collier	City of Naples (16–04–6553P).	The Honorable Bill Barnett, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Building Department, 295 Riverside Circle, Naples, FL 34102.	*http://www.msc.fema.gov/lomc*	Jan, 4, 2017	125130
Lake	City of Fruitland Park (16–04–6296X).	The Honorable Chris Bell, Mayor, City of Fruitland Park, 506 West Berckman Street, Fruitland Park, FL 34731.	Building Department, 506 West Berckman Street, Fruitland Park, FL 34731.	*http://www.msc.fema.gov/lomc*	Dec. 28, 2016	120387
Lee	City of Sanibel (16–04–4047P).	The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Building Department, 800 Dunlop Road, Sanibel, FL 33957.	*http://www.msc.fema.gov/lomc*	Dec. 6, 2016	120402
Lee	Village of Estero (15–04–9858P).	Mr. Steve Sarkozy, Manager, Village of Estero, 9401 Corkscrew Palms Circle, Estero, FL 33928.	Village Hall, 9401 Corkscrew Palms Circle, Estero, FL 33928.	*http://www.msc.fema.gov/lomc*	Dec. 12, 2016	120260
Manatee	Unincorporated areas of Manatee County (16–04–3945P).	The Honorable Vanessa Baugh, Chair, Manatee County Board of Commissioners, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Building and Development Services Division, 1112 Manatee Avenue West, Bradenton, FL 34205.	*http://www.msc.fema.gov/lomc*	Dec. 20, 2016	120153
Manatee	Unincorporated areas of Manatee County (16–04–5342P).	The Honorable Vanessa Baugh, Chair, Manatee County Board of Commissioners, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Building and Development Services Division, 1112 Manatee Avenue West, Bradenton, FL 34205.	*http://www.msc.fema.gov/lomc*	Dec. 27, 2016	120153
Monroe	Village of Islamorada (16–04–5228P).	The Honorable Deb Gillis, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Planning and Development Department, 86800 Overseas Highway, Islamorada, FL 33036.	*http://www.msc.fema.gov/lomc*	Dec. 5, 2016	120424
Seminole	City of Altamonte Springs (16–04–5502P).	The Honorable Patricia Bates, Mayor, City of Altamonte Springs, 225 Newburyport Avenue, Altamonte Springs, FL 32701.	Public Works Department, 950 Calabria Drive, Altamonte Springs, FL 32701.	*http://www.msc.fema.gov/lomc*	Dec. 19, 2016	120290
Walton	City of Freeport (16–04–3900P).	The Honorable Sidney R. Barley, Mayor, City of Freeport, P.O. Box 339, Freeport, FL 32439.	City Hall, 112 Highway 20 West, Freeport, FL 32439.	*http://www.msc.fema.gov/lomc*	Dec. 9, 2016	120319
Georgia: Columbia	Unincorporated areas of Columbia County (16–04–5385P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	Columbia County Engineering Services Department, Building A, East Wing, 630 Ronald Reagan Drive, Evans, GA 30809.	*http://www.msc.fema.gov/lomc*	Dec. 8, 2016	130059
Kentucky: Fayette	Lexington–, Fayette, Urban County Government (16–04–2392P).	The Honorable Jim Gray, Mayor, Lexington–Fayette, Urban County Government, 200 East Main Street, Lexington, KY 40507.	City Hall, 200 East Main Street, Lexington, KY 40507.	*http://www.msc.fema.gov/lomc*	Dec. 2, 2016	210067
Massachusetts:						
Essex	City of Gloucester (16–01–0697P).	The Honorable Sefatia Romeo Theken, Mayor, City of Gloucester, 9 Dale Avenue, Gloucester, MA 01930.	City Hall, 9 Dale Avenue, Gloucester, MA 01930.	*http://www.msc.fema.gov/lomc*	Dec. 16, 2016	250082
Essex	Town of Manchester-by-the-Sea (16–01–0697P).	The Honorable Eli G. Boling, Chairman, Town of Manchester-by-the-Sea, Board of Selectmen, 10 Central Street, Manchester-by-the-Sea, MA 01944.	Town Hall, 10 Central Street, Manchester-by-the-Sea, MA 01944.	*http://www.msc.fema.gov/lomc*	Dec. 16, 2016	250090

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Montana: Mineral ..	Unincorporated areas of Mineral County (16–08–0230P).	The Honorable Roman Zylawy, Chairman, Mineral County Board of Commissioners, 300 River Street, Superior, MT 59872.	Mineral County Government Office, 300 River Street, Superior, MT 59872.	*http://www.msc.fema.gov/lomc*	Dec. 29, 2016	300159
New Mexico:						
Bernalillo	City of Albuquerque (16–06–1045P).	The Honorable Richard J. Berry, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Development and Building Services Division, 600 2nd Street Northwest, Albuquerque, NM 87103.	*http://www.msc.fema.gov/lomc*	Dec. 13, 2016	350002
Santa Fe	City of Santa Fe (16–06–2549P).	The Honorable Javier M. Gonzales, Mayor, City of Santa Fe, P.O. Box 909, Santa Fe, NM 87501.	Land Use Department, Technical Review Division, P.O. Box 909, Santa Fe, NM 87501.	*http://www.msc.fema.gov/lomc*	Dec. 19. 2016	350070
North Carolina:						
Alamance	Unincorporated Areas of Alamance County (15–04–9829P).	The Honorable Eddie Boswell, Chairman, Alamance County Board of Commissioners, 124 West Elm Street, Burlington, NC 27253.	Alamance County Inspections and Address Department, 215 North Graham Hopedale Road, Burlington, NC 27217.	*http://www.msc.fema.gov/lomc*	Dec. 8, 2016	370001
Graham	Unincorporated areas of Graham County (16–04–4666P).	The Honorable Jacob Nelms, Chairman, Graham County Board of Commissioners, 12 North Main Street, Robbinsville, NC 28771.	Graham County Emergency Services Division, 70 West Fort Hill Road, Robbinsville, NC 28771.	*http://www.msc.fema.gov/lomc*	Dec. 16. 2016	370105
McDowell	Unincorporated Areas of McDowell County (16–04–3711P).	The Honorable David N. Walker, Chairman, McDowell County Board of Commissioners, 60 East Court Street, Marion, NC 28752.	McDowell County Health Department, 408 Spaulding Road, Marion, NC 28752.	*http://www.msc.fema.gov/lomc*	Dec. 14, 2016	370148
Mecklenburg ..	City of Charlotte (15–04–3179P).	The Honorable Jennifer Roberts, Mayor, City of Charlotte, 600 East 4th Street, 15th Floor, Charlotte, NC 28202.	Charlotte-Mecklenburg Stormwater Services Division, 2145 Suttle Avenue, Charlotte, NC 28208.	*http://www.msc.fema.gov/lomc*	Jan 2. 2017	370159
Randolph	Unincorporated areas of Randolph County (16–04–3349P).	The Honorable Darrell Frye, Chairman, Randolph County Board of Commissioners, 725 McDowell Road, Asheboro, NC 27205.	Randolph County Planning and Zoning Department, 201 East Academy Street, Asheboro, NC 27203.	*http://www.msc.fema.gov/lomc*	Dec. 14, 2016	370195
Wake	Town of Holly Springs (16–04–1838P).	The Honorable Richard G. Sears, Mayor, Town of Holly Springs, P.O. Box 8, Holly Springs, NC 27540.	Engineering Department, 128 South Main Street, Holly Springs, NC 27540.	*http://www.msc.fema.gov/lomc*	Dec. 29, 2016	370403
Wake	Unincorporated areas of Wake County (16–04–1838P).	The Honorable James West, Chairman, Wake County Board of Commissioners, P.O. Box 550, Raleigh, NC 27602.	Wake County Environmental Services Department, Waverly F. Akins Office Building, 336 Fayetteville Street, Raleigh, NC 27601.	*http://www.msc.fema.gov/lomc*	Dec. 29, 2016	370368
Pennsylvania:						
Allegheny	City of Pittsburgh (16–03–0541P).	The Honorable William Peduto, Mayor, City of Pittsburgh, City County Building, Room 512, 414 Grant Street, Pittsburgh, PA 15219.	City County Building, 414 Grant Street, Pittsburgh, PA 15219.	*http://www.msc.fema.gov/lomc*	Dec. 19, 2016	420063
Chester	Township of East Whiteland (16–03–0517P).	Mr. John Nagel, Manager, Township of East Whiteland, 209 Conestoga Road, Frazer, PA 19355.	Municipal Building, 209 Conestoga Road, Frazer, PA 19355.	*http://www.msc.fema.gov/lomc*	Dec. 28, 2016	420279
South Carolina:						
Charleston	Town of Mount Pleasant (16–04–2610P).	The Honorable Linda Page, Mayor, Town of Mount Pleasant, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Planning and Development Department, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	*http://www.msc.fema.gov/lomc*	Dec. 8, 2016	455417

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Charleston	Town of Mount Pleasant (16–04–6229P).	The Honorable Linda Page, Mayor, Town of Mount Pleasant, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Planning and Development Department, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	*http://www.msc.fema.gov/lomc*	Dec. 29, 2016	455417
Charleston	Unincorporated areas of Charleston County (16–04–2610P).	The Honorable J. Elliott Summey, Chairman, Charleston County Council, 4045 Bridgeview Drive, Suite B254, North Charleston, SC. 29405.	Charleston County Building Inspection Services Division, 4045 Bridgeview Drive North Charleston, SC. 29405.	*http://www.msc.fema.gov/lomc*	Dec. 8, 2016	455413
Texas:						
Bexar	City of San Antonio (16–06–1242P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Stormwater Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*http://www.msc.fema.gov/lomc*	Dec. 30, 2016	480045
Bexar	City of San Antonio (16–06–2426P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Stormwater Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*http://www.msc.fema.gov/lomc*	Dec. 27, 2016	480045
Bexar	Unincorporated areas of Bexar County (16–06–1257P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	*http://www.msc.fema.gov/lomc*	Dec. 6, 2016	1 480035
Collin	City of McKinney (16–06–2498P).	The Honorable Brian Loughmiller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75069.	Engineering Department, 221 North Tennessee Street, McKinney, TX 75069.	*http://www.msc.fema.gov/lomc*	Dec. 12, 2016	480135
Denton	City of Corinth (16–06–2195P).	The Honorable Bill Heidemann, Mayor, City of Corinth, 2027 Vintage Circle, Corinth, TX 76210.	Planning and Development Department, 3300 Corinth Parkway, Corinth, TX 76208.	*http://www.msc.fema.gov/lomc*	Jan 5, 2017	481143
Denton	City of Denton (16–06–2195P).	The Honorable Chris A. Watts, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	Engineering Department, 901–A Texas Street, Denton, TX 76509.	*http://www.msc.fema.gov/lomc*	Jan 5, 2017	480194
El Paso	City of El Paso (16–06–0755P).	The Honorable Oscar Leeser, Mayor, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	Development Department, 801 Texas Avenue, El Paso, TX 79901.	*http://www.msc.fema.gov/lomc*	Dec. 1, 2016	480194
Montgomery	Unincorporated areas of Montgomery County (16–06–0818P).	The Honorable Craig B. Doyal, Montgomery County Judge, 501 North Thompson Street, Suite 401, Conroe, TX 77301.	Montgomery County Permitting Department, 501 North Thompson Street, Suite 100, Conroe, TX 77301.	*http://www.msc.fema.gov/lomc*	Dec. 5, 2016	480483
Tarrant	City of Colleyville (16–06–1876P).	The Honorable Richard Newton, Mayor, City of Colleyville, 100 Main Street, Colleyville, TX 76034.	City Hall, 100 Main Street, Colleyville, TX 76034.	*http://www.msc.fema.gov/lomc*	Dec. 22, 2016	480590
Travis	Village of Bee Cave (16–06–0812P).	The Honorable Caroline Murphy, Mayor, Village of Bee Cave, 400 Galleria Parkway, Bee Cave, TX 78738.	Department of Planning and Development, 400 Galleria Parkway, Bee Cave, TX 78738.	*http://www.msc.fema.gov/lomc*	Dec. 2, 2016	481610
Williamson	City of Leander (16–06–0760P).	The Honorable Christopher Fielder, Mayor, City of Leander, P.O. Box 319, Leander, TX 78641.	Engineering Department, P.O. Box 319, Leander, TX 78641.	*http://www.msc.fema.gov/lomc*	Dec. 9, 2016	481536
Wilson	City of La Vernia (16–06–0558P).	The Honorable Robert Gregory, Mayor, City of La Vernia, P.O. Box 225, La Vernia, TX 78121.	City Hall, 102 East Chihuahua Street, La Vernia, TX 78121.	*http://www.msc.fema.gov/lomc*	Dec. 8, 2016	481050

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Wilson	Unincorporated areas of Wilson County (16–06–0558P).	The Honorable Richard L. Jackson, Wilson County Judge, 1420 3rd Street, Suite 101, Floresville, TX 78114.	Wilson County Emergency Management Department, 800 10th Street, Building B, Floresville, TX 78114.	*http://www.msc.fema.gov/lomc*	Dec. 8. 2016	480230
Utah:						
Utah	City of Saratoga Springs (16–08–0597P).	The Honorable Jim Miller, Mayor, City of Saratoga Springs, 1307 North Commerce Drive, Suite 200, Saratoga Springs, UT 84045.	City Hall, 1307 North Commerce Drive, Suite 200, Saratoga Springs, UT 84045.	*http://www.msc.fema.gov/lomc*	Dec. 19, 2016	490250
Utah	Unincorporated areas of Utah County (16–08–0597P).	The Honorable Larry Ellertson, Chairman, Utah County Board of Commissioners, 100 East Center Street, Suite 2300, Provo, Utah 84606.	Utah County Community Development Department, 100 East Center Street, Provo, Utah 84606.	*http://www.msc.fema.gov/lomc*	Dec. 19, 2016	495517
Weber	City of Ogden (16–08–0099P).	The Honorable Michael P. Caldwell, Mayor, City of Ogden, 2549 Washington Boulevard, Suite 910, Ogden, UT 84401.	City Hall, 2549 Washington Boulevard, Ogden, UT 84401.	*http://www.msc.fema.gov/lomc*	Dec. 27, 2016	37 490189
Weber	Unincorporated areas of Weber County (16–08–0099P).	The Honorable Kerry W. Gibson, Chairman, Weber County Commission, 2380 Washington Boulevard, Suite 360, Ogden, UT 84401.	Weber County Government Building, 2380 Washington Boulevard, Ogden, UT 84401.	*http://www.msc.fema.gov/lomc*	Dec. 27, 2016	490187
Virginia:						
Arlington	Unincorporated areas of Arlington County (15–03–3059P).	Mr. Mark Schwartz, Manager, Arlington County, 2100 Clarendon Boulevard, Suite 302, Arlington, VA 22201.	Arlington County Department of Environmental Services, 2100 Clarendon Boulevard, Suite 813, Arlington, VA 22201.	*http://www.msc.fema.gov/lomc*	Dec. 2, 2016	515520
Fairfax	Unincorporated areas of Fairfax County (16–03–0196P).	Mr. Edward L. Long, Jr., Fairfax County Executive, 12000 Government Center Parkway, Fairfax, VA 22035.	Fairfax County Department of Public Works and Environmental Services, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035.	*http://www.msc.fema.gov/lomc*	Jan 2, 2017	515525
Loudoun	Town of Leesburg (16–03–2150P).	The Honorable David Butler, Mayor, Town of Leesburg, 25 West Market Street, Leesburg, VA 20176.	Department of Plan Review, 25 West Market Street, Leesburg, VA 20176.	*http://www.msc.fema.gov/lomc*	Dec. 16, 2016	510091
Prince William	Unincorporated areas of Prince William County (16–03–0196P).	Mr. Christopher E. Martino, Acting Prince William County Executive, 1 County Complex Court, Prince William, VA 22192.	Prince William County Department of Public Works, 5 County Complex Court, Prince William, VA 22192.	*http://www.msc.fema.gov/lomc*	Jan 2, 2017	510119

[FR Doc. 2016–28528 Filed 11–25–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1655]

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 February 27, 2017.

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–1655, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@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: November 16, 2016.

Roy E. Wright,

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

I. Watershed-based studies:

Community	Community map repository address
Wheeler Lake Watershed	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Lauderdale County, Alabama and Incorporated Areas	
Unincorporated Areas of Lauderdale County	Lauderdale County Road Department, 1630 State Street, Florence, AL 35630.
Lawrence County, Alabama and Incorporated Areas	
Town of Hillsboro	Town Hall, 11355 Main Street, Hillsboro, AL 35643.
Unincorporated Areas of Lawrence County	Lawrence County Engineering Department, 160 Parker Road, Moulton, AL 35650.
Limestone County, Alabama and Incorporated Areas	
City of Athens	Engineering and Community Development Department, 1600 Elm Street West, Athens, AL 35611.
City of Decatur	Building Department, 402 Lee Street Northeast, 4th Floor, Decatur, AL 35601.
City of Huntsville	City Hall, 308 Fountain Circle, Huntsville, AL 35801.
City of Madison	Engineering Department, 100 Hughes Road, Madison, AL 35758.
Town of Ardmore	Town Hall, 26494 1st Street, Ardmore, AL 35739.
Town of Mooresville	Limestone County Engineering Department, 310 West Washington Street, Athens, AL 35611.
Unincorporated Areas of Limestone County	Limestone County Engineering Department, 310 West Washington Street, Athens, AL 35611.
Madison County, Alabama and Incorporated Areas	
City of Huntsville	City Hall, 308 Fountain Circle, Huntsville, AL 35801.

Community	Community map repository address
City of New Hope	City Hall, 5496 Main Drive, New Hope, AL 35760.
Town of Triana	Town Hall, 640 6th Street, Triana, AL 35756.
Unincorporated Areas of Madison County	Madison County Department of Public Works, Engineering Department, 266–C Shields Road, Huntsville, AL 35811.
Marshall County, Alabama and Incorporated Areas	
Unincorporated Areas of Marshall County	Marshall County Courthouse, 424 Blount Avenue, Guntersville, AL 35976.
Morgan County, Alabama and Incorporated Areas	
City of Decatur	Building Department, 402 Lee Street Northeast, 4th Floor, Decatur, AL 35601.
City of Hartselle	City Hall, 200 Sparkman Street Northwest, Hartselle, AL 35640.
Town of Falkville	Town Hall, 21 North 1st Avenue, Falkville, AL 35622.
Town of Priceville	Town Hall, 242 Marco Drive, Priceville, AL 35603.
Town of Somerville	Town Hall, 24 High Street, Somerville, AL 35670.
Town of Trinity	Town Hall, 35 Preston Drive, Trinity, AL 35673.
Unincorporated Areas of Morgan County	Morgan County Engineer's Office, 580 Shull Road Northeast, Hartselle, AL 35640.
Upper Chattahoochee Watershed	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Dawson County, Georgia and Incorporated Areas	
City of Dawsonville	City Hall, 415 Highway 53 East, Suite 100, Dawsonville, GA 30534.
Unincorporated Areas of Dawson County	Dawson County Planning and Development Department, 25 Justice Way, Suite 2322, Dawsonville, GA 30534.
Hall County, Georgia and Incorporated Areas	
City of Buford	City Hall, 2300 Buford Highway, Buford, GA 30518.
City of Flowery Branch	City Hall, 5517 Main Street, Flowery Branch, GA 30542.
City of Gainesville	Department of Water Resources Administration Building, 757 Queen City Parkway, Southwest, Gainesville, GA 30501.
City of Lula	City Hall, 6055 Main Street, Lula, GA 30554.
City of Oakwood	City Hall, 4035 Walnut Circle, Oakwood, GA 30566.
Town of Clermont	Town Hall, 109 King Street, Clermont, GA 30527.
Unincorporated Areas of Hall County	Hall County Government Center, Engineering Division, 2875 Browns Bridge Road, 3rd Floor, Gainesville, GA 30504.
Lumpkin County, Georgia and Incorporated Areas	
City of Dahlonega	City Hall, 465 Riley Road, Dahlonega, GA 30533.
Unincorporated Areas of Lumpkin County	Lumpkin County Planning and Public Works Department, 25 Short Street, Suite 10, Dahlonega, GA 30533.

II. Non-watershed-based studies:

Community	Community map repository address
DeSoto County, Mississippi and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 14–04–A051S Preliminary Date: August 28, 2015	
Town of Walls	Town Hall, 9087 Nail Road, Walls, MS 38680.
Unincorporated Areas of DeSoto County	DeSoto County Geographic Information Systems, 365 Losher Street, Suite 350, Hernando, MS 38632.
Blair County, Pennsylvania (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 16–03–0712S Preliminary Date: April 7, 2016	
Borough of Tyrone	Administrative Office, 1100 Logan Avenue, Tyrone, PA 16686.
Township of Snyder	Municipal Building, 108 Baughman Hollow Road, Tyrone, PA 16686.

Community	Community map repository address
Township of Tyrone	Community Map Repository, 237 Burket Road, Tyrone, PA 16686.
Huntingdon County, Pennsylvania (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 16–03–0713S Preliminary Date: April 7, 2016	
Borough of Birmingham	Birmingham Borough Map Repository, 4545 Meadow Wood Lane, Warriors Mark, PA 16877.
Township of Morris	Morris Township Office, 4077 Shaffersville Road, Alexandria, PA 16611.
Township of Spruce Creek	Spruce Creek Township Map Repository Huntingdon County Annex Building, Planning and Development Department, 205 Penn Street, Suite 3, Huntingdon, PA 16652.
Township of Warriors Mark	Township Office, 4571 Firehouse Road, Warriors Mark, PA 16877.
Cameron County, Texas and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 05–06–A027S Preliminary Date: June 4, 2015	
Town of Rangerville	Harlingen Irrigation District, 301 East Pierce Avenue, Harlingen, TX 78550.

[FR Doc. 2016–28530 Filed 11–25–16; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1657]

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 February 27, 2017.

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–1657, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@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: November 16, 2016.

Roy E. Wright,

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

I. Non-watershed-based studies:

Community	Community map repository address
Appanoose County, Iowa and Incorporated Areas	
Maps Available for Inspection Online at:*http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 16–07–0169S Preliminary Date: April 12, 2016	
City of Centerville	City Hall, 312 East Maple Street, Centerville, IA 52544.
City of Cincinnati	City Hall, 101 Alpine Street, Cincinnati, IA 52549.
City of Moravia	Municipal Building, 116 South William Street, Moravia, IA 52571.
City of Mystic	City Hall, 304 West Main Street, Mystic, IA 52574.
City of Plano	City Hall, 311 3rd Street, Plano, IA 52581.
City of Rathbun	City Hall, 411 Main Street, Rathbun, IA 52544.
Town of Unionville	Town Hall, 109 West Union Street, Unionville, IA 52594.
Unincorporated Ares of Appanoose County	Appanoose County Board of Supervisors Office, 201 North 12th Street, Centerville, IA 52544.
Clarke County, Iowa and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 16–07–0172S Preliminary Date: April 12, 2016	
City of Osceola	City Hall, 115 North Fillmore Street, Osceola, IA 50213.
City of Woodburn	City Hall, 607 Sigler Street, Woodburn, IA 50275.
Unincorporated Ares of Clarke County	Clarke County Courthouse, 100 South Main Street, Osceola, IA 50213.
Davis County, Iowa and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 16–07–0174S Preliminary Date: April 12, 2016	
City of Bloomfield	City Hall, 11 West Franklin Street, Bloomfield, IA 52537.
City of Floris	City Hall, 103 Monroe Street, Floris, IA 52560.
Unincorporated Ares of Davis County	Davis County Highway Department, 21585 Lilac Avenue, Bloomfield, IA 52537.
Decatur County, Iowa and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 16–07–0178S Preliminary Date: April 21, 2016	
City of Davis City	City Hall, Community Center, North Bridge Street, Davis City, IA 50065.
City of Grand River	City Hall, 126 Broadway Street, Grand River, IA 50108.
City of Lamoni	City Hall, 190 South Chestnut Street, Lamoni, IA 50140.
City of Leon	City Hall, 104 West 1st Street, Leon, IA 50144.
Unincorporated Ares of Decatur County	Decatur County Engineer's Office, 1306 South Main Street, Leon, IA 50144.
Hancock County, Iowa and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 16–07–0180S Preliminary Date: May 20, 2016	
City of Britt	City Hall, 170 Main Avenue South, Britt, IA 50423.
City of Corwith	City Hall, 108 Northwest Elm Street, Corwith, IA 50430.
City of Crystal Lake	City Hall, 225 State Avenue South, Crystal Lake, IA 50432.
City of Forest City	City Hall, 305 North Clark Street, Forest City, IA 50436.
City of Garner	City Hall, 135 West 5th Street, Garner, IA 50438.
City of Kanawha	City Hall, 121 North Main Street, Kanawha, IA 50477.
City of Woden	City Hall, 302 Main Avenue, Woden, IA 50484.

Community	Community map repository address
Unincorporated Ares of Hancock County	Hancock County Courthouse, 855 State Street, Garner, IA 50438.
Lucas County, Iowa and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 16–07–0206S Preliminary Date: April 21, 2016	
City of Chariton	City Hall, 115 South Main Street, Chariton, IA 50049.
City of Lucas	Community Center, 111 East Front Street, Lucas, IA 50151.
City of Russell	City Hall, 115 South Maple Street, Russell, IA 50238.
Unincorporated Ares of Lucas County	Lucas County Secondary Roads Department, 916 Braden Avenue, Chariton, IA 50049.
Marion County, Iowa and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 16–07–0290S Preliminary Date: May 20, 2016	
City of Bussey	City Hall, 313 5th Street, Bussey, IA 50044.
City of Hamilton	City Hall, 407 East Street, Hamilton, IA 50116.
City of Harvey	City Hall, 402 West Street, Harvey, IA 50119.
City of Knoxville	City Hall, 305 South 3rd Street, Knoxville, IA 50138.
City of Marysville	Marysville City Hall, 311 Cedar Street, Hamilton, IA 50116.
City of Melcher-Dallas	City Hall, 305 D Main East Street, Melcher-Dallas, IA 50062.
City of Pella	City Hall, 825 Broadway Street, Pella, IA 50219.
City of Pleasantville	City Hall, 108 West Jackson Street, Pleasantville, IA 50225.
City of Swan	City Hall, 104 Church Street, Swan, IA 50252.
Unincorporated Areas of Marion County	Marion County Engineer's Office, 402 Willetts Drive, Knoxville, IA 50138.
Monroe County, Iowa and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 16–07–0211S Preliminary Date: May 20, 2016	
City of Melrose	City Hall, 110 Kells Avenue, Melrose, IA 52569.
Unincorporated Ares of Monroe County	Monroe County Courthouse, 10 Benton Avenue East, Albia, IA 52531.
Wayne County, Iowa and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 16–07–0215S Preliminary Date: May 20, 2016	
City of Corydon	City Hall, 101 West Jackson Street, Corydon, IA 50060.
City of Seymour	City Hall, 109 North 5th Street, Seymour, IA 52590.
Unincorporated Ares of Wayne County	Wayne County Courthouse, 100 North Lafayette Street, Corydon, IA 50060.
Carver County, Minnesota and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 07–05–2514S and 15–05–5064S Preliminary Date: September 30, 2011 and September 14, 2015	
City of Carver	City Hall, 316 Broadway Street, Carver, MN 55315.
City of Chanhassen	City Hall, Planning Department, 7700 Market Boulevard, Chanhassen, MN 55317.
City of Chaska	City Hall, One City Hall Plaza, Chaska, MN 55318.
City of Cologne	City Hall, 1211 Village Parkway, Cologne, MN 55322.
City of Mayer	City Hall, 413 Bluejay Avenue, Mayer, MN 55360.
City of New Germany	Carver County Courthouse, Public Health & Environment Division, 600 East 4th Street, Chaska, MN 55318.
City of Norwood Young America	City Hall, 310 Elm Street West, Norwood Young America, MN 55368.
City of Victoria	City Hall, 1670 Stieger Lake Lane, Victoria, MN 55386.
City of Waconia	City Hall, 201 South Vine Street, Waconia, MN 55387.
City of Watertown	City Hall, 309 Lewis Avenue South, Watertown, MN 55388.
Unincorporated Areas of Carver County	Carver County Courthouse, Public Health & Environment Division, 600 East 4th Street, Chaska, MN 55318.

[FR Doc. 2016–28529 Filed 11–25–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4285–DR; Docket ID FEMA–2016–0001]

North Carolina; Amendment No. 13 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 North Carolina (FEMA–4285–DR), dated October 10, 2016, and related determinations.

DATES: Effective November 10, 2016.

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 North Carolina 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 October 10, 2016.

Franklin County for Public Assistance, including direct federal assistance.

Anson, Bladen, Chatham, Cumberland, Halifax, Hoke, Johnston, Lee, Nash, Richmond, Scotland, and Wake Counties for Public assistance [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–28535 Filed 11–25–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4285–DR; Docket ID FEMA–2016–0001]

North Carolina; Amendment No. 14 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 North Carolina (FEMA–4285–DR), dated October 10, 2016, and related determinations.

DATES: Effective October 24, 2016.

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 disaster is closed effective October 24, 2016.

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. 2016–28536 Filed 11–25–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3380–EM; Docket ID FEMA–2016–0001]

North Carolina; 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 North Carolina (FEMA–3380–EM), dated October 7, 2016, and related determinations.

DATES: *Effective Date:* October 24, 2016.

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 October 24, 2016.

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. 2016–28541 Filed 11–25–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Changes, of an Existing Information Collection; Comment Request; OMB Control No. 1653–0048

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice of information collection for review; Forms No. 73–028; ICE Mutual Agreement between Government and Employers (IMAGE); OMB Control No. 1653–0048.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE) is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to

obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 27, 2017.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), PRA Clearance Officer, U.S. Immigration and Customs Enforcement, 801 I Street NW., Mailstop 5800, Washington, DC 20536–5800.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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 agencies 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without changes, of a currently approved information collection.

(2) *Title of the Form/Collection:* U.S. Immigration and Customs Enforcement (ICE) Mutual Agreement between Government and Employers (IMAGE) Self-Assessment Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* ICE Form 73–028; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. The U.S. Immigration and Customs Enforcement Mutual Agreement between Government and Employers (IMAGE) program is the outreach and education component of the Homeland Security Investigations (HSI) Worksite Enforcement (WSE) program. IMAGE is designed to build cooperative relationships with the private sector to enhance compliance with immigration laws and reduce the number of unauthorized aliens within the American workforce. Under this program ICE will partner with businesses representing a cross-section of industries. A business will initially complete and prepare an IMAGE application so that ICE can properly evaluate the company for inclusion in the IMAGE program. The information provided by the company plays a vital role in determining its suitability for the program. While 8 U.S.C. 1324(a) makes it illegal to knowingly employ a person who is not in the U.S. legally, there is no requirement for any entity in the private sector to participate in the program and the information obtained from the company should also be available to the public.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 90 minutes (1.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 150 annual burden hours.

Dated: November 22, 2016.

Scott Elmore,

PRA Clearance Officer, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2016–28484 Filed 11–25–16; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–84]

30-Day Notice of Proposed Information Collection: Multifamily Mortgagee's Application for Insurance Benefits

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* December 28, 2016.

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: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 29, 2016 at FR 81 59237.

A. Overview of Information Collection

Title of Information Collection: Multifamily Mortgagee's Application for Insurance Benefits.

OMB Approval Number: 2502–0419.

Type of Request: Revision of a currently approved collection.

Form Number: Form HUD 2747, Application for Insurance Benefits, Multifamily Mortgage.

Description of the need for the information and proposed use: A lender with an insured multifamily mortgage pays an annual insurance premium to the Department. When and if the mortgage goes into default, the lender may elect to file a claim for insurance benefits with the Department. A requirement of the claims process is the submission of an application for insurance benefits. Form HUD 2747, Mortgagee's Application for Insurance Benefits (Multifamily Mortgage), satisfies this requirement.

Respondents: (*i.e.* affected public): Not-for-profit institutions, State, local or Tribal Government.

Estimated Number of Respondents: 110.

Estimated Number of Responses: 110.

Frequency of Response: Occasion.

Average Hours per Response: 9.

Total Estimated Burden: 990.

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: November 18, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–28438 Filed 11–25–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–81]

30-Day Notice of Proposed Information Collection: Surveys of Community Development Marketplace Project Inventory and Recipients and Providers of HUD Technical Assistance and Training

AGENCY: Office of the Chief Information Officer, 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 30 days of public comment.

DATES: *Comments Due Date:* December 28, 2016.

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: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna P. Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person 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. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 25, 2016 81 FR 16194.

A. Overview of Information Collection

Title of Information Collection: Surveys of Community Development Marketplace Project Inventory and Recipients and Providers of HUD Technical Assistance and Training.

OMB Approval Number: 2506–New.

Type of Request: New collection.

Form Number: None.

The total burden hours are estimated at 5,428 hours annually. The weighted average burden per response is 0.39 hours or 23.4 minutes.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
CDM project intake survey (and follow up feedback)	332	4.00	1328	2.25	2988.00	[1] $40.46	$120,894.48
Outcomes Survey of Providers of Direct TA	1140	[2] 1.10	1254	0.25	313.50	[3] $40.46	$12,684.21
Outcomes Survey of Recipients of Direct TA provided by third-party organizations	1140	[4] 1.10	1254	0.25	313.50	[5] $28.39	$8,900.27
Outcomes Survey of Recipients of HUD Staff-Led TA under Community Partnerships	180	1.00	180	0.25	45.00	[6] $28.39	$1,277.55
Survey of HUD Training Participants (In Person/Classroom)	3500	[7] 1.30	4550	0.16	728.00	[8] $23.46	$17,078.88
Survey of HUD Training Participants (Web-based/Online)	5000	[9] 1.30	6500	0.16	1040.00	[10] $23.46	$24,398.40
Totals	11,292	9.80	15,066	3.32	5,428.00	$184.62	$185,233.79

[1] Hourly rate based off of GS–13–01 Schedule for "Rest of the U.S." as of October 2016.

[2] HUD anticipates that a small percentage of TA providers will provide multiple TA engagements, and therefore be asked to complete two surveys.

[3] Hourly rate based off of GS–13–01 Schedule for "Rest of the U.S." as of October 2016.

[4] HUD anticipates that a small percentage of TA recipients will receive multiple TA engagements, and therefore be asked to complete two surveys.

[5] Hourly rate based off of GS–11–01 Schedule for "Rest of the U.S." as of October 2016.

[6] Hourly rate based off of GS–11–01 Schedule for "Rest of the U.S." as of October 2016.

[7] HUD anticipates that approximately 30% of in person trainees will complete multiple trainings, and therefore be asked to complete more than one survey.

[8] Hourly rate based off of GS–09–01 Schedule for "Rest of the U.S." as of October 2016.

[9] HUD anticipates that approximately 30% of online trainees will complete multiple trainings, and therefore be asked to complete more than one survey.

[10] Hourly rate based off of GS–09–01 Schedule for "Rest of the U.S." as of October 2016.

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: November 18, 2016.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–28446 Filed 11–25–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–83]

30-Day Notice of Proposed Information Collection: Final Endorsement of Credit Instrument

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* December 28, 2016.

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: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 16, 2016 at FR 81 63784.

A. Overview of Information Collection

Title of Information Collection: Final Endorsement of Credit Instrument.

OMB Approval Number: 2502–0016.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–92023.

Description of the need for the information and proposed use: The information collected on the Final Endorsement of Credit Instrument form is used to request final endorsement by HUD of the credit instrument. The mortgage/lender submits information to indicate the schedule of advances made on the project and the final advances to be disbursed immediately upon final endorsement.

Respondents: (*i.e.* affected public): Business or other for-profit, Not-for-profit institutions, contractors, mortgagors/borrowers, and mortgagees/lenders.

Estimated Number of Respondents: 1,472.

Estimated Number of Responses: 1.

Frequency of Response: 1.

Average Hours per Response: 1.

Total Estimated Burden: 1,472.

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: November 18, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–28439 Filed 11–25–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–79]

30-Day Notice of Proposed Information Collection: Electronic Line of Credit Control System (eLOCCS) System Access

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* December 28, 2016.

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: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*

FOR FURTHER INFORMATION, CONTACT: Inez C. Downs, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; email Inez C. Downs at *Inez. C. Downs@hud.gov* or telephone 202–402–8046. 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. Downs.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 26, 2016 at 81 FR 66069.

A. Overview of Information Collection

Title of Information Collection: Electronic Line of Credit Control System (eLOCCS) System Access.

OMB Control Number: 2535–0102.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–27054.

Description of the need for the information and proposed use: Payment request vouchers for distribution of grant funds using the Electronic Line of Credit Control System (eLOCCS) System. An authorization form is submitted to establish access to the eLOCCS payment system.

Respondents (*i.e.* affected public): State or Local Government; Public Housing Agencies (PHAs), Individuals or Households.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–27054	2,420	1	2,420	0.17	411	$52	$21,372
Total					411	52	21,372

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: November 18, 2016.

Inez C. Downs,

Department Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 2016–28448 Filed 11–25–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–82]

30-Day Notice of Proposed Information Collection: Federal Labor Standards Payee Verification and Payment Processing

AGENCY: Office of the Chief Information Officer, 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 30 days of public comment.

DATES: *Comments Due Date:* December 28, 2016.

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: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna P. Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person 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. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 8, 2016 at FR 81 62170.

A. Overview of Information Collection

Title of Information Collection: Federal Labor Standards Payee Verification and Payment Processing.

OMB Approval Number: 2501–0021.

Type of Request: Extension without change of a currently approved collection.

Form Number: HUD–4734.

Description of the need for the information and proposed use: To make refunds and wage restitution payments.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–4734	50	1	50	.10	5	$37.46	$187.30
Total	50	1	50	.10	5	37.46	187.30

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: November 18, 2016.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–28440 Filed 11–25–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2016–N171; FXES11150600000–167–FF06E13000]

Endangered and Threatened Wildlife and Plants; Enhancement of Survival Permit Application; Draft Candidate Conservation Agreement with Assurances for Eight Species in Northeastern Wyoming and Southeastern Montana, with Integrated Candidate Conservation Agreement and Conservation Agreement; Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), received an application from the Thunder Basin Grasslands Prairie Ecosystem Association (Thunder Basin Association) for an Enhancement of Survival permit (permit) under the Endangered Species Act of 1973, as amended (ESA), associated with implementation of a Candidate Conservation Agreement with Assurances (CCAA) for eight species (Covered Species) in specified areas in northeastern Wyoming and southeastern Montana (Coverage Area). The CCAA would implement a Conservation Strategy developed by the Thunder Basin Association for farm and ranch operations, certain recreational activities, oil and gas activities, and surface/in-situ mining activities on enrolled non-Federal lands in the Coverage Area. The Association also proposes that the Conservation Strategy be implemented on Federal lands administered by the Bureau of Land Management (BLM) and U.S. Forest Service (USFS) in the Coverage Area through two additional agreements, a Candidate Conservation Agreement (CCA) and Conservation Agreement (CA), that would also be administered by the Association. The intent of the CCAA and associated CCA and CA is to provide non-Federal landowners and BLM and USFS pemittees/lessees in the Coverage Area with the opportunity to voluntarily conserve the Covered Species and their habitats on enrolled properties while carrying out their operations in a manner that would contribute to precluding the need to list any of these species.

Pursuant to the National Environmental Policy Act (NEPA), we have prepared a draft environmental assessment (EA) that analyzes the potential impacts of issuance of the permit and implementation of the proposed CCAA, as well as the potential impacts of other Federal entities entering into the companion CCA and CA. The draft EA also analyzes the potential impacts of two alternatives to the consolidated proposed action, including a no action alternative. The permit application, the draft CCAA and draft EA are available for public review, and we seek public comment on these documents and potential issuance of the permit associated with the CCAA. Because the draft CCA and CA are part of the proposed action addressed in the draft EA, we have also made these draft agreements available for public review.

DATES: Written comments must be submitted by December 28, 2016.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the Thunder Basin CCAA.

○ *Internet:* Documents may be viewed on the Internet at *http://www.fws.gov/wyominges/Index.html.*

○ *U.S. Mail:* Field Supervisor, Wyoming Ecological Services Field Office, U.S. Fish and Wildlife Service, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY 82009.

○ *Email: ThunderBasin_CS@fws.gov.* Include ''Thunder Basin CCAA'' in the subject line of the message.

○ *Fax:* 307–772–2358, Attn: TBGPEA CCAA.

○ *In-Person Viewing or Pickup:* Documents will be available for public inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, Wyoming Field Office, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY 82009.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Wyoming Ecological Services Field Office (see **ADDRESSES**), telephone: 307–772–2374. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We received an application from the Thunder Basin Grasslands Prairie Ecosystem Association (Thunder Basin Association or Association) for an enhancement of survival permit (permit) under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* ESA), for incidental take associated with implementation of a proposed eight-species Candidate Conservation Agreement with Assurances (CCAA). The Coverage Area would be the five northeastern Wyoming counties of Campbell, Converse, Crook, Niobrara, and Weston, along with two qualifying peripheral properties in Sheridan County, Wyoming, and in the Montana counties of Big Horn, Powder River, and Rosebud. The activities covered by the draft CCAA and permit (Covered Activities) are general farm and ranch operations, certain recreational activities, oil and gas activities, and surface/in-situ mining activities, as well as the conservation measures to be implemented for these activities under the CCAA. The application includes a draft CCAA that addresses impacts to the Covered Species from Covered Activities on eligible non-Federal properties within the Coverage Area. These impacts are addressed through a Conservation Strategy developed by the Association for implementation through three separate but related agreements to be administered by the Association: the CCAA, which encompasses non-Federal lands in the Coverage Area, a Candidate Conservation Agreement (CCA) that addresses Covered Activities conducted on BLM or USFS lands in the Coverage Area pursuant to a permit, license, or

other authorization from these agencies; and a Conservation Agreement (CA) that addresses voluntary conservation measures undertaken by eligible companies in anticipation of their future development of energy resources within specified potential coal and oil and gas development areas within the Coverage Area. Activities covered by the CCA and the CA would not be covered by the Enhancement of Survival permit and associated CCAA that are the subject of this notice, and no assurances or permits under the ESA are available for these separate agreements.

The Conservation Strategy developed by the Thunder Basin Association proposes to address landscape conservation in the Covered Area in the context of two primary ecotypes, sagebrush steppe and the shortgrass prairie, and their associated at-risk Covered Species. The Covered Species found in the sagebrush steppe ecotype are greater sage-grouse (*Centrocercus urophasianus*), sage sparrow (*Amphispiza belli*), Brewer's sparrow (*Spizella breweri*), and sage thrasher (*Oreoscoptes montanus*). The Covered Species found in the shortgrass prairie ecotype are black-tailed prairie dog (*Cynomys ludovicianus*), mountain plover (*Charadrius montanus*), burrowing owl (*Athene cunicularia*), and ferruginous hawk (*Buteo regalis*). The intent of the Association's Conservation Strategy, as implemented through the CCAA and companion agreements, is to provide ranchers, agriculture producers, coal producers, and an oil and gas producers in the Coverage Area with the opportunity to voluntarily conserve the Covered Species and their habitat while carrying out their operations in a manner that would contribute to precluding the need to list these species.

Pursuant to the National Environmental Policy Act (42 U.S.C. 4321 *et seq.;* NEPA), we have prepared a draft environmental assessment (EA) that analyzes the potential impacts of issuance of the permit and implementation of the proposed CCAA, as well as the potential impacts of the Service and other Federal entities entering into the companion CCA and CA. The draft EA also analyzes the potential impacts of two alternatives to the consolidated proposed action, including a no action alternative. The permit application, the draft CCAA and draft EA are available for public review, and we seek public comment on these documents and potential issuance of the permit associated with the CCAA. Because the draft CCA and CA are part of the proposed action addressed in the draft EA, these draft agreements are available for public review.

Background Information

A CCAA is an agreement between the Service and one or more non-Federal entities in which private and other non-Federal landowners voluntarily agree to manage lands they enroll in the CCAA to remove or reduce threats to species that are proposed for listing under the ESA, that are candidates for listing, or that may become candidates for listing. In return for managing their lands to the benefit of the species covered by the CCAA, participating property owners receive assurances that no additional conservation measures or land, water or resource use restrictions will be imposed under the ESA on covered activities on enrolled lands should any of the covered species ever be listed under the ESA. The Service provides these assurances through an Enhancement of Survival permit, issued pursuant to section 10(a)(1)(A) of the ESA for a specific number of years, that becomes effective if a species covered by the CCAA and permit is listed. Under the permit, participating landowners also receive authorization for take that is incidental to activities covered by the CCAA. In a case such as this, in which a third-party would administer the CCAA, the permit is issued to the third-party administrator, the Thunder Basin Association here, and permit coverage extends to non-Federal landowners who enroll in the CCAA through a Certificate of Inclusion (CI) and comply with the requirements stated in the CCAA and their respective CIs. Additional permit application requirements and issuance criteria for CCAAs are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d), respectively, as well as 50 CFR part 13. Please also see our joint policy on CCAAs, which we published in the **Federal Register** with the Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (64 FR 32726; June 17, 1999).

As described above, the Thunder Basin Association has also proposed implementing its Conservation Strategy in the Coverage Area through two additional agreements, the CCA and CA, which are integrated with the CCAA and the Association's administration of that agreement. In general, CCAs and CAs are voluntary conservation agreements between the Service and one or more public or private parties that identify specific conservation measures that the participants will voluntarily undertake to conserve the species covered by the agreements. CCAs are typically developed with Federal agencies to address one or more threats on Federal lands to candidate species and species that are likely to become candidates, and are particularly helpful in ensuring consistent application of a conservation strategy in situations, such as occur in the Coverage Area, where private activities occur on a mix of non-Federal and Federal lands. Because Federal agencies have special obligations for the conservation of listed species under section 7 of the ESA, CCAs for activities conducted on Federal lands do not include the assurances, incidental take authorization and permit that are available to participants in a CCAA, all of whom by definition are non-Federal entities. A CA, in turn, may involve non-Federal and/or private parties, but also does not provide assurances, take authorization or a permit to agreement participants. In both types of agreements, the Service works with its partners to identify threats to candidate species, plan the measures needed to address the threats and conserve these species, identify Federal permittees/licensees or others willing to participate in the CCA or CA, develop agreements with these parties, and design and implement conservation measures and monitor their effectiveness.

Proposed Action

Under the proposed CCAA and the incorporated Conservation Strategy, members of the Thunder Basin Association who enroll non-Federal lands in the CCAA (Participants) would implement conservation measures that avoid, minimize, and mitigate impacts to the Covered Species and their habitats from activities covered by the CCAA (Covered Activities), which are general farm and ranch operations, certain recreational activities, oil and gas activities and surface/in-situ mining activities, as well as the conservation measures to be implemented for these activities under the CCAA. The Service would issue the permit to the Thunder Basin Association, which would administer the CCAA and enroll the Participants as provided in the CCAA. The CCAA and associated permit would be in effect for 30 years. The Coverage Area would encompass the five northeastern Wyoming counties of Campbell, Converse, Crook, Niobrara, and Weston, along with two qualifying peripheral properties located in Sheridan County, Wyoming, and the Montana counties of Big Horn, Powder River, and Rosebud.

Through issuance of the enhancement of survival permit to the Thunder Basin Association, the Service would provide

landowners who enroll non-Federal property in the CCAA through the Association with assurances that, should any of the Covered Species be listed, no further commitments or restrictions than those they committed to under the CCAA would be imposed for Covered Activities on enrolled lands, as long as the CCAA is being properly implemented. Furthermore, if any of the Covered Species are listed, the permit would provide landowners participating in the CCAA with incidental take authorization for Covered Activities on enrolled non-Federal property. The permit would become effective on the effective date of a listing of a Covered Species as endangered or threatened and would continue through the end of the CCAA term.

The Secretary of the Interior has delegated to the Service the authority to approve or deny a section 10(a)(1)(A) permit in accordance with the ESA. To act on Thunder Basin Association's permit application, we must determine that the CCAA meets the issuance criteria specified in the ESA and at 50 CFR 17.22 and 17.32, as well as at 50 CFR part 13. These criteria include a finding that the proposed CCAA complies with the requirements of our CCAA Policy (64 FR 32726; June 17, 1999). The Service has proposed changes to the CCAA Policy and Regulation (FWS/NOAA Fisheries policy notice at Docket No. [FWS–HQ–ES–2015–0177; May 4, 2016]; FWS regulations notice at Docket No. [FWS–HQ–ES–2015–0171; May 4, 2016]. When determining whether this CCAA complies with the requirements of our CCAA Policy, we will use the most recent finalized CCAA Policy.

National Environmental Policy Act Compliance

The issuance of a section 10(a)(1)(A) permit is a Federal action subject to NEPA compliance, including the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR 1500–1508; 516 DM 6.2B). The Service's decision on whether to enter into the CCAA, CCA and CA, so that the Conservation Strategy can be implemented on non-Federal and Federal lands subject to these agreements, is also a Federal action subject to NEPA compliance. The Association's draft CCAA and related application for the Enhancement of Survival permit, as well as the companion CCA and CA it proposes, are not eligible for categorical exclusion under NEPA. We have prepared a draft EA to further analyze the direct, indirect, and cumulative impacts of the proposed CCAA and permit, the CCA and the CA, including their proposed implementation of the Conservation Strategy, on the quality of the human environment and other natural resources. In compliance with NEPA, we analyzed the potential impacts of this proposed action and a reasonable range of alternatives in the draft EA. Based on these analyses and any new information resulting from public comment on the proposed action, we will determine if issuance of the permit and approval of the underlying CCAA and related CCA and CA would cause any significant impacts to the human environment. After reviewing public comments, we will evaluate whether the proposed action and alternatives in the draft EA are adequate to support a finding of no significant impact under NEPA. We now make the draft EA available for public inspection online or in person at the Service offices listed in **ADDRESSES**.

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, information, opinions, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on our proposed permit action. We particularly seek comments on the following: (1) Biological information and relevant data concerning the Covered Species; (2) current or planned activities in the subject area and their possible impacts on the Covered Species; (3) identification of any other environmental issues that should be considered with regard to the proposed permit action; and (4) information regarding the adequacy of the draft CCAA pursuant to the requirements for permits at 50 CFR parts 13 and 17.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comments, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we use in preparing the EA, will be available for public inspection by appointment, during normal business hours, at our Wyoming Field Office (see **ADDRESSES**).

Next Steps

After completion of the EA based on consideration of public comments, we will determine whether adoption of the proposed action, entry into the proposed CCAA, CCA and CA and issuance of the permit associated with the CCAA, warrants a finding of no significant impact or whether an environmental impact statement should be prepared. We will evaluate the proposed agreements and their incorporated Conservation Strategy, as well as any comments we receive, to determine whether to enter into the agreements. We will also use our evaluation and any comments we receive to help determine whether implementation of the proposed CCAA would meet the requirements for issuance of a permit under section 10(a)(1)(A) of the ESA. Further, we will evaluate whether the proposed permit action and underlying CCAA, in addition to the CCA and CCA, would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will consider the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit to the Thunder Basin Association and enter into a CCAA, CCA, and CA. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments we receive during the public comment period.

Authority: We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA (42 U.S.C. 4321 *et seq.*) and their implementing regulations (50 CFR 17.22 and 40 CFR 1506.6; 516 DM 6.2B, respectively).

Michael Thabault,

Assistant Regional Director, Ecological Services, Mountain-Prairie Region, U.S. Fish and Wildlife Service, Lakewood, Colorado.

[FR Doc. 2016–28418 Filed 11–25–16; 8:45 am]

BILLING CODE 4310–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON04000 L16100000.DT0000–17X]

Notice of Availability of the Record of Decision for the Roan Plateau Planning Area Resource Management Plan Amendment and Final Supplemental Environmental Impact Statement, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Approved Resource Management Plan (RMP) Amendment for the Roan Plateau planning area in Garfield and Rio Blanco Counties, Colorado. The BLM Director signed the ROD on November 16, 2016, which constitutes the final decision of the BLM and makes the Approved RMP effective immediately.

ADDRESSES: Copies of the ROD/Approved RMP Amendment are available upon request at the BLM Colorado River Valley Field Office, 2300 River Frontage Road, Silt, CO 81652; at the BLM White River Field Office, 220 East Market Street, Meeker, CO 81641; or via the Internet at *https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do.*

FOR FURTHER INFORMATION CONTACT: Greg Larson, Project Manager, at 970–876–9000; Colorado River Valley Field Office (see address above), or *glarson@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The planning area, which is in west-central Colorado, includes approximately 73,602 acres of land (Federal surface, Federal mineral estate, or both). It is located primarily in Garfield County with a small portion in southern Rio Blanco County. The Roan Plateau RMP Amendment amends the Glenwood Springs and White River RMPs to address resource management decisions within the planning area. The BLM prepared the Roan Plateau Proposed RMP Amendment/Final Supplemental Environmental Impact Statement (EIS) to evaluate a range of management decisions for resources, resource uses, and special designations within the planning area, and to respond to a June 22, 2012, ruling by the United States District Court for the District of Colorado remanding the 2007 Roan Plateau RMP Amendment. The Court set aside the 2007 Roan Plateau RMP Amendment and remanded the matter to the BLM for further action in accordance with the Court's decision.

In particular, the Court found that the Final EIS supporting the 2007 Roan Plateau RMP Amendment was deficient insofar as it: (i) Failed to sufficiently address the ''Community Alternative'' that various local governments, environmental organizations and individual members of the public recommended; (ii) Failed to sufficiently address the cumulative air quality impacts of the 2007 RMP Amendment in conjunction with anticipated oil and gas development on private lands outside the Roan Plateau planning area; and (iii) Failed to adequately address the issue of potential ozone impacts from proposed oil and gas development. Based on the Court's ruling and new information available since the BLM developed the 2007 Final EIS, the BLM determined that a new RMP Amendment and supplemental analysis under NEPA were warranted.

Additionally, the parties involved in the litigation reached a settlement agreement in November 2014. In the settlement agreement, the BLM agreed to consider an alternative that included closing certain lands on top of the Roan Plateau to new oil and gas leasing while keeping other lands in the planning area open for leasing, exploration, and development subject to certain conditions. As part of the settlement agreement, the BLM cancelled 17 leases held by Bill Barrett Corporation.

The Roan Plateau Approved RMP Amendment adopts the Settlement Alternative that was identified in the November 2014 settlement agreement. The Approved RMP Amendment contains management actions to meet desired resource conditions for fluid minerals management; social and economic impacts; riparian habitat; recreation; and air, water and ecological resources. The Approved RMP Amendment also addresses decisions regarding Wild and Scenic Rivers, Areas of Critical Environmental Concern, and lands with wilderness characteristics. Greater Sage-Grouse decisions in the Approved RMP Amendment are consistent with the Northwest Colorado Greater Sage-Grouse RMP Amendment ROD.

The BLM's Preferred Alternative (the Settlement Alternative) for the Draft RMP Amendment/Draft Supplemental EIS was carried forward into the Proposed RMP Amendment/Final Supplemental EIS published on July 1, 2016. The BLM did not receive any protests on the Proposed RMP Amendment/Final Supplemental EIS and the Govenor did not identify any inconsistencies with State or local plans, policies or programs during the Governor's consistency review.

As a result, the BLM made only minor editorial modifications in preparing the Approved RMP Amendment. These modifications provide further clarification of some of the decisions, and are discussed in Section 1.3 of the Approved RMP Amendment/ROD. The Approved RMP Amendment/ROD also includes certain implementation decisions that are immediately appealable under 43 CFR part 4. These decisions involve the desgination of the following individual travel routes—TRR–IMP–01, TRR–IMP–02, and TRR–IMP–03.

Any party adversely affected by these route designation decisions may appeal within 30 days of publication of this Notice of Availability pursuant to 43 CFR, part 4, subpart E. The appeal should state the specific route(s), as identified in Chapter 2 of the Approved RMP Amendment/ROD, on which the decision is being appealed. The appeal must be filed with the Colorado River Valley Field Manager at the above listed address. Please consult the appropriate regulations (43 CFR, part 4, subpart E) for further appeal requirements.

Authority: 40 CFR 1506.6.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2016–28519 Filed 11–25–16; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000. L51010000.ER0000. LVRWH09H0480. 16X.HAG 17–0026]

Notice of Availability of the Final Environmental Impact Statement and Proposed Land Use Plan Amendments for the Boardman to Hemingway Transmission Line Project, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the

Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) and proposed Land Use Plan (LUP) Amendments for the Boardman to Hemingway Transmission Line Project (Project) and by this notice is announcing its availability. The Final EIS analyzes the potential environmental impacts of granting a right-of-way to Idaho Power Company to construct and operate a 300 mile long high-voltage alternating-current transmission line.

DATES: A person who meets the conditions for protesting an LUP Amendment outlined in 43 CFR 1610.5–2 and wishes to file a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability (NOA) in the **Federal Register**. The BLM will issue its Record of Decision (ROD) after any protests are resolved, but no earlier than 30 days after the Final EIS is available.

ADDRESSES: Copies of the Final EIS and proposed LUP Amendments have been sent to Federal, Tribal, State, and local governments potentially affected by the proposed Project, to public libraries in the area, and to interested parties that previously requested a DVD copy. Copies of the Final EIS and Proposed LUP Amendments are also available for public inspection at the locations identified in the Supplementary Information section of this notice. Interested persons may also review the Final EIS and Proposed LUP Amendments and supporting documents on the internet at *http://www.boardmantohemingway.com/blm.*

All protests must be in writing and mailed to one of the following addresses:

Regular Mail: Overnight Delivery: BLM Director (210), Attention: Protest Coordinator, P.O. Box 71383, Washington, DC 20024–1383

Overnight Delivery: BLM Director (210), Attention: Protest Coordinator, 20 M Street SE., Room 2134LM, Washington, DC 20003

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, National Project Manager, Bureau of Land Management, Vale District Office, P.O. Box 655, Vale, OR 97918; by telephone at 307–775–6115; or email to *comment@boardmantohemingway.com.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at (800) 877–8339 to contact the above individual during normal business hours. The FRS 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.

For information about the United States Forest Services' (USFS) involvement, contact Arlene Blumton, USFS Project Lead by telephone at 541–962–8522; email: *ablumton@fs.fed.us.* The USFS will provide a mailing address in its Boardman to Hemingway NOA of the Final EIS and Proposed LUP Amendments and a draft USFS ROD to be published in the **Federal Register** at a later date.

SUPPLEMENTARY INFORMATION: Idaho Power Company filed a right-of-way (ROW) application with the BLM to construct, operate, and maintain the Project, which is an approximately 300-mile-long (depending on the route selected) overhead, single-circuit, 500-kilovolt (kV), alternating-current electric transmission line with additional ancillary facilities. The Project would connect at its northern terminus with the Longhorn Substation proposed by Bonneville Power Administration (BPA), approximately four miles northeast of the city of Boardman in Morrow County, Oregon, to the existing Hemingway Substation, near the city of Melba in Owyhee County, Idaho. When completed, the Project would provide additional electrical load capacity between the Pacific Northwest region and the Intermountain region of southwestern Idaho. The Project also would alleviate existing transmission constraints and ensure sufficient electrical capacity to meet present and forecasted customer needs as described in Idaho Power Company's 2015 Integrated Resource Plan available online at *https://www.idahopower.com/AboutUs/PlanningForFuture/irp/2015.*

The requested right-of-way width is 250 feet for its entire length, except for a section about 7 miles long that will replace an existing 69kV transmission line, requiring a 90-foot-wide right-of-way within and parallel to the eastern boundary of the Naval Weapons Systems Training Facility (NWSTF) Boardman, as well as a 0.9-mile-long section that will require a 125-foot-wide right-of-way to relocate an existing 230-kv transmission line.

The Project would take approximately 2 to 3 years to construct and would consist of the following permanent facilities:

- A single-circuit 500-kV electric transmission line (including structures and conductors, and other associated facilities) between the proposed Longhorn Substation and the existing Hemingway Substation;
- Associated access roads and access control gates;
- Communication regeneration sites every 40 miles;
- Removal of approximately 15 miles of the existing Boardman to Tap 69-kV transmission line; and
- The re-routing of 0.3 miles of the existing Quartz to Tap 230-kV transmission line.

The BLM may issue a separate short-term right-of-way grant for temporary facilities, including temporary access roads, and geotechnical investigation (also analyzed in the Final EIS) for a period of five years.

Alternative routes considered in the Final EIS cross Federal, State, and private lands. Indian reservations are not crossed; however, lands of Native American concern are within the Project area.

Under Title V of FLPMA, the BLM considers applications for ROWs on BLM-administered lands and must determine whether to grant, grant with modifications, or deny ROW applications. Title V of FLPMA also provides direction to the USFS in responding to applications for special-use authorizations on lands it administers. The BLM is the designated lead Federal agency for preparing the EIS as defined at 40 CFR § 1501.5. The USFS is a cooperating agency because the proposed Project may require a special-use authorization across USFS lands. Additional cooperating agencies include Federal, State, and local agencies.

In accordance with NEPA, the BLM prepared a Draft EIS for the ROW application for the proposed Project using an interdisciplinary approach in order to consider a variety of resource issues and concerns identified during internal, interagency and public scoping. An NOA for the Draft EIS for the Project was published by the U.S. Environmental Protection Agency in the **Federal Register** on December 19, 2014 (79 FR 75834), initiating a 90-day public comment period. The BLM also published an NOA for the Draft EIS on the same date (79 FR 78088). To allow the public an opportunity to review information associated with the proposed Project and comment on the Draft EIS, the BLM conducted open-house meetings in January 2015 in Boardman, Pendleton, Le Grande, Baker City, Durkee, and Ontario, Oregon; and Marsing, Idaho. An online open house meeting was also available on the Project Web site from December 19, 2014, to March 19, 2015. During the comment period, the BLM received 382 submittals containing 3,750 comments from Federal, State, and local agencies; public and private organizations; and individuals. Principal issues identified

in the comments received by BLM included:

- Mitigation;
- Opposition to, or support for, specific route alignments;
- Impacts on sensitive biological resources, including sage-grouse and special status plant species;
- Impacts on the Oregon National Historic Trail (NHT) and other resources in the National Trail System;
- Methods of analysis not clearly explained; and
- Difficulty in comparing alternatives.

The BLM incorporated the comments received on the Draft EIS, where appropriate, to clarify the analysis presented in the Final EIS. Based on comments received on the Draft EIS, the BLM made revisions to update the resource data used to analyze the alternatives in the EIS and added route variations in response to comments and input from cooperating agencies. Comments on the Draft EIS offered recommendations for routing options as variations of sections of the longer alternative routes. The BLM evaluated each route variation option and many of the routing options were carried forward as sections of alternative routes in the Final EIS; only a few were considered, but eliminated from detailed analysis in the Final EIS. Consistent with agency requirements, a systematic approach was used to compare alternatives by analyzing potential impacts and mitigation.

The Final EIS organizes the alternatives into six segments that are based generally on similar geography, natural features, drainages, resources, and/or land uses. Each segment examines multiple alternative routes for those segments, and some of the alternative routes have one or more smaller localized variations. This effort evaluated 24 alternative routes and 40 variations totaling approximately 850 miles in detail, along with a No Action Alternative.

Under the No Action Alternative, neither the BLM right-of-way nor the USFS special-use permit would be granted. As a result, the transmission line and ancillary facilities would not be constructed, and the BLM would not amend its land use plans.

The Final EIS identifies the Agency-Preferred Alternative route, which is approximately 293 miles long. Approximately 34 miles (12 percent) of the Agency-Preferred Alternative route is located within designated utility corridors. The Agency-Preferred Alternative route is co-located with existing transmission lines and pipelines for a distance of approximately 90 miles (31 percent) of the total length of 293 miles. The Agency-Preferred Alternative crosses approximately 100 miles of Federal land, 3 miles of State land, and 190 miles of private land. Although no Indian reservations are crossed, lands of Native American concern are within the Project area.

Segment 1 of the Agency-Preferred Alternative begins in Oregon. There are a few small, isolated parcels of land administered by the BLM; however, the NWSTF Boardman is administered by the Navy. The route exits the proposed Longhorn Substation to the south, crossing the boundary of the NWSTF Boardman at the northeastern corner and parallels the eastern boundary of the NWSTF Boardman on the west side of Bombing Range Road for approximately 7 miles. At that point, the route crosses to the east side of Bombing Range Road, thereby avoiding the Resource Natural Area B, a Resource Management Area, and traditional cultural properties on the NWSTF Boardman. The route proceeds across Bombing Range Road for approximately 350 feet where the route intersects with and the parallels along the east side of Bombing Range Road to the south for approximately 3.6 miles before joining the Applicant's Proposed Action Alternative. From there, the route heads south to join the southern route variation proposed by Morrow and Umatilla counties. The northern portion of the Agency-Preferred Alternative was developed through collaboration with the Navy and Morrow and Umatilla counties and: (1) Repurposes an existing use area currently occupied by the BPA 69-kV transmission line on the NWSTF Boardman (on the west side of and parallel to Bombing Range Road), (2) avoids airspace conflicts by complying with the Navy's requested 100-foot height restriction for transmission lines along Bombing Range Road, (3) avoids and/or minimizes effects on areas planned for potential wind-farm development, and (4) minimizes effects on high-value agricultural lands. The Agency-Preferred Alternative may require mitigation of effects on Washington ground squirrel habitat, traditional cultural properties, and the Oregon NHT.

Where the Agency-Preferred Alternative crosses Navy-administered land, the BLM has analyzed environmental impacts to allow the Navy to tier to the Final EIS in support of its decision whether to grant the necessary authorizations for the removal of the existing BPA 69-kV transmission line and for the construction, operation, and maintenance of the proposed 500-kV transmission line across the 7 miles of military-withdrawn land.

The BLM identified the east-west section of the southern route as the Agency-Preferred Alternative for a number of reasons. This route minimizes effects on areas of potential windfarm development and existing active agricultural lands, and avoids effects on the traditional cultural landscape (associated with the area to the north). In the southernmost portion of Segment 1, on the Wallowa-Whitman National Forest, the USFS identified its preference for use of the designated utility corridor, and endorsed the route as the USFS Agency-Preferred Alternative on the Forest. There are a few small, isolated parcels of BLM-administered lands in Segment 1.

In Segment 2, no lands administered by the BLM are crossed. The Agency-Preferred Alternative route in Segment 2 is the a combination of Variation S2–A2 on the Wallowa-Whitman National Forest, the Glass Hill Alternative with Variation S2–D2, and Variation S2–F2 along the southern portion of Segment 2. The USFS's preference on the Wallowa-Whitman National Forest in this northern portion of the Segment 2 is to co-locate more closely with the existing 230-kV transmission line within the USFS-designated utility corridor to the extent practicable (Variation S2–A2). The intent is to minimize vegetation removal and surface disturbance by using the existing service roads associated with the existing 230-kV transmission line. Continuing on to the southeast, the Agency-Preferred Alternative route follows the Glass Hill Alternative using the Variation S2–D2 (recommended in comments on the Draft EIS). In the area of Glass Hill, this route does not parallel existing linear facilities, but is west of and the farthest from the City of La Grande, Oregon. This option ensures the route is farthest from associated land uses, cultural resources (primarily historic sites) and the Oregon NHT and associated sites. Also, the Glass Hill Alternative avoids some high-value soils (for potential agriculture). Use of Variation S2–D2 would also result in the avoidance of the high elevation (unique ecology) land on Cowboy Ridge, reducing potential visual resource impacts on the Morgan Lake recreation area.

Along the southern portion of Segment 2, the agency preference is (1) to parallel the existing 230-kV transmission line (Variation S2–F2); (2) avoid potential effects on center-pivot and other irrigated agricultural land, and (3) reduce effects on greater sage-

grouse General Habitat, and reduce effects on the Oregon NHT.

The Agency-Preferred Alternative in Segment 3 crosses interspersed private land and BLM-administered lands. In the northern portion of Segment 3, the Agency-Preferred Alternative is co-located to parallel more closely an existing 230-kV transmission line. This alternative route has been identified as the Agency-Preferred Alternative because the route (1) parallels existing linear facilities along its entire length (existing 230-kV line along the northern portion and existing 138-kV line along the southernmost portion of the variation), (2) avoids and/or minimizes effects on greater sage-grouse Priority Habitat, (3) avoids and/or minimizes effects on irrigated agriculture, (4) minimizes impacts on a large gravel operation, and (5) was recommended by and developed in collaboration with Baker County and other local stakeholders. From the National Historic Oregon Trail Interpretive Center (NHOTIC), the proposed transmission line would be collocated with the existing 230-kV transmission line and existing agricultural development west of the center. The BLM identified specific mitigation that would minimize visual impacts from the NHOTIC, including a requirement for weathered H-Frame construction.

At the southern end of Segment 3, the Agency-Preferred Alternative parallels an existing 138-kV transmission line for much of its length, avoids irrigated agriculture, avoids greater sage-grouse Priority Habitat, and avoids the Straw Ranch 1 parcel of the Oregon Trail Area of Critical Environmental Concern (ACEC). In addition, in the southern portion of Segment 3, the Agency-Preferred Alternative is a route-variation option developed in coordination with Baker County to reduce: Impacts on irrigated agriculture, impacts on greater sage-grouse General Habitat, the number of freeway crossings, and visual impacts on the Chimney Creek portion of the Oregon Trail ACEC.

The Agency-Preferred Alternative in Segment 4 is a mix of private and Federal land-ownership. This alternative route parallels an existing 138-kV transmission line, and then parallels Interstate 84 to the area west of Farewell Bend. The northern portion of the Agency-Preferred Alternative is within both a West-wide Energy Corridor and BLM-designated utility corridor in the area of Farewell Bend. The alternative route then turns south then southwest to (1) avoid crossing most greater sage-grouse Priority Habitat and (2) and avoid an area of irrigated agriculture of particular concern to local stakeholders. However, there would be impacts on a broad cultural landscape that includes important pre-contact and historic cultural resources extending from the Farewell Bend area to the south as well as cultural and recreational resources associated with the Oregon NHT. These impacts would be addressed as part of mitigation requirements for the project.

The Agency-Preferred Alternative in Segment 5 crosses land administered by the BLM with some private land interspersed. The Agency-Preferred Alternative (1) uses a variation to avoid impacts on lands with wilderness characteristics in the Double Mountain area; (2) avoids impacts on an Owyhee River Below the Dam ACEC; (3) uses portions of the BLM-designated utility corridor along the southern portion of Segment 5; and (4) minimizes habitat fragmentation, impacts on cultural resources, and avoids impacts on an area of the Owyhee River determined by the BLM to be suitable for designation as a National Wild and Scenic River.

The Agency-Preferred Alternative in Segment 6 consists of mixed Federal and private land ownership in the northwestern portion of the segment. The Agency-Preferred Alternative avoids crossing certain private lands at the request of Owyhee County where land-owner permission is required and has not been given. This route also provides more distance from a large cultural resource area known as Graveyard Point. Moving into Idaho, the Agency-Preferred Alternative uses the West-wide Energy Corridor on BLM-administered land to preserve space for future use of the corridor.

The BLM has developed the Final EIS consistent with relevant laws, regulations, and policies, including those guiding agency decisions that may have an impact on resources and their values, services, and functions. The BLM also has considered in the Final EIS measures to mitigate the impacts and, if the BLM approves the ROW application, the BLM will apply the mitigation hierarchy (avoid; minimize; rectify, reduce, or eliminate over time; and compensate) as identified by the Council on Environmental Quality (40 CFR 1508.20) and recent policies on mitigation, including the Presidential Memorandum on Mitigation (Nov. 3, 2015), Secretary of the Interior's Secretarial Order 3330 (Oct. 31, 2013), Department of the Interior's Departmental Manual, 600 DM 6, and BLM's Draft Manual 1794—''Regional Mitigation.'' The Project's siting and design, required design features, Project, mitigation measures identified in the Final EIS, and all associated implementation plans have been developed in consideration of the full mitigation hierarchy to avoid, minimize, rectify, or reduce impacts over time, and last, to compensate for unavoidable impacts on important, scarce, or sensitive resources. The priority is to mitigate impacts at the site of the activity through impact avoidance, minimization, rectification, and reduction. If these types of mitigation measures are not sufficient to adequately address anticipated direct, indirect, and cumulative impacts, the BLM will require additional measures to address these impacts, including through compensatory mitigation where appropriate.

Copies of the Final EIS are available for public inspection during normal business hours at the following locations in Oregon:

- Baker County Planning Department, 1995 Third St., Baker City
- Baker County Library, 2400 Resort St., Baker City
- BLM-Baker Field Office, 3285 11th St., Baker City
- Boardman City Library, 200 S. Main St., Boardman
- Harney County Public Library, 80 W. D St., Burns
- Grant County Planning Department, 201 S. Humboldt, Canyon City
- BLM-Burns District Office, 28910 Hwy 20 W., Hines
- Hermiston Public Library, 235 E. Gladys Avenue, Hermiston
- Morrow County Planning Department, 205 NE. Third St., Irrigon
- Grant County Library, 507 S. Canyon Blvd., John Day
- La Grande Public Library, 2006 Fourth St., La Grande
- Union County Planning Department, 1001 4th St., Suite C, La Grande
- USFS-Wallowa Whitman National Forest Office, La Grande Ranger District, 3502 Highway 30, La Grande
- USFS-Wallowa Whitman National Forest, 1550 Dewey Ave, Baker City
- Pendleton Public Library, 502 S.W. Dorion Ave., Pendleton
- Umatilla County Planning Department, 216 SE. Fourth St., Pendleton
- BLM-Prineville District Office, 3050 NE. 3rd St., Prineville
- Ontario Library, 388 S.W. Second Ave., Ontario
- BLM-Vale District Office, 100 Oregon St., Vale
- Malheur County Planning Department, 251 B St. W., Vale
- Oregon Department of Energy, 625 Marion St. NE., Salem
- North Powder City Library, 290 East Street, North Powder

Copies of the Final EIS are available for public inspection during normal business hours at the following locations in Idaho:

- BLM-Boise District Office, 3948 Development Ave., Boise
- Boise Public Library, 715 S. Capitol Blvd., Boise
- BLM-Owyhee Field Office, 20 1st Ave. W., Marsing
- Owyhee County Planning Department, 17069 Basey St., Murphy
- Nampa Public Library, 101 11th Ave. S., Nampa
- Lizard Butte Library, 111 S 3rd Ave. W., Marsing

Agency Decisions on the Proposed Project: Based on the environmental analysis in the Final EIS, the BLM Oregon/Washington State Director will decide whether to grant, grant with modifications, or deny the application for a ROW across BLM-managed lands based on the Agency-Preferred Alternative, another alternative route, or any combination of routes analyzed. The USFS will issue a separate ROD specific to its decision whether or not to issue a Special Use Permit for the portions of the Project that cross National Forest System lands. Depending on the route selected, the Navy and the Bureau of Reclamation also may need to issue decisions on the Project and adopt the Final EIS.

BLM Land Use Plan Amendments and the Protest Process: Depending on the route alternative, the BLM would need to issue a decision to amend LUPs where the portions of the proposed Project crossing BLM-administered lands would not conform to the respective land use plan pursuant to 43 CFR 1610.3–2, 1610.5–5. The BLM has analyzed the environmental impacts of the proposed BLM LUP amendments in the Final EIS. Instances where the Project is not in conformance with applicable land-use plans or objectives include BLM visual resource management (VRM) classifications as explained in the Final EIS. In connection with the Agency-Preferred Alternative, the BLM is proposing three LUP amendments. All proposed LUP Amendments comply with applicable Federal laws and regulations and would apply only to Federal lands and mineral estate administered by the BLM.

- BLM Baker RMP:

o In Segment 3, the 250-feet-wide right-of-way for the Project in VRM Class II lands in Burnt River Canyon (23 acres) would be modified from Class II to Class IV.

- BLM SEORMP—Segment 3

○ In Segment 3, the 250-feet-wide right-of-way for the Project in VRM Class III lands in the vicinity of the National Historic Oregon Trail ACEC (51 acres) would be modified from Class III to Class IV.

○ In Segment 5, the 250-feet-wide right-of-way in VRM Class II lands outside and north of the Owyhee River Below the Dam ACEC (20 acres) would be amended from Class II to Class IV.

Instructions for filing a protest with the Director regarding the proposed BLM LUP Amendments can be found in the ''Dear Reader'' letter of the Final EIS, available at *http://www.boardmantohemingway.com/blm* and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section. Emailed protests will not be accepted as valid protests unless the protesting party also provides the original by regular mail or overnight delivery postmarked by the close of the protest period. Under these conditions, the BLM will consider the email an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct emails to *protest@blm.gov.*

USFS Land Use Plan Amendments. Depending on the route alternative selected, LUP Amendments proposed by the USFS are needed for the portions of the Project crossing USFS-administered lands that do not conform to the Wallowa-Whitman National Forest Land and Resource Management Plan (LRMP). For the Agency Preferred-Alternative, instances where the Project is not in conformance with applicable LRMP standards and guidelines include USFS visual quality objectives; LRMP direction for Eastside Screens; and LRMP direction for managing anadromous fish-producing watersheds (direction commonly known as PACFISH) and fish-producing watersheds (direction commonly known as INFISH). For the Agency-Preferred Alternative, the aspects of the Project that do not conform to current USFS LRMP management direction include:

- VQOs crossed by the 250-feet-wide right-of-way for the Project on the Wallowa-Whitman National Forest will be modified from the current objective class (Modified, Partial Retention and Retention) to Maximum Modification.
- LRMP direction for Eastside Screens will be amended to allow sale of timber associated with the Project to proceed without characterizing patterns of stand structure and comparing to the Historic Range of Variability, as required by the Interim Ecosystem Standards (Scenario A). Associated wildlife standards also would be amended for the Project.
- LRMP direction for managing PACFISH and INFISH will be amended to allow timber harvest in riparian habitat conservation areas (associated with Project) and allow issuance of a special-use authorization for the Project.

The USFS will a provide a final evaluation of LRMP compliance in a separate NOA for the Final EIS, Proposed LUP Amendments, and draft USFS ROD, to be issued later date. The BLM has used and coordinated the NEPA comment process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (54 U.S.C. 306108), as provided for in 36 CFR 800.2(d)(3). Ongoing consultations with American Indian tribal governments will continue in accordance with policy; and tribal concerns, including impacts on Indian trust assets, will be given due consideration. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this proposed Project, were invited to participate.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including personal identifying information—may be made publicly available at any time. While you may ask the BLM in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sally J. Sovey,

Acting State Director, Oregon/Washington.

[FR Doc. 2016–28691 Filed 11–25–16; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–22336; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Peabody Museum of Natural History, Yale University, New Haven, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Natural History, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects, sacred objects, and/or objects of cultural patrimony. Lineal descendants or representatives of any Indian tribe or

Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Peabody Museum of Natural History. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Peabody Museum of Natural History at the address in this notice by December 28, 2016.

ADDRESSES: Professor David Skelly, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Peabody Museum of Natural History, Yale University, New Haven, CT that meet the definition of unassociated funerary objects, sacred objects, and/or objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

Unassociated Funerary Objects

In the late 19th century, six cultural items were collected in southwestern Alaska. Three of the cultural items were collected circa 1896–1899, placed on deposit at the Peabody Museum of Natural History in 1928, and formally donated to the Peabody Museum of Natural History in 1992. The remaining three cultural items were collected prior to 1880 when they were donated to the Peabody Museum of Natural History. The six cultural items are: One headdress, two bone necklaces, one ivory amulet, one bone drinking tube, and one oyster catcher rattle.

In June 2015, representatives from the Central Council of the Tlingit and Haida Indian Tribes of Alaska identified the six cultural items as part of a shaman's outfit/paraphernalia (collectively the ''Six Shaman's Objects'') and historic and contemporary scholars support this identification. Historic and contemporary scholars also state that Tlingit shamans were traditionally placed in above-ground grave houses along with their outfit/paraphernalia.

Sacred Objects and Objects of Cultural Patrimony

In the late 19th century, one Chilkat robe and one Chilkat Woodworm pipe were collected from southwestern Alaska and in 1902 they were donated to the Peabody Museum of Natural History. In 1928 or 1929 one Raven rattle was collected from southwestern Alaska and was subsequently donated to the Peabody Museum of Natural History in 1966. In 1931, one Chilkat robe, was purchased in Juneau, Alaska and donated to the Peabody Museum of Natural History. During consultation, representatives from the Central Council of the Tlingit and Haida Indian Tribes of Alaska identified the first Chilkat robe as depicting the Sea Monster crest, which belongs to the *Wooshkeetaan* Clan; the Chilkat Woodworm pipe as depicting the Woodworm crest, which belongs to the *Ghaanaxhteidí* Clan; the Raven rattle as being made by Jack Gamble (Dl'eet') of the *Wooshkeetaan* Clan; and the second Chilkat robe as depicting the Killerwhale crest which belongs to the *Dakhl'aweidi* Clan (collectively the ''Four Clan Objects'').

The representatives stated that, according to tribal custom, no individual could have legally alienated the Four Clan Objects from their respective clans. In addition, the representatives stated that members of the *Wooshkeetaan,* the *Ghaanaxhteidí* and the *Dakhl'aweidi* Clans need the Four Clan Objects to practice traditional ceremonies today. Evidence presented by the Central Council and independent scholars confirm the attribution of the crests to the specific clans, support the representative's description of the legal significance of the crests as recording the clans' collective title to the Four Clan Objects, and corroborate that the Four Clan Objects are especially revered and feature prominently in traditional and present day ceremonial contexts.

Determinations Made by the Peabody Museum of Natural History

Officials of the Peabody Museum of Natural History have determined:

- *Unassociated Funerary Objects.* Pursuant to 25 U.S.C. 3001(3)(B), the Six Shaman Objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- *Sacred Objects.* Pursuant to 25 U.S.C. 3001(3)(C), the Four Clan Objects described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- *Objects of Cultural Patrimony.* Pursuant to 25 U.S.C. 3001(3)(D), the Four Clan Objects described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- *Shared Group Identity.* Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects, sacred objects, and/or objects of cultural patrimony and the Central Council of the Tlingit and Haida Indian Tribes of Alaska.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Professor David Skelly, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752, by December 28, 2016. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects, sacred objects, and/or objects of cultural patrimony to the Central Council of the Tlingit and Haida Indian Tribes of Alaska may proceed.

The Peabody Museum of Natural History is responsible for notifying the Central Council of the Tlingit and Haida Indian Tribes of Alaska that this notice has been published.

Dated: November 2, 2016

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–28512 Filed 11–25–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–22329; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Hood Museum of Art, Dartmouth College, Hanover, NH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Hood Museum of Art, Dartmouth College has completed an inventory of human remains in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Hood Museum of Art, Dartmouth College. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Hood Museum of Art, Dartmouth College at the address in this notice by December 28, 2016.

ADDRESSES: Kathleen P. O'Malley, Hood Museum of Art, Dartmouth College, 6 East Wheelock Street, Hanover, NH 03755, telephone (603) 646–3853, email *kathleen.p.omalley@dartmouth.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Hood Museum of Art, Dartmouth College, Hanover, NH. The human remains were removed from Hood's Landing, Marion County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Hood Museum of Art professional staff in consultation with representatives of the Cherokee Nation, Eastern Band of Cherokee Indians, The Chickasaw Nation, The Muscogee (Creek) Nation, and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

In August of 1932, human remains representing, at minimum, one individual were removed from an ''Indian mound'' at Hood's Landing in Marion County, TN, one-quarter mile west of the Oxbow by Robert M. Bear of the Education Department at Dartmouth College. The human remains were donated to the Dartmouth College Museum and subsequently transferred to the Department of Anthropology, Dartmouth College in 1939. In 1993, in compliance with NAGPRA, officials of the Hood Museum of Art took control of the human remains and included them in an Inventory of Native American Human Remains in the Possession of the Hood Museum of Art at Dartmouth College that are considered to be Culturally Unidentifiable. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Hood Museum of Art, Dartmouth College, Hanover, NH

Officials of the Hood Museum of Art, Dartmouth College have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological evidence as determined by professors in the Physical Anthropology Department at Dartmouth College and collection history.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Cherokee Nation, Eastern Band of Cherokee Indians, The Chickasaw Nation, and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Cherokee Nation, Eastern Band of Cherokee Indians, The Chickasaw Nation, and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Cherokee Nation, Eastern Band of Cherokee Indians, The Chickasaw Nation, and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Kathleen P. O'Malley, Hood Museum of Art, Dartmouth College, 6 East Wheelock Street, Hanover, NH 03755, telephone (603) 646–3853, email *kathleen.p.omalley@dartmouth.edu,* by December 28, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Cherokee Nation, Eastern Band of Cherokee Indians, The Chickasaw Nation, and the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

The Hood Museum of Art is responsible for notifying the Cherokee Nation, Eastern Band of Cherokee Indians, The Chickasaw Nation, The Muscogee (Creek) Nation, and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: November 2, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–28511 Filed 11–25–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–22351; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before October 29, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by December 13, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before October 29, 2016. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

ALABAMA

Fayette County

Grimsley, John Clifford, House, 432 10th St., Fayette, 16000834

Houston County

Water Works Standpipe, Intersection of East Powell and North Saint Andrews St., .5 mi. north of Main St., Dothan, 16000835

COLORADO

Douglas County

Dyer, Samuel, House, 208 North Cantril St., Castle Rock, 16000836

GEORGIA

Chatham County

Atlantic Greyhound Bus Terminal, 109 Martin Luther King, Jr. Blvd., Savannah, 16000837

MICHIGAN

Saginaw County

Saginaw News Building, 203 South Washington Ave., Saginaw, 16000838

NEW YORK

Erie County

Buffalo Milk Company Building, 885 Niagara St., Buffalo, 16000839
Buffalo Public School #24 (PS 24), 775 Best St., Buffalo, 16000840
The Karnak Flats, 87 Whitney Pl., Buffalo, 16000841
The Rae Flats and The Raleigh, 346 and 354 Franklin St., Buffalo, 16000842

Onondaga County

Oak Knitting Company, 102 West Division St., Syracuse, 16000843

OHIO

Clark County

Edward Wren Company Building, 31–37 High St., Springfield, 16000844

Cuyahoga County

Fenway Hall, 1986 Stokes Blvd., Cleveland, 16000845

Franklin County

Del Monte Apartments, 341–345 South Third St., Columbus, 16000846

Hamilton County

Eastern Hills Young Men's Christian Association (YMCA), 1228 E. McMillan St., Cincinnati, 16000847

OKLAHOMA

Kay County

Hatashita, Henry C., House, 1408 Pioneer Rd., Ponca City, 16000848

Oklahoma County

Medical Arts Building, 100 Park Ave., Oklahoma City, 16000849
Municipal Auditorium, 201 North Walker Ave., Oklahoma City, 16000850

Tillman County

Manitou Jail, NE intersection of 3rd St. and U.S. 183, Manitou, 16000851

PUERTO RICO

Lajas Municipality

Oliver Hazard Perry Graded School (Early 20th Century Schools in Puerto Rico MPS), San Bias St., corner with Concordonia St., Lajas, 16000852

Santa Isabel Municipality

Sistema de riego de las tres haciendas (Going with the Flow: Waterworks in Puerto Rico, 1840–1898), South of PR 52, north and on PR 1, west and east of PR 153, Santa Isabel, 16000853

RHODE ISLAND

Providence County

Edgewood Historic District—Aberdeen Plat (Edgewood Neighborhood, Cranston, R.I. MPS), Berwick Ln., Chiswick Rd., Strathmore Place and Road, portions of Broad St., and Narragansett Blvd., Cranston, 16000833
Naushon Company Plant, 32 Meeting St., Cumberland, 16000854

WASHINGTON

King County

Mount Baker Park Improvement Club Clubhouse, 2811 Mount Rainier Dr., S., Seattle, 16000855

Pierce County

Wedge Historic District, Triangle area bounded by Division and 6th Aves., and South M St., Tacoma, 16000856

Authority: 60.13 of 36 CFR Part 60.

Dated: November 4, 2016.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2016–28449 Filed 11–25–16; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–565 and 731–TA–1341 (Preliminary)]

Hardwood Plywood From China; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–565 and 731–TA–1341 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of hardwood plywood from China, provided for in heading 4412 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by January 3, 2017. The Commission's views must be transmitted to Commerce within five business days thereafter, or by January 10, 2017.

DATES: *Effective Date:* November 18, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Messer ((202) 205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on November 18, 2016, on behalf of the Coalition for Fair Trade in Hardwood Plywood, which is comprised of Columbia Forest Products (Greensboro, North Carolina); Commonwealth Plywood Inc. (Whitehall, New York); Roseburg Forest Products Co. (Roseburg, Oregon); States Industries Inc. (Eugene, Oregon); and Timber Products Com. (Springfield, Oregon).

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Friday, December 9, 2016, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.bishop@usitc.gov* and *Sharon.bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before December 7, 2016. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 14, 2016, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this/these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: November 21, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–28485 Filed 11–25–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1030]

Certain High-Potency Sweeteners, Processes for Making Same, and Products Containing Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 26, 2016, under the Tariff Act of 1930, on behalf of Celanese International Corporation and Celanese Sales U.S. Ltd., both of Irving,Texas, and Celanese IP Hungary Bt, of Hungary.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons

with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION: The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain high-potency sweeteners, processes for making same, and products containing same by reason of infringement of certain claims of U.S. Patent No. 9,024,016 (''the '016 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 21, 2016, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain high-potency sweeteners, processes for making same, and products containing same by reason of infringement of one or more of claims 1–3 and 10 of the '016 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Celanese International Corporation, 222 West Las Colinas Boulevard, Suite 900N, Irving, TX 75039

Celanese Sales U.S. Ltd., 222 West Las Colinas Boulevard, Suite 900N, Irving, TX 75039

Celanese IP Hungary Bt, Váci út 33, Budapest, 1134 Hungary

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Suzhou Hope Technology Co., Ltd., No. 18 Sanjiali Road, Nansha Jingang Town, Zhangjiagang County, Suzhou City, 215632 Jiangsu Province, China

Anhui Jinhe Industrial Co., Ltd., 127 East Street, Lai'an County, Anhui, 239200 China

Vitasweet Co., Ltd., Peking Times Square, No. 103, Huizhongli, Chaoyang District, Beijing, 100101 China

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 22, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–28498 Filed 11–25–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122—NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection: STOP Formula Grant Program Match Documentation Worksheet

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 27, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 agencys 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* STOP Formula Grant Program Match Documentation Worksheet.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–XXXX. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes STOP formula grantees (50 states and the District of Columbia The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 and reauthorized and amended by the Violence Against Women Act of 2000, the Violence Against Women Act of 2005 and the Violence Against Women Act of 2013. The purpose of the STOP Formula Grant Program is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice's Office on Violence Against Women (OVW) administers the STOP Formula Grant Program funds which are awarded to states and territories to enhance the capacity of local communities to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in cases involving violent crimes against women. Each state and territory must allocate 25 percent for law enforcement, 25 percent for prosecutors, 30 percent for victim services (of which at least 10 percent must be distributed to culturally specific community-based organizations), 5 percent to state and local courts, and 15 percent for discretionary distribution. VAWA provides for a 25 percent match requirement imposed on grant funds under the STOP Formula Grant Program. Thus, a grant made under this program may not cover more than 75 percent of the total costs of the project being funded. Under VAWA 2005, the state cannot require matching funds for a grant or subgrant for any tribe, territory, or victim service provider, regardless of funding allocation category. The state is exempted from matching the portion of the state award that goes to a victim service provider for victim services or that goes to tribes. Territories are also exempted in full. States can receive additional waiver of match based on a petition to OVW and a demonstration of financial need. OVW will look at the time of closeout at the entities and purposes of funds and base the required match on that.

The purpose of this new information collection is to provide a worksheet for documenting the amount of matching funds required at the closeout of a specific fiscal year award under the STOP Formula Grant Program. The type of questions on the worksheet will include award number, award amount, amount of funds sub-awarded to victim service providers for victim services or to tribes.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the approximately 51 respondents approximately ten minutes to complete a STOP Formula Grant Program match documentation worksheet.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 8.5 hours, that is 51 STOP State Administrators completing an assessment tool one time with an estimated completion time being ten minutes.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: November 21, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–28454 Filed 11–25–16; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Ventilation Plan and Main Fan Maintenance Record

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Ventilation Plan and Main Fan Maintenance Record,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 28, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201610-1219-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to maintain PRA authorization for the MSHA Ventilation Plan and Main Fan Maintenance Record information collection. An underground mine usually presents a harsh and hostile working environment. Pursuant to statutory authority, the MSHA has issued regulations under which a mine operator is required to prepare a written plan of the mine ventilation system. The plan must be updated at least annually. Upon written request of the MSHA District Manager, the plan or revisions must be submitted to the MSHA for review and comment. In addition, the main ventilation fans for an underground mine must be maintained according to either manufacturers' recommendations or a written periodic schedule. Upon request of an authorized representative of the Secretary of Labor, this fan maintenance schedule must be made available for review. The records help ensure compliance with the standard and may serve as a warning mechanism for possible ventilation problems before they occur. The MSHA codified the regulations at 30 CFR 57.8520 and –.8525. Federal Mine Safety and Health Act of 1977 section 103(h) authorizes this information collection. *See* 30 U.S.C. 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0016. The current approval is scheduled to expire on December 31, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 29, 2016 (81 FR 50022).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0016. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Ventilation Plan and Main Fan Maintenance Record.

OMB Control Number: 1219–0016.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 232.

Total Estimated Number of Responses: 241.

Total Estimated Annual Time Burden: 5,606 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 21, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–28576 Filed 11–25–16; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0024]

Proposed Extension of Information Collection; Application for Waiver of Surface Sanitary Facilities' Requirements (Pertaining to Coal Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Application for Waiver of Surface Sanitary Facilities' Requirements (Pertaining to Coal Mines).

DATES: All comments must be received on or before January 27, 2017.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2016–0035.
- *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners.

Title 30 CFR 71.400 through 71.402 and 75.1712–1 through 75.1712–3 require coal mine operators to provide bathing facilities, clothing change rooms, and sanitary flush toilet facilities in a location that is convenient for use of the miners. If the operator is unable to meet any or all of the requirements, he/she may apply for a waiver. Title 30 CFR 71.403, 71.404, 75.1712–4, and

75.1712–5 provide procedures by which an operator may apply for and be granted a waiver. Applications are filed with the District Manager for the district in which the mine is located and must contain the name and address of the mine operator, name and location of the mine, and a detailed statement of the grounds on which the waiver is requested.

Waivers for surface mines may be granted by the District Manager for a period not to exceed one year. If the waiver is granted, surface mine operators may apply for annual extensions of the approved waiver. Waivers for underground mines may be granted by the District Manager for the period of time requested by the underground mine operator as long as the circumstances that were used to justify granting the waiver remain in effect. Waivers are not transferable to a successor coal mine operator.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Application for Waiver of Surface Sanitary Facilities' Requirements (Pertaining to Coal Mines). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL—Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Application for Waiver of Surface Sanitary Facilities' Requirements (Pertaining to Coal Mines). MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0024.

Affected Public: Business or other for-profit.

Number of Respondents: 731.

Frequency: On occasion.

Number of Responses: 731.

Annual Burden Hours: 301 hours.

Annual Respondent or Recordkeeper Cost: $3,655.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2016–28422 Filed 11–25–16; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL WOMEN'S BUSINESS COUNCIL

Quarterly Public Meeting

AGENCY: National Women's Business Council.

ACTION: Notice of open public meeting.

DATES: The National Women's Business Council December Public Meeting will be held on Wednesday, December 7, 2016, from 2:00 p.m. to 4:00 p.m. EST.

ADDRESSES: The meeting will be held virtually via teleconference and webinar.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), the U.S. Small Business Administration (SBA) announces the meeting of the National Women's Business Council. The National Women's Business Council conducts research on issues of importance and impact to women entrepreneurs and makes policy recommendations to the SBA, Congress, and the White House on how to improve the business climate for women.

This meeting is the 1st quarter meeting for Fiscal Year 2017. The program will include remarks from the Council Chair Carla Harris, updates on the Council's work from Council Members, and a public discussion on the Council's latest research report on supplier diversity. Time will be reserved at the end of the webinar for participants to address Council Members with questions, comments, or feedback.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; advance notice of attendance is requested. To RSVP and confirm attendance, the general public should email *info@nwbc.gov* with subject line: ''RSVP for 12/07/16 Public Meeting.'' For additional questions, please email *info@nwbc.gov* or call the main office number at 202–205–3850.

For more information, please visit the National Women's Business Council Web site at *www.nwbc.gov.*

Dated: November 15, 2016.

Miguel J. L'Heureux,

SBA Committee Management Officer.

[FR Doc. 2016–28488 Filed 11–25–16; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

Seeks Qualified Candidates for the Advisory Committee on Reactor Safeguards

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Request for resumes.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) seeks qualified candidates for the Advisory Committee on Reactor Safeguards (ACRS). Submit resumes to Jamila Perry and Alesha Bellinger, ACRS, Mail Stop T2E26, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or email *Jamila.Perry@nrc.gov* and *Alesha.Bellinger@nrc.gov.*

SUPPLEMENTARY INFORMATION: The ACRS is a part-time advisory group, which is statutorily mandated by the Atomic Energy Act of 1954, as amended. ACRS provides independent expert advice on matters related to the safety of existing and proposed nuclear power plants and on the adequacy of proposed reactor safety standards. Of primary importance

are the safety issues associated with the operation of 99 commercial nuclear power plants in the United States and regulatory initiatives, including risk-informed and performance-based regulation, license renewal, power uprates, and the use of mixed oxide and high burnup fuels. An increased emphasis is being given to safety issues associated with new reactor designs and technologies, including passive system reliability and thermal hydraulic phenomena, use of digital instrumentation and control, international codes and standards used in multinational design certifications, materials, and structural engineering, nuclear analysis and reactor core performance, and nuclear materials and radiation protection. In addition, the ACRS may be requested to provide advice on radiation protection, radioactive waste management, and earth sciences in the agency's licensing reviews for fuel fabrication and enrichment facilities, and for waste disposal facilities. The ACRS also has some involvement in security matters related to the integration of safety and security of commercial reactors.

See the NRC Web site at *http://www.nrc.gov/aboutnrc/regulatory/advisory/acrs.html* for additional information about ACRS. Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear reactor safety matters, the ability to solve complex technical problems, and the ability to work collegially on a board, panel, or committee. The Commission, in selecting its Committee members, also considers the need for specific expertise to accomplish the work expected to be before the ACRS. ACRS Committee members are appointed for four-year terms with no term limits. The Commission looks to fill one vacancy as a result of this request. For this position, a candidate must have extensive experience in nuclear power plant probabilistic risk assessment and risk management. Best qualified candidates will have at least 20 years of specific PRA and risk management experience, considerable broad experience and a distinguished record of achievement in one or more areas of nuclear science and technology or related engineering discipline(s).

Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with diverse backgrounds, so that the membership on the Committee is fairly balanced in terms of the points of view represented and functions to be performed by the Committee. Candidates will undergo a thorough security background check to obtain the security clearance that is mandatory for all ACRS members. The security background check will involve the completion and submission of paperwork to NRC. Candidates for ACRS appointments may be involved in or have financial interests related to NRC-regulated aspects of the nuclear industry. However, because conflict-of-interest considerations may restrict the participation of a candidate in ACRS activities, the degree and nature of any such restriction on an individual's activities as a member will be considered in the selection process.

Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment. This might require divestiture of securities or discontinuance of certain contracts or grants. Information regarding these restrictions will be provided upon request. As a part of the Stop Trading on Congressional Knowledge Act of 2012, which bans insider trading by members of Congress, their staff, and other high-level federal employees, candidates for appointments will be required to disclose additional financial transactions.

A resume describing the educational and professional background of the candidate, including any special accomplishments, publications, and professional references should be provided. Candidates should provide their current address, telephone number, and email address. All candidates will receive careful consideration. Appointment will be made without regard to factors such as race, color, religion, national origin, sex, age, or disabilities. Candidates must be citizens of the United States and be able to devote approximately 100 days per year to Committee business, but may not be compensated for more than 130 calendar days. Resumes will be accepted until December 28, 2016.

Dated at Rockville, Maryland, this 22nd day of November, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2016–28506 Filed 11–25–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–286 and 50–333; ASLBP No. 16–950–01–LA–BD01]

Entergy Nuclear Operations, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Entergy Nuclear Operations, Inc., (Indian Point Nuclear Generating Unit No. 3 and James A. Fitzpatrick Nuclear Power Plant)

This proceeding involves a challenge to, inter alia, an amendment request that would transfer the beneficial interest in the Power Authority of the State of New York (PASNY) Master Decommissioning Trust, including all rights and obligations thereunder, held by PASNY for Indian Point Nuclear Generating Unit No. 3 in Westchester County, New York, and the James A. Fitzpatrick Nuclear Power Plant in Oswego County, New York, to Entergy Nuclear Operations, Inc. (ENO). On November 1, 2016, Susan H. Shapiro filed a hearing request (dated September 15, 2016) on behalf of the Indian Point Safe Energy Coalition, et al., that relates to a September 27, 2016 **Federal Register** notice, 81 FR 66,301, 66,305 (2016), that provided ''opportunity to request a hearing and petition for leave to intervene'' regarding ENO's amendment request dated August 16, 2016.

The Board is comprised of the following Administrative Judges:

Paul S. Ryerson, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Ronald M. Spritzer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Rockville, Maryland, November 18, 2016.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2016–28556 Filed 11–25–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–602; NRC–2016–0241]

University of Texas—Austin; Nuclear Engineering Teaching Laboratory TRIGA Research Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; notice of opportunity to request a hearing and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an application for the renewal of Facility Operating License No. R–129, which authorizes the University of Texas at Austin (the licensee) to operate the Nuclear Engineering Teaching Laboratory (NETL) Training, Research, Isotope Production, General Atomics (TRIGA) Research Reactor at a maximum steady-state thermal power of 1.1 megawatts (MW). The NETL research reactor is a TRIGA-fueled research reactor located at the J.J. Pickle Research Campus, in Austin, Texas. If approved, the renewed license would authorize the licensee to operate the NETL TRIGA Research Reactor up to a steady-state thermal power of 1.1 MW for an additional 20 years from the date of issuance of the renewed license. Because the license renewal application contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: A request for a hearing or petition for leave to intervene must be filed by January 27, 2017. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by December 8, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0241 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–2016–0241. 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*. For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Michael Balazik, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2856; email: *Michael.Balazik@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering an application for the renewal of Facility Operating License No. R–129, which authorizes the licensee to operate the NETL TRIGA Research Reactor at a maximum steady-state thermal power of 1.1 MW. The renewed license would authorize the licensee to operate the NETL TRIGA Research Reactor up to a steady-state thermal power of 1.1 MW for an additional 20 years from the date of issuance of the renewed license.

By letter dated December 11, 2011, and as supplemented by various letters referenced in Section IV, ''Availability of Documents,'' of this notice, the NRC received an application from the licensee filed pursuant to 10 CFR 50.51(a) to renew Facility Operating License No. R–129 for the NETL research reactor. The application contains SUNSI.

Based on its initial review of the application, the NRC staff determined that the licensee submitted sufficient information in accordance with 10 CFR 50.33 and 50.34 and that the application is acceptable for docketing. The current docket, Docket No. 50–602, for Facility Operating License No. R–129 will be retained. The docketing of the renewal application does not preclude requests for additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the licensee's application. Prior to a decision to renew the license, the Commission will make findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a petition is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309(d), a petition shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

The petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention

and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements of 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and request permission to cross-examine witnesses, consistent with the NRC's regulations, policies, and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by January 27, 2017. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter ''petition''), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request: (1) A digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/adjudicatory-sub.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an

exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a petition will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

IV. Availability of Documents

Documents related to this action, including the license renewal application and other supporting documentation, are available to interested persons as indicated.

Document	ADAMS Accession No.
NUREG–1537, Part 1, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors, Format and Content,'' February 1996	ML042430055
NUREG–1537, Part 2, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors, Standard Review Plan and Acceptance Criteria,'' February 1996	ML042430048
''University of Texas at Austin—Request for Renewal of Facility Operating License R–129,'' December 12, 2011 (redacted version)	ML12156A097
''University of Texas at Austin—Supplement to Application Containing Table of Contents, Chapter 4 and Chapter 9 of the Safety Analysis Report (TAC No. ME7694),'' January 17, 2012 (redacted version)	ML12156A196
''The University of Texas TRIGA II Research Reactor Safety Analysis Report, Chapter 12,'' January 17, 2012	ML12030A102
''University of Texas at Austin—Supplemental Information Relative to Proposed Safety Analysis Report, Appendix 15.4,'' February 21, 2012	ML12061A009
''University of Texas at Austin—Partial Response to Request for Additional Information regarding the License Renewal Request for the Nuclear Engineering Teaching laboratory TRIGA Mark II Nuclear Research Reactor (TAC No. ME7694),'' September 17, 2012	ML12307A071
''University of Texas at Austin—Request for Additional Information Regarding the License Renewal Request for the Nuclear Engineering Teaching Laboratory TRIGA Mark II Nuclear Research Reactor,'' December 19, 2012	ML13002A015
''University of Texas, Austin, Response to Request for Additional Information to New Fuel Storage License Renewal,'' March 22, 2013	ML13091A006
''Request for Renewal of Facility Operating License R–129,'' August 21, 2013	ML13246A014
''University of Texas—Austin—Response to the Request for Additional Information Regarding License Renewal,'' July 15, 2015 (redacted version)	ML15211A638
''50–602, Request for Renewal of Facility Operating License R–129,'' August 26, 2015	ML15251A234
''University of Texas, Austin, Request for an Extension for Completion of Remaining Requests for Additional Information to December 18, 2015,'' October 23, 2015	ML15313A027
''University of Texas-Austin—Response to Request for Additional Information Regarding Renewal Request, July 31, 2015 Correspondence,'' December 22, 2015	ML16015A052
''University of Texas at Austin—Response to Request for Additional Information Regarding the License Renewal Request for the Nuclear Engineering Teaching Laboratory TRIGA Mark II Nuclear Research Reactor (TAC No. ME7694),'' February 5, 2016	ML16053A094
''University of Texas at Austin—Withdraw of Request for Additional Information Dated April 1, 2015, to Nuclear Engineering Teaching Laboratory TRIGA Mark II Nuclear Research Reactor (TAC No. ME7694),'' April 13, 2016	ML16103A110
''University of Texas-Austin—Response to Request for Additional Information Regarding the License Renewal for Nuclear Engineering Teaching Laboratory TRIGA Mark II Nuclear Research Reactor,'' May 2, 2016	ML16132A239

Portions of the license renewal application and its supporting documents contain SUNSI. These portions will not be available to the public. Any person requesting access to SUNSI must follow the procedures described in the Order below.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A

''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the dates the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have proposed contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to the Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 22nd day of November, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information). If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2016–28507 Filed 11–25–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76361; File No. SR–FINRA–2016–043]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide a Process for an Expedited Proceeding and Adopt a Rule To Prohibit Disruptive Quoting and Trading Activity

November 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that, on November 15, 2016, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to (i) adopt new Supplementary Material to Rule 5210 to address two specific types of disruptive quoting and trading activity, as further described below and (ii) amend the FINRA Rule 9800 Series to permit FINRA to initiate an expedited proceeding to take prompt action for violations of the new Supplementary Material.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing two rule changes [3] regarding disruptive trading and quoting activity. The first proposed rule change would adopt new Supplementary Material .03 to Rule 5210 to define and prohibit specific conduct that is deemed disruptive trading and quoting activity. The second proposed rule change would amend the Rule 9800 Series to provide FINRA with the authority to issue, on an expedited basis, a permanent cease and desist order against a respondent that engages

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that this filing constitutes a single ''proposed rule change,'' under Section 19(b) of the Act.

in a frequent pattern or practice of the disruptive trading and quoting activity in Supplementary Material .03 to Rule 5210. The proposed rule change mirrors the framework that Bats BZX Exchange, Inc., formerly known as BATS Exchange, Inc. (''BATS''), and The Nasdaq Stock Market LLC (''Nasdaq'') have recently adopted, but builds off of FINRA's existing process for temporary cease and desist orders (''TCDOs'').[4] FINRA believes that having the authority to issue a cease and desist order on an expedited basis to stop certain well-defined disruptive and manipulative quoting and trading activity when the activity is persistent would significantly enhance FINRA's ability to protect investors and market integrity.

Proposed Disruptive Trading and Quoting Rule

As a national securities association registered pursuant to Section 15A of the Act, FINRA is required to be organized and to have the capacity to enforce compliance by its members and persons associated with its members with, among other things, the Act, the rules and regulations thereunder, and FINRA Rules.[5] Further, FINRA's rules are required to be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, . . . to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.''[6] In fulfilling these requirements, FINRA has developed a comprehensive regulatory program that includes automated surveillance of a substantial portion of trading activity.[7] When potentially disruptive, manipulative, or otherwise improper quoting and trading activity is identified, FINRA staff conducts an investigation into the activity, which often includes requesting additional information from the member or members involved.[8] To the extent violations of the Act, the rules and regulations thereunder, or FINRA Rules (or the rules of an exchange with which FINRA has an RSA) have been identified and confirmed, FINRA will commence the enforcement process (either on its own behalf or on behalf of a client exchange), which might result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business activities, a monetary fine, or a temporary or permanent ban from the securities industry.[9]

The process described above, from the initial identification of potentially disruptive, manipulative, or improper quoting and trading activity to a final resolution of the matter, can often take up to several years.[10] FINRA believes that this time period is generally necessary and appropriate to ensure that the subject member has a fair procedure before a sanction is imposed, particularly in complex cases. However, as described below, FINRA believes that there are certain clear cases of disruptive and manipulative behavior, or cases where the potential harm to investors is so large, that FINRA should have the authority to initiate an expedited proceeding to stop the behavior from continuing, similar to that which currently exists under the Rule 9800 Series for issuing TCDOs.

In recent years, several cases have been brought and resolved by FINRA and other self-regulatory organizations (''SROs'') that involved allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities over which neither FINRA nor other SROs had direct jurisdiction. In each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering[11] or spoofing.[12] The exchanges and FINRA were able to identify the disruptive quoting and trading activity in real-time or near real-time; however, due to the procedural requirements in existing SRO rules, the members responsible for the conduct or responsible for their customers' conduct were able to continue the disruptive quoting and trading activity during the entirety of the subsequent lengthy investigation and enforcement process.[13] FINRA believes that it should have the authority to initiate an expedited proceeding to stop the behavior from continuing if a member is engaging in or facilitating certain clear types of disruptive quoting and trading activity and the member has received sufficient notice with an opportunity to respond, but such activity has not ceased.

The proposed rule change therefore adds Supplementary Material .03 to FINRA Rule 5210 (Publication of Transactions and Quotations) to explicitly prohibit members from engaging in or facilitating the disruptive quoting and trading activities set forth in the rule.[14] The Supplementary Material would prohibit members from engaging in or facilitating disruptive quoting and trading activity as defined in the rule, including acting in concert with other persons to effect such activity. FINRA believes it is necessary to extend the prohibition to situations

[4] On February 18, 2016, the SEC approved a proposed rule change filed by BATS to adopt new BATS Rule 12.15, which prohibits certain types of disruptive quoting and trading activities, and BATS Rule 8.17, which permits BATS to conduct a new expedited suspension proceeding when it believes BATS Rule 12.15 has been violated. *See* Securities Exchange Act Release No. 77171 (February 18, 2016), 81 FR 9017 (February 23, 2016) (''BATS Approval Order''); *see also* Securities Exchange Act Release No. 77606 (April 13, 2016), 81 FR 23026 (April 19, 2016) (adopting identical rules for Bats EDGA Exchange, Inc.); Securities Exchange Act Release No. 77602 (April 13, 2016), 81 FR 23046 (April 19, 2016) (adopting identical rules for Bats BYX Exchange, Inc.); Securities Exchange Act Release No. 77589 (April 12, 2016), 81 FR 22691 (April 18, 2016) (adopting identical rules for Bats EDGX Exchange, Inc.). On May 19, 2016, Nasdaq filed a substantially similar proposed rule change with the SEC for immediate effectiveness. *See* Securities Exchange Act Release No. 77913 (May 25, 2016), 81 FR 35081 (June 1, 2016). Nasdaq has similarly extended the rule to other exchanges. *See, e.g.,* Securities Exchange Act Release No. 78208 (June 30, 2016), 81 FR 44366 (July 7, 2016).

[5] *See* 15 U.S.C. 78*o*–3(b)(2).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] FINRA conducts, on its own behalf, surveillance of its members' trading activity, as well as surveillance for numerous national securities exchanges pursuant to Regulatory Services Agreements (''RSAs''). FINRA currently has RSAs with 18 different exchanges to perform some degree of surveillance. FINRA also combines its own data with data received from those exchanges with which it has RSAs to conduct cross-market surveillance.

[8] *See, e.g.,* Rule 8210.

[9] 15 U.S.C. 78*o*–3(b)(7). *See generally* Rule 9200 Series.

[10] *See* BATS Approval Order, *supra* note 4, at 9017.

[11] ''Layering'' is a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

[12] ''Spoofing'' is a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some type of market movement or response from other market participants, which the market manipulator is able to take advantage of by placing orders on the opposite side of the market.

[13] For descriptions of two specific examples, *see* SR–BATS–2015–101. *See also* Securities Exchange Act Release No. 75693 (August 13, 2015), 80 FR 50370, 50371–72 (August 19, 2015).

[14] FINRA currently has authority to prohibit and take action against manipulative trading activity, including disruptive quoting and trading activity, pursuant to its general market manipulation rules, including Rules 2010 and 2020. The proposed Supplementary Material would define more specifically and prohibit certain types of disruptive quoting and trading activity. Violations of the Supplementary Material would also provide the basis to apply the proposed cease and desist proceeding described below. Combined, proposed Supplementary Material .03 to Rule 5210 and the proposed amendments to the Rule 9800 Series would provide FINRA with the authority to act promptly to prevent the defined types disruptive quoting and trading activity from continuing to occur.

when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several firms or customers.

The proposed rule change defines two types of prohibited activities and states that, for purposes of the rule, disruptive quoting and trading activity would include a ''frequent pattern or practice'' of these activities. As is the case with BATS Rule 12.15, the prohibited activities do not include an express intent element.[15]

- *Trading Scenario One:* A frequent pattern in which the following facts are present: (1) A party enters multiple limit orders on one side of the market at various price levels; (2) following the entry of the limit orders, the level of supply and demand for the security changes; (3) the party enters one or more orders on the opposite side of the market that are subsequently executed; and (4) following the execution, the party cancels the original limit orders.
- *Trading Scenario Two:* A frequent pattern in which the following facts are present: (1) A party narrows the spread for a security by placing an order inside the national best bid and offer and (2) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the party.

Similar to Interpretation and Policy .02 to BATS Rule 12.15, Supplementary Material .03 also makes clear that the order of the events indicating the pattern does not change the applicability of the rule and that these types of disruptive quoting and trading activity can occur regardless of the venue(s) on which the activity is conducted.

Proposed Cease and Desist Proceeding

In addition to the new Supplementary Material describing the prohibited trading and quoting activity, the proposed rule change provides FINRA with authority to issue, on an expedited basis, a permanent cease and desist order (''PCDO'') under FINRA's existing TCDO rules for violations of Supplementary Material .03 to FINRA Rule 5210.[16]

Under the current TCDO rules, FINRA can initiate a TCDO proceeding under the Rule 9800 Series when respondents are alleged to have violated certain specific rules,[17] and although BATS modeled its expedited suspension proceeding rule on FINRA's TCDO rules, there are some differences.[18] Under the proposed rule change, FINRA can issue a PCDO under which a respondent to the proceeding would be (1) Ordered to cease and desist from the violative activity under Supplementary Material .03 to Rule 5210 or (2) ordered to cease and desist from providing market access to a client engaged in the violative trading activity.[19]

The proposed process for issuing a PCDO for violations of Supplementary Material .03 to Rule 5210 closely follows the existing TCDO procedures in the Rule 9800 Series. Specifically, like a TCDO, under the proposed amendments to FINRA's procedural rules, the following provisions would apply to a PCDO proceeding for alleged violations of the new Supplementary Material .03 to Rule 5210:

- Only FINRA's Chief Executive Officer (or such other senior officer as the CEO may designate) may initiate a PCDO proceeding under the rule;[20]
- The PCDO proceeding is initiated by service of a notice, effective upon service, stating whether FINRA is requesting that the respondent take action or refrain from certain action, and the notice must be accompanied by a declaration of facts, a memorandum of points and authorities, and a proposed order containing the required elements of an order;[21]
- A hearing is conducted by a Hearing Panel,[22] and the rules include provisions regarding the conduct of the hearing and generally require that the hearing be held within 15 days of service of the notice initiating the proceeding;[23]
- The Hearing Panel must issue a written decision no later than ten days after receipt of the hearing transcript;[24]
- The PCDO must set forth the alleged violation and the significant market disruption or investor harm that is likely to result without the issuance of an order and describe in reasonable detail the act or acts the respondent is to take or refrain from taking;[25]
- The PCDO is effective upon service and remains effective and enforceable unless modified, set aside, limited, or revoked pursuant to the rule;[26]
- Any time after the respondent is served with a PCDO, a party to the proceeding may apply to the Hearing Panel to have the order modified, set aside, limited, or suspended, and the Hearing Panel must generally respond to any such request in writing within ten days after receipt of the request;[27]
- FINRA can initiate an expedited proceeding pursuant to FINRA Rules 9556 and 9559 for violations of a PCDO;[28]
- Sanctions issued under the rule constitute final and immediately effective disciplinary sanctions thus allowing the respondent to appeal the PCDO to the SEC; however, filing an application for review with the SEC does not stay the effectiveness of the PCDO unless the SEC otherwise orders;[29] and
- The issuance of the PCDO does not alter FINRA's ability to further investigate the matter or later sanction the member pursuant to its standard disciplinary process for violations of

[15] BATS Rule 12.15 refers to these activities as ''Disruptive Quoting and Trading Activity Type 1'' and ''Disruptive Quoting and Trading Activity Type 2.''

[16] FINRA has existing authority to issue PCDOs. *See* Rule 9291.

[17] FINRA has the authority to initiate a TCDO for alleged violations of Section 10(b) of the Act and Rule 10b-5 thereunder; SEA Rules 15g–1 through 15g–9 concerning penny stocks; FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade) if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act of 1933; FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices); or FINRA Rule 4330 (Customer Protection—Permissible Use of Customers' Securities) if the alleged violation is misuse or conversion of customer assets. *See* FINRA Rule 9810(a).

[18] *See* Rule 9800 Series. BATS noted in its filing that its proposed rule was based in part on FINRA Rules 9810 through 9870. *See* SR–BATS–2015–101. In those instances where the BATS procedural rule differs from FINRA's current TCDO process, FINRA believes that continuing to follow its existing TCDO process will be more efficient and effective than conforming to the BATS rule.

[19] Under the current TCDO rules, FINRA must file an underlying complaint at the same time it issues a TCDO notice if a complaint has not already been filed. *See* Rule 9810(d). A TCDO remains in effect only until the conclusion of the underlying disciplinary proceeding. *See* Rule 9840(c). Under the proposed rule change, as in the BATS rule, the PCDO would be permanent, and there would be no required underlying disciplinary proceeding. However, the proposed rule change would in no way preclude FINRA from pursuing a separate disciplinary action for the underlying conduct.

[20] *See* Rule 9810(a). A PCDO proceeding would be initiated only after attempts to resolve the conduct with the firm were unsuccessful. In approving the BATS rules, the SEC noted that BATS represented that it ''will only seek an expedited suspension when—after multiple requests to a Member for an explanation of [a pattern of potentially disruptive quoting and trading] activity—it continues to see the same pattern of manipulation from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity.'' *See* BATS Approval Order, *supra* note 4. FINRA anticipates using the proposed PCDO authority in the proposed rule change under the same circumstances.

[21] *See* Rule 9810(a), (b).

[22] *See* Rule 9820.

[23] *See* Rule 9830(a).

[24] *See* Rule 9840(a).

[25] *See* Rule 9840(a).

[26] *See* Rule 9840, 9850.

[27] *See* Rule 9850.

[28] *See* Rule 9860, 9556, 9559.

[29] *See* Rule 9870.

supervisory obligations or other violations of FINRA rules or the Act.

The proposed rule change does include two notable differences between the proposed process for a PCDO for violation of Supplementary Material .03 to Rule 5210 and FINRA's existing TCDO process. First, under the proposed rule change, a PCDO would be imposed if the Hearing Panel finds: (1) By a preponderance of the evidence that the alleged violation specified in the notice occurred and (2) that the conduct or continuation thereof is likely to result in significant market disruption or significant harm to investors. The standard of proof for TCDOs is a likelihood of success on the merits, which is a lower standard than the preponderance standard.[30] Second, the permitted terms of the order would differ to reflect the nature of Supplementary Material .03 to Rule 5210 and, as discussed above, the common circumstance where the member is not engaged directly in the activity but is facilitating the disruptive quoting or trading activity by providing market access to one of its clients. Thus, under the proposed rule change a PCDO would be limited to: (1) ordering a respondent to cease and desist from violating Supplementary Material .03 to FINRA Rule 5210, and/or (2) ordering a respondent to cease and desist from providing access to a client of the respondent that is causing violations of Supplementary Material .03 to FINRA Rule 5210.

Unlike BATS Rule 12.15, under which the respondent is suspended unless and until it takes or refrains from taking the act or acts described in the suspension order, the proposed rule change, like FINRA's current TCDO process, would require a subsequent expedited proceeding for violation of the PCDO before a respondent could be suspended from FINRA membership. This approach is similar to FINRA's existing TCDO authority, and FINRA believes it is preferable given the broader impact a FINRA suspension would have on a firm's operations versus a suspension by an individual exchange.[31]

As noted above, FINRA is proposing to adopt rules substantially similar to the BATS rules recently approved by the SEC combined with FINRA's existing TCDO rules. Similar to the concerns expressed by BATS in its rule filing, FINRA is concerned that it has no expedited means by which it can prevent disruptive quoting and trading activity from continuing to occur after it has been identified without resorting to a formal disciplinary proceeding which can often take years to complete. Moreover, during the pendency of a disciplinary proceeding, the conduct often continues to take place. By contrast, an expedited proceeding like that recently approved for BATS, and similar to the FINRA TCDO provisions already in place to prevent ongoing fraud or conversion of customer funds, can preclude the activity in a significantly more expeditious manner while still ensuring that respondents have adequate procedural protections in place.

The proposed rule change would enhance investor protection and market integrity by allowing FINRA to issue PCDOs on an expedited basis to stop certain disruptive and manipulative activity and prevent ongoing fraud in an expeditious manner. FINRA anticipates that the issuance of PCDOs under the proposed rule change would be limited to those extreme circumstances where an expedited proceeding is the only means by which FINRA can stop ongoing violative conduct.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be 30 days after the date of the filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[32] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Pursuant to the proposal, FINRA will have a mechanism to promptly initiate expedited proceedings in the event it believes that it has sufficient proof that a violation of Supplementary Material .03 to Rule 5210 has occurred and is ongoing. FINRA believes the proposed rule change would enhance investor protection and market integrity by allowing FINRA to issue PCDOs to stop the defined types of disruptive and manipulative activity and prevent ongoing fraud in an expeditious manner.

FINRA also believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen FINRA's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other members and their customers if conduct is allowed to continue. As explained above, FINRA notes that, like BATS Rule 12.15, it has defined the prohibited disruptive quoting and trading activity by modifying the traditional definitions of layering and spoofing to eliminate an express intent element. FINRA believes this modification is necessary for the protection of investors so that ongoing disruptive quoting and trading activity does not occur while a more formal disciplinary proceeding is conducted, which can take several years to complete. Through this proposal, FINRA does not intend to modify the definitions of spoofing and layering that have generally been used by FINRA and other regulators in connection with actions like those cited above.

FINRA further believes that the proposal is consistent with Section 15A(b)(8) of the Act, which requires that the rules of a national securities association ''provide a fair procedure for the disciplining of members and persons associated with members.'' [33]

FINRA believes that following the existing procedures under its TCDO rules to issue a PCDO under the proposed rule change provides a fair procedure for disciplining members and persons associated with members. FINRA recognizes that the proposed rule change lowers the threshold necessary to stop activity consistent with the patterns described above and potentially suspend, or otherwise sanction, member firms engaging in such activity.[34] FINRA believes that, by following its existing TCDO procedures, these risks are mitigated by numerous controls in place to assure that cease and desist orders are sought and imposed only in appropriate cases. For example, FINRA could impose such an order only if the action has been authorized by FINRA's CEO or other

[30] *See* Rule 9840(a)(1). In 2015, FINRA amended its TCDO process to, among other things, change the evidentiary standard for TCDOs to a likelihood of success on the merits. *See* Securities Exchange Act Release No. 75629 (August 6, 2015), 80 FR 48379 (August 12, 2015).

[31] Rather than be limited to a full suspension, a separate expedited proceeding for violation of a PCDO would also allow for the imposition of a wider range of sanctions if the respondent requests a hearing. *See* FINRA Rules 9556, 9559.

[32] 15 U.S.C. 78*o*-3(b)(6).

[33] 15 U.S.C. 78*o*–3(b)(8).

[34] Consistent with the BATS framework approved by the SEC, the proposed rule eliminates an express intent element from the definition of prohibited activities, thereby lowering the burden of proof necessary to stop these prohibited activities from express intent to a ''frequent pattern or practice'' of such activities, coupled with the requirement that the conduct is likely to result in significant market disruption or significant harm to investors. *See* BATS Approval Order, *supra* note 4.

senior officers designated by the CEO. The proposed rule change also ensures the respondents have an opportunity for a hearing prior to the imposition of a sanction and an independent Hearing Panel has made findings that the standards for issuing the order have been met. Moreover, a party subject to a cease and desist order may appeal to the SEC.

Finally, FINRA also believes the proposal is consistent with Section 15A(h)(1) of the Act,[35] which requires that the rules of a national securities association with respect to a disciplinary proceeding: bring specific charges against a member or person associated with a member, notify such member or person of and provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. FINRA believes that each of these requirements is addressed by the notice and due process provisions included within its TCDO Rules and the amendments proposed thereto. Importantly, as noted above, FINRA anticipates using the authority proposed in this filing only in clear and egregious cases when necessary to protect investors or other members, and even in such cases, the respondent will be afforded a fair procedure in connection with the cease and desist proceedings.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rulemaking and its potential economic impacts, including the anticipated costs and benefits associated with the proposed rule change.

Economic Impact Assessment

1. Regulatory Need

As discussed above, FINRA has developed a comprehensive surveillance program that allows it to identify potentially disruptive quoting and trading activity almost in real-time. However, under the current rules, it can often take FINRA up to several years to stop potentially disruptive activity. FINRA believes that there are certain clear cases of disruptive activity, or cases where the potential harm to investors is so large, in which FINRA should be able to stop the disruptive behavior and the associated ongoing investor harm from continuing in an expeditious manner. The proposed rule change defines and prohibits specific types of disruptive quoting and trading activity and gives FINRA the authority to initiate an expedited proceeding and issue a PCDO to take prompt action against these potentially harmful activities.

2. Anticipated Benefits

The proposed rule change would enhance investor protection and market integrity by allowing FINRA to issue cease and desist orders to stop certain disruptive and manipulative activity and prevent ongoing fraud or conversion of customer funds in an expeditious manner. FINRA anticipates that the issuance of cease and desist orders under the proposed rule change would be limited to those extreme circumstances where an expedited proceeding is the only means by which FINRA can stop ongoing violative conduct. While the expedited proceedings would be limited to extreme cases with clear violations, FINRA believes that the proposed rule would allow FINRA to initiate and resolve the proceedings sooner, in which case the potential benefits can be substantial in just a single case where investors are being harmed.

3. Anticipated Costs

FINRA does not believe that the proposed rule change would impose material costs on member firms as the underlying conduct is already prohibited by existing rules. Further, FINRA anticipates that any costs would likely be minimal relative to the substantial investor protection benefits that may arise from just a single case where investors are being harmed significantly.

4. Other Economic Impacts

FINRA recognizes that the proposed rule change lowers the threshold necessary to stop activity consistent with the patterns described above and suspend member firms engaging in such activity.[36] Accordingly, in developing this proposal, FINRA considered the possibility that the lower threshold may result in actions taken against firms for activity that is not manipulative. FINRA believes that such risks are mitigated by numerous controls in place to assure that cease and desist orders are sought and imposed only in appropriate cases. For example, as discussed above, FINRA anticipates that it would seek a cease and desist order only if it continues to see a frequent pattern of potentially manipulative activity from a member, even after making multiple requests to that member for an explanation. Similarly, FINRA could impose such an order only if the action has been authorized by FINRA's CEO or other senior officers designated by the CEO. The proposed rule also ensures the respondents have an opportunity for a hearing prior to the imposition of a suspension and an independent Hearing Panel has made findings that the standards for issuing the order have been met. Moreover, a party subject to a cease and desist order may appeal to the SEC.

Similarly, FINRA also considered the possibility that in response to the proposed rule, firms may avoid legitimate activities that may be appear to fall within the trading scenarios discussed above to avoid regulatory and enforcement related costs. If such a response is large, it might manifest itself in the provision of liquidity in the relevant market. FINRA believes the controls discussed above, particularly those associated with providing opportunities to the firms to explain their trading strategy prior to any regulatory action, would largely mitigate this risk.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[37] and Rule 19b–4(f)(6) thereunder.[38]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

[35] 15 U.S.C. 78*o*–3(h)(1).

[36] Consistent with the BATS framework approved by the SEC, the proposed rule eliminates an express intent element from the definition of prohibited activities, thereby lowering the burden of proof necessary to stop these prohibited activities from express intent to a ''frequent pattern or practice'' of such activities. *See* BATS Approval Order, *supra* note 4.

[37] 15 U.S.C. 78s(b)(3)(A).

[38] 17 CFR 240.19b–4(f)(6).

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2016–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–043. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–043 and should be submitted on or before December 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–28458 Filed 11–25–16; 8:45 am]

BILLING CODE 8011–01–P

[39] 17 CFR 200.30–3(a)(12).

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 Equity Market Structure Advisory Committee will hold a public meeting on Tuesday, November 29, 2016, in the Multipurpose Room, LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC.

The meeting will begin at 9:30 a.m. (EST) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will be open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at *www.sec.gov*.

On November 8, 2016, the Commission published notice of the Committee meeting (Release No. 34–79257), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting will focus on recommendations and updates from the four subcommittees.

For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: November 22, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–28642 Filed 11–23–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934; Release No. 79370/November 21, 2016]

In the Matter of the New York Stock Exchange LLC for an Order Granting the Approval of Proposed Rule Change Adopting Maximum Fees Member Organizations May Charge in Connection With the Distribution of Investment Company Shareholder Reports Pursuant to Any Electronic Delivery Rules Adopted by the Securities and Exchange Commission; Order Scheduling Filing of Statements on Review

On August 15, 2016, the New York Stock Exchange LLC (''NYSE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt maximum fees NYSE member organizations may charge in connection with the distribution of investment company shareholder reports pursuant to any ''notice and access'' electronic delivery rules adopted by the Commission.[3] On October 5, 2016, the Commission extended the time period for Commission action on the proposal to November 20, 2016.[4] On November 18, 2016, the Division of Trading and Markets took action, pursuant to delegated authority, 17 CFR 200.30–3(a)(12), approving the proposed rule change.[5]

Pursuant to Commission Rule of Practice 431,[6] the Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *Notice of Filing of Proposed Rule Change Adopting Maximum Fees Member Organizations may Charge in Connection with the Distribution of Investment Company Shareholder Reports Pursuant to Any Electronic Delivery Rules Adopted by the Securities and Exchange Commission, Securities Exchange Act of 1934,* Release No. 78589 (August 16, 2016), 81 FR 56717 (August 22, 2016) (SR–NYSE–2016–55).

[4] *Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Adopting Maximum Fees Member Organizations May Charge in Connection with the Distribution of Investment Company Shareholder Reports Pursuant to Any Electronic Delivery Rules Adopted by the Securities and Exchange Commission, Securities Exchange Act of 1934,* Release No. 79051 (October 5, 2016), 81 FR 70449 (October 12, 2016).

[5] *Order Granting Approval of Proposed Rule Change Adopting Maximum Fees Member Organizations May Charge in Connection with the Distribution of Investment Company Shareholder Reports Pursuant to Any Electronic Delivery Rules Adopted by the Securities and Exchange Commission,* Securities Exchange Act of 1934, Release No. 79355 (November 18, 2016).

[6] 17 CFR 201.431.

reviewing the delegated action and the November 18, 2016 order is stayed.

Accordingly, it is ordered, pursuant to Rule of Practice 431, that by December 7, 2016, any party or other person may file any additional statement.

It is further ordered that the November 18, 2016 order approving the proposed rule change (SR–NYSE–2016–55) shall remain stayed pending further order of the Commission.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–28456 Filed 11–25–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79362; File No. SR–BOX–2016–53]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC (''BOX'') Options Facility

November 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 10, 2016, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b&4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule on the BOX Market LLC (''BOX'') options facility. Changes to the Fee Schedule pursuant to this proposal will be effective November 11, 2016. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX. Specifically, the Exchange proposes to revise certain qualification thresholds in Sections I.B.1 of the BOX Fee Schedule, Primary Improvement Order and I.B.2 of the BOX Fee Schedule, the BOX Volume Rebate (''BVR''). Changes to the Fee Schedule pursuant to this proposal will be effective November 11, 2016.[5]

Primary Improvement Order

Under the tiered fee schedule for Primary Improvement Orders, the Exchange assesses a per contract execution fee to all Primary Improvement Order executions where the corresponding PIP or COPIP Order is from the account of a Public Customer. Percentage thresholds are calculated on a monthly basis by totaling the Initiating Participant's Primary Improvement Order volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes. The Exchange proposes to adjust the percentage thresholds in Tiers 4 and 5. Specifically, the Exchange proposes to change Tier 4 from ''0.500% to 0.949%'' to ''0.500% to 0.799%'' and Tier 5 from ''0.950% and Above'' to ''0.800% and Above.'' The Exchange notes that it is not proposing any changes to the fees within the Primary Improvement Order fee structure and the quantity submitted will continue to be calculated on a monthly basis by totaling the Initiating Participant's Primary Improvement Order volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes.

BVR

Next, the Exchange proposes to adjust certain percentage thresholds within the BVR. Under the BVR, the Exchange offers a tiered per contract rebate for all Public Customer PIP Orders and COPIP Orders of 100 and under contracts that do not trade solely with their contra order. Percentage thresholds are calculated on a monthly basis by totaling the Participant's PIP and COPIP volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes. The Exchange proposes to adjust the percentage thresholds in Tiers 3 and 4. Specifically, the Exchange proposes to change Tier 3 from ''0.340% to 0.949%'' to ''0.340% to 0.799%'' and Tier 4 from ''0.950% and Above'' to ''0.800% and Above.'' The Exchange notes that is it not proposing any changes to the fees within the BVR. The quantity submitted will continue to be calculated on a monthly basis by totaling the Participant's PIP and COPIP volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

BOX believes it is reasonable, equitable and not unfairly discriminatory to adjust the monthly Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes. The volume thresholds with their tiered fees and rebates are meant to incentivize Participants to direct order flow to the Exchange to obtain the benefit of the lower fee or higher rebate, which in turn benefits all market participants by increasing liquidity on the Exchange.

The Exchange believes the proposed amendments to the Primary

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Exchange notes that while a Participant's monthly volume and percentage threshold will remain unchanged, under this proposal their percentage threshold may fall into a different Tier for the remaining trading days in the month. Consequently, a Participant may receive a higher rebate/lower fee for transactions executed within these trading days.

[6] 15 U.S.C. 78f(b)(4) and (5).

Improvement Order percentage thresholds are reasonable, equitable and not unfairly discriminatory. The proposed changes to the thresholds are equitable and not unfairly discriminatory as they are available to all BOX Participants that initiate Auction Transactions, and Participants may choose whether or not to take advantage of the percentage thresholds and their applicable discounted fees. Further, the Exchange believes that the proposed changes are reasonable and competitive as they will further incentivize Participants to direct order flow to the Exchange, benefiting all market participants.

The Exchange also believes the proposed amendments to the BVR in Section I.B.2 of the BOX Fee Schedule are reasonable, equitable and not unfairly discriminatory. The BVR was adopted to attract Public Customer order flow to the Exchange by offering these Participants incentives to submit their Public Customer PIP and COPIP Orders to the Exchange and the Exchange believes it is appropriate to now amend the BVR. The Exchange believes it is equitable and not unfairly discriminatory to amend the BVR, as all Participants have the ability to qualify for a rebate, and rebates are provided equally to qualifying Participants. Other exchanges employ similar incentive programs; [7] and the Exchange believes that the proposed changes to the volume thresholds are reasonable and competitive when compared to incentive structures at other exchanges. Finally, the Exchange believes it is reasonable and appropriate to continue to provide incentives for Public Customers, which will result in greater liquidity and ultimately benefit all Participants trading on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is simply proposing to amend certain percentage thresholds for Auction Transaction fees and rebates in the BOX Fee Schedule. The Exchange believes that the volume based rebates and fees increase intermarket and intramarket competition by incenting Participants to direct their order flow to the exchange, which benefits all participants by providing more trading opportunities and improves competition on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [8] and Rule 19b–4(f)(2) thereunder,[9] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2016–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–53. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–53, and should be submitted on or before December 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–28459 Filed 11–25–16; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* Section B of the PHLX Pricing Schedule entitled ''Customer Rebate Program;'' ISE Gemini's Qualifying Tier Thresholds (page 6 of the ISE Gemini Fee Schedule); and CBOE's Volume Incentive Program (VIP).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79360; File No. TP 16–16]

Order Granting Limited Exemption From Exchange Act Rule 15c2–11 to Certain Interdealer Quotation Systems Pursuant to Exchange Act Rule 15c2–11(h)

November 21, 2016.

By letter dated November 21, 2016 (the ''Letter''), Global OTC requested that the Securities and Exchange Commission (the ''Commission'') grant a limited exemption from rule 15c2–11 under the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), in connection with the publication or submission for publication of quotations for a covered over-the-counter (''OTC'') equity security (an ''OTC Security'' or, plural, ''OTC Securities'') in the interdealer quotation system (''IDQS'') operated by Global OTC (''Global OTC IDQS''). Specifically, Global OTC seeks an exemption to permit broker-dealers, consistent with the approach described below, to publish or submit for

publication quotations in Global OTC IDQS for an OTC Security that is already ''piggyback'' qualified, or ''piggyback'' eligible, under rule 15c2–11(f)(3), in another IDQS, without the broker-dealer separately complying with the requirements of rule 15c2–11, subject to certain conditions.

Rule 15c2–11, with certain exceptions, requires that a broker-dealer that publishes or submits for publication quotations for OTC Securities in a quotation medium gather, review, and preserve certain specified information and have a reasonable basis under the circumstances for believing that the information is accurate in all material respects and was obtained from reliable sources.[1] Rule 15c2–11 includes an exception to the rule's requirements—the ''piggyback'' exception—for when a broker-dealer publishes, in an IDQS [2] that specifically identifies as such unsolicited customer indications of interest, a quotation for an OTC Security that was already the subject of regular and frequent quotations in compliance with rule 15c2–11(f)(3)(i).[3] For this piggyback exception to apply, the security must have been the subject of quotations (exclusive of any identified customer interests) in the IDQS on each of at least 12 days within the previous 30 calendar days, with no more than 4 business days in succession without a quotation.[4] Thus, if a publication or submission for publication of a quotation for an OTC Security meets all of the requirements of this exception, a broker-dealer can ''piggyback'' on either its own or other broker-dealers' previously published quotations in an IDQS.

The Letter represents that the concerns the Commission raised in adopting rule 15c2–11 would not be implicated if exemptive relief, subject to the conditions below, were granted to broker-dealers publishing or submitting for publication quotations in Global OTC IDQS. Specifically, Global OTC describes in the Letter an approach based on transferability of piggyback eligibility from one IDQS to another IDQS to allow a broker-dealer to avail itself of the piggyback exception when quoting in Global OTC IDQS any OTC Security that (1) qualifies for the piggyback exception in another IDQS, or (2) is initially quoted in Global OTC IDQS based on the relief provided in this Order and then establishes and maintains piggyback eligibility under rule 15c2–11(f)(3)(i) based on quotations (exclusive of any identified customer interests) in Global OTC IDQS. Global OTC represents that this approach would assist investors in OTC Securities by increasing competition, promoting fair and orderly markets, and providing redundancy in the event of systems failures by having an additional IDQS in which to continuously quote OTC Securities that already are eligible for the piggyback exception in another IDQS.

Based on the facts and representations made in the Letter, we find that it is appropriate in the public interest, and is consistent with the protection of investors, to grant, and hereby grant, broker-dealers a limited exemption from rule 15c2–11 to permit a broker-dealer to publish or submit for publication quotations in Global OTC IDQS, or in any other IDQS,[5] for an OTC Security that is piggyback eligible under rule 15c2–11(f)(3) in another IDQS, without the broker-dealer separately complying with the requirements of rule 15c2–11, subject to the conditions of this Order.

The conditions of this Order are designed to extend the rule 15c2–11(f)(3)(i) exception to broker-dealers that are publishing or submitting for publication quotations for already-quoted OTC Securities that are currently piggyback eligible under rule 15c2–11(f)(3) in an IDQS other than an IDQS in which piggyback eligibility has been established, while at the same time limiting the scope of relief by excluding from eligibility certain OTC Securities. The first condition limits the applicability of relief to an IDQS that meets the requirements to be an IDQS as defined in the rule [6] and that meets the requirements of rule 15c2–11(f)(3)(i). Conditions two, three, and four are designed to help ensure that the relief is limited to quotations in an IDQS that has established, maintains, and enforces monitoring and review requirements to verify that the OTC Security is piggyback eligible in another IDQS (or has established piggyback eligibility in the IDQS) and that there are current quotations for that OTC Security in that other IDQS, and that the issuer of the OTC Security is not delinquent in its required filing obligations under the federal securities laws, on the day that a broker-dealer commences publishing or submitting for publication quotations for that OTC Security in the IDQS. Finally, condition five is designed to ensure that the IDQS maintains adequate books and records to demonstrate compliance with this Order.

This Order does not expand the number of OTC Securities that are already quoted pursuant to the exception from the requirements of rule 15c2–11 contained in rule 15c2–11(f)(3); rather, this Order extends the rule 15c2–11(f)(3)(i) exception to quotations for these already-quoted OTC Securities published by broker-dealers in an IDQS other than the IDQS in which piggyback eligibility is established if, and only if, the requirements of Rule 15c2–11(f)(3)(i) are otherwise satisfied and the conditions of this Order are met. As such, we do not believe that the transfer of piggyback eligibility for these already-quoted OTC Securities under rule 15c2–11(f)(3), from one IDQS to another IDQS, as conditioned in this Order, constitutes a fraudulent, manipulative, or deceptive practice comprehended within the purpose of rule 15c2–11.

Conclusion

It is hereby ordered, pursuant to Exchange Act rule 15c2–11(h), that broker-dealers are exempt from the requirements of rule 15c2–11 solely to permit broker-dealers to publish or submit for publication quotations in Global OTC IDQS or in any similarly situated IDQS for an OTC Security that is piggyback eligible under rule 15c2–11(f)(3) in another IDQS, subject to the following conditions:

1. The IDQS meets the requirements to be an IDQS as defined in the rule [7] *and* specifically identifies as such unsolicited indications of customer interest of the kind described in paragraph (f)(2) of rule 15c2–11.

2. The IDQS permits a broker-dealer to commence publishing or submitting for publication quotations in such IDQS for the OTC Security, in reliance on this Order, only if (a) the OTC Security is piggyback eligible under rule 15c2–11(f)(3) in another IDQS; *and* (b) the OTC Security has current quotations in that other IDQS, and the symbol for the OTC Security does not contain the fifth letter identifier appended by FINRA to

[1] *See* 17 CFR 240.15c2–11(a)–(c).

[2] Paragraph (e)(2) of rule 15c2–11 defines an IDQS to mean ''any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.'' 17 CFR 240.15c2–11(e)(2). Global OTC represents that it qualifies as an IDQS because Global OTC IDQS does not accept or maintain dark orders and fully attributes to the broker-dealer representing the quotation all quotations submitted on Global OTC IDQS.

[3] *See* 17 CFR 240.15c2–11(f)(3)(i) (providing frequency of quotation requirements for a security to meet the piggyback exception).

[4] *Id.*

[5] Based on the facts and representations, we believe it is appropriate to expand the scope of the exemptive relief to include publishing or submitting for publication quotations in any IDQS, not just Global OTC IDQS, provided that the conditions of this Order are satisfied.

[6] *See* 17 CFR 240.15c2–11(e)(2); *supra* note 2.

[7] *See* 17 CFR 240.15c2–11(e)(2); *supra* note 2.

the symbols of OTC Securities to identify issuers that are delinquent in their required filings, on the day the broker-dealer commences quoting in such IDQS.

3. Once a broker-dealer commences publishing or submitting for publication quotations in the IDQS for the OTC Security in accordance with condition 2, such IDQS permits broker-dealers to continue publishing or submitting for publication quotations in such IDQS for the OTC Security only if the OTC Security continues to be piggyback eligible under rule 15c2–11(f)(3) in another IDQS *or* has established and maintains piggyback eligibility under rule 15c2–11(f)(3)(i) based on quotations (exclusive of any identified customer interests) in such IDQS.

4. The IDQS establishes, maintains, and enforces policies and procedures reasonably designed to ensure compliance with this Order.

5. The IDQS maintains books and records sufficient to demonstrate that such IDQS is complying with the terms of this Order, and such IDQS promptly provides such records to Commission staff upon request.

This Order is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this Order are directed to the anti-fraud and anti-manipulation provisions of the federal securities laws, particularly section 10(b) of the Exchange Act and rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this Order. This Order should not be considered a view with respect to any other question that the publication or submission for publication of quotations in reliance on this Order may raise, including, but not limited to, the applicability of other federal or state laws to such activity.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

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BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(6).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79363; File No. SR–NYSEArca-2016–148]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rules 7.1 and 7.2, and NYSE Arca Equities Rules 7.1 and 7.2

November 21, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 10, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 7.1 (Trading Sessions) to permit the Chief Executive Officer of the Exchange or his or her designee to take certain actions in connection with the trading of securities on the Exchange; (b) NYSE Arca Equities Rule 7.1 (Hours of Business) to permit the President of NYSE Arca Equities or his or her designee to take certain actions in connection with the trading of securities on the NYSE Arca Equities marketplace; and (c) NYSE Arca Rule 7.2 (Holidays) and NYSE Arca Equities Rule 7.2 (Holidays) to remove a reference to presidential election days. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend (a) NYSE Arca Rule 7.1 (Trading Sessions) to permit the Chief Executive Officer (''CEO'') of the Exchange or his or her designee to take certain actions in connection with the trading of securities on the Exchange; (b) NYSE Arca Equities Rule 7.1 (Hours of Business) to permit the President of NYSE Arca Equities or his or her designee to take certain actions in connection with the trading of securities on the NYSE Arca Equities marketplace; and (c) NYSE Arca Rule 7.2 (Holidays) and NYSE Arca Equities Rule 7.2 (Holidays) to remove a reference to presidential election days.

The Exchange believes the proposed changes to NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 would make such rules more reflective of the organizational structure of the Exchange and NYSE Arca Equities. At the same time, the proposed rule changes would ensure that the Boards of Directors of NYSE Arca and of NYSE Arca Equities (each, a ''Board'') continue to have the authority to take action they deem necessary or appropriate in particular situations.

NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1

Proposed Changes to NYSE Arca Rule 7.1

The first paragraph of NYSE Arca Rule 7.1 provides that, unless otherwise ruled by the Board of the Exchange or its designee, the Exchange shall be open for the transaction of business daily except on Saturdays and Sundays, and that the hours at which trading sessions shall open and close shall be established by the Board or its designee. Commentary .01 to Rule 7.1 notes that, except under unusual conditions as may be determined by the Board or its designee, hours during which transactions in options on individual securities may be made on the Exchange shall correspond to the normal hours for business set forth in the rules of the primary exchange listing the securities underlying the options.

The Exchange proposes to amend the first paragraph of NYSE Arca Rule 7.1 to provide that, except as may be

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

otherwise determined by the Board as to particular days, the Exchange shall be open for the transaction of business on every business day. The Exchange proposes to remove the current exclusion of Saturdays and Sundays because Saturdays and Sundays are not business days and therefore no exclusion is needed. Finally, the amended paragraph would provide that the hours at which trading sessions shall open and close may be specified by Exchange rule, as well as by the Board. The two paragraphs of the present rule would become paragraphs (a) and (b). These proposed rule changes are based in part on New York Stock Exchange LLC (''NYSE'') Rule 51(a) and NYSE MKT LLC (''NYSE MKT'') Rule 51(a)—Equities.[4]

The Exchange proposes to add new paragraphs (c), (d), and (e) to NYSE Arca Rule 7.1. These proposed changes are based on NYSE Rule 51(b) and (c) and NYSE MKT Rule 51(b)–(d)—Equities. New paragraph (c) would provide that, except as may be otherwise determined by the NYSE Arca Board, the CEO of the Exchange or his or her designee may halt or suspend trading in some or all securities traded on the Exchange; extend the hours for the transaction of business on the Exchange; close some or all Exchange facilities; determine the duration of any such halt, suspension or closing undertaken; or determine to trade securities on the Exchange's disaster recovery facility.[5]

New paragraph (d) would provide that the CEO or his or her designee shall take any of the actions described in new paragraph (c) only when he or she deems such action to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances such as:

- Actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange,
- a request by a governmental agency or official, or
- a period of mourning or recognition for a person or event.

New paragraph (e) would require that the CEO or his or her designee notify the NYSE Arca Board of actions taken pursuant to the rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.[6]

The Exchange proposes that the commentary to NYSE Arca Rule 7.1 be amended by deleting ''under unusual conditions'' and a reference to the Board's designee, and by adding a reference to the authority of the CEO or his or her designee under new subparagraph (c).

Finally, the Exchange proposes to change the name of NYSE Arca Rule 7.1 from ''Trading Sessions'' to ''Hours of Business,'' which would make it consistent with NYSE Arca Equities Rule 7.1.

Proposed Changes to NYSE Arca Equities Rule 7.1

The first paragraph of NYSE Arca Equities Rule 7.1 provides that, unless otherwise ruled by the NYSE Arca Equities Board, the Corporation shall be open for the transaction of business daily except on Saturdays and Sundays, and the hours at which trading sessions shall open and close shall be established by the NYSE Arca Equities Board. NYSE Arca Equities Rule 7.1 does not provide for a Board designee.

The Exchange proposes to amend the first paragraph of NYSE Arca Equities Rule 7.1 to provide that, except as may be otherwise determined by the NYSE Arca Equities Board as to particular days, the Corporation shall be open for the transaction of business on every business day. The Exchange proposes to remove the current exclusion of Saturdays and Sundays because Saturdays and Sundays are not business days and therefore no exclusion is needed. Finally, the amended paragraph would provide that the hours at which trading sessions shall open and close may be specified by Exchange rule, as well as by the Board. The two paragraphs of the present rule would become paragraphs (a) and (b). These proposed rule changes are based in part on NYSE Rule 51(a) and NYSE MKT Rule 51(a)—Equities.

The Exchange proposes to add a new subparagraph (c) to provide that, except as may be otherwise determined by the NYSE Arca Equities Board, the President of the Corporation or his or her designee may halt or suspend trading in some or all securities traded on the Corporation; extend the hours for the transaction of business on the Corporation; close some or all Corporation facilities; determine the duration of any such halt, suspension or closing; or determine to trade securities on the Exchange's disaster recovery facility. These proposed changes are based on NYSE Rule 51(b) and NYSE MKT Rule 51(b)—Equities.

New subparagraphs (d) and (e) would subject the President or his or her designee to the same limitations and reporting requirements as in proposed NYSE Arca Rule 7.1(d) and (e), which are based on NYSE Rule 51(b) and (c) and NYSE MKT Rule 51(b)–(d)—Equities.

Discussion

Currently, NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 require Board action if extraordinary circumstances arise. However, the Boards may not be able to convene and act quickly, thereby delaying any potential response. Pursuant to their respective bylaws, at least half of the directors on the NYSE Arca and NYSE Arca Equities Boards are Public Directors.[7] Therefore, as a practical matter, they are unlikely to be at or near the Exchange if extraordinary circumstances arise, making it harder to convene quickly. Further, if communication systems are severely compromised in an emergency, the Boards may not be able to convene at all.[8]

Current NYSE Arca Rule 7.1 partially addresses this concern by allowing the NYSE Arca Board to name designees. However, use of a designee requires that the Board make the delegation before any unusual conditions arise. Further, NYSE Arca Rule 7.1 does not set any limits on when designees may act under the rule, unlike proposed paragraphs (c) and (d). Accordingly, the Exchange proposes to delete the references to a Board designee in the first paragraph of

[4] NYSE LLC and NYSE MKT are affiliates of the Exchange. *See* Securities Exchange Act Release Nos. 45433 (February 12, 2002), 67 FR 7441 (February 19, 2002) (SR–NYSE–2001–55), and 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63). NYSE MKT LLC is submitting substantially the same proposed rule change for NYSE MKT Rule 901NY, applicable to the trading of options contracts on NYSE Amex Options LLC. *See* SR–NYSEMKT–2016–106.

[5] As part of its business continuity and disaster recovery plans, the Exchange maintains a disaster recovery facility, which is a secondary data center located in a geographically diverse location, as required by Regulation SCI. *See* 14 CFR 242.1001(a)(2)(v) (requiring policies and procedures for business continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption).

[6] For example, the Exchange may close on a national day of mourning for a former president of the United States.

[7] *See* NYSE Arca, Inc. Bylaws, Article III, Sec. 3.02(a) and NYSE Arca Equities, Inc. Bylaws, Art. III, Sec. 3.02(a). ''Public Directors'' are directors that are persons from the public who are not, or are not affiliated with, a broker-dealer in securities and, in the case of the Exchange Board, are not employed by, or involved in any material business relationship with, the Exchange or its affiliates.

[8] For both Boards, the presence of a majority of directors is necessary to constitute a quorum. *See* NYSE Arca, Inc. Bylaws, Article III, Sec. 3.07 and NYSE Arca Equities, Inc. Bylaws, Art. III, Sec. 3.09.

NYSE Arca Rule 7.1 and commentary thereto. Such proposed deletions would make NYSE Arca Rule 7.1 consistent with NYSE Arca Equities Rule 7.1, NYSE Rule 51(a) and NYSE MKT Rule 51(a)—Equities, none of which contemplate the Board appointing a designee to set the hours for business.

The Exchange believes designating by rule that the CEO of the Exchange, President of NYSE Arca Equities, or their designees may take certain actions in extraordinary circumstances would make NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 more reflective of the organizational structure of the Exchange and NYSE Arca Equities. As described above, the CEO, President, or their designees would be able to take such action only when they deem it to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances.

The proposed amendments would ensure that the NYSE Arca and NYSE Arca Equities Boards continue to have the authority to take action they deem necessary or appropriate in particular situations. In addition, as proposed, the amended rules would ensure that the Boards would remain informed, by requiring the CEO or President to notify the relevant Board of actions taken pursuant to the authority granted under the rule, with the exception of a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

The proposed changes would have the additional benefit of bringing NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 into greater conformity with the rules of the NYSE and NYSE MKT.[9]

The Exchange notes that the trading rules of Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGX Exchange, Inc., and Bats EDGA Exchange, Inc. also provide that the CEO of the relevant exchange may halt, suspend trading in any and all securities traded on the exchange, close some or all exchange facilities, and determine the duration of any such halt, suspension, or closing, when he deems such action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest. The lists of special circumstances set out in such trading rules are substantially similar to those in NYSE Rule 51 and NYSE MKT Rule 51—Equities.[10]

NYSE Arca Rule 7.2 and NYSE Arca Equities Rule 7.2

The last sentence in the first paragraph of NYSE Arca Rule 7.2 provides that the Board will determine whether to open the Exchange on presidential election days. Similarly, the last sentence in the first paragraph of NYSE Arca Equities Rule 7.2 provides that the Board will determine whether to open NYSE Arca Equities on presidential election days. The Exchange proposes to delete both sentences.

The existing sentences are worded as if the Exchange and NYSE Arca Equities will be closed on presidential election days unless the Board determines otherwise. The Exchange believes the wording is potentially confusing to investors, because the Exchange and NYSE Arca Equities are generally open on presidential election days. Accordingly, the Exchange proposes to delete the language. The proposed edits will not affect the Board's ability to close the Exchange or NYSE Arca Equities for a presidential election day, as it would continue to have authority to do so under Rule 7.1.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[11] in general, and further the objectives of Section 6(b)(5) of the Act,[12] in particular, because they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because they are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule changes are consistent with Section 6(b)(1) of the Act,[13] in that they enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed changes to NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest, and enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, because they would make NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 more reflective of the organizational structure of the Exchange and NYSE Arca Equities. In this manner, they would strengthen the ability of the Exchange and NYSE Arca Equities to respond appropriately and in a timely fashion to extraordinary circumstances, even if the relevant Board is unable to convene. However, unlike present NYSE Arca Rule 7.1, which puts no limits on when the Board's designees may act, the proposed amended rules would ensure that the CEO, President, or their designees, as applicable, would be able to take action only when he or she deems such action to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances.

The Exchange believes that the proposed changes to NYSE Arca Rule 7.2 and NYSE Arca Equities Rule 7.2 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest, and enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, because they would remove sentences that are worded as if the Exchange and NYSE Arca Equities will be closed on presidential election days unless the Board determines otherwise. The Exchange believes the wording is potentially confusing to investors, because the Exchange and NYSE Arca Equities are generally open on presidential election days. Accordingly, the Exchange proposes to delete the language.

In addition, the Exchange believes that the proposed rule changes to [sic] would remove impediments to, and perfect the mechanisms of, a free and open market and a national market

[9] NYSE Rule 51(a) and NYSE MKT Rule 51(a)—Equities do not state that the CEO can name a designee. However, pursuant to NYSE Rule 1 and NYSE MKT Rule 1—Equities, the CEO of the relevant exchange may designate one or more qualified employees to act in his or her place in the event that the CEO is not available. *See* NYSE Rule 1 and NYSE MKT Rule 1—Equities. *See also* Securities Exchange Act Release No. 61810 (March 31, 2010), 75 FR 17816 (April 7, 2010) (SR–NYSE–2010–26).

[10] *See* Bats BZX Exchange, Inc. Rule 11.1(c); Bats BYX Exchange, Inc. Rule 11.1(c); Bats EDGX Exchange, Inc. Rule 11.1(c); and Bats EDGA Exchange, Inc. Rule 11.1(c).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(1).

system and, in general, protect investors and the public interest, and enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, because they would ensure that the NYSE Arca and NYSE Arca Equities Boards continue to have the authority to take action they deem necessary or appropriate in particular situations. In addition, as proposed, the proposed amended NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1 would ensure that the Boards would remain informed, by requiring the CEO or President to notify the relevant Board of actions taken pursuant to the authority granted under the rule, with the exception of a period of mourning or recognition for a person or event, as soon thereafter as is feasible. The proposed changes to NYSE Arca Rule 7.2 and NYSE Arca Equities Rule 7.2 will not affect the Board's ability to close the Exchange or NYSE Arca Equities for a presidential election day, as it would continue to have authority to do so under Rule 7.1.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the administration and functioning of the Exchange and its subsidiary NYSE Arca Equities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay would immediately strengthen the ability of the Exchange and NYSE Arca Equities to respond appropriately and in a timely fashion to extraordinary circumstances. The Exchange further states that waiving the 30-day operative delay would not affect the authority of the NYSE Arca and NYSE Arca Equities Boards to take action they deem necessary or appropriate in particular situations. Moreover, the Exchange states that waiver of the 30-day operative delay would allow the Exchange to align its rules with those of its affiliated exchanges without delay. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–148 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–148. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–148, and should be submitted on or before December 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–28460 Filed 11–25–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79366; File No. SR–NASDAQ–2016–106]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Granting Approval of Proposed Rule Change To Modify Rule IM–5900–7 To Adjust the Entitlement to Services of Acquisition Companies

November 21, 2016.

I. Introduction

On September 22, 2016, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the treatment of acquisition companies under Rule IM–5900–7 so that acquisition companies will not be entitled to complimentary services under IM–5900–7 until they complete an acquisition meeting the Exchange's requirements, as described below. The proposed rule change was published in the **Federal Register** on October 7, 2016.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposed to amend Rule IM–5900–7 to adjust the timing of when complimentary services are provided to listed acquisition companies under that rule. Under the current rules, except as described below, Nasdaq generally does not permit the initial or continued listing of a company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies. However, in the case of a company whose business plan is to complete an initial public offering (''IPO'') and engage in a merger or acquisition with one or more unidentified companies within a specific period of time (an ''Acquisition Company''), Nasdaq will permit the listing on the Nasdaq Global Market or Capital Market if the company meets all applicable initial listing requirements, as well as the additional conditions described in Nasdaq Rule IM–5101–2 (Listing of Companies Whose Business Plan is to Complete One or More Acquisitions).[4] Pursuant to Rule IM–5101–2(b), among other requirements, within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the company specified in its registration statement, the company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination (a business combination that satisfies the conditions of IM–5101–2(b) is referred to as a ''Business Combination'').[5] Rule IM–5101–2 also requires that following each Business Combination, the combined company must meet the requirements for initial listing.[6]

As set forth in Rule IM–5900–7, the Exchange offers certain complimentary services to companies newly listing on the Nasdaq Global and Global Select Markets in connection with an IPO, upon emerging from bankruptcy, or in connection with a spin-off or carve-out from another company (''Eligible New Listings'') and to companies that switch their listing from the New York Stock Exchange (''NYSE'') to the Global or Global Select Markets (''Eligible Switches'').[7] The complimentary services provided to some listed companies under IM–5900–7 are not, however, available to companies listing on the Capital Market. The Exchange also noted that, as of the date of filing its proposal with the Commission, all companies listing as an Acquisition Company have listed on the Capital Market.[8]

Currently, pursuant to Rule IM–5900–7, the services offered include a whistleblower hotline (with a retail value of approximately $4,000 annually), an investor relations Web site (with a retail value of approximately $16,000 annually), disclosure services for earnings or other press releases (with a retail value ranging from $15,000 to $20,000 annually, depending on the company's market capitalization and whether it is an Eligible New Listing or an Eligible Switch), audio webcasting (with a retail value of approximately $6,500 annually), market analytic tools (with a retail value ranging from approximately $29,000 to $51,000 annually, depending on the number of users granted access), and may include market advisory tools such as stock surveillance (with a retail value of approximately $51,000 annually), global targeting (with a retail value of approximately $40,000 annually), monthly ownership analytics and event driven targeting (with a retail value of approximately $46,000 annually), and an annual perception study (with a retail value of approximately $35,000 annually).[9] The total retail value of the services provided ranges from approximately $70,500 to $188,500 annually, depending on a company's market capitalization and whether it is an Eligible New Listing or an Eligible Switch.[10] In addition, one-time development fees of approximately $3,500 to establish the services in the first year are waived.[11] The length of the complimentary period that a company receives services under IM–5900–7 is either two or four years from the listing date, depending on a company's market capitalization and whether it is an

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79025 (October 3, 2016), 81 FR 69881 (October 7, 2016) (''Notice'').

[4] *Id.* at 69882. Rule IM–5101–2(a) requires that at least 90% of the gross proceeds from the IPO and any concurrent sale by the company of equity securities must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an ''insured depository institution,'' as that term is defined in Section 3(c)(2) of the Federal Deposit Insurance Act, or in a separate bank account established by a registered broker or dealer (collectively, a ''deposit account''). For a full set of requirements to list an Acquisition Company, *see* Rule IM–5101–2. The Exchange permits Acquisition Companies to list only on the Capital and Global Markets but not the Global Select Market. *See* Notice, *supra* note 3, at 69882 (citing Rule 5310(i), which provides that a company subject to IM–5101–2 is not eligible to list on the Global Select Market).

[5] Rule IM–5101–2 also provides, among other things, that if the company does not meet the requirements for initial listing following a business combination or does not comply with one of the requirements set forth in the rule, Nasdaq will issue a Staff Delisting Determination to delist the company's securities.

[6] *See* Rule IM–5101–2. If the company does not meet the requirements for initial listing following a Business Combination or does not comply with one of the requirements set forth in the IM–5101–2, Nasdaq will issue a Staff Delisting Determination under Nasdaq Rule 5810 to delist the company's securities. *Id.*

[7] In addition, all companies listed on Nasdaq receive services from Nasdaq, including Nasdaq Online and the Market Intelligence Desk. *See* Notice, *supra* note 3, at 69882.

[8] *See* Notice, *supra* note 3, at 69882.

[9] The Exchange noted that it does not propose to make any changes in its filing to the values of the various services provided to eligible listed companies discussed above, which values are specified in Rule IM–5900–7. *See* Notice, *supra* note 3, at 69882.

[10] *See* Rule IM–5900–7.

[11] *Id.*

Eligible New Listing or an Eligible Switch.[12] Notwithstanding the foregoing, if an Eligible New Listing or Eligible Switch begins to use a particular service provided under IM–5900–7 within 30 days after the date of listing, the complimentary period for that service begins on the date of first use.[13]

The Exchange has now proposed to amend Rule IM–5900–7 to provide that an Acquisition Company will no longer be deemed to be an Eligible New Listing or an Eligible Switch at the time of its initial listing, but instead will be deemed to be an Eligible New Listing at such time as it has completed a Business Combination and lists such merged company on the Global or Global Select Market in conjunction with that Business Combination.[14] Thus, under the proposal, an Acquisition Company will no longer be eligible to receive complimentary services under IM–5900–7 at the time of its initial listing on the Global Market before it has completed a Business Combination, but will instead be entitled to receive such services if and when it completes a Business Combination and lists on the Global or Global Select Market in conjunction with that Business Combination.

Under the proposal, for purposes of providing complimentary services under IM–5900–7 to certain listed companies, the Exchange would treat a company previously listed on the Nasdaq Capital Market as listing on the Global or Global Select Market in conjunction with a Business Combination if it files an application to list on the Global or Global Select Market before completing the combination and demonstrates compliance with all applicable criteria within 60 days of completing the Business Combination. According to the Exchange, this additional 60-day period may be required, in some cases, to allow time for the issuance of shares in the transaction and then for the newly formed entity to obtain information from third parties to demonstrate compliance with the shareholder and public float requirements of Nasdaq's Global or Global Select Market.[15]

Under the proposed rules, if the Acquisition Company is listed on the Global Market at the time it completes a Business Combination and remains listed on the Global Market or transfers to the Global Select Market, the complimentary period for services under IM–5900–7 would commence on the date of such Business Combination.[16] If the Acquisition Company is listed on the Capital Market at the time it completes the Business Combination, under the proposed rules the Acquisition Company would be given 60 days to demonstrate that it meets the listing criteria of the Global or Global Select Market; if it does qualify within 60 days, the complimentary period for services under IM–5900–7 would commence on the date of listing on the Global or Global Select Market.[17] In either case, however, if the company lists on the Global or Global Select Market and begins to use a particular service provided under IM–5900–7 within 30 days after the date of the Business Combination, the complimentary period for that service would begin on the date of first use.

Finally, the Exchange proposed to make various non-substantive technical and conforming revisions to its Rules.[18]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act.[19] Specifically, the Commission believes it is consistent with the provisions of Sections 6(b)(4) and (5) of the Act,[20] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission believes that the proposed rule change is consistent with Section 6(b)(8) of the Act[21] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that it is consistent with the Act for the Exchange to adjust the timing of when Acquisition Companies are eligible to receive complimentary services under IM–5900–7 from the time of initial listing of the Acquisition Company on the Global Market in connection with an IPO or with switching their listing from the NYSE,[22] to the time of listing on the Global or Global Select Market in conjunction with a Business Combination. The Exchange represented that, in its view, Acquisition Companies do not generally need the services provided under IM–5900–7 upon listing, but would find these services useful if they remain listed after they complete a Business Combination.[23] The Exchange explained that at the time of initial listing, Acquisition Companies do not have operating businesses, issue few press releases, and frequently do not have detailed Web sites.[24] The Exchange stated when an Acquisition Company completes a Business Combination with an operating company, the combined company is similar to other Eligible New Listings, such as IPOs, and will have increased need to focus on identifying and communicating with its shareholders.[25] The Exchange explained that like the other Eligible New Listings that receive complimentary services under the existing rule, these companies are transitioning to the traditional public

[12] *Id.*

[13] *Id.*

[14] The Exchange stated that after completing the Business Combination, the company would receive the same services under IM–5900–7, with the same value, as any other Eligible New Listing. *See* Notice, *supra* note 3, at 69882.

[15] *See* Notice, *supra* note 3, at 69882. *See, e.g.,* Nasdaq Rules 5315 and 5405, which set forth the quantitative listing requirements for Primary Equity Securities for the Nasdaq Global Select and Global Markets.

[16] The Exchange noted that an Acquisition Company must meet the initial listing requirements at the time of its Business Combination even if it is already listed on the Global Market. *See* Notice, *supra* note 3, at 69883 (citing Rule IM–5101–2(d)).

[17] The Exchange stated that an Acquisition Company that was listed on the Capital Market before the Business Combination would remain on the Capital Market until it demonstrates compliance with the applicable Global or Global Select Market initial listing criteria. *See* Notice, *supra* note 3, at 69882.

[18] Specifically, the Exchange proposed to delete a reference in the existing rule text to ''NASDAQ'' when referring to the Global and Global Select Markets, to conform to other references to the Global and Global Select Markets within the rule. In addition, the Exchange proposed to update the introductory note in Rule IM–5900–7 to include the specific date that a prior change to the rule was approved. *See* Securities Exchange Act Release No. 78806 (September 9, 2016), 81 FR 63523 (September 15, 2016) (approving NASDAQ–2016–098) (''NASDAQ 2016 Order'').

[19] 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(4) and (5).

[21] 15 U.S.C. 78f(b)(8).

[22] An Acquisition Company that has not yet completed a Business Combination may switch from NYSE to the Capital or Global Market, but would only be eligible to receive the services under IM–5900–7 at the time it completes a Business Combination.

[23] *See* Notice, *supra* note 3, at 69882.

[24] *Id.* The Exchange stated in its filing that Acquisition Companies tend to trade infrequently and in a tight range until the company completes an acquisition. *Id.* The Exchange also stated that it typically takes more than two years for an Acquisition Company to identify a target and complete an acquisition and, as a result, the term of any complimentary services offered to an Acquisition Company upon initial listing would usually expire before the company acquired a target and began operating as an operating company that could benefit from the services. *Id.*

[25] *See id.* at 69883.

company model and the complimentary services provided under IM–5900–7 will help ease that transition.[26] Therefore, the Exchange stated that it believes that it is not an inequitable allocation of fees nor unfairly discriminatory to offer the services to an Acquisition Company, as described in IM–5101–2, only upon completion of a Business Combination.[27]

In addition, the Exchange stated that in many cases Acquisition Companies will consider transferring to a new listing venue at the time they complete a Business Combination, and that the proposed rule change will enable the Exchange to compete to retain these companies by offering them a package of complimentary services that assists their transition to becoming a traditional public operating company.[28]

The Exchange also recognized that not all Acquisition Companies will complete a Business Combination and that some listed Acquisition Companies will therefore never become eligible for the complimentary services under IM–5900–7.[29] However, the Exchange reiterated that it does not believe that the services under IM–5900–7 generally would be useful to an Acquisition Company and that any such Acquisition Company therefore would not suffer any meaningful detriment as a consequence.[30]

As noted in the previous order approving IM–5900–7, Section 6(b)(5) of the Act does not require that all issuers be treated the same; rather, the Act requires that the rules of an Exchange not unfairly discriminate between issuers.[31] In its proposal, the Exchange has made representations that reasonably justify treating an Acquisition Company that lists on the Global or Global Select Market in conjunction with a Business Combination similar to a newly-listed operating company. In addition, when listed as an Acquisition Company, the Acquisition Company will also be eligible to receive complimentary products through the Exchange's Market Intelligence Desk and NASDAQ Online similar to all listed companies.[32] The Commission further notes that an Acquisition Company that completes a Business Combination will be receiving the same package of services as an Eligible New Listing[33] and that it will not be receiving any additional benefits or services by virtue of the proposed rule change. The Commission has previously found that the package of complimentary services offered to Eligible New Listings and Eligible Switches is equitably allocated among issuers consistent with Section 6(b)(4) of the Act and that describing the values of the services adds greater transparency to the Exchange's rules and to the fees applicable to such companies.[34] The Commission also believes that describing in the exchange's rules the products and services available to listed companies and their associated values will ensure that individual listed companies are not given specially negotiated packages of products or services to list, or remain listed, that would raise unfair discrimination issues under the Act.[35] Based on the foregoing, the Commission believes that the Exchange has provided a sufficient basis for adjusting the timing of when Acquisition Companies are eligible to receive the additional complimentary services set forth under IM–5900–7 from the time of an Acquisition Company's initial listing on the Global Market in connection with an IPO or with switching their listing from NYSE, to the time of an Acquisition Company's listing on the Global or Global Select Market in conjunction with a Business Combination, and that this change does not unfairly discriminate among issuers and is therefore consistent with the Act. For similar reasons, and as the value of the services offered are not changing, only the timing of when such services are provided to an Acquisition Company, we find that the proposal is consistent with Section 6(b)(4) of the Act.[36]

The Commission also believes that it is consistent with the Act for the Exchange to allow the complimentary period for a particular service to begin on the date of first use if an Acquisition Company that has completed a Business Combination begins to use the service within 30 days after the date of the Business Combination. The Exchange stated in its filing that, in its experience, it can take companies a period of time to review and complete necessary contracts and training for the complimentary services under IM–5900–7 following their becoming eligible for those services and that allowing this modest 30 day period, if the company needs it, will help to ensure that the company will have the benefit of the full period permitted under the rule to actually use the services, thus giving companies the full intended benefit.[37] The Commission notes that Rule IM–5900–7 currently allows an Eligible New Listing or an Eligible Switch to begin using services within 30 days of its initial listing date.[38] As noted in the NASDAQ 2014 Order, the Commission believes that this would provide only a short window of additional time to allow companies to finalize their contracts for the complimentary services. The Commission notes that under the proposed rule this additional 30 day window would only be available to Acquisition Companies that list on the Global or Global Select Markets in conjunction with a Business Combination and thereby treats such Acquisition Companies, at the time they qualify for listing as an operating company, the same as other newly-listed companies that qualify as Eligible New Listings under Rule IM–5900–7.[39]

The Commission believes that it is consistent with the Act for the Exchange to define a company listing on Nasdaq's Global or Global Select Markets in conjunction with a Business Combination to include a company that is listed on the Capital Market at the time of the Business Combination if it both filed an application to list on the Global or Global Select Market before completing the Business Combination and demonstrates compliance with all applicable criteria for the Global or Global Select Market within 60 days of completing the Business Combination, and to provide that the period of complimentary services for such a company will commence on the date of its listing on the Global or Global Select Market. The Exchange represented that, in its experience, such a company may need a period of as long as 60 days to obtain information from third parties to demonstrate compliance with the listing

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] 15 U.S.C. 78f(b)(5); *see also* Securities Exchange Act Release No. 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (approving NASDAQ–2011–122) (''NASDAQ 2011 Order'').

[32] *See supra,* note 7; *see also* NASDAQ 2011 Order, *supra* note 31, at 79262.

[33] *See* Rule IM–5101–2, requiring, among other things, that an Acquisition Company meet the requirements for initial listing after it meets the business combination requirements of IM–5101–2(b) just as is required for other Eligible New Listings.

[34] *See* NASDAQ 2011 Order, *supra* note 31, at 79266 and NASDAQ 2016 Order, *supra* note 18, at 63525.

[35] *See, e.g.,* Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449, 51452 (August 18, 2011) (approving NYSE–2011–20).

[36] The Commission has also approved similar rule proposals filed by other exchanges. *See infra* note 48 and accompanying text.

[37] *See* Notice, *supra* note 3, at 69883.

[38] *See* Securities Exchange Act Release No. 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (approving NASDAQ–2014–058) (''NASDAQ 2014 Order'').

[39] The Commission expects the Exchange to track the start (and end) date of each free service.

requirements.[40] The Exchange stated that this 60-day period appropriately recognizes the practical problem that a company may have with demonstrating compliance with the initial listing requirements for the Global or Global Select Market at exactly the time of its Business Combination.[41] The Exchange further stated that it believes that it is not unfairly discriminatory to limit this 60-day period to Acquisition Companies transitioning from the Capital Market to the Global or Global Select Market, as the Exchange expects it would be rare for a company already on the Global Market to need additional time to demonstrate compliance with initial listing requirements.[42] The Commission also notes that the treatment of an Acquisition Company completing a Business Combination on the Capital Market as an Eligible New Listing under IM–5900–7 for purposes of listing on the Global and Global Select Markets, as long as it completes the Business Combination and lists no later than 60 days from that date, is consistent with the other changes noted above concerning when complimentary services are received by an Acquisition Company listed on the Global and Global Select Markets.

In addition, the Exchange stated that beginning the complimentary period for a company in this situation on the date of its listing on the Global or Global Select Market (rather than on the date of the Business Combination as is the case for companies listed on Global Market at the time of the Business Combination) is consistent with the period provided to other Eligible New Listings and Eligible Switches under the current rules, which begins on the date of listing.[43] The Exchange also noted that, prior to the point of demonstrating compliance with the listing requirements, there is no certainty as to whether the company will qualify for the Global or Global Select Market and be eligible to receive the services and, as a result, complimentary services could not be provided prior to that date.[44] Furthermore, the Exchange noted that the proposal provides that a company that takes advantage of the 60-day time period to demonstrate compliance cannot further extend the start of the complimentary period by using an additional 30-day period to start using the complimentary services.[45]

Based on the foregoing, the Commission believes that the Exchange has provided a sufficient basis for treating a company listed on the Capital Market at the time it completes a Business Combination as listing on the Global or Global Select Market in conjunction with a Business Combination if it files an application to list on the Global or Global Select Market before completing the combination and demonstrates compliance with all applicable criteria within 60 days of completing the Business Combination, and for beginning the complimentary period for a company in this situation on the date of its listing on the Global or Global Select Market rather than on the date of the Business Combination, and that these changes do not unfairly discriminate among issuers and are therefore consistent with Section 6(b)(5) of the Act.

The Commission also believes that the Exchange is responding to competitive pressures in the market for listings in making this proposal. Specifically, the Exchange has represented that, in many cases, an Acquisition Company will consider transferring to a new listing venue when it completes a Business Combination and that the proposed rule change would allow it to compete to retain these companies by offering them a package of complimentary services that assists their transition to being a traditional public company.[46] The Exchange also represented that when the complimentary period ends, a former Acquisition Company that had acquired an operating business will be more likely to continue to use the Nasdaq Corporate Solutions service or a competing service, whereas otherwise they may not be exposed to the value of these services and therefore may not purchase any, which will create additional users of the service class and enhance competition among service providers.[47] Further, the Commission notes that it has recently approved similar proposals filed by other exchanges with respect to the timing of complimentary services offered to Acquisition Companies under their rules.[48] The Commission also notes that nothing in the Exchange's rules requires an Acquisition Company to remain listed on the Exchange after it completes a Business Combination and that such company is free to list on other markets. Accordingly, the Commission believes that the proposed rule reflects the current competitive environment for exchange listings among national securities exchanges, and is appropriate and consistent with Section 6(b)(8) of the Act.[49]

Finally, the Commission finds that it is consistent with Section 6(b)(5) of the Act[50] for the Exchange to make various technical and conforming revisions to facilitate clarity of its Rules.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[51] that the proposed rule change (SR–NASDAQ–2016–106) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–28461 Filed 11–25–16; 8:45 am]

BILLING CODE 8011–01–P

[40] *See* Notice, *supra* note 3, at 69883. As noted above, the Exchange stated that this additional time may be required, in some cases, to allow the issuance of shares in the transaction and then for the newly formed entity to obtain information from third parties to demonstrate compliance with the shareholder and public float requirements. *See supra* note 15 and accompanying text.

[41] *See* Notice, *supra* note 3, at 69883.

[42] *See id.* For example, the Exchange explained that an Acquisition Company that is already listed on the Global Market would be required to have 400 round lot holders upon initially listing and would be required to have 400 total holders for continued listing. *Id.*

[43] As described above, while the complimentary period will begin on the date of listing on the Global or Global Select Markets, if the company begins to use a particular service within 30 days after the date of the Business Combination, the period begins for that service on the date of first use.

[44] *See* Notice, *supra* note 3, at 69883.

[45] *See id.* For example, if a company completes a Business Combination on Day 1, demonstrates compliance with Global or Global Select Market listing standards and becomes listed on that market on Day 45, and begins using a certain complimentary service on Day 90, the complimentary period for that service would begin on Day 45, the day of listing. However, if a company completes a Business Combination on Day 1 and demonstrates compliance with Global or Global Select Market listing standards and becomes listed on one of those markets on Day 15, and begins using a certain complimentary service on Day 30, the complimentary period for that service would begin on Day 30, which is 30 days from the Business Combination or 15 days after listing.

[46] *See* Notice, *supra* note 3, at 69883.

[47] *See id.* The Exchange also noted that other service providers can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders. *Id.*

[48] *See* Securities Exchange Act Release Nos. 79056 (October 6, 2016), 81 FR 70449 (October 12, 2016) (approving NYSEMKT–2016–62) and 79187 (October 28, 2016), 81 FR 76403 (November 2, 2016) (approving NYSE–2016–58).

[49] 15 U.S.C. 78f(b)(8).

[50] 15 U.S.C. 78f(b)(5).

[51] 15 U.S.C. 78s(b)(2).

[52] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14929 and #14930]

Kansas Disaster Number KS–00098

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 Kansas (FEMA—4287—DR), dated 10/20/2016.

Incident: Severe Storms and Flooding.

Incident Period: 09/02/2016 through 09/12/2016.

EFFECTIVE DATE: 11/15/2016.

Physical Loan Application Deadline Date: 12/19/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 07/20/2017.

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 KANSAS, dated 10/20/2016, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: PHILLIPS.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia G. Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–28491 Filed 11–25–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14981 and #14982]

Virginia Disaster #VA–00066

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Virginia (FEMA–4291–DR), dated 11/15/2016.

Incident: Hurricane Matthew.

Incident Period: 10/07/2016 through 10/15/2016.

EFFECTIVE DATE: 11/15/2016. Physical Loan Application Deadline Date: 01/17/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 08/15/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/15/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Cities and Counties:

Chesapeake City, Franklin City, Isle of Wight, Norfolk City, Portsmouth City, Southampton, Suffolk City, Virginia Beach City.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 149818 and for economic injury is 149828.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia G. Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–28515 Filed 11–25–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14609]

California Disaster #CA–00243 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 02/02/2016.

Incident: Ocean Conditions Resulting in the Delayed Commercial Dungeness Crab Season and Closure of Commercial Rock Crab Fishery.

Incident Period: 11/06/2015 and continuing through 11/02/2016.

EFFECTIVE DATE: 11/16/2016.

EIDL Loan Application Deadline Date: 11/02/2016.

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 an Economic Injury declaration for the State of California, dated 02/02/2016 is hereby amended to establish the incident period for this disaster as beginning 11/06/2015 and continuing through 11/02/2016.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: November 16, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–28490 Filed 11–25–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9803]

E.O. 13224 Designation of Abdullah Ahmed al-Meshedani, aka Abdullah Ahmed al-Mashhadani, aka Abdullah Ahmad al-Mashhadani, aka Abu Qassim, aka, Abu Kassem, aka Abu al-Qasem, as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(b) of E.O. 13224 of September 23, 2001, as amended by E.O. 13268 of July 2, 2002, and E.O. 13284 of January 23, 2003, I hereby determine that the individual known as Abdullah Ahmed al-Meshedani, aka Abdullah Ahmed al-Mashhadani, aka Abdullah Ahmad al-Mashhadani, aka Abu Qassim, aka, Abu Kassem, aka Abu al-Qasem, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the

blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: October 21, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–28585 Filed 11–25–16; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice 9801]

E.O. 13224 Designation of Jorge Quispe Palomino, aka Comrade Raul as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(b) of E.O. 13224 of September 23, 2001, as amended by E.O. 13268 of July 2, 2002, and E.O. 13284 of January 23, 2003, I hereby determine that the person known as Jorge Quispe Palomino, also known as Comrade Raul, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: October 31, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–28551 Filed 11–25–16; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 9802]

E.O. 13224 Designation of Tarcela Loya Vilchez, aka Comrade Olga as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(b) of E.O. 13224 of September 23, 2001, as amended by E.O. 13268 of July 2, 2002, and E.O. 13284 of January 23, 2003, I hereby determine that the person known as Tarcela Loya Vilchez, also known as Comrade Olga, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: October 31, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–28583 Filed 11–25–16; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 9791]

30-Day Notice of Proposed Information Collection: Disclosure of Violations of the Arms Export Control Act

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *December 28, 2016.*

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

You must include the DS form number, information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Danielle Canfield, Directorate of Defense Trade Controls, Department of State, who may be reached at *CanfieldDP@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Disclosure of Information Related to Potential Violations of the Arms Export Control Act.
- *OMB Control Number:* 1405–0179.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* T/PM/DDTC.
- *Form Number:* DS–7787.
- *Respondents:* Individuals and companies engaged in the business of manufacturing, exporting, or temporarily importing defense hardware or defense technical data; furnishing defense services; or brokering.
- *Estimated Number of Respondents:* 1500.
- *Estimated Number of Responses:* 1500.
- *Average Time per Response:* 10 hours.
- *Total Estimated Burden Time:* 15,000 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary, unless required under ITAR Sections 126.1, 126.16, 126.17, 123.17.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Directorate of Defense Trade Controls (DDTC), Bureau of Political-Military Affairs, U.S. Department of State, in accordance with the Arms Export Control Act (AECA) (22 U.S.C. 2751 *et seq.*) and the AECA's implementing regulations, the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130), has the principal missions of taking final action on license applications and other requests for defense trade transactions via commercial channels, ensuring compliance with the statute and regulations, and collecting various types of reports. By statute, Executive Order, regulation, and delegation of authority, DDTC is charged with controlling the export and temporary import of defense articles and the provision of defense services covered by the U.S. Munitions List, and the brokering thereof.

In accordance with ITAR Part 127, DDTC maintains a robust program to ensure compliance with the AECA and ITAR. As a part of this program, DDTC encourages the voluntary disclosure of potential violations of the AECA, ITAR, and any regulation, order, or authorization issued thereunder. The information disclosed is analyzed to determine whether administrative action concerning any violation is warranted; the voluntary nature of such a disclosure may be considered a mitigating factor in determining the administrative penalties, if any, which may be imposed. Failure to report a violation may result in circumstances detrimental to U.S. national security and foreign policy interests and will be considered as an adverse factor in determining the appropriate disposition of such violations. Also, the activity in question might merit referral to the Department of Justice for consideration of whether criminal prosecution is warranted. In such cases, DDTC will notify the Department of Justice of the voluntary nature of the disclosure, but the Department of Justice is not required to give that fact any weight.

The ITAR also imposes a duty to notify DDTC of potential violations of the AECA and ITAR in certain instances. In accordance with ITAR §§ 123.17(j), 126.1(e)(2), 126.16(h)(8) and (n), and 127.17(h)(8) and (n), any person involved in or with knowledge of activities identified or prohibited by these sections must notify DDTC of the violations or produce documents and information, respectively.

In certain circumstances, DDTC may also request or direct a registrant or another party to disclose details about a particular transaction or program based on information it receives from partner federal agencies or other sources. The information required for a directed disclosure is largely the same as that requested in a voluntary disclosure and must be sufficient for DDTC to determine the precise nature of the violation, the circumstances surrounding it, and any remediation efforts that have been put in place.

ITAR § 127.12 enunciates the information which should accompany a disclosure. Historically, respondents to this information collection submitted their disclosures to DDTC in writing via hard copy documentation. However, as part of an IT modernization project designed to streamline the collection and use of information by DDTC, a form has been developed for the submission of disclosures. This will allow both DDTC and respondents submitting a disclosure to more easily track and analyze submissions. This method of submission is discussed in detail below.

Response to Public Comments

On June 20, 2016, DDTC published a **Federal Register** Notice requesting initial public comments on the proposed disclosure form, DS–7787 ''Disclosure of Violations of the Arms Export Control Act.'' 81 FR 39994. DDTC received nine comments in response to this request, summarized below along with DDTC's responses:

Several commenters opined that the DS–7787 form should merely function as a cover sheet for disclosure submissions in order to allow submitters to use a more narrative format to notify DDTC of potential violations. DDTC notes that the intended use of the form is to utilize uniform data fields for greater search and analytics capabilities and readability in the case management system; the unlimited-character text boxes associated with each data field will allow ample room for narratives to be included in the submission and therefore this comment was not accepted. DDTC does recognize, however, that the need exists for a mechanism to allow submitters to explain ancillary information, and will add an ''Additional Relevant Information'' text box and the ability to upload supporting documentation to the form. However, DDTC stresses that this does not absolve submitters of the responsibility to use the form as the primary vehicle for declaring violations.

Other comments concerned the burden associated with the form, which DDTC reasons to be an average of 10 hours per submission. These commenters argued that a 10-hour burden is inadequate to capture the amount of effort that is required by certain complex disclosures; DDTC appreciates these comments but replies that 10 hours is an average figure, and while some disclosures are very complex, the vast majority of disclosures declared on an annual basis are discrete instances which take far less than 10 hours per response. Therefore, DDTC believes 10 hours to be an accurate representation of the total average burden per response.

Several commenters also requested that the instructions be revised to, among others, define which fields of the form are mandatory; explain how to determine the number of violations; clarify what information is required for ''related disclosures,'' ''discovery date,'' and ''relevant Department of State license(s) or authorization(s)''; describe the disclosure method for companies and individuals under a consent agreement or similar reporting arrangement; and describe the method of submission of the form. DDTC appreciates all of these comments and has re-worked the instructions based on this feedback; the instructions are posted and available for review along with the revised form on DDTC's Web site at *www.pmddtc.state.gov.*

Another commenter noted that the form does not discuss how to make a disclosure that involves classified information. DDTC has addressed this guidance in the revised instructions and stresses that classified information should never be included on the DS–7787. Similarly, guidance on making a disclosure related to a country proscribed by ITAR § 126.1 has also been included in the instructions.

Multiple commenters also asked that the form be updated to accept submissions from third parties such as an outside counsel. DDTC notes that the ITAR requires an empowered official, as defined in ITAR § 120.25, to certify the disclosure, but that outside counsel may be listed as a point-of-contact for the

submission; this option has been added to the form.

In a similar vein, some commenters requested clarification on how to disclose violations that involve a sub-licensee or subcontractor, and also how non-U.S. entities (*e.g.* authorized end-users or foreign consignees) will submit disclosures. DDTC replies that sub-licensees and subcontractors should be included as involved parties on the form; if the violation of the sub-licensee or subcontractor related to one of the discloser's authorizations, the discloser may have responsibility for the violation and it should be reported as such. If the respondent is reporting a violation of a subcontractor or sub-licensee that is not related to any of the respondent's authorizations, the option ''Third party disclosure'' should be selected. Non-U.S. entities will be required to create a unique username and password to access the case management system and file a disclosure directly.

One commenter also requested that DDTC work with its counterpart bureau in the Department of Commerce to develop a joint disclosure form. The commenter argued that since the Obama Administration's Export Control Reform (ECR) initiative has transferred oversight of dozens of commodities from the U.S. Munitions List (USML) to the Department of Commerce's Export Administration Regulations (EAR), a joint form would capture instances where a violation occurred prior to a commodity being moved from the USML to the EAR. DDTC replies that the DS–7787 will exist beyond the ECR initiative, and submitters are required to explain the violation in detail on the form, during which time any ECR distinctions should be made.

Similarly, several commenters remarked that DDTC should include a field to allow respondents to include ''mitigating information'' regarding the particular matter they are disclosing. DDTC notes that the form, as written, contains all of the information required by ITAR § 127.12. Additionally, as addressed above, DDTC has added a field for additional relevant information on the form, and notes that this would be the appropriate place to enter mitigating and/or aggravating information that does not more properly fit into another field. The respondent is encouraged to provide as much detail of remedial measures and mitigating factors as they are able throughout the existing fields; however, determinations of exactly what constitutes ''mitigating information'' are made solely by DDTC; therefore, such a separate field will not be added to the form.

One commenter also requested DDTC to address the information protection and data security elements of the case management system. Recognizing the sensitivity of the data submitted in a disclosure, the system will meet all current government standards for data security and the Privacy Act of 1974. Individual users will also be required to create a unique username and password to access the system and submit information over an encrypted connection. Similarly, DDTC will protect information from public disclosure to the extent permitted by law; DDTC encourages submitters to clearly mark proprietary information in accordance with the Department of State guidelines at 22 CFR 171.12.

One commenter requested that the form include a question to declare whether a disclosure involves Major Defense Equipment (MDE), which DDTC has incorporated into the form.

Methodology

This information will be collected by electronic submission. Respondents will be required to enroll in DDTC's online system and will be issued an appropriate credential based on the business the user will be transacting. Lower assurance matters (such as initial registration in the system) will require a secure username and password. Matters requiring higher assurance will require multi-factor credentials, such as a certificate based login.

Dated: November 21, 2016.

Anthony M. Dearth,

Managing Director, Acting Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2016–28514 Filed 11–25–16; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–116]

Petition for Exemption; Summary of Petition Received; CK Aerial Photography LLC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before December 19, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–5813 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, (202) 267–4264 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 18, 2016.

Dale Bouffiou,

Deputy Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–5813.

Petitioner: CK Aerial Photography LLC.

Section(s) of 14 CFR Affected: 14 CFR part 21 and Sections 45.23(b), 61.113(a)(b), 91.7(a), 91.9(b)(2), 91.103(b)(2), 91.109, 91.119(c), 91.121, 91.151, 91.203(a)(b), 91.405(a),

91.407(a)(1), 91.409(a)(1)(2), and 91.417(a)(b).

Description of Relief Sought: The petitioner is requesting relief to operate UAS to conduct aerial photography and videography both domestically and outside of the United States.

[FR Doc. 2016–28543 Filed 11–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–114]

Petition for Exemption; Summary of Petition Received; Astraeus Aerial

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before December 19, 2016.

ADDRESSES: Send comments identified by docket number FAA–2014–0352 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, (202) 267–4264, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 18, 2017.

Dale Bouffiou,

Deputy Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–0352.

Petitioner: Astraeus Aerial.

Section(s) of 14 CFR Affected: 21 subpart H, 45.23(b), 61.113(a), 91.103, 91.109, 91.119, 91.121, 91.151(a)(2), 91.203(a) & (b), 91.405(a), 91.409(a)(2), 91.417(a) & (b), 91.7(a), and 91.9(b)(2).

Description of Relief Sought: The petitioner requests to amend Exemption No. 11062B to conduct UAS commercial operations using augmented visual line of sight operations with a two-person pilot system; using multiple controllers, one pilot maintains visual line of sight and the other manipulates the aircraft using first person viewing. The petitioner also requests nighttime operations, use of aircraft over 55 pounds (the Astraeus Aerial V.4CS), and operations over people.

[FR Doc. 2016–28554 Filed 11–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–117]

Petition for Exemption; Summary of Petition Received; Trimble Navigation Limited

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before December 19, 2016.

ADDRESSES: Send comments identified by docket number FAA–2014–0367 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, (202) 267–4264 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 18, 2016.

Dale Bouffiou,

Deputy Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–0367

Petitioner: Trimble Navigation Limited

Section(s) of 14 CFR Affected: 14 CFR 61.23(a)(c), 61.101(e)(4)(5), 61.113(a), 61.315(a), 91.7(a), 91.119(c), 91.121,

91.151(a)(1), 91.405(a), 91.407(a)(1), 91.409(a)(1)(2), and 91.417(a)(b)

Description of Relief Sought: The petitioner is requesting to renew Exemption No. 11110, which expires December 31, 2016, to operate UAS to conduct aerial data collection.

[FR Doc. 2016–28553 Filed 11–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–118]

Petition for Exemption; Summary of Petition Received; Rare Air Drone Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before December 19, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–9367 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, (202) 267–4264, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 18, 2016.

Dale Bouffiou,

Deputy Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–9367.

Petitioner: Rare Air Drone Services.

Section(s) of 14 CFR Affected: 14 CFR part 21; 14 CFR 45.23(b), 61.113(a)(b); 91.7(a); 91.9(b)(2); 91.103(b); 91.109; 119.121; 91.151(a); 91.203(a)(b); 91.405(a); 91.407(a)(1); 91.409(a)(2); 91.417(a)(b).

Description of Relief Sought: The petitioner is requesting relief to operate UAS to conduct aerial photography and videography for real estate purposes.

[FR Doc. 2016–28552 Filed 11–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–115]

Petition for Exemption; Summary of Petition Received; Leading Edge Associates, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before December 19, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–9422 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, (202) 267–4264 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 18, 2016.

Dale Bouffiou,

Deputy Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–9422.

Petitioner: Leading Edge Associates, Inc.

Section(s) of 14 CFR Affected: 14 CFR 137.19(c), 137.19(d), 137.19(e)(2)(ii)(iii) and (v), 137.31(a), 137.31(b), 137.33(a), and 137.42.

Description of Relief Sought: The petitioner is requesting relief in order to operate the Yamaha RMAX for the purposes of aerial agricultural-related operations, including but not limited to

use of the RPA for mosquito adulticiding and larvaciding in the vector markets using industry EPA approved products.

[FR Doc. 2016–28534 Filed 11–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–119]

Petition for Exemption; Summary of Petition Received: Aero Medical Products Mfg., Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before December 19, 2016.

ADDRESSES: You may send comments identified by docket number FAA–2013–0582 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *mark.forseth@faa.gov,* phone (425) 227–2796.

This notice is published pursuant to 14 CFR 11.85.

Issued in Renton, Washington, on November 18, 2016.

Dale Bouffiou,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0582.

Petitioner: Aero Medical Products Mfg., Inc.

Section of 14 CFR Affected: §§ 25.562 and 25.785(b).

Description of Relief Sought: Petitioner request to amend exemption no. 10862 to allow ambulatory persons to occupy medical stretchers during all stages of flight.

[FR Doc. 2016–28532 Filed 11–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2016–0027]

Revision of Form FHWA–1273

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The FHWA is requesting comments on a proposed revision of form FHWA–1273—''Required Contract Provisions Federal-Aid Construction Contracts.'' This form includes certain contract provisions that are required on all Federal-aid construction projects. The revisions are necessary to provide consistency with the current policies of FHWA and other Federal agencies.

DATES: Comments must be received on or before December 28, 2016.

ADDRESSES: All comments should include the docket number that appears in the heading of this document and may be submitted in the following ways:

- *E-Gov Web site: http://www.regulations.gov.* This Web site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* DOT Docket Management System: 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:* DOT Docket Management System; West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number at the beginning of your comments. If you submit your comments by mail, submit two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Late comments will be considered to the extent practicable.

Note: Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Persons making comments may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: Gerald Yakowenko, Office of Program Administration, (202) 366–1562, *Gerald.Yakowenko@dot.gov* or William Winne, Office of the Chief Counsel, (202) 366–1397, *William.Winne@dot.gov.* Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at:

http://www.archives.gov and the Government Publishing Office's database at: *http://www.access.gpo.gov/nara.*

Background

As provided in 23 CFR 633.103, Form FHWA–1273 includes contract provisions and proposal notices that are required by regulations promulgated by FHWA or other Federal agencies. The provisions include non-discrimination, prevailing wage rates, subcontracting, job-site safety, and other important requirements that must be included in every Federal-aid construction project. According to 23 CFR 633.104(a), FHWA will update the form as regulatory revisions occur. Since the form was last revised on May 1, 2012, a number of policy revisions have occurred. The revisions that are being proposed by FHWA to Form FHWA–1273 will bring the form up to date with the current requirements. The proposed revisions are being made for the following reasons:

- The U.S. Department of Labor, Office of Federal Contract Compliance (OFCCP) issued a final rule on December 9, 2014, which revised the Equal Employment Opportunity requirements for Federal and federally assisted projects. We propose to implement minor revisions in Sections II and III—*Nondiscrimination* and *Non-segregated Facilities* to replace the terms ''sex'' with ''sex, sexual orientation, and gender identity'' to be consistent with the 41 CFR 60–1.
- Revisions are proposed to Section II.10 as follows: This section is retitled as ''Assurance Required,'' the assurance required by 49 CFR 26.13(b) is included verbatim, and incorporation by reference is provided for the Title VI assurance required by U.S. DOT Order 1050.2A Appendices A and E.
- A revision is proposed to the first paragraph of Section IV to address the ''treatment of projects'' provision in 23 U.S.C. 133(i), which requires that all projects (excluding those funded under the recreational trail set-aside) be treated as if on a Federal-aid highway.
- Revisions are proposed to Section IX—*Implementation of Clean Air Act and Federal Water Pollution Control Act* to be consistent with the provisions in Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards in 2 CFR 200.
- Revisions are proposed to Section X—*Certification Regarding Debarrment, Suspension, Ineligibility and Voluntary Exclusion* to implement new certification language to ensure that awards are not made to companies who have a verified Federal tax delinquency or companies who have been convicted of a Federal felony offense within 2 years prior to the award. The new certifications implement the Government-wide General Provisions, currently under Division E, Title VII, Financial Services and General Government Appropriations Act, FY 2016 (Sections 745–746 in the FY 2016 Act, 129 STAT. 2485–2486 and similar provisions in subsequent appropriations acts). In addition, the Excluded Parties List System (*www.EPLS.gov*) has been replaced with the System for Award Management (*www.SAM.gov*). The reference to this system in the form is updated.
- We propose to add a new Section XII—*Use of United States-Flag Vessels* to implement Cargo Preference Act requirements on Federal-aid projects. On October 14, 2008, President Obama signed the ''Duncan Hunter National Defense Authorization Act of 2009.'' Section 3511 of that Act amended the Cargo Preference Act by stating the requirements apply to cargoes financed ''in any way with Federal funds for the account of any persons unless otherwise exempted.'' This Act requires the use of a United States-Flag vessel for all oceanic shipments (or shipments across the Great Lakes) necessary for materials or equipment acquired for a specific, Federal aid highway project. See FHWA's December 8, 2015, legal opinion titled: ''Cargo Preference Act and Federal-aid Projects'' (available online at *https://www.fhwa.dot.gov/construction/cqit/cargo/151208.cfm*) for additional information.
- Minor grammatical and formatting revisions are proposed throughout the document for clarity and to be consistent with 2 CFR part 200.

The proposed revision to Form FHWA–1273 will incorporate the changes noted above as well as other important changes to the required contract provisions. A list of the proposed changes and a marked-up version of the changes are available at the following Web site: *https://www.fhwa.dot.gov/construction/cqit/form1273.cfm.*

The FHWA anticipates issuing a second notice responding to the comments received and requiring the use of the revised form for all Federal-aid projects advertised 60 days after the publication date of the second notice.

Authority: 23 U.S.C. 112; 23 CFR 633; 49 CFR 1.85.

Issued on: November 17, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–28586 Filed 11–25–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Safety Advisory 2016–02]

Identification and Mitigation of Hazards Through Job Safety Briefings and Hazard Recognition Strategies

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of Safety Advisory.

SUMMARY: FRA is issuing Safety Advisory 2016–02 out of concern for the number of railroad and railroad contractor fatalities that occur when roadway workers perform certain activities that fall outside the scope of FRA's safety regulations, but within the purview of the U.S. Occupational Safety and Health Administration's (OSHA) regulations. FRA is issuing this Safety Advisory to remind railroads and railroad contractors, and their employees (including roadway workers) of the importance of identifying hazardous conditions at job locations, conducting thorough job safety briefings to discuss the hazardous conditions, and taking appropriate actions to mitigate those conditions. This Safety Advisory reminds railroads, railroad contractors, and their respective employees that OSHA's job safety regulations may apply to certain roadway worker activities and makes recommendations for hazard recognition strategies and challenge procedures that could improve roadway worker safety while roadway workers are engaged in activities subject to OSHA's regulations. FRA considers this Safety Advisory responsive to the National Transportation Safety Board's (NTSB) Recommendations R–14–33, R–14–35, and R–14–36.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Riley, Track Specialist, Track Division, Office of Technical Oversight, FRA, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590, (202) 493–6357.

SUPPLEMENTARY INFORMATION: On April 3, 2016, two National Railroad Passenger Corporation (Amtrak) employees were killed in Chester, Pennsylvania, when an Amtrak train struck a backhoe on that track. Although the NTSB has not concluded its

investigation of this accident, FRA believes more robust protection of roadway workers [1] employed by railroads and railroad contractors who work on or near railroad track is necessary. Railroad safety is of the utmost importance to FRA, and FRA has taken several measures, some of which are discussed below, to better protect roadway workers.

On June 10, 2016, FRA published two final rules addressing roadway worker safety. One of the rules amends FRA's Roadway Worker Protection (RWP) regulations (49 CFR part 214, subpart C), while the second rule revises FRA's alcohol and drug regulations (49 CFR part 219).

The final rule, ''Railroad Workplace Safety; Roadway Worker Protection Miscellaneous Revisions (RRR)'' (RWP Final Rule), resolves miscellaneous interpretive issues, codifies certain FRA technical bulletins, adopts new requirements governing redundant signal protections and the movement of roadway maintenance machines over certain types of track, and amends certain qualification requirements for roadway workers. *See* 81 FR 37840, June 10, 2016. For example, the RWP Final Rule mandates job briefings for roadway workers include information on the accessibility of the roadway worker in charge. Second, it sets standards for how ''occupancy'' behind train authorities (when the authority for a work crew does not begin until the train has passed the area) can be used. Third, it requires annual training for any train, yard, and engine service individual acting as a roadway worker in charge. Finally, it requires railroads to annually train all roadway workers on their procedures for determining whether it is safe to cross track.

The final rule, ''Control of Alcohol and Drug Use: Coverage of Maintenance of Way (MOW) Employees and Retrospective Regulatory Review-Based Amendments'' (MOW Final Rule), broadens the scope of FRA's alcohol and drug regulations to cover MOW employees.[2] *See* 81 FR 37894, June 10, 2016. The MOW Final Rule subjects all MOW employees to FRA's drug and alcohol testing, including random testing, post-accident testing, reasonable suspicion testing, reasonable cause testing, pre-employment testing, return-to-duty testing, and follow-up testing. The MOW Final Rule also requires drug testing of railroad and MOW employees involved in certain highway-rail grade crossing accidents or incidents.

On March 17, 2016, FRA published Safety Advisory 2016–01 addressing the movement of roadway maintenance machines over highway-rail grade crossings. In Safety Advisory 2016–01, FRA emphasized the importance of compliance with railroad operating rules over highway-rail grade crossings and the need for railroad employees and contractors operating those machines to maintain situational awareness. *See* 81 FR 14516, Mar. 17, 2016. Specifically, in Safety Advisory 2016–01 FRA recommends railroads and railroad contractors review, update, and follow rules and procedures governing the safe movement of roadway maintenance machines traversing highway-rail grade crossings.

As discussed above, FRA has taken a number of recent steps to better protect roadway workers when those roadway workers are engaged in activities subject to FRA's safety jurisdiction. When those employees are engaged in activities outside the scope of FRA's safety regulations, they may be required to comply with OSHA's regulations, such as 29 CFR part 1910 (Occupational Safety and Health Standards) and 29 CFR 1926 (Safety and Health Regulations for Construction). Specifically, railroads and railroad contractors may be required to implement policies and procedures mandated by OSHA relating to the working conditions for roadway workers.

Between January 1, 2000 and December 31, 2015, over 60 roadway worker fatalities occurred while the roadway workers performed work not covered by FRA's safety regulations. This leads FRA to believe railroads and railroad contractors, as well as their employees, may fail to recognize potential hazards outside of those directly governed by FRA's rail safety regulations and may fail to develop and implement appropriate risk mitigation actions.

During the NTSB's September 24, 2014, hearing regarding the 2013 MOW and signal employee fatalities, the NTSB reminded the rail industry that, in certain situations, OSHA's regulations apply to railroads and railroad contractors, including OSHA's requirements that employees: (1) Conduct hazard assessments to identify and address existing conditions that pose safety hazards; (2) conduct job safety briefings prior to every work activity; and (3) conduct additional job briefings if significant changes occur during the course of the work. *See* 29 CFR 1910.132(d), 1910.269(a)(3), 1910.269(c), 1926.952(b)–(d).[3]

Although FRA's safety regulations require on-track safety job briefings prior to an employee fouling track,[4] through this Safety Advisory, FRA reminds railroads and railroad contractors and their respective employees that when their roadway workers are engaged in activities that fall outside the scope of FRA's safety regulations, those activities may be subject to OSHA's regulations. And, those OSHA regulations may require job safety briefings prior to beginning certain work activities, and additional job safety briefings if a new hazard is discovered during the work assignment. Job safety briefings, specific to the task or tasks to be performed, provide a mechanism to not only communicate identified risks to every member of the roadway work group, but to also ensure that the roadway work group agrees as to how the identified risks will be mitigated. The job safety briefing is a key component in preventing individual conditions, which can be harmless in isolation, from becoming a potentially dangerous situation.

Railroads and railroad contractors should consider having a workable strategy for identifying safety hazards that exist in their work environments and for eliminating or addressing such safety hazards. Railroads and railroad contractors should therefore consider developing and implementing annual training for their roadway workers in various hazard recognition techniques. Whenever a hazard or risk is identified, a roadway worker should stop, look around, and analyze the situation for potential harm. Recognizing every situation for its potential danger may be

[1] FRA regulations define a ''roadway worker'' as ''any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts.'' 49 CFR 214.7.

[2] The MOW Final Rule defines the term ''maintenance-of-way employee'' or ''MOW employee'' as ''a roadway worker, as defined in 49 CFR 214.7.''

[3] Also on September 24, 2014, the NTSB issued a report titled *Special Investigation Report on Railroad and Rail Transit Roadway Worker Protection,* SIR–14/03. In that report, NTSB issued three Safety Recommendations to FRA that this Safety Advisory is responsive to, including Safety Recommendations R–14–33, R–14–35, and R–14–36. NTSB's Recommendation R–14–33 states FRA should revise the job briefing provisions of its Roadway Worker Protection regulations (49 CFR part 214) to include best practices found in OSHA's regulations. NTSB's Recommendation R–14–35 states FRA should work with OSHA to establish guidelines for when and where OSHA standards should be applied to railroads and railroad workers. NTSB's Recommendation R–14–36 states FRA should require initial and recurring training for roadway workers in hazard recognition and mitigation, including recognition and mitigation of the hazards of tasks performed by coworkers.

[4] *See e.g.,* 49 CFR 214.315(a) and (d) (addressing job safety briefings).

challenging. Moreover, individual, isolated conditions may appear to be harmless. However, a combination of several seemingly harmless conditions can present a serious safety hazard.

Examples of contributing factors or actions roadway workers may face or engage in that may have been a factor in one or more roadway worker fatalities since 2000 while the roadway workers were performing work not covered by FRA regulations include, but are not limited to: Ascending or descending; falling objects; electrocution; an unanticipated energy release; slips, trips and falls; hoisting or lowering an object; off-track equipment striking roadway workers; collisions between roadway maintenance machines and standing trains; highway vehicle collisions (vehicle to vehicle); highway vehicles striking roadway workers; and environmental-related hazards (swarming bees, mudslides, heat stroke, flash floods, etc.).

FRA and the railroad industry have witnessed success using the Good Faith Challenge Procedures found in FRA's regulations [5] for situations when a roadway worker believes the on-track safety procedure being used is inadequate for the work being performed. In such a situation, the roadway worker may remain clear of the track until the challenged safety issue is resolved without fear of retribution or retaliation. Many railroads have adopted Good Faith Challenge Procedures for any safety-related concern, not just those FRA regulates. FRA recommends all railroads and railroad contractors adopt appropriate Good Faith Challenge Procedures for any recognized hazard identified during job safety briefings or any hazard otherwise arising during the course of work activities roadway worker believes requires remediation, whether FRA, OSHA, or another Federal agency regulate the that hazard.

Recommendations: In light of the above discussion, and in an effort to improve job safety briefings, improve the identification and mitigation of potential safety hazards existing in the working environments of roadway workers, and reduce the number of injuries and fatalities occurring when roadway workers are engaged in activities outside the scope of FRA's safety regulations, FRA recommends railroads and railroad contractors:

1. Develop hazard-recognition strategies identifying and addressing existing conditions posing actual or potential safety hazards, emphasizing the contributing factors or actions involved in roadway worker-related fatalities occurring since 2000.

2. Provide annual training to roadway workers on the use of hazard-recognition strategies developed by the railroad or the railroad contractor.

3. Institute procedures for mandatory job safety briefings compliant with OSHA's regulations prior to initiating any roadway worker activity. Consistent with OSHA's regulations, roadway workers should use hazard-recognition procedures to identify potential hazards in their job briefings and then determine the appropriate measures to mitigate the identified hazards. If an unforeseen situation develops during work performance, roadway workers should stop working and conduct a second job briefing to determine the appropriate means of mitigating the new hazard.

4. Develop and apply Good Faith Challenge Procedures for all roadway workers who, in good faith, believe a task is unsafe or an identified hazard has not been mitigated.

FRA encourages railroad and railroad contractor industry members to take actions consistent with the preceding recommendations and any other actions that may help ensure the safety of roadway workers. Although the primary purpose of this Safety Advisory is for railroads and railroad contractors to apply these recommendations to activities that fall outside the scope of FRA's safety regulations, FRA also encourages the industry to apply these recommendations to activities FRA's regulations govern.

FRA may modify this Safety Advisory, issue additional safety advisories, or take other appropriate actions necessary to ensure the safety of the Nation's railroads, including pursuing other corrective measures under its safety laws and regulations.

Issued in Washington, DC, on November 22, 2016.

John K. Alexy,

Director, Office of Safety Analysis.

[FR Doc. 2016–28558 Filed 11–25–16; 8:45 am]

BILLING CODE 4910–06–P

[5] *See* 49 CFR 214.311 (responsibility of employers to implement Good Faith Challenge Procedures).

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Private Enterprise Participation

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of policy guidance.

SUMMARY: The Federal Transit Administration (FTA) hereby establishes policy guidance for documenting compliance with the private enterprise participation requirements under the Moving Ahead for Progress in the 21st Century Act (MAP–21). It also includes additional clarifications under the Fixing America's Surface Transportation (FAST) Act. Because the policy guidance requirement reiterates existing statutes and regulations and imposes no new requirements on recipients, FTA is not soliciting public comment on this policy guidance.

DATES: Effective Date: This policy guidance will be effective January 12, 2017.

FOR FURTHER INFORMATION CONTACT: For policy guidance questions, Kimberly Gayle, Office of Budget and Policy, telephone: 202–366–1429; or email: *Kimberly.Gayle@dot.gov.* For legal questions, Dana Nifosi, Office of Chief Counsel, telephone: 202–366–1936; or email: *Dana.Nifosi@dot.gov.*

I. Background

The FTA is issuing this policy guidance pursuant to Section 20013(d) of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141). Section 20013(d) requires the Secretary of Transportation to publish policy guidance regarding how recipients of Federal financial assistance under 49 U.S.C. chapter 53 can best document compliance with the requirements for private enterprise participation in public transportation planning and transportation improvement programs contained in sections 5303(i)(6), 5306(a), and 5307(b)[1] of title 49, United States Code.

A. Statutory Requirements for Private Enterprise Participation

Section 5303(i)(6) requires that each metropolitan planning organization (MPO) provide interested parties, including private providers of transportation, with a reasonable opportunity to comment on the metropolitan transportation plan (MTP). The Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94) amended this section to include the following private providers: ''intercity bus operators, employer-based commuting programs, such as a carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program.'' In addition, MPOs must develop a participation plan that defines

[1] FTA notes that Section 20013(d) of MAP–21 refers to 49 U.S.C. 5307(c); however, the private transportation provider participation requirement is contained within 5307(b). Section 3010(b) of the Fixing America's Surface Transportation Act makes a technical correction to reference the correct subsection.

a process for providing all interested parties, including private providers of transportation, with reasonable opportunities to be involved in the metropolitan transportation planning process. The MPO participation plan must be developed in consultation with all interested parties.

Section 5306(a) provides that a plan or program required by 49 U.S.C. 5303, 5304, or 5305 must encourage, to the maximum extent feasible, the participation of private enterprise (Note: 49 U.S.C. 5305 simply provides formula funding for the planning programs and does not establish procedural requirements.) 49 U.S.C. 5307(b) requires recipients of Urbanized Area Formula Grants to develop, in consultation with interested parties, including private transportation providers, a proposed program of projects (POP) for activities to be financed.

B. Regulatory Requirements for Metropolitan Planning Organizations in Metropolitan Areas

The FTA and the Federal Highway Administration (FHWA) recently promulgated a joint final rule (Joint Planning Rule) to update their regulations governing the development of MTPs and programs for urbanized areas, long-range statewide transportation plans and programs, and the congestion management process, as well as revisions related to the use of and reliance on planning products developed during the planning process for project development and the environmental review process. 81 FR 34049 (May 27, 2016), codified at 23 CFR part 450 and 49 CFR part 613. The regulatory changes implement amendments that MAP–21 and the FAST Act made to the metropolitan transportation planning and statewide and non-metropolitan planning processes.

Subpart C of the Joint Planning Rule implements 49 U.S.C. 5303 Metropolitan transportation planning. Each MPO must develop a Transportation Improvement Program (TIP) for the metropolitan planning area that provides all interested parties with a reasonable opportunity to comment on the proposed TIP in accordance with a documented participation plan that defines a process for providing individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, providers of freight transportation services, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as carpool programs, vanpool programs, transit benefit programs, parking cash-out programs, shuttle programs, or telework programs), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process. 23 CFR 450.316(a), 450.326(b). When an MPO submits a proposed TIP to FTA and FHWA as part of the Statewide Transportation Improvement Program (STIP) approval process outlined in 23 CFR part 450, subpart B, the MPO must certify that the metropolitan transportation planning process is being carried out in accordance with all applicable requirements, including 49 U.S.C. 5303. This self-certification must be made at least every four years per 23 CFR 450.336.

C. Regulatory Requirements for Statewide and Non-Metropolitan Planning

Subpart B of the Joint Planning Rule implements 49 U.S.C. 5304 Statewide and metropolitan transportation planning. Each state must undertake a transportation planning process and develop a long-range statewide transportation plan and STIP, which must be submitted, at least every four years, to FTA and FHWA for joint approval. When a state submits a STIP, it must certify that the transportation planning process is being carried out in accordance with all applicable requirements.

In implementing the statewide transportation planning process, States must develop and use a documented public involvement process that, *inter alia,* establishes early and continuous public involvement opportunities that provide timely information about issues and decision-making processes to individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, private providers of transportation (including intercity bus operators), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties. See, 23 CFR 450.210.

D. Section 5307 Certification

Section 5307(b) requires recipients of urbanized area formula grants to develop a POP in consultation with interested parties, including private transportation providers. Recipients must then publish the proposed POP to provide affected individuals, private transportation providers and local elected officials an opportunity to examine and submit comments on the proposed POP and performance of the recipient. Recipients also must provide an opportunity for a public hearing. In preparing the final POP, recipients must consider comments and views received, especially those of private transportation providers. A recipient of Section 5307 funds must, in each fiscal year in which it requests such funds, submit a final POP and must certify that it has complied with Section 5307(b).

FTA Circular 9030.1E, ''Urbanized Area Formula Program: Program Guidance and Application Instructions (January 16, 2014), includes guidance that recipients may satisfy the requirements of Section 5307(b) by following the procedures of the public involvement process outlined in the FTA/FHWA planning regulations. The Circular advises that a recipient that chooses to integrate the metropolitan planning process with the development of the POP should coordinate with the MPO and ensure that the public knows that the recipient is using the public participation process associated with TIP development to satisfy the public hearing requirements of Section 5307(b).

II. Policy Guidance

FTA has determined that the best way to document compliance with the private enterprise participation provisions of 49 U.S.C. 5303(i)(6), 5306(a) and 5307(b) is to comply with the public participation requirements imposed by the recently promulgated Joint Planning Rule. FTA's recipients will continue to submit the applicable certifications required by Subparts B and C of the Joint Planning Rule and 49 U.S.C. 5307 through the annual certifications and assurances process. In addition, recipients must retain, and provide to FTA when requested, documentation of participation by interested parties in the metropolitan and statewide planning processes, and evidence of compliance with participation plans and POPs, as applicable, that are developed as part of the 49 U.S.C. 5303 and 5304 metropolitan and statewide planning processes and the 49 U.S.C. 5307 Urbanized Area Formula Grant process.

Accordingly, recipients shall document compliance with the private sector participation provisions through the existing regulatory process implementing Federal planning requirements. FTA will verify

compliance through its current oversight procedures either during the triennial review, state management review, planning certification review, the STIP approval process, and the Section 5307 grant application process. Given that this policy guidance imposes no new requirements, FTA is not requesting public comment.

Carolyn Flowers,

Acting Administrator.

[FR Doc. 2016–28479 Filed 11–25–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. USCG–2015–0472]

Deepwater Port License Application: Delfin LNG LLC; Delfin LNG Deepwater Port; Final Application Public Hearing and Final Environmental Impact Statement

AGENCY: Maritime Administration, U.S. Department of Transportation.

ACTION: Notice of availability; notice of public hearing; request for comments.

SUMMARY: The Maritime Administration (MARAD), in cooperation with the U.S. Coast Guard (USCG) and the Federal Energy Regulatory Commission (FERC), announces: (1) The schedule and locations of public hearings; and (2) the availability of the Final Environmental Impact Statement (EIS) for the Delfin LNG, LLC (Delfin LNG) deepwater port license application for the exportation of natural gas.

A Notice of Application that summarized the original Delfin LNG deepwater port license application was published in the **Federal Register** on July 16, 2015 (80 FR 42162). A Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) and Notice of Public Meetings was published in the **Federal Register** on July 29, 2015 (80 FR 45270). A Notice of Receipt of Amended Application was published in the **Federal Register** on December 24, 2015 (80 FR 80455). A Notice of Availability (NOA) and Notice of Public Meetings for the Draft EIS was published in the **Federal Register** July 15, 2016 (81 FR 46157). This NOA incorporates the aforementioned Notices by reference.

The proposed Delfin LNG deepwater port would be located in Federal waters within the Outer Continental Shelf (OCS) approximately 37.4 to 40.8 nautical miles off the coast of Cameron Parish, Louisiana.

The proposed Delfin LNG deepwater port incorporates onshore components, which are subject to FERC jurisdiction. These facilities are described in the section of this Notice titled ''FERC Application.''

Publication of this notice begins a 45-day comment period, requests public participation in the environmental impact review process, provides information on how to participate in the process and announces final public hearings in Cameron, Louisiana and Beaumont, Texas. The Final EIS complies with the Deepwater Port Act of 1974, as amended (33 United States Code (U.S.C.) 1501 *et seq.*) (DWPA) and the National Environmental Policy Act (42 U.S.C. 4332(2)(C)) (NEPA), as implemented by the Council on Environmental Quality regulations (40 CFR 1500 to 1508). MARAD and the USCG request public comments on the Final EIS and the application.

Pursuant to the criteria provided in the DWPA, both Louisiana and Texas have been designated as Adjacent Coastal States (ACS) for this application.

DATES: MARAD and USCG will hold two public hearings in connection with the license application's Final EIS. The first public hearing will be held in Cameron, Louisiana, on December 13, 2016, from 6 p.m. to 8 p.m. The second public hearing will be held in Beaumont, Texas, on December 14, 2016, from 6 p.m. to 8 p.m. Each public hearing will be preceded by an open house from 4:30 p.m. to 5:30 p.m. The public hearing may end later than the stated time, depending on the number of persons who wish to make a comment on the record. Additionally, material you submit in response to the request for comments must reach *www.regulations.gov* by close of business January 12, 2017, or 45 days after the date of publication of this NOA in the **Federal Register**, whichever is later.

Federal and State agencies must also submit comments, recommended conditions for licensing, or letters of no objection by Friday, January 12, 2017, or 45 days after publication of this notice in the **Federal Register**, whichever is later. Also, within 45 days following the final hearing, on or prior to January 30, 2017, the Governor of Louisiana and the Governor of Texas (ACS Governors) may approve, disapprove, or notify MARAD of inconsistencies with State programs relating to environmental protection, land and water use, and coastal zone management for which MARAD may ensure consistency by placing conditions on the license.

MARAD must issue a Record of Decision (ROD) to approve, approve with conditions, or deny the deepwater port license application, within 90 days following the final license hearing, on or prior to March 14, 2017.

ADDRESSES: The open house and public hearing in Cameron, Louisiana will be held at the Johnson Bayou Community Center, 5556 Gulf Beach Highway, Cameron, LA, 70631; telephone: 337–569–2454. Free parking is available at the Community Center. The open house and public hearing in Beaumont, Texas will be held at the Holiday Inn Beaumont Plaza, 3950 Walden Road, Beaumont, Texas 77705; telephone: 409–842–5995. Free parking is available at the Holiday Inn Beaumont Plaza.

The license application, comments, supporting information and the Final EIS are available for viewing at the *Regulations.gov* Web site: *http://www.regulations.gov* under docket number USCG–2015–0472.

We encourage you to submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. If you submit your comments electronically, it is not necessary to also submit a hard copy. If you cannot submit material using *http://www.regulations.gov,* please contact either Mr. Roddy Bachman, USCG or Ms. Yvette M. Fields, MARAD, as listed in the following **FOR FURTHER INFORMATION CONTACT** section of this document. This section provides alternate instructions for submitting written comments. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted. Anonymous comments will be accepted. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

FOR FURTHER INFORMATION CONTACT: Mr. Roddy Bachman, USCG, telephone: 202–372–1451, email: *Roddy.C.Bachman@uscg.mil;* or Ms. Yvette M. Fields, Director, Office of Deepwater Ports and Offshore Activities, MARAD, telephone: 202–366–0926, email: *Yvette.Fields@dot.gov*.

SUPPLEMENTARY INFORMATION:

Request for Comments

We request public comments on the Final EIS and the application. We also encourage attendance at the open houses and public hearings; however, the public hearing is not the only opportunity you have to comment. You may submit comments electronically at any time, as described in above in **ADDRESSES**, to *http://www.regulations.gov* under docket number USCG–2015–0472.

Regardless of the method you use to submit comments or material, all submissions will be posted, without change, to the Federal Docket Operations Facility Web site (*http://www.regulations.gov*), and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Use Notice that is available on the *http://www.regulations.gov* Web site, and the Department of Transportation (DOT) Privacy Act Notice that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477), see PRIVACY ACT. You may view docket submissions at the DOT Docket Operations Facility or electronically at the *http://www.regulations.gov* Web site.

Public Hearing and Open House

The open houses, public hearings and docket comments will be used by MARAD to inform the Maritime Administrator's decision making process, including the ROD and any conditions that may be placed on a subsequent license to own, construct and operate a deepwater port.

You are invited to learn about the proposed Delfin LNG deepwater port at either of the informational open houses and to comment at the public hearings on the proposed action and the environmental impact analysis contained in the Final EIS. Speakers may register upon arrival and will be recognized in the following order: (1) Elected officials; (2) public agency representatives; then (3) individuals or groups in the order in which they registered. In order to accommodate all speakers, speaker time may be limited, hearing hours may be extended, or both. Speakers' transcribed remarks will be included in the public docket. You may also submit written material for inclusion in the public docket. Written material must include the author's name. We ask attendees to respect the hearing process in order to ensure a constructive information-gathering session. Please do not bring signs or banners inside the hearing venue. The presiding officer will use his/her discretion to conduct the hearing in an orderly manner.

Public hearing locations are wheelchair accessible; however, attendees who require special assistance such as sign language interpretation or other reasonable accommodation, should notify the USCG (see **FOR FURTHER INFORMATION CONTACT**) at least five (5) business days in advance. Please include contact information as well as information about specific needs.

Background

On May 8, 2015, as supplemented on June 19, 2015, MARAD and USCG received an application from Delfin LNG for all Federal authorizations required for a license to own, construct and operate a deepwater port for the export of natural gas. The proposed deepwater port would be located in Federal waters approximately 37.4 to 40.8 nautical miles off the coast of Cameron Parish, Louisiana. Louisiana and Texas were designated as ACSs for the Delfin LNG license application. A Notice of Application was published in the **Federal Register** on July 16, 2015 (80 FR 42162).

On July 29, 2015, a NOI to Prepare an EIS and Notice of Public Meetings was published in the **Federal Register** (80 FR 45270). MARAD and USCG hosted two public scoping meetings in connection with the original Delfin LNG deepwater port license application.[1] The first public scoping meeting was held in Lake Charles, Louisiana on August 18, 2015; the second public scoping meeting was held in Beaumont, Texas on August 19, 2015. Transcripts of the scoping meetings are included in the public docket. After the public scoping meetings concluded, Delfin LNG advised MARAD, the USCG and FERC of its intent to amend the original license application.

In anticipation of the amended license application, MARAD and USCG issued a regulatory ''stop-clock'' letter to Delfin LNG on September 18, 2015. That letter commenced a regulatory ''stop-clock,'' effective September 18, 2015, which remained in effect until MARAD and USCG received the amended license application and determined it contained sufficient information to continue the Federal review process. On November 19, 2015, Delfin LNG submitted its amended license application to MARAD and USCG and a Notice of Receipt of Amended Application was published in the **Federal Register** on December 24, 2015 (80 FR 80455).

Working in coordination with participating Federal and State agencies, MARAD and USCG commenced processing the amended license application and completed the Draft EIS. A NOA and Notice of Public Meetings for the Draft EIS was published in the **Federal Register** July 15, 2016 (81 FR 46157). MARAD and the USCG hosted two Draft EIS public meetings in connection with the Delfin LNG deepwater port license application. The first public meeting was held in Cameron, Louisiana on August 9, 2016; the second public scoping meeting was held in Beaumont, Texas on August 10, 2016. Transcripts of the scoping meetings are included in the public docket under docket number USCG–2015–0472.

The Final EIS, application materials and associated comments are currently available for public review at the Federal docket Web site: *www.regulations.gov* under docket number USCG–2015–0472.

Proposed Action and Alternatives

USCG and MARAD are co-lead Federal agencies for the preparation of the Final EIS; MARAD is the Federal licensing agency (action agency). The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in the ''Summary of the License Application'' below. The alternatives to licensing the proposed port are: (1) Licensing with conditions (including conditions designed to mitigate environmental impact) and (2) denying the application, which, for purposes of environmental review, is the ''no-action'' alternative. These alternatives are more fully discussed in the Final EIS. You can address any questions about the proposed action or the Final EIS to USCG or MARAD project managers identified in **FOR FURTHER INFORMATION CONTACT**.

Summary of the License Application

Delfin LNG has applied for a MARAD-issued license to construct, own, operate and eventually decommission a deepwater port in the Gulf of Mexico to liquefy domestically-sourced natural gas for export. Exports are proposed to both Free Trade Agreement nations and non-Free Trade Agreement nations, in accordance with the Department of Energy export license approvals.

The proposed Delfin LNG deepwater port has both onshore and offshore components. The proposed Delfin LNG deepwater port would be located in Federal waters within the OCS West Cameron (WC) Area, West Addition Protraction Area (Gulf of Mexico) approximately 37.4 to 40.8 nautical miles off the coast of Cameron Parish, Louisiana, in water depths ranging from approximately 64 to 72 feet (19.5 to 21.9 meters). The Delfin LNG deepwater port would consist of four semi-permanently moored Floating Liquefied Natural Gas Vessels (FLNGVs) located as follows: No. 1 (29°8′13.1″ N/93°32′2.2″ W), No. 2 (29°6′13.6″ N/93°32′42.4″ W), No. 3

[1] The Federal Energy Regulatory Commission did not have a representative in attendance; however, to the extent any were made, comments related to the construction and operation of the FERC jurisdictional Delfin Onshore Facility were received into the administrative record.

(29°6′40.7″ N/93°30′10.1″ W) and No. 4 (29°4′40.9″ N/93°30′51.8″ W) located in WC lease blocks 319, 327, 328 and 334, respectively. The Delfin LNG deepwater port would reuse and repurpose two existing offshore natural gas pipelines; the former U–T Operating System (UTOS) pipeline and the High Island Offshore System (HIOS) pipeline. Four new 30-inch diameter pipeline laterals, each approximately 6,400 feet in length, connecting the HIOS pipeline to each of the FLNGVs, would be constructed. In addition, a 700-foot 42-inch diameter new pipeline would be constructed to bypass a platform at WC lease block 167 (WC 167) and connect the UTOS and HIOS pipelines. Feed gas would be supplied through the new pipeline laterals to each of the FLNGVs where it would be super-cooled to produce LNG. The LNG would be stored onboard the FLNGVs and transferred via ship-to-ship transfer to properly certified LNG tankers. Each of the FLNGVs would be semi-permanently moored to four new weathervaning tower yoke mooring systems (TYMS).

The onshore components in Cameron Parish, Louisiana are described specifically in an application originally submitted to FERC (see FERC Application). The onshore components of the Delfin LNG deepwater port would consist of constructing and operating a new natural gas compressor station, gas supply header and a metering station at an existing gas facility. The proposal would require: (1) Reactivation of approximately 1.1 miles of existing 42-inch pipeline, formerly owned by UTOS, which runs from Transcontinental Gas Pipeline Company Station No. 44 (Transco Station 44) to the mean highwater mark along the Cameron Parish Coast; (2) installation of 120,000 horsepower of new compression; (3) construction of 0.25 miles of 42-inch pipeline to connect the former UTOS line to the new meter station; and (4) construction of 0.6 miles of twin 30-inch pipelines between Transco Station 44 and the new compressor station.

Onshore pipeline quality natural gas from the interstate grid would be sent to the existing, but currently idle, 42-inch UTOS pipeline. The gas transported through the UTOS pipeline would then bypass the existing manifold platform located at WC 167 via a newly installed pipeline segment, 700 feet in length, connecting to the existing 42-inch HIOS pipeline.

The bypass of the WC 167 platform would be trenched so that the top of the pipe is a minimum of 3 feet below the seafloor. From the bypass, the feed gas would then be transported further offshore using the HIOS pipeline portion leased by Delfin LNG between WC 167 and High Island A264 OCS lease block. The existing UTOS and HIOS pipelines transect OCS Lease Blocks WC 314, 318, 319, 327 and 335, and would transport feed gas from onshore to offshore (one-directional flow). Delfin LNG proposes to install four new lateral pipelines along the HIOS pipeline, starting approximately 16.0 nautical miles south of the WC 167 platform. Each subsea lateral pipeline would be 30 inches in diameter and approximately 6,400 feet in length, extending from the HIOS pipeline to the Delfin LNG deepwater port. The maximum allowable operating pressure of the pipeline system (UTOS, bypass, HIOS and laterals) would be 1,250 pounds per square inch gauge (psig).

The FLNGVs would receive pipeline quality natural gas via the laterals and TYMS, and then, using onboard liquefaction equipment, cool it sufficiently to completely condense the gas and produce LNG. The produced LNG would be stored in International Maritime Organization (IMO) type B, prismatic, independent LNG storage tanks aboard each of the FLNGVs. Each vessel would have a total LNG storage capacity of 210,000 cubic meters (m^3).

An offloading mooring system would be provided on each FLNGV to moor an LNG tanker side-by-side for cargo transfer of LNG through loading arms or cryogenic hoses using ship-to-ship transfer procedures. LNG tankers would be moored with pilot and tug assist. The FLNGVs would be equipped with fenders and quick-release hooks to facilitate mooring and unmooring operations. The offloading system would be capable of accommodating standard LNG tankers with nominal cargo capacities up to 170,000 m^3. Delfin LNG estimates that the typical LNG cargo transfer operation would be carried out within 24 hours, including LNG tanker berthing, cargo transfer and sail-away. Approximately 31 LNG tankers are expected to visit each of the four FLNGVs per year for a total of up to 124 cargo transfer operations per year. Each LNG tanker would be assisted by up to three tugs during approach and mooring and up to two tugs while departing the Delfin LNG deepwater port.

The FLNGVs would be self-propelled vessels and have the ability to disconnect from the TYMS and set sail to avoid hurricanes or to facilitate required inspections, maintenance and repairs.

In the nominal design case, based on an estimated availability of 92 percent and allowance for consumption of feed gas during the liquefaction process, each of the four FLNGVs would produce approximately 146 billion standard cubic feet per year (Bscf/y) of gas (approximately 3.0 million metric tonnes per annum [MMtpa]) for export in the form of LNG. Together, the four FLNGVs are designed to have the capability to export 585 Bscf/y of gas (approximately 12.0 MMtpa).

As detailed engineering and equipment specification advances during the design process and operating efficiencies are gained post-commissioning, the liquefaction process could perform better than this nominal design case. It is anticipated that LNG output could improve to as much as 657.5 Bscf/y in the optimized design case (approximately 13.2 MMtpa) which is the amount Delfin LNG is requesting authorization to export.

The proposed Delfin LNG deepwater port would take a modular implementation approach to allow for early market entry and accommodate market shifts. Offshore construction activities are proposed to begin at the end of the first quarter of 2018 and would be completed in four stages, with each stage corresponding to the commissioning and operation of an FLNGV. The anticipated commissioning of FLNGV 1 is the third quarter of 2019 with start-up of commercial operation of FLNGV 1 by the end of 2019. It is anticipated that FLNGVs 2 through 4 would be commissioned 12 months apart. Following this schedule and barring unforeseen events, the Delfin LNG deepwater port would be completed and all four FLNGVs would be fully operational by the summer of 2022.

Should a license be issued, the Delfin LNG deepwater port would be designed, fabricated, constructed, commissioned, maintained, inspected and operated in accordance with applicable codes and standards and with USCG oversight as regulated under Title 33, Code of Federal Regulations (CFR), subchapter NN–Deepwater Ports (33 CFR 148, 149 and 150). This includes applicable waterways management and regulated navigations areas, maritime safety and security requirements, risk assessment and compliance with domestic and international laws and regulations for vessels that may call at the port.

FERC Application

On May 8, 2015, Delfin LNG filed its original application with FERC requesting authorizations pursuant to the Natural Gas Act and 18 CFR part 157 for the onshore components of the proposed deepwater port terminal including authorization to use the

existing pipeline infrastructure, which includes leasing a segment of pipeline from HIOS extending from the terminus of the UTOS pipeline offshore. On May 20, 2015, FERC issued its *Notice of Application* for the onshore components of Delfin LNG's deepwater port project in Docket No. CP15–490–000. This Notice was published in the **Federal Register** on May 27, 2015 (80 FR 30226). Delfin LNG stated in its application that High Island Offshore System, LLC would submit a separate application with FERC seeking authorization to abandon by lease its facilities to Delfin LNG. FERC, however, advised Delfin LNG that it would not begin processing Delfin LNG's application until such time that MARAD and USCG deemed Delfin LNG's deepwater port license application complete and High Island Offshore System, LLC submitted an abandonment application with FERC. On June 29, 2015, MARAD and USCG accepted the documentation and deemed the original Delfin LNG license application complete.

On November 19, 2015, High Island Offshore System, LLC filed an application (FERC Docket No. CP16–20–000) to abandon certain offshore facilities in the Gulf of Mexico, including its 66-mile-long mainline, an offshore platform and related facilities (''HIOS Repurposed Facilities''). Accordingly, on November 19, 2015, Delfin LNG filed an amended application in FERC Docket No. CP15–490–001 to use the HIOS Repurposed Facilities and to revise the onshore component of its deepwater port project. On December 1, 2015, FERC issued a *Notice of Application* for Delfin LNG's amendment, which was published in the **Federal Register** on December 7, 2015 (80 FR 76003).

The amended FERC application specifically discusses the onshore facility and adjustments to the onshore operations that would involve reactivating approximately 1.1 miles of the existing UTOS pipeline; the addition of four new onshore compressors totaling 120,000 horsepower of new compression; activation of associated metering and regulation facilities; the installation of new supply header pipelines (which would consist of 0.25 miles of new 42-inch-diameter pipeline to connect the former UTOS line to the new meter station); and 0.6 miles of new twin 30-inch-diameter pipelines between Transco Station 44 and the new compressor station site.

Additional information regarding the details of Delfin LNG's original and amended application to FERC is on file and open to public inspection. Project filings may be viewed at the *www.ferc.gov* Web site using the ''eLibrary'' link. Enter the docket number excluding the last three digits (*i.e.,* CP15–490) in the docket number field to access project information. For assistance, please contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 33 U.S.C. 1501 *et seq.,* 49 CFR 1.93(h).

Dated: November 8, 2016.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–27297 Filed 11–25–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0124; Notice 1]

General Motors LLC, Receipt of Petition for Inconsequentiality and Decision Granting Request To File Out of Time and Request for Deferral of Determination

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of receipt of petition and decision granting partial relief.

SUMMARY: On May 16, 2016, TK Holdings Inc. (Takata) filed a defect information report (DIR), in which it determined that a defect existed in certain passenger-side air bag inflators that it manufactured, including passenger inflators that it supplied to General Motors, LLC (GM) for use in certain GMT900 vehicles. GM has petitioned the Agency for a decision that, because of differences in inflator design and vehicle integration, the equipment defect determined to exist by Takata is inconsequential as it relates to motor vehicle safety in the GMT900 vehicles, and that GM should therefore be relieved of its notification and remedy obligations.

DATES: The closing date for comments is September 14, 2017.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments regarding this petition for inconsequentiality. Comments must refer to the docket and notice number cited in the title of this notice and be submitted by one of the following methods:

- *Internet:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Facsimile:* (202) 493–2251.

You may call the Docket at (202) 366–9324.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Thus, submitting such information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the ''Privacy and Security Notice'' link in the footer of *http://www.regulations.gov.* 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 in the docket and will be considered. 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 also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

FOR FURTHER INFORMATION CONTACT: For legal issues: Elizabeth Mykytiuk, Office of the Chief Counsel, NCC–100, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: (202) 366–5263).

For general information regarding NHTSA's investigation into Takata air bag inflator ruptures and the related recalls: *http://www.safercar.gov/rs/takata/index.html.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 4, 2016, NHTSA issued, and Takata agreed to, an Amendment to the November 3, 2015 Consent Order (the ''Amendment''), under which Takata is bound to declare a defect in all frontal driver and passenger air bag inflators that contain a phase-stabilized ammonium nitrate (PSAN)-based propellant and do not contain a moisture-absorbing desiccant. Such defect declarations will be made on a rolling basis. *See* Amendment at ¶ 14. Takata timely submitted the first scheduled equipment DIRs on May 16, 2016. *See* Recall Nos. 16E–042, 16E–043, and 16E–044. Those DIRs included non-desiccated passenger inflators, designated as types SPI YP and PSPI–L YD, that were installed as original equipment on certain motor vehicles manufactured by GM (the ''covered passenger inflators''), as well as other non-desiccated passenger inflators installed as original equipment on motor vehicles manufactured by a number of other automakers, which are not at issue here.

The Takata filing triggered GM's obligation to file a DIR for the affected GM vehicles. *See* 49 CFR part 573; Amendment at ¶ 16; November 3, 2015 Coordinated Remedy Order at ¶ 46.[1] GM ultimately submitted two DIRs on May 27, 2016. *See* Recall Nos. 16V–381 (for vehicles in Zone A) and 16V–383 (for vehicles in Zone B). In an attachment to the DIRs, GM stated that it had not determined the existence of a safety defect, and it referred to the recalls as ''preliminary.''[2] The attachment further indicated that, even though GM had not made an independent defect determination, the company was nonetheless filing a DIR in response to Takata's defect determination. *See* Recall Nos. 16V–381 and 16V–383. GM stated that it ''expect[s] to provide NHTSA with additional test data, analysis or other relevant and appropriate evidence in support of our belief that our vehicles do not pose an unreasonable risk to safety.'' *See id.* GM also stated that it ''will conduct a recall of its airbag inflators covered by the May 2016 Takata DIRs, unless GM is able to prove to NHTSA's satisfaction that the inflators in its vehicles do not pose an unreasonable risk to safety.'' *Id.*

On November 15, 2016, GM petitioned the Agency, under 49 U.S.C. 30118(d), 30120(h) and 49 CFR part 556, for a decision that, because of differences in inflator design and vehicle integration, the equipment defect determined to exist by Takata is inconsequential as it relates to motor vehicle safety in the GMT900 vehicles. *See* GM's Petition for Inconsequentiality and Request for Deferral of Determination Regarding Certain GMT900 Vehicles Equipped with Takata ''SPI YP'' and ''PSPI–L YD'' Passenger Inflators (the ''Petition''). GM's Petition concluded that because the putative defect is inconsequential in the GMT900 vehicles, the company should be relieved of notification and remedy obligations for Takata inflators in those GM vehicles. *See* Petition at p. 18. GM further requested that NHTSA defer its decision on the petition until GM is able to complete its testing and engineering analysis in August 2017. *See id.*

II. Request To Accept Late Filing

As an initial matter, GM requests that NHTSA, in its enforcement discretion, accept and consider the Petition even though it was filed outside the regulatory filing deadline. *See* Petition at p. 5 n.5. GM's Petition was filed with the Agency on November 15, 2016. Under 49 CFR 556.4(c), inconsequentiality petitions usually must be filed within 30 days of the relevant defect determination. Because Takata made a defect determination concerning the covered passenger inflators on May 16, 2016, GM's Petition should have been filed by June 15, 2016.

GM has requested that NHTSA waive the 30-day filing requirement in light of GM's transparency with the Agency, including communications occurring before and contemporaneous with the May 2016 DIR filings. *See* Petition at p. 5 n.5. While such transparency alone would not support a waiver of the filing deadline, the Agency has considered the totality of the facts and circumstances presented here in deciding to grant the waiver.

First, allowing GM's Petition to be filed outside the regulatory deadline is not inconsistent with the purpose of such deadline, which is to prevent a manufacturer from unduly delaying the remedy of defects. *See* 42 FR 7146. Here, GM's delay in filing the Petition will not have any impact on the availability of a remedy. GM has indicated that it has been working diligently on a potential remedy and has stated it intends to have a validated, alternative remedy available by June 30, 2017, should it become necessary. *See* Petition at p. 17. This length of time between DIR submission and remedy is not unusual in the context of the Takata recalls, and it is consistent with the lower relative rupture risk of the covered passenger inflators and the time needed to develop, validate, and ensure the safety of an alternative remedy part. Therefore, some elapsed time between the DIR and the availability of the remedy is inevitable, regardless of the timing of GM's Petition. NHTSA has determined that the availability of the remedy for GM's May 2016 DIRs would be essentially the same whether this Petition was filed in June or November.

Second, GM has been proactively investigating Takata inflators in GMT900 vehicles since November 2014. *See* Petition at pp. 4–5. GM believes that it has now obtained data through its investigation that supports an inconsequentiality finding, and that it will be able to prove that the covered passenger inflators do not present an unreasonable risk to safety once that investigation concludes in August 2017. *See* Petition at p. 18. Given that GM's ongoing investigation pre-dates the May 2016 DIR filings, the Agency concludes that the company is acting in good faith in filing this Petition, even though it filed the Petition beyond the deadline.[3]

Finally, GM communicated its intent to file such a petition in the attachment to its May 2016 DIRs when it stated, ''GM will conduct a recall of its airbag inflators covered by the May 2016 Takata DIRs, unless GM is able to prove to NHTSA's satisfaction that the inflators in its vehicles do not pose an unreasonable risk to safety.'' *See* Recall Nos. 16V–381 and 16V–383. This statement is consistent with the purpose of 49 U.S.C. 30118(d) and 49 CFR part 556, which is to enable vehicle manufacturers to petition NHTSA for an exemption from the Safety Act's notice and remedy requirements when a defect is determined to be inconsequential to motor vehicle safety. Because NHTSA, the public, and other stakeholders were on notice (since at least May 2016) of GM's intention to attempt to prove the safety of the covered passenger inflators,

[1] Under 49 CFR 573.5(a), a vehicle manufacturer is responsible for any safety-related defect determined to exist in any item of original equipment. *See also* 49 U.S.C. 30102(b)(1)(C).

[2] Neither the Safety Act nor NHTSA regulations define or use the term ''preliminary recall.''

[3] If it appeared that a manufacturer had filed such a petition in an attempt to toll its notification and remedy obligations while it began a new investigation, the Agency would not waive the 30-day deadline.

thereby avoiding any notice and remedy obligation, there is no prejudice to the public caused by GM filing the Petition after the standard deadline.

For the foregoing reasons, NHTSA will grant GM's request and accept the filing of its Petition outside of the 30-day deadline. NHTSA is granting this extraordinary relief because of the unique circumstances surrounding the Takata recall and the particular facts and circumstances of this case. This decision should not be considered precedent in any other case. The Agency will continue to enforce the 30-day filing deadline for inconsequentiality petitions, including any others that may be filed by GM in connection with future Takata recalls.

III. Class of Motor Vehicles Involved

GM's Petition involves certain ''GMT900'' vehicles that contain the covered passenger inflators (designated as inflator types ''SPI YP'' and ''PSPI–L YD'').[4] GMT900 is a GM-specific vehicle platform that forms the structural foundation for a variety of GM trucks and sport utility vehicles, including: Chevrolet Silverado 1500, GMC Sierra 1500, Chevrolet Silverado 2500/3500, GMC Sierra 2500/3500, Chevrolet Tahoe, Chevrolet Suburban, Chevrolet Avalanche, GMC Yukon, GMC Yukon XL, Cadillac Escalade, Cadillac Escalade ESV, and Cadillac Escalade EXT. The GM DIRs included the following GMT900 vehicles:

- In Zone A, model year 2007–2011 GMT900 vehicles. Zone A comprises the following states and U.S. territories: Alabama, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, South Carolina, Texas, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands (Saipan), and the U.S. Virgin Islands. *See* Amendment at ¶ 7.a.
- In Zone B, certain model year 2007–2008 GMT900 vehicles. Zone B comprises the following states: Arizona, Arkansas, Delaware, District of Columbia, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia. *See* Amendment at ¶ 7.b.[5]

IV. Summary of GM's Petition

According to the Petition, GM's engineering analysis supports the conclusion that the covered passenger inflators in the subject GMT900 vehicles are currently performing as designed, and will likely continue to perform as designed for a number of years—*i.e.,* that the covered passenger inflators, as integrated into the GMT900 vehicles, do not present an unreasonable risk to safety. *See* Petition at p. 3

As an initial matter, GM notes in its Petition that Takata submitted the May 16, 2016 equipment DIRs without evidence of any incidents of inflator rupture in the SPI YP or PSPI–L YD variants that are used only in GMT900 vehicles. Petition at p. 2. GM has been studying the long-term performance of the covered passenger inflators and has conducted an analysis of the ballistic performance of the covered passenger inflators. *See* Petition at pp. 11–12. Based upon this analysis, GM asserts that the covered passenger inflators are not currently at risk of rupture. According to the Petition, GM's position is based upon the following: an estimated 52,000 Takata passenger inflator deployments in GMT900 vehicles without a rupture; ballistic tests of 1,418 covered passenger inflators without a rupture or sign of abnormal deployment; test deployment of 12 inflators artificially exposed to additional humidity and temperature cycling without a rupture or sign of abnormal deployment; and analysis, through stress-strength interference, indicating that the propellant in older covered passenger inflators has not degraded to a sufficient extent to create rupture risk. *See* Petition at p. 4.

GM further states that the covered passenger inflators are not used by any other original equipment manufacturer and that those inflators have a number of unique design features that influence burn rates and internal ballistic dynamics, including greater vent-area-to-propellant-mass ratios, steel end caps, and thinner propellant wafers. *See* Petition at p. 12. In addition, GM states that the physical environment of the GMT900 vehicles better protects the covered passenger inflators from temperature cycling that can cause rupture. *Id.* More specifically, GM notes that the GMT900 vehicles have larger interior volumes than smaller passenger cars, and are equipped with solar-absorbing windshields and side glass. *Id.* To support the effect such differences may have on the safety of the covered passenger inflators, GM cites NHTSA's expert Dr. Harold R. Blomquist, who stated in his expert report that vehicle platform differences may play a role in the relative risk of rupture. *See* Petition at p. 11 (citing Amendment, Exhibit A at ¶¶ 30–31).

Finally, GM states its belief that the covered passenger inflators will not present a risk of rupture in the longer term. To supplement its internal analysis, GM has retained a third-party expert, Orbital ATK, to conduct a long-term aging study that will estimate the service life expectancy of the covered passenger inflators in the GMT900 vehicles. *See* Petition at p. 12. GM has asked Orbital ATK to test the effect of different inflator design variables—*i.e.,* wafer thickness, vent area, moisture dynamics, and others—in the GMT900 platform's unique thermal environment. *See* Petition at pp. 17–18. GM anticipates that this study will be complete in August 2017. *Id.*

V. Request To Defer Decision on Petition

GM implicitly acknowledges that its data, information, and views are not yet sufficient for the Agency to grant its inconsequentiality petition. Given the status of GM's engineering analysis and the results of testing conducted to date, and in order to fully-analyze the performance of these inflators over the long-term, the company has requested that NHTSA allow GM until August 31, 2017 to complete its engineering analysis and inflator aging studies. *See* Petition at pp. 17–18. Ordinarily, under 49 CFR 556.4(b)(5), an inconsequentiality petition must set forth all data, views, and arguments supporting that petition. In this case, GM states that further probative data (*e.g.,* further aging testing and analysis) is forthcoming, but necessarily will take more time to develop. Therefore, some of the evidence GM intends to present cannot yet be set forth in the Petition. Accordingly, GM requests that the Agency defer its decision on the Petition until such data can be developed.

GM asserts that it has made a threshold showing that its inflators are safe in the short term or, at a minimum, will not present an unreasonable risk to safety during the period that the Petition is pending. *See* Petition at p. 3. GM further asserts that because its engineers and suppliers have been working on re-designed replacement inflators to be ready in the event that the inflators in

[4] GM previously filed, and ultimately withdrew, a petition to defer the recall of certain newer GMT900 vehicles that will be included in Takata's next set of DIRs, scheduled to be submitted on December 31, 2016. *See* 81 FR 64575. This Petition does not include or address that population of vehicles. *See* Petition at pp. 8–9.

[5] Takata also filed an equipment DIR covering non-desiccated passenger inflators in Zone C that were manufactured between January 1, 2003 and December 31, 2004. *See* Recall No. 16E–044. Because GM did not use the covered passenger inflators in its GMT900 vehicles prior to model year 2007, there were no GMT900 vehicles in Zone C affected by Takata's DIR. Zone C comprises the following states: Alaska, Colorado, Connecticut, Idaho, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming. *See* Amendment at ¶ 7.c.

these vehicles must be replaced, providing GM the additional time it requests will not delay GM's efforts to develop and validate replacement inflators as an available remedy for the Subject GMT900 Vehicles, should that remedy ultimately be required. *Id.*

The Agency acknowledges that GM has produced probative evidence to support its inconsequentiality claim. The testing and data collected by GM to date—while not yet sufficient—tends to support GM's Petition, at least with respect to the short-term safety of the covered passenger inflators. Based upon the data GM has developed and presented to date, NHTSA believes that in the coming months this evidence could ultimately grow and develop to support GM's position with respect to the long-term safety of the covered passenger inflators. Presently, however, the evidence GM has presented is not yet sufficient to prove (by a preponderance of the evidence) their long-term safety. Based upon the evidence and analysis GM has presented to date, and its plan to develop and analyze additional data, NHTSA agrees that GM's request for additional time is reasonable and supported by the testing and data collected to date.

Moreover, although a pending inconsequentiality petition tolls GM's obligation to provide a remedy, NHTSA does not believe consumers will be significantly impacted by the requested deferral. As explained above, GM has been working toward an alternative remedy in the event it should become necessary, and expects that remedy to be available in June 2017. The length of the requested deferral is through August 2017. Therefore, if NHTSA ultimately were to deny this Petition at the conclusion of GM's engineering analysis, no significant delay in the availability of remedy parts would result.

For these reasons, NHTSA will grant the requested relief, and allow GM an opportunity to provide more evidence and a fuller record upon which the Agency can make its determination. Subject to the conditions that follow, GM shall have until August 31, 2017 to present all data, views, and arguments supporting this Petition, including additional analysis and testing results, through a supplement or amendment, which shall be published in the docket. GM shall be required to provide NHTSA with monthly updates on GM's engineering analysis, Orbital ATK's study, and any other data, analysis, or test results GM develops in its effort to support its inconsequentiality claim. In addition, GM shall provide the Agency with a non-confidential summary of each update that will be made available through the public docket. During this time, any interested person may also submit written data, views, and arguments regarding this Petition. Following the conclusion of the requested deferral—*i.e.,* August 31, 2017, NHTSA will make a decision whether to grant or deny the Petition after considering all available information.

NHTSA reserves the right to deny this Petition at any time prior to August 31, 2017, in the event necessary to mitigate an unreasonable risk to safety within the meaning of the Safety Act, based upon, *inter alia,* future field ruptures, ballistic testing failures that are not related to artificial aging tests, or other relevant facts or circumstances.

Accordingly, NHTSA hereby gives notice of its receipt of GM's Petition for Inconsequentiality and Request for Deferral of Determination Regarding Certain GMT900 Vehicles Equipped with Takata ''SPI YP'' and ''PSPI–L YD'' Passenger Inflators. And it is hereby ORDERED that:

1. GM's request to file an inconsequentiality petition for DIRs 16V–381 and 16V–383 beyond the 30-day deadline is GRANTED;

2. The period for public comment on GM's Petition shall run from the publication of this decision through September 14, 2017;

3. GM's request for a deferral of the Agency's decision so that it may have additional time to present evidence and analysis in support of this Petition is GRANTED, and GM's time for the development and presentation of further evidence, data, and information is extended to August 31, 2017;

4. GM shall provide NHTSA with monthly updates on its engineering analysis, Orbital ATK's study, and any other data, analysis, or test results the company develops in its effort to support this Petition, and GM shall provide the Agency with a non-confidential summary of each update that will be added to the public docket; and

5. NHTSA retains the right to rule on the Petition at any time before August 31, 2017 (*i.e.,* to either deny or grant the Petition) should additional evidence, facts, or circumstances—in NHTSA's sole judgment and discretion—warrant such a decision.

Authority: 49 U.S.C. 30101, *et seq.,* 30118, 30120(h), 30162, 30166(b)(1), 30166(g)(1); delegation of authority at 49 CFR 1.95(a); 49 CFR parts 556, 573, 577.

Paul A. Hemmersbaugh,

Chief Counsel.

[FR Doc. 2016–28476 Filed 11–25–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0128]

Pipeline Safety: Meeting of the Voluntary Information-Sharing System Working Group

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of Voluntary Information-Sharing System Working Group Meeting.

SUMMARY: This notice announces a public meeting of the newly created Voluntary Information-Sharing System (VIS) Working Group. The VIS Working Group will convene to discuss administrative procedures and consider the development of a voluntary information-sharing system.

DATES: The VIS Working Group will meet on Monday, December 19, 2016, from 8:30 a.m. to 5:00 p.m., EST.

The meeting will not be web cast; however, any documents presented will be available on the meeting Web site and posted on the E-Gov Web site: *http://www.regulations.gov* under docket number PHMSA–2016–0128 within 30 days following the meeting.

ADDRESSES: The meeting will be held at a location yet to be determined in the Washington, DC Metropolitan area. The meeting location, agenda and any additional information will be published on the following VIS Working Group and registration page at: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=122*.

Public Participation

This meeting will be open to the public. Members of the public who wish to attend in person are asked to register at: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=122* no later than December 16, 2016, in order to facilitate entry and guarantee seating. Members of the public who attend in person will also be provided an opportunity to make a statement during the meeting.

Written comments: Persons who wish to submit written comments on the meeting may be submitted to the docket in the following ways:

E-Gov Web site: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on Federal holidays.

Instructions: Identify the docket number PHMSA–2016–0128 at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477) or view the Privacy Notice at *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2016–0128.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail.

Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

Services for Individuals With Disabilities

The public meeting will be physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Cheryl Whetsel at *cheryl.whetsel@dot.gov* by December 12, 2016.

FOR FURTHER INFORMATION CONTACT: For information about the meeting, contact Cheryl Whetsel by phone at 202–366–4431 or by email at *cheryl.whetsel@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The VIS Working Group is a newly created advisory committee established in accordance with Section 10 of the Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2016 (Pub. L. 114–183), the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., App. 2, as amended), and 41 CFR 102–3.50(a).

II. Meeting Details and Agenda

The VIS Working Group will consider and provide recommendations to the Secretary as specifically outlined in section 10 of Public Law 114–183:

(a) The need for, and the identification of, a system to ensure that dig verification data are shared with in-line inspection operators to the extent consistent with the need to maintain proprietary and security-sensitive data in a confidential manner to improve pipeline safety and inspection technology;

(b) Ways to encourage the exchange of pipeline inspection information and the development of advanced pipeline inspection technologies and enhanced risk analysis;

(c) Opportunities to share data, including dig verification data between operators of pipeline facilities and in-line inspector vendors to expand knowledge of the advantages and disadvantages of the different types of in-line inspection technology and methodologies;

(d) Options to create a secure system that protects proprietary data while encouraging the exchange of pipeline inspection information and the development of advanced pipeline inspection technologies and enhanced risk analysis;

(e) Means and best practices for the protection of safety- and security-sensitive information and proprietary information; and

(f) Regulatory, funding, and legal barriers to sharing the information described in paragraphs (a) through (d).

The Secretary will publish the VIS Working Group's recommendations on a publicly available DOT Web site. The VIS Working Group will fulfill its purpose once its recommendations are published online.

The agenda will be published on the PHMSA Web site.

Issued in Washington, DC, on November 21, 2016, under authority delegated in 49 CFR 1.97.

Linda Daugherty,

Deputy Associate Administrator for Field Operations.

[FR Doc. 2016–28425 Filed 11–25–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2016–0171]

Request for Comments

AGENCY: Office of the Secretary, U.S. Department of Transportation

ACTION: Notice and request for comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.),* this notice announces that the U.S. Department of Transportation (DOT) will forward the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for renewal of a previously approved collection. The ICR describes the nature of the information collection and its expected cost and burden hours. The OMB approved the form in 2015 with its renewal required by December 31, 2016. The **Federal Register** Notice with a 60-day comment period soliciting comments on the form renewal was published on September 16, 2016, [FR Vol. 81, No. 180, page 63855]. No comments were received.

DATES: Comments on this notice must be received by December 28, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal to the DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tami L. Wright, Associate Director, Equal Employment Opportunity Complaints and Investigations Division

(S–34), Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–9370.

SUPPLEMENTARY INFORMATION:

Form Title(s): Individual Complaint of Employment Discrimination Form.

Form Number: DOT F 1050–8.

OMB Control Number: 2105–0056.

Abstract: The DOT will utilize the form to collect information necessary to process Equal Employment Opportunity (EEO) discrimination complaints filed by employees, former employees, and applicants for employment with the Department. These complaints are processed in accordance with the Equal Employment Opportunity Commission's regulations, 29 CFR part 1614, as amended. The DOT will use the form to: (a) Request requisite information from the individual for processing his or her EEO employment discrimination complaint; and (b) obtain information to identify an individual or his or her attorney or other representative, if appropriate. An individual's filing of an EEO employment complaint is solely voluntary. The DOT estimates that it takes an individual approximately one hour to complete the form.

Type of Request: Renewal of a previously approved collection.

Affected Public: Job applicants filing EEO employment discrimination complaints.

Total Annual Estimated Burden: 10 hours.

Frequency of Collection: An individual's filing of an EEO complaint is solely voluntary.

Comments are Invited on: (a) Whether the proposed collection of information is reasonable for the proper performance of the EEO functions of the Department; (b) the accuracy of the Department's estimate of the burden of the proposed information collection, including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate, automated, electronic, mechanical, or other technology. Comments should be addressed to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Issued in Washington, DC, on November 18, 2016.

Habib Azarsina,

OST Privacy and PRA Officer, U.S. Department of Transportation.

BILLING CODE 4910–9X?–P

OMB No:

PAPERWORK REDUCTION ACT BURDEN STATEMENT

Under the Paperwork Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number. The public reporting burden for this voluntary collection of information is estimated to average 1 hour per response. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to the U.S. Department of Transportation, Departmental Office of Civil Rights, S-34, 1200 New Jersey Avenue, SE., Washington, DC 20590

U.S. Department of Transportation

INDIVIDUAL COMPLAINT OF EMPLOYMENT DISCRIMINATION FORM INSTRUCTIONS

(*Read the following instructions carefully before you complete this form.*)
(*Please complete all items on the complaint form.*)

GENERAL: This form should be used only if you, as an applicant for employment with the Department of Transportation, or as a present or former Department of Transportation employee:

1) believe you have been discriminated against because of your **race, color, religion, sex** (gender, sexual harassment, pregnancy, sexual orientation, gender identity, or transgender status), **national origin, age** (40 years or older at the time of the event giving rise to your claim), **physical or mental disability, equal pay/compensation**, **genetic information**, or believe that you have been **retaliated** against for participating in activities covered under the Equal Employment Opportunity statutes; **and**

2) have presented the matter for informal resolution to an EEO Counselor within **45-calendar days** of the event giving rise to your claim, or within **45-calendar days** of first becoming aware of the alleged discrimination.

IMPORTANT NOTE: In certain situations, the information provided in Part III of the attached complaint form may be used in lieu of an affidavit in the investigation of your complaint. Accordingly, the information you provide in this part should be brief, clear, and complete.

WHEN TO FILE: In accordance with 29 C.F.R. § 1614.106, your formal complaint must be filed within **15-calendar days** of the date you received the Notice of Right to File a Discrimination Complaint form from your EEO Counselor. You must sign and date your complaint. If you are represented **by an attorney**, the attorney may sign the complaint on your behalf.

These time limits may be extended: **1)** if you show that you were not notified of the time limits and were not otherwise aware of them, or **2)** if you were prevented by circumstances beyond your control from submitting the matter within the time limits, or **3)** for other reasons considered sufficient by the Department.

REPRESENTATION: You may have a representative of your own choosing at all stages of the processing of your complaint. However, your representative will be disqualified if such representation would conflict with the official or collateral duties of the representative. No EEO Counselor or EEO Officer may serve as a representative. *(Your representative need not be an attorney, but only an attorney representative may sign the complaint on your behalf.)*

WHERE TO FILE: The complaint should be filed with the Associate Director, Equal Employment Opportunity Complaints and Investigations Division (S-34), Departmental Office of Civil Rights, 1200 New Jersey Avenue, S.E., W76-401, Washington, DC 20590. Filing instructions are contained in the Notice of Right to File a Discrimination Complaint form which was provided by your EEO Counselor. Keep a copy of the completed complaint form for your records.

(PLEASE ALSO READ THE PRIVACY ACT STATEMENT ON THE REVERSE SIDE)

PRIVACY ACT STATEMENT

1. **FORM NUMBER/TITLE DATE**: Department of Transportation Form Number 1050-8, Individual Complaint of Employment Discrimination with the Department of Transportation.

2. **AUTHORITY**: 42 U.S.C. 2000e; 29 U.S.C. 633a; PL 95-062 as amended; 5 U.S.C. 1303 and 1304; 5 C.F.R. 5.2 and 5.3; 29 C.F.R. 1614.105 and 1614.107; and Executive Order 11478, as amended.

3. **PRINCIPAL PURPOSES**: The purpose of this complaint form, whether recorded initially on the form or taken from a letter from the Complainant, is to record the filing of a formal written complaint of employment discrimination with the Department of Transportation on the grounds of race, color, religion, sex (gender, sexual harassment, pregnancy, sexual orientation, gender identity, or transgender status), national origin, age, physical or mental disability, genetic information, or reprisal, and to reach a decision on the complaint. Information provided on this form will be used by the Department of Transportation to determine whether the complaint was timely filed and whether the claims in the complaint are within the purview of 29 C.F.R. Part 1614, and to provide a factual basis for investigation of the complaint.

4. **ROUTINE USES**: Other disclosures may be:

   a. to respond to a request from a Member of Congress regarding the status of the complaint or appeal;
   b. to respond to a court subpoena and/or to refer to a district court in connection with a civil suit;
   c. to disclose information to authorized officials or personnel to adjudicate a complaint or appeal;
   d. to disclose information to another Federal agency or to a court or third party in litigation when the Government is party to a suit before the court.

5. **WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY, AND EFFECT ON INDIVIDUAL BY NOT PROVIDING INFORMATION**: Formal complaints of employment discrimination must be in writing, signed by the Complainant (or attorney representative), and must identify the parties and action or policy at issue. Failure to comply may result in the Department of Transportation dismissing the complaint. It is not mandatory that this form be used to provide the requested information.

DETACH AND KEEP THIS PAGE WHEN YOU FILE YOUR COMPLAINT

ONE DOT Working Better Together DEPARTMENT OF TRANSPORTATION

INDIVIDUAL COMPLAINT OF EMPLOYMENT DISCRIMINATION WITH THE DEPARTMENT OF TRANSPORTATION

FOR OFFICE USE ONLY

DEPARTMENT CASE NUMBER

FILING DATE

PART I COMPLAINANT IDENTIFICATION INFORMATION

1. Name (Last, First, Middle Initial):

2. Telephone/Fax (Include Area Code):

Home: Fax:

Work: Fax:

E-Mail:

3. Present Home Address (You must notify the Departmental Office of Civil Rights of any changes to your address while the complaint is pending, or your complaint may be dismissed):

Street Address

City State Zip Code

4. If you are a *current* or *former* employee of the Federal government, list your most recent title, series, and grade.

Title Series Grade

5. Name and Address of Organization Where You Work (If a Department of Transportation Employee):

Office and Staff Symbol:

Street Address:

City: State: Zip Code:

6. Employment Status in Relation to this Complaint:

☐ **Applicant** ☐ **Probationary** ☐ **Career/Career Conditional**

☐ **Former Employee**

Date Last Employed at Department

☐ **Retired**

Date of Retirement

☐ **Other**

Specify

7. I certify that all of the statements made in this complaint are true, complete, and correct to the best of my knowledge and belief.

Signature of Complainant or ATTORNEY Representative **Date**

PART II DESIGNATION OF REPRESENTATIVE

8. You may represent yourself in this complaint or you may choose someone to represent you. Your representative does not have to be an attorney. You may change your designation of a representative at a later date, but you must notify the Departmental Office of Civil Rights immediately in writing of any change, and you must include the same information requested in this Part.

"I hereby designate _____ (Please Print Name) to serve as my representative during the course of this complaint. I understand that my representative is authorized to act on my behalf.

9. Representative's Mailing Address:

Firm/Organization

Street Address

City State Zip Code

10. Representative's Employer (If Federal Agency):

11. Representative's Telephone/Fax (Include Area Code):

Telephone: Fax:

12. SIGNATURE of Complainant (or ATTORNEY) **DATE**

PART III ALLEGED DISCRIMINATORY ACTIONS

13. Name and Address of Agency/office that took the action at issue (if different than item 5.)

Office and Organizational Component

Street Address

City State Zip Code

14. If your complaint involves non-selection for a position, please complete the following:

Position Title Series Grade

Vacancy Announcement No. Date Learned of Non-selection

15. Mark below ONLY the basis(es) you believe were relied on to take the actions described in #17.

- ☐ Race (Specify) _____
- ☐ Color (State Complexion) _____
- ☐ Religion (Specify) _____
- ☐ Sex (Gender, Sexual Harassment, Pregnancy, Sexual Orientation, Gender Identity, or Transgender Status) _____
- ☐ National Origin (Specify) _____
- ☐ Age (Date of Birth) _____
- ☐ Mental Disability (Specify) _____
- ☐ Physical Disability (Specify) _____
- ☐ Equal Pay/Compensation (Specify) _____
- ☐ Genetic Information (Specify) _____
- ☐ Retaliation (Date(s) of prior EEO Activity) _____

16. Mark below ONLY the claim(s) you believe were relied on to take the actions described in #17.

☐	1. Appointment/Hire	☐	14. Reassignment A. Denied B. Directed
☐	2. Assignment Of Duties	☐	15. Reasonable Accommodation – Disability
☐	3. Awards	☐	16. Reinstatement
☐	4. Conversion To Full-Time	☐	17. Religious Accommodation
☐	5. Disciplinary Action A. Demotion B. Reprimand C. Suspension D. Termination E. Other	☐	18. Retirement
☐	6. Duty Hours	☐	19. Sex Stereotyping (LGBT-related discrimination only)
☐	7. Evaluation/Appraisal	☐	20. Telework
☐	8. Examination/Test	☐	21. Termination
☐	9. Harassment A. Non-Sexual B. Sexual C. Hostile Work Environment (non-sexual) D. Hostile Work Environment (sexual)	☐	22. Terms/Conditions Of Employment

☐	10. Medical Examination	☐	23. Time And Attendance
☐	11. Pay Including Overtime	☐	24. Training
☐	12. Performance Evaluation/ Appraisal	☐	25. Other
☐	13. Promotion/Non-Selection		

17. (A) Describe the action taken against you that you believe was discriminatory; (B) Give the date the action occurred, and the name of each person responsible for the action; (C) Describe how you were treated differently than other employees or applicants because of your race, color, religion, sex (gender, sexual harassment, pregnancy, sexual orientation, gender identity, or transgender status), national origin, age (40 years or older), disability (mental and/or physical), genetic information, or in retaliation for your participation in the EEO complaint process or opposition to alleged discriminatory practices; (D) indicate what harm, if any, came to you in your work situation as a result of this action. (You may attach extra sheets.)

18. What remedial or corrective action are you seeking?

PART IV EEO COUNSELOR CONTACT

19. When did the most recent discriminatory event occur?

Month Day Year

20. When did you first become aware of the alleged discrimination?

Month Day Year

21. When did you contact an EEO Counselor?

Month Day Year

22. Did you discuss ALL actions raised in item 17 with an EEO Counselor? ☐ YES ☐ NO
(If no, explain on attached sheet)

23. Name and Telephone number of EEO Counselor

Name Telephone No.

24. When did you receive your Notice of Right to File a Discrimination Complaint?

Month Day Year

25. On this same matter, have you filed a grievance or appeal under:

- Negotiated Grievance procedures ☐ YES ☐ NO
- Agency grievance procedure ☐ YES ☐ NO
- MSPB appeal procedure ☐ YES ☐ NO

If you filed a grievance or appeal, provide date filed, case number, and present status.

[FR Doc. 2016–28486 Filed 11–25–16; 8:45 am]
BILLING CODE 4910–9X–C

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Announcement Type: Notice and Request for Public Comment

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury, is soliciting comments concerning the Certification of Material Events Form.

DATES: Written comments must be received on or before January 27, 2017 to be assured of consideration.

ADDRESSES: Submit your comments via email to David Meyer, Certification, Compliance Monitoring and Evaluation (CCME) Program Manager, CDFI Fund, at *ccme@cdfi.treas.gov.*

FOR FURTHER INFORMATION CONTACT: David Meyer, CCME Program Manager, CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC. 20220. The Certification of Material Events Form may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov/ccme.* Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's Web site at *http://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certification of Material Events Form.

OMB Number: 1559–0037.

Abstract: This information collection captures information related to specified ''material events'' that recipients are required to report per their assistance agreements for the Community Development Financial Institution Program, New Markets Tax Credit Program, Bank Enterprise Award Program, Capital Magnet Fund Program, and CDFI Bond Guarantee Program. The revised form requires recipients to indicate their material event, explain the event, and their organizational response.

Type of Review: Regular Review.

Affected Public: CDFIs and CDEs; including business or other for-profit institutions, non-profit entities, and State, local and Tribal entities participating in CDFI Fund programs.

Estimated Number of Respondents: 200.

Estimated Annual Time per Respondent: .25 hours.

Estimated Total Annual Burden Hours: 50 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 4701 *et seq.;* 26 U.S.C. 45D.

Mary Ann Donovan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2016–28572 Filed 11–25–16; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Request To Reissue U.S. Savings Bonds to a Personal Trust

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Request to Reissue U.S. Savings Bonds to a Personal Trust.

DATES: Written comments should be received on or before January 27, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for further information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request to Reissue U.S. Savings Bonds to a Personal Trust.

OMB Number: 1530–0036.

Form Number: FS Form 1851.

Abstract: The information is necessary to support a request for reissue of savings bonds in the name of the trustee of a personal trust estate.

Current Actions: Extension of a previously approved collection.

Type of Review: Regular.

Affected Public: Households and Individuals.

Estimated Number of Respondents: 18,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 4,500.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 21, 2016.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2016–28410 Filed 11–25–16; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Minority Bank Deposit Program (MBDP) Certification Form for Admission

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Minority Bank Deposit Program (MBDP) Certification Form for Admission.

DATES: Written comments should be received on or before January 27, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for further information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Minority Bank Deposit Program (MBDP) Certification Form for Admission

OMB Number: 1530–0001.

Form Numbers: FS Form 3144.

Abstract: The information collected on this form is used by financial institutions to apply for participation in the Minority Bank Deposit Program. Institutions approved for acceptance in the program are entitled to special assistance and guidance from Federal agencies, State and local governments, and private sector organizations.

Current Actions: Extension of a previously approved collection.

Type of Review: Regular.

Affected Public: Private Sector.

Estimated Number of Respondents: 150.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 75.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 21, 2016.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2016–28409 Filed 11–25–16; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Application by Survivors for Payment of Bond or Check Issued Under the Armed Forces Leave Act of 1946, as Amended

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Application By Survivors for Payment of Bond or Check Issued Under the Armed Forces Leave Act of 1946, as amended.

DATES: Written comments should be received on or before January 27, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for further information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application By Survivors for Payment of Bond or Check Issued Under the Armed Forces Leave Act of 1946, as amended.

OMB Number: 1530–0038.

Form Number: FS Form 2066.

Abstract: The information is requested to support payment of an Armed Forces Leave Bond or check issued under Section 6 of the Armed Forces Leave Act of 1946, as amended, where the owner died without assigning the bond to the Administrator of Veterans Affairs prior to payment, or without presenting the check for payment.

Current Actions: Extension of a previously approved collection.

Type of Review: Regular.

Affected Public: Households and Individuals.

Estimated Number of Respondents: 2,500.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,250.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 21, 2016.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2016–28411 Filed 11–25–16; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0757]

Agency Information Collection Activity Under OMB Review (Supportive Services for Veteran Families (SSVF) Program) Application for Supportive Services Grant)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to provide supportive services grants to private non-profit organizations and consumer cooperatives, who will coordinate or provide supportive services to very low-income veteran families residing in permanent housing, are homeless and scheduled to become residents of permanent housing within a specified time period.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 27, 2017.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Brian McCarthy, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *brian.mccarthy4@va.gov.* Please refer to ''OMB Control No. 2900–0757 (Supportive Services for Veteran Families (SSVF) Program)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 461–6345.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is

being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Supportive Services for Veteran Families (SSVF) Program.

a. Application for Supportive Services Grants VA Form 10–10072

b. Participant Satisfaction Survey, VA Form 10–10072a

c. Quarterly Grantee Performance Report, VA Form 10–10072b

d. Renewal Application. VA Form 10–10072c

e. Applicant Budget Template Worksheet

f. FY16 Financial Report

g. Grantee Certification

OMB Control Number: 2900–0757 (Supportive Services for Veteran Families (SSVF) Program).

Type of Review: Revision.

Abstract: The purpose of the Supportive Services for Veteran Families (SSVF) Program is to provide supportive services grants to private non-profit organizations and consumer cooperatives who will coordinate or provide supportive services to very low-income veteran families who are residing in permanent housing, are homeless and scheduled to become residents of permanent housing within a specified time period, or after exiting permanent housing, are seeking other housing that is responsive to such very low-income veteran family's needs and preferences.

Affected Public: Individuals or households.

Estimated Annual Burden: 25,505 hours.

Estimated Average Burden per Respondent: 62.5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 12,270.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–28455 Filed 11–25–16; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 81 Monday,

No. 228 November 28, 2016

Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 262, et al.
Hazardous Waste Export-Import Revisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 266, 267, 271 and 273

[EPA–HQ–RCRA–2015–0147; FRL–9947–74–OLEM]

RIN 2050–AG77

Hazardous Waste Export-Import Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending existing regulations regarding the export and import of hazardous wastes from and into the United States. EPA is making these changes to: Provide greater protection to human health and the environment by making existing export and import related requirements more consistent with the current import-export requirements for shipments between members of the Organization for Economic Cooperation and Development (OECD); enable electronic submittal to EPA of all export and import-related documents (*e.g.,* export notices, export annual reports); and enable electronic validation of consent in the Automated Export System (AES) for export shipments subject to RCRA export consent requirements prior to exit. The AES resides in the U.S. Customs and Border Protection's Automated Commercial Environment (ACE).

DATES: This final rule is effective on December 31, 2016. The compliance dates for the various new and updated provisions in this action can be found in section II.D. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 31, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2015–0147. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Laura Coughlan, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (703) 308–0005; email address: *coughlan.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. General Information
- A. List of acronyms used in this action
- B. Does this action apply to me?
- C. What is the agency's authority for taking this action?

II. Background
- A. History and summary of the proposed rule
- B. Rationale for the final rule
- C. Summary of the final rule
- D. Compliance dates for the final rule

III. Detailed Discussion of the Final Rule
- A. Consolidation of hazardous waste import and export requirements consistent with current OECD procedures
- B. Transition from paper-based to electronic port procedures under ITDS for RCRA waste exports subject to notice and consent
- C. Conversion of paper submittals for imports and exports to electronic submittals using EPA's Waste Import Export Tracking System
- D. Availability of Electronic Reporting
- E. Changes to hazardous waste manifest requirements for import and export shipments
- F. Additional requirements for recognized traders arranging for hazardous waste imports or exports
- G. Incorporation by reference of OECD waste lists
- H. Conforming Changes to Parts 260, 262 through 267, 271, and 273
- I. Related Proposed Rulemaking

IV. State Authorization
- A. Applicability of Rules in Authorized States
- B. Effect on State Authorization

V. 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 Act (RFA)
- 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
- K. Executive Order 13659: Streamlining the Export/Import Process for America's Businesses
- L. Congressional Review Act

I. General Information

A. List of Acronyms Used in This Action

Acronym	Meaning
ACE	Automated Commercial Environment.
AES	Automated Export System.
AOC	Acknowledgment of Consent (issued by EPA).
CBI	Confidential Business Information.
CBP	United States Customs and Border Protection.
CDX	Central Data Exchange.
CEC	Commission for Environmental Cooperation.
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act.
CFR	Code of Federal Regulations.
CROMERR	Cross-Media Electronic Reporting Regulation.
CRT	Cathode Ray Tube.
CY	Calendar Year.
EPA	United States Environmental Protection Agency.
FR	Federal Register.
FTR	U.S. Census Bureau's Foreign Trade Regulations.
HSWA	Hazardous and Solid Waste Amendments.
ICR	Information Collection Request.
ITDS	International Trade Data System.
ITN	Internal Transaction Number (issued by AES).
LAB	Lead-Acid Battery.
NAICS	North American Industrial Classification System.
NCEDE	Notice and Consent Electronic Data Exchange.
NTTAA	National Technology Transfer and Advancement Act.
NAFTA	North American Free Trade Agreement.
OECD	Organization for Economic Co-operation and Development.
OLEM	Office of Land and Emergency Management.
OMB	Office of Management and Budget.
RCRA	Resource Conservation and Recovery Act.
RFA	Regulatory Flexibility Act.
SIC	Standard Industrial Classification.
SLAB	Spent Lead-Acid Battery.
UMRA	Unfunded Mandates Reform Act.
WIETS	Waste Import Export Tracking System.

B. Does this action apply to me?

The revisions to export and import requirements in this action generally affect four (4) groups: (1) All persons

who export or import (or arrange for the export or import) hazardous waste for recycling or disposal, including those hazardous wastes subject to the alternate management standards for (a) universal waste for recycling or disposal, (b) spent lead-acid batteries (SLABs) being shipped for reclamation, (c) industrial ethyl alcohol being shipped for reclamation, (d) hazardous waste samples of more than 25 kilograms being shipped for waste characterization or treatability studies, and (e) hazardous recyclable materials being shipped for precious metal recovery; (2) all recycling and disposal facilities who receive imports of such hazardous wastes for recycling or disposal; (3) all persons who export or arrange for the export of conditionally excluded cathode ray tubes being shipped for recycling; and (4) all persons who transport any export and import shipments described above. Potentially affected entities may include, but are not limited to:

NAICS code	NAICS description
211	Oil and Gas Extraction.
212	Mining (except Oil and Gas).
213	Support Activities for Mining.
311	Food Manufacturing.
324	Petroleum and Coal Products Manufacturing.
325	Chemical Manufacturing.
326	Plastics and Rubber Products Manufacturing.
327	Nonmetallic Mineral Product Manufacturing.
331	Primary Metal Manufacturing.
332	Fabricated Metal Product Manufacturing.
333	Machinery Manufacturing.
334	Computer and Electronic Product Manufacturing.
335	Electrical Equipment, Appliance, and Component Manufacturing.
336	Transportation Equipment Manufacturing.
339	Miscellaneous Manufacturing.
423	Merchant Wholesalers, Durable Goods.
424	Merchant Wholesalers, Nondurable Goods.
441	Motor Vehicle and Parts Dealers.
482	Rail transportation.
483	Water transportation.
484	Truck transportation.
488	Support Activities for Transportation.
531	Real Estate.
541	Professional, Scientific, and Technical Services.
561	Administrative and Support Services.
562	Waste Management and Remediation Services.
721	Accommodation.
924	Administration of Environmental Quality Programs.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this final rule to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Information on the estimated future economic impacts of this action is presented in section V of this preamble, as well as in the Regulatory Impact Analysis available in the docket for this action.

C. What is the agency's authority for taking this action?

EPA's authority to promulgate this rule is found in sections 1002, 2002(a), 3001–3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6901 et.seq., 6912, 6921–6924, and 6938.

II. Background

A. History and Summary of the Proposed Rule

On October 19, 2015, EPA proposed revisions to the current RCRA regulations governing imports and exports of hazardous waste and certain other materials in part 262 in order to improve protection of public health and the environment (80 FR 63284). First, we proposed to consolidate the hazardous waste import and export regulations so that one set of protective requirements, equivalent to the regulations currently in title 40 of the Code of Federal Regulations (CFR) Part 262 Subpart H implementing the Organization for Economic Cooperation and Development (OECD) Council Decision controlling transboundary movements of recyclable hazardous waste, would apply to all imports and exports of hazardous waste. Second, we proposed to mandate electronic reporting to EPA to make the process more efficient and to enable increased sharing of hazardous waste import and export data with state programs, the general public, and individual hazardous waste exporters and importers. Third, we proposed to require validation of the consent to export as part of the electronic export information submitted to U.S. Customs and Border Protection (CBP) to provide for more efficient compliance monitoring of hazardous waste export shipments. Fourth, we proposed to require matching of waste stream level consent numbers with waste streams listed on the Resource Conservation and Recovery Act (RCRA) hazardous waste manifests for import and export shipments. Lastly, we proposed to require EPA identification (ID) numbers for those recognized traders [1] arranging for export or import of hazardous waste. For a more detailed description of the proposed revisions, as well as the intended benefits of each revision, please see Sections I.D, III and IV of the proposed rule (80 FR 63284).

The comment period for the proposed rule closed on December 18, 2015. The Agency received thirteen unique sets of comments in response to its October 19, 2015 proposal. Of the thirteen unique comments, three were submitted anonymously, one was submitted by the State of Hawaii's Hazardous Waste Section, three were submitted by individual companies, two were submitted by transportation industry associations, three were submitted by waste treatment related industry associations, and one was submitted by a battery industry association. Most commenters supported requiring OECD procedures for all hazardous waste imports and exports and the proposed electronic reporting requirements. But a few commenters expressed varying levels of concern about the readiness of EPA's Waste Import Export Tracking System (WIETS), and the time needed to learn to use the completed system prior to being required to submit documents using the system. In addition, questions were raised by one commenter concerning how the Automated Export System, EPA's WIETS, and EPA's e-Manifest system would work together. After considering all the submitted comments, and recognizing that the modifications to EPA's WIETS are not yet completed, we are finalizing the revisions largely as proposed, but with several additional features that affect the timing of various provisions. First, we have established a transition period to minimize the impacts of applying OECD procedures and EPA ID requirements to those existing export and import shipments occurring under the terms of a consent issued by EPA prior to the effective date of this action. This will

[1] As defined in the final rule, a recognized trader is a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

allow persons exporting or importing shipments with Canada, Chile, Mexico, or any non-OECD country [2] pursuant to an EPA issued consent to continue to operate under the requirements in effect when the consent was issued until the consent expires, after which they would be required to comply with the new procedures. The final rule also includes the addition of delayed implementation for various electronic reporting requirements to EPA using EPA's WIETS, until a future electronic import-export reporting compliance date to be announced in a separate **Federal Register** notice. Lastly, the final rule includes the addition of a transition period prior to the required filing of EPA information into the Automated Export System (AES) for export shipments, during which either paper processes or electronic processes at the port may be used until a future AES filing compliance date, also to be announced in a separate **Federal Register** notice which may or may not be combined with the previously mentioned **Federal Register** notice.

B. Rationale for the Final Rule

Proposed changes to clarify and streamline requirements and convert paper submittals to electronic submittals arose in part from the Agency's periodic retrospective reviews of existing regulations, as called for by Executive Order 13563. Other proposed revisions to replace the paper process for export shipments at the port with an electronic process were needed in order to fulfill the direction set forth in Executive Order 13659 concerning the electronic management of international trade data by the U.S. Government as part of the International Trade Data System (ITDS). Lastly, EPA proposed making all hazardous waste imports and exports subject to the OECD procedures to address concerns and recommendations to strengthen individual shipment oversight in both the 2013 Commission for Environmental Cooperation [3] (CEC) report [4] on the export and recycling of spent lead-acid batteries (SLABs) within North America and the 2015 EPA Office of Inspector General (OIG) report [5] on hazardous waste imports.

As discussed in the proposed rule, EPA proposed applying OECD procedures to strengthen its oversight of such transboundary shipments of hazardous waste, as the harmonized OECD and Basel procedures are widely accepted as the international standard of control for such shipments. Transboundary waste shipments have a higher risk of being misdirected due to the increased number of custodial transfers, and the entry and exit procedures (and associated temporary storage) at the ports and border crossings for the countries of export, transit and import. Transboundary waste shipments to unapproved destination facilities are at the highest risk of mismanagement.

Under OECD-based procedures, prior notice and consent is required if either the exporting or importing country control the hazardous waste shipment as an export or import of hazardous waste. This allows the country or countries that control the shipment as hazardous waste to review the proposed import or export for compliance with domestic laws and regulations prior to any actual shipment. In cases where the proposed shipment would not comply with domestic laws or regulations or where there might be an issue with the proposed receiving facility, the importing country may deny consent, thus preventing a shipment to a facility that does not have the capacity to manage the waste properly.

For example, a foreign company recently proposed to ship unused methyl bromide to the U.S. for recycling, but import of methyl bromide into the U.S. for anything other than destruction is prohibited under the Clean Air Act. In a separate notice, a different foreign company proposed to ship SLABs to a facility in the U.S. for recycling, but the destination facility listed in the notice was not authorized to recycle SLABs. In each of the examples, EPA being able to review the proposed import for compliance with U.S. laws and regulations prior to any actual shipment prevented shipments that would have not complied with one or more regulations from entering the country. Preventing such non-compliant hazardous waste shipments through requiring consent for all hazardous waste imports is more efficient than trying to inspect all incoming shipments at every port, consistent with EPA's NextGen principles [6] thus protecting the health and environment for U.S. citizens.

In cases where only one of the countries control the proposed shipment as an import or export shipment of hazardous waste, the OECD procedures are to be followed by the country that controls the shipment as an import or export of hazardous waste. This ensures that the country is able to review the proposed import or export prior to actual shipment, and that the proper transport and management of the individual waste shipment occurs as approved.

When the proposed shipment would comply with domestic laws or regulations and the importing country consents, an international movement document must accompany the shipment from the starting site in the country of export to the destination site in the country of import, and copies of the signed movement document must be sent by the destination facility to the exporter and to the countries of export, import, and transit that respectively control the shipment as an export, import or transit of hazardous waste to confirm receipt of the shipment. Such confirmation reduces the risk of a shipment being misdirected to a country or facility not approved to receive the shipments for disposal or recovery. The confirmation of receipt also highlights any incident where the shipment is interrupted or misdirected, as the exporter and competent authorities will not receive the confirmation from the approved destination facility within expected timeframes. Lastly, the confirmation of receipt provides documentation for both the exporter and the countries of import and export that the shipment in fact went to the approved recycling or disposal facility.

Once received at the approved facility, management (*i.e.,* treatment and

[2] Transboundary shipments of hazardous waste with Canada, Chile, Mexico or any non-OECD country were previously subject to the export requirements of 40 CFR part 262 Subpart E or the import requirements of 40 CFR part 262 Subpart F, and not to the previous version of 40 CFR part 262 Subpart H.

[3] The Commission for Environmental Cooperation (CEC) is an international organization created by Canada, Mexico and the United States under the North American Agreement on Environmental Cooperation (NAAEC). The CEC was established, among other things, to address regional environmental concerns, help prevent potential trade and environmental conflicts, and to promote the effective enforcement of environmental law. The Agreement complements the environmental provisions of the North American Free Trade Agreement (NAFTA). More information on the CEC is available on its Web site at *www.cec.org.*

[4] *http://www.cec.org/Storage/149/17479_CEC_Secretariat-SLABs_Report_may7_en_web.pdf.*

[5] ''EPA Does Not Effectively Control or Monitor Imports of Hazardous Waste,'' July 6, 2015, available online at *http://www.epa.gov/sites/production/files/2015-09/documents/oigreportonhwimports015_0.pdf.*

[6] *https://www.epa.gov/compliance/next-generation-compliance.*

disposal, recovery) of each shipment is required to be completed within one year of shipment delivery, and the destination facility must send confirmation of completing such management back to the exporter and to the competent authorities of the countries of export and import that respectively control the shipment as an export or import of hazardous waste. This requirement minimizes the risk of speculative accumulation or abandonment of the waste shipments, and decreases the potential for associated damage to human health and the environment.

As discussed in Section II(B)(4) of the proposed rule, historically the overwhelming majority of the hazardous waste import and export shipments into and out of the United States occur with Canada and Mexico, both of which are member countries of the OECD. Canadian regulations already require U.S. exporters and receiving facilities to comply with OECD requirements through contract terms, and Canadian regulations requires Canadian exporters to comply with OECD requirements, including notice and consent, if the United States controls the planned shipment as an import of hazardous waste. More recently, only 26 export shipments and 111 import shipments out of the 54,152 hazardous waste import and export shipments in 2011 were between the United States and non-OECD countries. Only 84 import shipments out of the 53,376 hazardous waste import and export shipments in 2014 were between the United States and non-OECD countries. Additionally, almost all of the specific non-OECD countries from which the United States received import shipments in 2011 or 2014 (*i.e.,* the Bahamas, Bermuda, the Dominican Republic, Malaysia, the Netherland Antilles, the Philippines, Singapore, Syria) and the specific non-OECD countries to which the United States shipped export shipments in 2011 (*i.e.,* Peru, the Philippines) are Party to the Basel Convention [7] and the OECD procedures have been harmonized with the Basel procedures. Thus, the requirements established in this action will make U.S. requirements more consistent with those of our trading partners.

EPA notes that the OECD recovery and disposal operations include operations that would not be generally allowable under domestic RCRA management requirements. The definitions of disposal operations and recovery operations in § 262.81 reflect the complete OECD list of operations, and several operations listed solely in Canadian import-export regulations to accurately harmonize operations listed in notices with those of Canada and other OECD countries. If the recovery or disposal operation listed in a notice proposing shipment of a hazardous waste to the U.S. for recovery or disposal is not allowed under RCRA, EPA will object to the notice on that basis. The inclusion of the complete list of OECD and Canadian-specific recovery and disposal operations in § 262.81 does not make such operations allowable within the United States if RCRA does not allow such management.

Lastly, EPA would like to re-affirm that the existing U.S.-Canada bilateral agreement, the U.S.-Mexico bilateral agreement, and the three import-only bilateral agreements between the United States and Malaysia, Costa Rica, and the Philippines remain in place and are not affected by these revisions. While the revisions change the applicable requirements for hazardous waste shipments with these countries, these additional requirements are fully consistent with the bilateral agreements.

C. Summary of the Final Rule

This section provides a brief overview of this final rule and describes the major ways in which this rule differs from the proposal. For a more detailed description and justification of the changes in this final rule, see Section III of this preamble.

Largely as proposed, this final rule removes and reserves 40 CFR part 262 Subparts E and F, and expands the applicability of a reorganized and clarified 40 CFR part 262 Subpart H to all hazardous waste transboundary shipments, including those import and export shipments of universal waste managed under 40 CFR part 273 (or the authorized State equivalent) and specific hazardous wastes (*e.g.,* spent lead-acid batteries) managed under the alternate standards of 40 CFR part 266 (or authorized State equivalent). Exporters of hazardous waste shipments, and the transporters carrying such shipments, to Canada, Chile, Mexico and any non-OECD country will be required to comply with OECD procedures under new or renewed consents issued after the effective date of this action. Importers and receiving facilities of hazardous waste shipments, and the transporters carrying such shipments, from Canada, Chile, Mexico and any non-OECD country similarly will be required to comply with OECD procedures under new or renewed consents issued to either the foreign exporter or the U.S. importer after the effective date of this action. As required by OECD procedures and originally implemented in 40 CFR 262.82(g), EPA is finalizing the proposed text in §§ 261.4(d), 261.4(e), and 262.82(d) applying the OECD limit of 25 kilograms to all excluded hazardous waste sample import and export shipments. This limit applies in addition to the conditions for the sample exclusions at 40 CFR 261.4(d) and 40 CFR 261.4(e). EPA notes that for treatability samples, the lower of the limits listed in the existing § 261.4(e)(2)(ii) and new § 261.4(e)(4) would apply. For example, treatability samples of acute hazardous wastes to be imported or exported as excluded samples could be no more than 1 kg.

However, in contrast to the proposed rule, any existing export and import shipments with consents issued prior to the effective date of this action will only be required to comply with the terms of the consent and the original Part 262 subparts E or F based requirements in effect at the time the consents were issued until the relevant consent periods expire. The requirement for recognized traders arranging for import or export to obtain EPA ID numbers will be similarly phased in, in that those traders with consents issued prior to the effective date of this action will be able to continue managing the shipments occurring under those consents without having to immediately obtain an EPA ID number, and recognized traders will only be required to obtain an EPA ID number prior to arranging for any new or renewed consents to import or export hazardous waste on or after the effective date of this action.

Also in contrast to the proposed rule, electronic reporting to EPA using EPA's WIETS, or its successor system, will be phased in over a period of time to give EPA more time to complete and fully test a number of the electronic documents prior to requiring their use. Only electronic submittal of new export notices for hazardous waste or cathode ray tubes (CRTs) for recycling using EPA's WIETS will be required on the effective date of this action. Export annual reports for hazardous waste and CRTs for recycling will be required to be electronically submitted after a full calendar year of electronic-only AES filing has been required. The one-calendar-year period is necessary

[7] The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is a comprehensive global environmental agreement on hazardous and other wastes. The Convention has 181 Member countries, also known as Parties, and aims to protect human health and the environment against the adverse effects that may result from the generation, management, transboundary movements and disposal of hazardous and other wastes. The United States is a signatory, but has not yet ratified the Convention. More information on the Basel Convention may be found at *www.basel.int.*

because the AES data for exported shipments will be used in EPA's WIETS to build the draft export annual reports and EPA will need one full calendar year of this information in order to produce the appropriate draft export annual report for the exporter's review. The exporter will then have the opportunity to make any changes to reflect any return or rejection made subsequent to the AES filing for each shipment. Electronic submittal to EPA of the remaining seven import and export documents will not be required until after EPA completes and fully tests the electronic documents with the help of volunteer exporters, foreign facilities, importers, and receiving facilities. EPA will announce the future electronic import-export reporting compliance date for those submittals in a separate **Federal Register** notice. Paper submittals will be required from the effective date of this action until the electronic submittals are required for each of the following: Export annual reports, export exception reports, import notices, and receiving facility notifications of the need to arrange alternate management or return of an individual import shipment. No submittals to EPA will be required for each of the following, until the electronic import-export reporting compliance date (on or after which electronic submittal of these documents to EPA using EPA's WIETS, or its successor system, will be required): Export confirmations of receipt, export confirmations of recovery or disposal, import confirmations of receipt, and import confirmations of recovery or disposal. Finally, the final rule clarifies that electronic storage in EPA's WIETS of electronically submitted documents will satisfy EPA's recordkeeping requirements, so long as copies are readily available for viewing and production if requested by any EPA or authorized state inspector, and that the submitter will not be held liable for the inability to produce such documents for inspection if the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the submitter bears no responsibility.

Largely as proposed, EPA is requiring electronic filing in AES for each export shipment. However, the future AES filing compliance date will be announced in a separate **Federal Register** notice in order to give exporters and their authorized agents more time to revise their filing software and fully test out the procedures, consistent with the approach being used by CBP with other government agencies. Because the AES filing procedures related to validating consent to export a shipment are a new requirement, only a limited number of the exporters and authorized agents were able to test file in a pilot the additional information and validate their consents for individual hazardous waste export shipments as part of their current AES filing procedures prior to the effective date of this action. We are therefore establishing a transition period during which exporters may choose to comply with either the electronic AES filing procedures or the paper-based procedures at the port. EPA will coordinate with CBP on the selection of the AES filing compliance date, which will be announced in a separate **Federal Register** notice. On or after the AES filing compliance date, all exporters of hazardous waste and cathode ray tubes for recycling will be required to comply with the AES filing requirements.

The revisions to RCRA hazardous waste manifest-related requirements for hazardous waste export and import shipments are also being finalized largely as proposed with only a few changes. Exporters and receiving facilities will be required to list the consent number for each waste listed in the manifest from the effective date of this action, but the regulatory text no longer specifies exactly where on the manifest the consent numbers must be added. Also in contrast with the proposed rule, the final rule has removed the inadvertently proposed duplicate submittal of paper import manifests to both the e-Manifest system and EPA's International Compliance Assurance Division so that submittal of paper import manifests to EPA's International Compliance Assurance Division is required only until the receiving facility can mail the manifest to the e-Manifest system per §§ 264.71(a)(2)(v)/265.71(a)(2)(v). EPA is not finalizing the regulatory language proposed in §§ 262.83(a)(5) and (6). These provisions had included instructions for the exporter to obtain a confirmation of receipt from the foreign facility and for the exporter to provide direction to the transporter in cases when the shipment was rejected by the foreign facility. This regulatory language had been in the original manifest instructions under 40 CFR part 262 subpart E. However, EPA is elsewhere finalizing similar requirements such that §§ 262.83(a)(5) and (6) are redundant. Specifically, § 262.83(d)(2)(xv) requires the exporter to direct the foreign facility to confirm receipt of each shipment, § 262.83(f)(3)(i) requires contract terms to direct the foreign facility to inform the exporter if the shipment cannot be managed according to the consent, § 262.83(e) requires the exporter to arrange for the return of the waste as needed, and § 262.83(h) requires the exporter to file an exception report as needed. Lastly, the proposed deletion of the requirement for transporters to give a copy of the signed and dated manifest to the U.S. customs official at the point of departure from the United States has been amended to reflect the transition period prior to the AES filing compliance date during which the exporter may choose to either electronically file EPA information in AES or follow the existing paper-based process at the port. During the transition period, exporters will be required to inform the transporter whether they have chosen to follow paper-based processes so that the transporter will know whether he or she is required to give a copy of the paper manifest to the U.S. customs official. On or after the electronic AES filing compliance date, no transporter will be required to give a copy of a paper manifest to the U.S. customs official.

Finally, at this time EPA is not finalizing any limits to the number of hazardous waste codes that can be listed to characterize a hazardous waste in export notices, import notices, or export annual reports due to concerns raised by commenters (see response to comment document for more details).

D. Compliance Dates for the Final Rule

This final rule is effective on December 31, 2016. Section 3010(b) of RCRA allows EPA to promulgate a rule with an effective date shorter than six months when other good cause is found and published with the regulation. Under Executive Order 13659, agencies are required to have capabilities, agreements, and other requirements in place by December 31, 2016, to utilize the ITDS and supporting systems, such as the Automated Export System or its successor system, as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export. In order to comply with Executive Order 13659, the effective date must therefore be December 31, 2016.

EPA is, however, cognizant of the impact these changes will have on those companies or individuals currently exporting or importing hazardous waste

under the terms of a consent issued by EPA. As a result, as discussed earlier in this preamble, any consent that was issued by EPA prior to December 31, 2016 for a hazardous waste export or import will remain in effect for the remaining period of consent, and the 40 CFR part 262 based requirements that existed at the time the consent was issued will remain in effect until the 12-month consent period expires. A copy of those requirements has been placed in the docket. With the exception of filing in the Automated Export System (AES) for each hazardous waste export shipment and listing consent numbers matched to each hazardous waste listed on the RCRA manifest for each hazardous waste import and export shipment, exporters, importers and receiving facilities in the U.S. that intend to renew their consent to export or import hazardous wastes will have the remaining consent period to amend their contracts or equivalent arrangements with their foreign counterparts and transporters, obtain an EPA ID number as needed, register in EPA's Central Data Exchange (CDX) system, and otherwise prepare to comply with the requirements based on OECD procedures and the relevant electronic reporting requirements. Any proposed exports or imports of hazardous waste, and export or import shipments of hazardous waste samples that are greater than 25 kilograms that have not yet received consent to ship prior to December 31, 2016, will be subject to the revised export and import requirements on December 31, 2016, as appropriate.

Hazardous waste exporters with existing consents, or their authorized agents, will be required to file the additional information into AES, or its successor system, for each export shipment initiated on or after the future AES filing compliance date in accordance with the existing pre-departure filing deadlines in 15 CFR 30.4(b). Exporters of excluded cathode ray tubes for recycling will be subject to similar AES filing conditions for each export shipment initiated on or after the AES filing compliance date. For export shipments occurring prior to the AES filing compliance date, hazardous waste exporters will have to either ensure compliance with the existing paper-based process at the port or use the AES electronic filing procedures. For hazardous waste exporters choosing to use the paper-based process prior to the AES filing compliance date, paper documentation of consent (*i.e.,* a copy of the AOC letter for shipments previously subject to Part 262 subpart E, or a paper movement document for shipments previously subject to Part 262 subpart H) must accompany each export shipment, and for those hazardous waste export shipments that are required to be manifested, the transporter for each shipment will have to give a copy of the signed and dated manifest to the customs official at the port or border crossing.

With respect to electronically submitting import and export related documents to EPA using WIETS or its successor system, actual implementation depends upon when the EPA's system will be ready (*i.e.,* completion of the individual electronic documents in WIETS), and in the case of electronic export annual reports, on EPA having a calendar year of electronic AES filing data upon which to build each draft electronic export annual report in WIETS for the exporter to review and amend as necessary prior to electronically signing and submitting to EPA.

Export notices requesting initial consent or renewal of consent for hazardous wastes and for CRTs proposed to be exported for recycling will be required to be submitted to EPA electronically using EPA's WIETS on the effective date of this action.

Export annual reports for hazardous wastes and for CRTs exported for recycling will be required to be submitted to EPA electronically using EPA's WIETS by March 1 of the year after the AES filing compliance date, as all exporters will have been required to file in AES, or its successor system, for at least the previous calendar year. For hazardous waste export annual reports submitted prior to that date, exporters will be required to submit either a paper export annual report or, for those exporters who chose to comply with the optional AES electronic filing requirements for all export shipments made the previous calendar year, an electronic export annual report using EPA's WIETS. For CRT export annual reports submitted prior to March 1 of the year after the AES filing compliance date, exporters will be required to submit a paper export annual report to EPA.

Because EPA has not yet completed the electronic versions of the export exception report, export confirmation of receipt, export confirmation of recovery or disposal, import notification, import confirmation of receipt, import confirmation of recovery or disposal, or the receiving facility notification of the need to arrange alternate management or return of an import shipment, electronic submittal of these documents will not be required until a future electronic import-export reporting compliance date that will be announced in a separate **Federal Register** notice. Until that future electronic import-export reporting compliance date, paper versions of the export exception reports, import notices, and receiving facility notifications of the need to arrange alternate management or return of an import shipment will be required to be submitted to EPA via mail or hand delivery. Copies of the export confirmation of receipt and export confirmation of recovery or disposal will not be required to be submitted to EPA in paper form prior to the future electronic import-export reporting compliance date, but exporters will be required to make such confirmations available to EPA or an authorized State inspector upon request. Copies of the import confirmation of receipt and import confirmation of recovery or disposal similarly will not be required to be submitted to EPA in paper form prior to the future electronic import-export reporting compliance date, but receiving facilities will be required to make such confirmations available to EPA or an authorized State inspector upon request.

The compliance dates for the various major provisions with respect to import and export shipments occurring under consents issued by EPA prior to the effective date of this action are summarized in the table below:

Major regulatory provisions in final rule	Compliance date for new or renewing shipments requiring consent on or after December 31, 2016	Compliance date for existing shipments with Canada, Mexico, Chile, or any non-OECD country occurring under consent issued by EPA prior to December 31, 2016	Compliance date for existing shipments with OECD country other than Canada, Mexico or Chile occurring under consent issued by EPA prior to December 31, 2016
For Exports of Hazardous Waste Managed under Part 262, Part 266 or Part 273:			
Recognized traders must obtain EPA ID number prior to arranging for export (262.12(d)).	12/31/2016	Recognized trader may continue managing shipments occurring under consent issued prior to 12/31/16 until consent period ends without EPA ID number, but may not arrange renewal or new exports without EPA ID number.	Recognized trader may continue managing shipments occurring under consent issued prior to 12/31/16 until consent period ends without EPA ID number, but may not arrange renewal or new exports without EPA ID number.
Exporters must establish/amend contracts or equivalent arrangements to include items listed in 262.83(f).	12/31/2016	When consent period ends; if requesting renewal of existing shipments, should establish/amend contract during existing period of consent so in place prior to submitting export notice for renewal.	When consent period ends; if requesting renewal of existing shipments, should establish/amend contract during existing period of consent so in place prior to submitting export notice for renewal.
Exporters must submit export notice or renotification with all required OECD items electronically into EPA's WIETS (262.83(b)).	12/31/2016	N/A; submittal of notice only required for new or renewing export shipments.	N/A; submittal of notice only required for new or renewing export shipments.
Until future AES filing compliance date EPA will establish in a separate FR notice, exporters must either file in AES for every shipment to validate consent and provide manifest tracking number as appropriate, or must ensure paper proof of consent accompanies shipment (*i.e.*, AOC or international movement document) and paper manifest is given by transporter to U.S. customs official at point of departure; after that date, exporters must file in AES for every shipment (262.83(a)(6)).	12/31/2016; either AES filing or paper process at port required for each shipment until future AES filing compliance date; AES filing required thereafter.	Same	Same.
Exporters must prepare and provide RCRA manifest for every shipment, listing waste stream consent numbers matched to each listed waste (262.83(c)).	12/31/2016	12/31/2016	12/31/2016.
Exporters must prepare and provide international movement document for every shipment (262.83(d)).	12/31/2016	when consent period ends	required per previous Part 262 Subpart H.
Last U.S. transporter must sign and date manifest at port for every shipment, keep copy for records and send back copy to generator; prior to future AES filing compliance date must give copy of paper manifest to U.S. customs official at point of departure if instructed to do so by exporter per 262.83(a)(6)(i)(B)(2) (263.20(g)(4)(ii)).	12/31/2016	required per previous Part 262 Subpart E.	required per previous Part 262 Subpart H.

Major regulatory provisions in final rule	Compliance date for new or renewing shipments requiring consent on or after December 31, 2016	Compliance date for existing shipments with Canada, Mexico, Chile, or any non-OECD country occurring under consent issued by EPA prior to December 31, 2016	Compliance date for existing shipments with OECD country other than Canada, Mexico or Chile occurring under consent issued by EPA prior to December 31, 2016
Foreign facilities must (per contract terms) send confirmation of receipt using international movement document to U.S. exporter, country of import and any countries of transit that control the shipments as hazardous, and for shipments occurring on or after future electronic import-export reporting compliance date, to EPA electronically into EPA's WIETS using international movement document within 3 days of shipment delivery (262.83(d)(2)(xv) and 262.83(f)(4)).	12/31/2016; no paper submittal to EPA; electronic submittal to EPA required to be in contract for shipments occurring on or after future electronic import-export reporting compliance date.	when consent period ends; confirmation of receipt required per previous Part 262 Subpart E.	Confirmation of receipt using movement document required per previous Part 262 Subpart H.
When shipment must be managed at alternate facility in the country of import or another country, or returned to the U.S., the exporter must ensure such arrangements. If the waste must be returned, the exporter must provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned countries agree (262.83(e)).	12/31/2016	when consent period ends	required per previous Part 262 Subpart H.
Exporter must submit exception report to EPA within 30 days (or 1 day prior to return shipment start) if the exporter does not get copy of manifest noting actual departure within 45 days of shipment pickup, or if the exporter does not get confirmation of receipt within 90 days of initial shipment pickup, or if the foreign facility notifies the exporter of the need to return shipment to U.S. or arrange alternate management (262.83(h)).	12/31/16; paper submittal to EPA required until future electronic import-export reporting compliance date; electronic submittal to EPA required thereafter.	paper submittal required per previous Part 262 Subpart E.	paper submittal required per previous Part 262 Subpart H.
Foreign facilities must (per contract terms) send confirmation of recovery or disposal no later than 30 days of completing management of shipment and no later than one year after shipment delivery to exporter, country of import if it controls the shipment as hazardous waste, and for shipments occurring on or after future electronic import-export reporting compliance date, to EPA using EPA's WIETS (262.83(f)(5)).	12/31/2016; no paper submittal to EPA; electronic submittal to EPA using EPA's WIETS required to be in contract for shipments on or after future compliance date for electronic filing.	when consent period ends	paper submittal required per previous Part 262 Subpart H.

Major regulatory provisions in final rule	Compliance date for new or renewing shipments requiring consent on or after December 31, 2016	Compliance date for existing shipments with Canada, Mexico, Chile, or any non-OECD country occurring under consent issued by EPA prior to December 31, 2016	Compliance date for existing shipments with OECD country other than Canada, Mexico or Chile occurring under consent issued by EPA prior to December 31, 2016
Foreign facilities that performed interim recovery or disposal operations must (per contract terms) promptly send confirmation of final recovery or disposal that it receives from final recovery or disposal facility no later than after final facility receives shipment to exporter, country of import if it controls the shipment as hazardous waste, and for shipments occurring on or after future electronic import-export reporting compliance date, to EPA using EPA's WIETS (262.83(f)(6)).	12/31/2016; no paper submittal to EPA; electronic submittal to EPA using EPA's WIETS required to be in contract for shipments on or after future electronic import-export reporting compliance date.	when consent period ends	paper submittal required per previous Part 262 Subpart H.
Exporters must submit export annual report with all OECD items to EPA by March 1 detailing actual shipments made the previous calendar year (262.83(g)).	12/31/2016; until one year after AES filing compliance date, exporter must either submit paper report to EPA or submit electronically to EPA using EPA's WIETS if exporter has filed in AES for all shipments made the previous calendar year; electronic submittal to EPA using EPA's WIETS required thereafter.	paper submittal required per previous Part 262 Subpart E (with the exception of OECD-only items).	paper submittal required per previous Part 262 Subpart H.
Exporters must keep each record for 3 years, may keep electronically submitted documents in EPA's WIETS, providing documents are made available to EPA or authorized State inspector upon request (262.83(i)).	12/31/2016	12/31/16; recordkeeping of paper records required under previous Part 262 Subpart E.	12/31/16; recordkeeping of paper records required under previous Part 262 Subpart H.
For Exports of Excluded Cathode Ray Tubes for recovery:			
Exporters must submit export notice or renotification electronically using EPA's WIETS (261.39(a)(5)(ii), 261.39(a)(5)(vi)).	12/31/2016	N/A; submittal of notice only required for new or renewing export shipments.	N/A; submittal of notice only required for new or renewing export shipments.
Exporters must file in AES for every shipment to validate consent on or after a future AES filing compliance date (261.39(a)(5)(v)).	Optional to file in AES from 12/31/2016 until future AES filing compliance date; required to file in AES thereafter.	same	same.
Exporters must submit export annual reports to EPA (261.39(a)(5)(xi)).	12/31/2016; paper submittal to EPA prior to one year after future AES filing compliance date; electronic submittal to EPA using EPA's WIETS thereafter.	same	same.
Exporters must keep each record for 3 years, may keep electronically submitted documents in EPA's WIETS, providing documents are made available to EPA or authorized State inspector upon request (261.39(a)(5)(ix), 261.39(a)(5)(xi)).	12/31/2016	12/31/16; recordkeeping of paper records required previously.	12/31/16; recordkeeping of paper records required previously.

Major regulatory provisions in final rule	Compliance date for new or renewing shipments requiring consent on or after December 31, 2016	Compliance date for existing shipments with Canada, Mexico, Chile, or any non-OECD country occurring under consent issued by EPA prior to December 31, 2016	Compliance date for existing shipments with OECD country other than Canada, Mexico or Chile occurring under consent issued by EPA prior to December 31, 2016
For Exports or Imports of Excluded Samples for Characterization or Treatability Studies:			
Mass of excluded sample to be exported to a foreign lab or imported to a U.S. lab must be no more than 25 kg and comply with all other conditions of sample exclusions (262.82(d), 261.4(d), 261.4(e)).	12/31/2016; samples exceeding 25 kg must follow export or import requirements in Part 262 Subpart H.	12/31/2016; samples exceeding 25 kg must follow export or import requirements in Part 262 Subpart H.	12/31/2016; samples exceeding 25 kg must follow export or import requirements in Part 262 Subpart H.
For Imports of Hazardous Waste Managed under Part 262, Part 266 or Part 273:			
Recognized traders must obtain EPA ID number prior to arranging for import (262.12(d)).	12/31/2016	Recognized trader may continue managing shipments occurring under consent issued prior to 12/31/16 until consent period ends without EPA ID number, but may not arrange renewal or new imports without EPA ID number.	Recognized trader may continue managing shipments occurring under consent issued prior to 12/31/16 until consent period ends without EPA ID number, but may not arrange renewal or new imports without EPA ID number.
Importers must establish/amend contracts or equivalent arrangements to include items listed in 262.84(f).	12/31/2016	When consent period for consent issued to foreign exporter or importer ends; if requesting renewal of existing shipments, should establish/amend contract during existing period of consent so in place prior to foreign exporter submitting notice to country of export for renewal.	When consent period for consent issued to foreign exporter or importer ends; if requesting renewal of existing shipments, should establish/amend contract during existing period of consent so in place prior to foreign exporter submitting notice to country of export for renewal.
When country of export does not control as hazardous waste export, importers must submit import notice or renotification with all required OECD items to EPA (262.84(b), 264.12(a)(1), 265.12(a)(1)).	12/31/16; paper submittal to EPA required prior to future electronic import-export reporting compliance date; electronic submittal to EPA using EPA's WIETS required thereafter.	N/A; submittal of notice only required for new or renewing import shipments.	N/A; submittal of notice only required for new or renewing import shipments. Paper submittal required when country of export does not control as hazardous waste export per previous Part 262 Subpart H.
Importers must prepare and provide RCRA manifest for every shipment (262.84(c)).	12/31/2016	12/31/2016; required under previous Part 262 Subpart F.	12/31/16; required under previous Part 262 Subpart H.
Receiving facilities must send confirmation of receipt using international movement document within 3 days of shipment delivery to foreign exporter, to countries of export and transit that control it as hazardous waste export or transit respectively, and for shipments occurring after the future electronic import-export reporting compliance date, to EPA electronically using EPA's WIETS (262.84(d)(2)(xv), 264.12(a)(2), 264.71(d), 265.12(a)(2), 265.71(d), 267.71(d)).	12/31/2016; no paper submittal to EPA; electronic submittal to EPA using EPA's WIETS required for shipments on or after future electronic import-export reporting compliance date.	when consent period ends	when consent period ends; paper submittal required per previous Part 262 Subpart H.
Receiving facilities must add waste consent numbers matched to each waste listed in RCRA manifest and send copy of signed manifest to EPA's International Compliance Assurance Division within 30 days of shipment delivery until such time the facility can send the paper manifest to the e-Manifest system (264.71(a)(3), 265.71(a)(3), 267.71(a)(3)).	12/31/2016	12/31/2016; replaces requirement to submit paper manifest with copy of import consent documentation in previous Part 264/265/267.	12/31/2016; replaces requirement to submit paper manifest with copy of import consent documentation in previous Part 264/265/267.

Major regulatory provisions in final rule	Compliance date for new or renewing shipments requiring consent on or after December 31, 2016	Compliance date for existing shipments with Canada, Mexico, Chile, or any non-OECD country occurring under consent issued by EPA prior to December 31, 2016	Compliance date for existing shipments with OECD country other than Canada, Mexico or Chile occurring under consent issued by EPA prior to December 31, 2016
Receiving facilities must inform importer, foreign exporter, and EPA of need to arrange alternate management for shipment or to return shipment to country of export (262.84(f)(4)(i), 264.12(a)(3), 265.12(a)(3)).	12/31/16; paper submittal to EPA required prior to future electronic import-export reporting compliance date; electronic submittal to EPA using EPA's WIETS required thereafter.	when consent period ends	when consent period ends; paper submittal required per previous Part 262 Subpart H.
Receiving facilities must send confirmation of recovery/disposal no later than 30 days of completing management of shipment and no later than one year after shipment delivery to foreign exporter, to country of export if the country of export controls it as hazardous waste export, and on or after future electronic import-export reporting compliance date, to EPA electronically using EPA's WIETS (262.84(g), 264.12(a)(4)(i), 265.12(a)(4)(i)).	12/31/2016; no paper submittal to EPA prior to future electronic import-export reporting compliance date; electronic submittal to EPA using EPA's WIETS thereafter.	when consent period ends	when consent period ends; paper submittal required per previous Part 262 Subpart H.
Receiving facilities that performed interim recovery or disposal operations must promptly send confirmation of final recovery/disposal that it receives from final recovery/disposal facility no later than after final facility receives shipment to foreign exporter, to the country of export if the country controls it as a hazardous waste export, and on or after future electronic import-export reporting compliance date, to EPA using EPA's WIETS (262.84(f)(6), 264.12(a)(4)(ii), 265.12(a)(4)(ii)).	12/31/2016; no paper submittal to EPA prior to future electronic import-export reporting compliance date; electronic submittal to EPA using EPA's WIETS thereafter.	when consent period ends	when consent period ends; paper submittal required per previous Part 262 Subpart H.

III. Detailed Discussion of the Final Rule

A. Consolidation of Hazardous Waste Import and Export Requirements Consistent With Current OECD Procedures

As discussed in the previous section, existing export or import shipments occurring under the terms of a consent issued prior to the effective date of this action are not required to comply with the OECD-based requirements in the newly expanded and reorganized Part 262 subpart H, and instead must continue to comply with the terms of the consent and the requirements that applied at the time the consent was issued until the consent expires. Prior to the expiration of the consent period, any exporter wishing to submit an export notice requesting new consent or a renewal of a previous consent must register in EPA's CDX, obtain an EPA ID number if he or she is a recognized trader that does not already have one, and establish or amend a contract or equivalent arrangement between all parties to require all the OECD-based requirements prior to submitting the export notice electronically. Any importer must similarly register in EPA's CDX, obtain an EPA ID number if he or she is a recognized trader that does not already have one, and establish or amend a contract or equivalent arrangement between all parties to require all the OECD-based requirements prior to the expiration of the consent issued to the foreign exporter. Lastly, receiving facilities that do not also act as an exporter or as an importer must register in EPA's CDX prior to the electronic import-export reporting compliance date in order to electronically submit to EPA import confirmations of receipt, import confirmations of recovery or disposal, and receiving facility notifications of the need to arrange alternate management or the return of an individual import shipment.

Assuming the exporter obtains consent to export on or after the effective date of this action, the exporter must prepare and provide an international movement document containing all the items listed in § 262.83(d) for each export shipment, require that the movement document accompanies each shipment all the way from the shipment starting point in the U.S. to the receiving facility in the country of import, and that all required signatures are obtained. If the shipment starting point is different from the exporter's address, the movement document must list both the exporter's and the shipment origination information (*e.g.,* facility name, address, contact name and phone number, fax number and email address). The exporter must require the foreign receiving facility per contract terms to use the movement document to confirm acceptance of the waste shipment, or to document partial or total rejection of the waste shipment. Exporters may use the

widely accepted OECD/Basel international movement document, or any other movement document required by the country of import provided that all the required information can be included on the movement document. Environment and Climate Change Canada (ECCC) confirmed that use of the Canadian movement document is required in 2015, and Mexico's Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT) confirmed in Spring 2016 that they would prefer use of the Mexican tracking document to minimize the number of tracking documents accompanying each shipment. Use of the Mexican tracking document is acceptable to EPA so long as all required items in § 262.83(d) are included. The contract terms must require foreign facilities to send copies of the international movement document to confirm receipt to the exporter, the country of import and any countries of transit that control the shipment as an import or transit shipment of hazardous waste, respectively, and for shipments occurring on or after the future electronic import-export reporting compliance date EPA will establish in a separate FR notice, to EPA using EPA's WIETS within three (3) days of shipment delivery. If the foreign facility rejects the shipment in part or in whole, the contract terms must require the foreign facility to notify the exporter and the country of import of the need to arrange alternate management or the return of the waste to the United States. If alternate management in the country of import that is acceptable to the exporter and the country of import cannot be found, the exporter must provide for the return of the export shipment within 90 days or some other time frame to which the relevant competent authorities all agree. Whether the shipment is managed at an alternate location or returned, the exporter must submit an exception report to EPA.

If the shipment is accepted by the foreign facility for recovery or disposal, the exporter's contract must require the foreign facility to confirm completion of recovering or disposing of the waste in the shipment as soon as possible but no later than thirty (30) days after completing recovery or disposal of the shipment, and no later than one (1) year from the shipment's delivery to the foreign facility. The exporter's contract must also require that the foreign facility send such confirmations to the exporter, the country of import, and on or after the future electronic import-export reporting compliance date, to EPA using EPA's WIETS. If the foreign facility is solely performing an interim recovery or disposal operation prior to final recovery or disposal at a final facility, the contract must require the foreign facility to promptly forward copies of confirmations of recovery or disposal that it receives in turn from the final facility to the exporter, the country of import, and on or after the future electronic import-export reporting compliance date, to EPA using EPA's WIETS. By March 1 of each year, the exporter must submit an annual report summarizing all the shipments made during the previous calendar year. All records must be kept by the exporter for at least three (3) years. Records submitted electronically may be kept in the user's account in WIETS, but must be made available to EPA or an authorized state inspector upon request. No exporter may be held liable for the inability to produce such documents for inspection under this section if the exporter can demonstrate that the inability to produce the document is due exclusively to technical difficulty with WIETS for which the exporter bears no responsibility.

With respect to import shipments, a contract or equivalent arrangement between all parties to require all the OECD-based requirements must be established prior to any submittal of a notice. In most cases, prior notice is submitted and the eventual consent is issued to the foreign exporter rather than the importer. At the time the consent is sent back to the foreign exporter via the country of export, EPA will send a copy of import consent documentation to the receiving facility as well. But for cases where the country of export does not control the shipment as an export of hazardous waste, for whatever reason, the importer will be required to submit a notice directly to EPA requesting consent for the shipments to occur. EPA will issue the consent in such cases to the importer, and will send a copy of the consent documentation to the receiving facility as well. Just as with export shipments, the shipments must be accompanied by an international movement document and the receiving facility must both confirm receipt and confirm recovery or disposal of the waste shipment. If the country of export does not control the shipment as an export of hazardous waste, the receiving facility does not have to send the confirmations of receipt or the confirmations of recovery or disposal to the country of export. If the receiving facility cannot accept the waste shipment, it must notify the foreign exporter, the importer (if different from the receiving facility), and EPA of the need to arrange alternate management or the return of the import shipment. In cases of return, EPA will then notify the country of export of the need for the return within 90 days.

If the receiving facility is solely performing interim recovery or disposal operations prior to final recovery or disposal at another facility, the receiving facility must promptly send confirmations of final recovery or disposal it receives from the final facility to the foreign exporter, to the country of export if it controls the shipment as an export of hazardous waste, and on or after the future electronic import-export reporting compliance date, to EPA.

B. Transition From Paper-Based to Electronic Port Procedures Under ITDS for RCRA Waste Exports Subject to Notice and Consent

Under Executive Order 13659, EPA and CBP must have the capabilities, agreements, and requirements in place to utilize electronic processes in AES, or its successor system, in place of existing paper processes at the port or border crossing required to clear export shipments for departure. Under existing paper processes for shipments occurring under consents issued prior to the effective date of this action, transporters of hazardous waste export shipments must carry paper documentation that the exporter has received consent to export the wastes in the shipment, in the form of either EPA's AOC letter for export shipments to Canada, Chile, Mexico, or any non-OECD country, or a movement document for export shipments to all other OECD countries. In addition, for manifested hazardous waste shipments the transporter must give a copy of the signed and dated RCRA manifest to the U.S. customs official at the point of departure. Under the new electronic procedures in AES, or its successor system, exporters will file the following EPA data in the AES, along with the other information required under 15 CFR 30.6:

(1) EPA license required indicator (to declare shipment is subject to RCRA export notice and consent requirements)
(2) Commodity classification code (10 digit, numeric description of the commodity) per 15 CFR 30.6(a)(12)
(3) EPA consent number (specific to waste)
(4) Country of ultimate destination per 15 CFR 30.6(a)(5)
(5) Date of export per 15 CFR 30.6(a)(2)
(6) RCRA hazardous waste manifest tracking number (if required; universal waste, CRTs being shipped for recycling, industrial

ethyl alcohol being shipped for reclamation, and SLABs being shipped for recovery of lead are exempt from RCRA manifest requirements under existing RCRA regulations)

(7) Quantity of waste in shipment and units for reported quantity (units established by commodity classification number)

(8) EPA net quantity and EPA net quantity units of measure (if required, must be reported in kilograms if solid waste, and in liters if liquid waste; only required if commodity classification number does not require quantity to be reported in weight or volume units)

Of the items listed previously, only the ''EPA license code'', ''EPA consent number'', ''RCRA hazardous waste manifest tracking number'', ''EPA net quantity'', and ''EPA net quantity units of measurement'' are not already required to be filed in AES under the U.S. Census Bureau's Foreign Trade Regulations (FTR). Of these five items, one item is only required if the waste is subject to RCRA manifesting requirements and two of the remaining items are only required in cases where the commodity classification number-based quantity reporting does not require that the quantity of the commodity in the shipment be reported in weight or volumetric units (*e.g.,* kg or L). Because an EPA license, or an EPA consent number, is required, AES will require the two to five additional items to be filed, as appropriate, and will validate the country of ultimate destination and the date of export against EPA-supplied reference data for the entered EPA consent number. If the consent number is not in the correct format, AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing to correct it. If the country of ultimate destination does not match the country of import for the consent number, AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing. If the expected date of shipment departure does not fall within the start date and end date for the consent number, AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing. If a RCRA manifest is required for the consent number and the filer does not enter a correctly formatted RCRA manifest number (*i.e.,* nine digits followed by three letters), AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing. Lastly, if the EPA net shipping quantity is required to be entered based on the commodity classification number entered and the filer does not enter that quantity, the AES will provide a fatal error message for the filer that specifies the error in the filing. The filer will then need to correct and resubmit the filing. AES will not issue an Internal Transaction Number (ITN) to indicate successful completion until the filing passes all validations. The exporter and transporter will be in violation of the FTR if the shipment is exported without a valid ITN. When the shipment is validated and the ITN issued, the shipment will be cleared to leave the port of export.

As discussed in the previous section, EPA is establishing a transition period under which exporters may choose to comply with either the electronic AES filing procedures or the paper-based procedures at the port. Exporters choosing to use the paper process at the port must provide the paper documentation of consent to the initial transporter, along with a paper RCRA manifest if the shipment is required to be manifested, and must instruct the transporter via email, mail or fax to give a copy of the signed and dated RCRA manifest to the U.S. customs official at the port or border crossing. Exporters choosing to use electronic AES filing procedures must file the EPA data listed above in AES as part of their electronic export information in AES, obtain an ITN number, provide the ITN number to the initial transporter, and if providing the transporter with a paper RCRA manifest, confirm to the transporter that no manifest must be given to the U.S. customs official at the port by manually crossing out the sentence instructing transporters to do so in the Instructions for the International Block on the RCRA manifest.

EPA will coordinate with CBP on the selection of the future AES filing compliance date, but we anticipate that it will likely be at the start of a calendar year to ensure a full calendar year of AES filing data for the first year to enable EPA to build draft export annual reports in EPA's WIETS for electronic review and submittal by exporters. EPA will announce the future AES filing compliance date in a separate **Federal Register** notice. On or after the AES filing compliance date, all exporters of hazardous waste and cathode ray tubes for recycling will be required to comply with the AES filing requirements.

C. Conversion of Paper Submittals for Imports and Exports to Electronic Submittals Using EPA's Waste Import Export Tracking System

As discussed in the previous section, EPA has not yet completed or tested out electronic versions of the export exception report, export confirmation of receipt, export confirmation of recovery or disposal, import notification, import confirmation of receipt, import confirmation of recovery or disposal, or the receiving facility notification of the need to arrange alternate management or return of an import shipment. Electronic submittal of these documents is therefore not required until a future electronic import-export reporting compliance date that EPA will establish in a separate **Federal Register** notice. The electronic export notice has been completed, and electronic submittal of export notices requesting new or renewed consent will be required on the effective date of this action. The electronic export annual report has been completed but since the draft export annual report will be built using AES filing data on validated export shipments that is automatically sent from AES to EPA's WIETS, electronic submittal of the export annual report will not be required until one year after the AES filing compliance date. Paper submittals of export annual reports, export exception reports, import notices, and receiving facility notifications of the need to arrange alternate management or return of an individual import shipment will be required from the effective date of this action until the future electronic import-export reporting compliance date. No submittals to EPA of export confirmations of receipt, export confirmations of recovery or disposal, import confirmations of receipt, or import confirmations of recovery or disposal will be required until the future electronic import-export reporting compliance date, on or after which electronic submittal of these documents to EPA using EPA's WIETS will be required.

D. Availability of Electronic Reporting

As of December 31, 2016, exporters of cathode ray tubes for recycling (40 CFR 261.39(a)(5)(ii)) or RCRA-regulated hazardous wastes (40 CFR 262.83(b)) must complete and submit hazardous waste export notices using EPA's WIETS. EPA's Central Data Exchange (CDX) is the agency entry point for the agency electronic reporting. EPA's WIETS can be accessed by logging into EPA's CDX. As part of the one-time CDX registration process, individual

exporters and export preparers must create a CDX account.[8] As of one year after the AES filing compliance date, exporters of cathode ray tubes for recycling (40 CFR 261.39(a)(5)(xi)) or RCRA-regulated hazardous wastes (40 CFR 262.83(g)) can review draft export annual reports generated by WIETS and submit final export annual reports similarly using EPA's WIETS. They can prepare, sign, submit and receive receipt of their export notice or their annual report in WIETS. The submitter can also track which of their export notices are pending or processed.

A separate **Federal Register** Notice will be published for the other 7 reports (40 CFR 262.83(d)(2)(xv), 262.83(f)(4), 262.83(f)(5), 262.83(f)(6), 262.83(h), 262.84(b), 262.84(d)(2)(xv), 262.84(f)(4)(i), 262.84(f)(6), 262.84(g), 264.12(a)(1), 264.12(a)(2), 264.12(a)(3), 264.12(a)(4)(i), 264.12(a)(4)(ii), 264.71(d), 265.12(a)(1), 265.12(a)(2), 265.12(a)(3), 265.12(a)(4)(i), 265.12(a)(4)(ii), 265.71(d)).

How to Access the System: WIETS can be accessed by going to *https://cdx.epa.gov* and registering with CDX and selecting WIETS as your Program Service.

How to Get Help for the System: The CDX Help desk is available for help with CDX registration for WIETS. There are also several user's guides (for both CDX and the WIETS data system). There is a user guide to guide the user through the registration process on CDX and then there is a user's guide for using WIETS. That guide is posted in WIETS. Users may register in CDX at any time, and EPA encourages those exporters and export preparers that expect to submit export notices in 2017 to begin the CDX registration process as soon as possible. For assistance with registering in CDX, please contact the CDX help desk via phone at 888–890–1995 from 8:00 a.m. to 6:00 p.m. (EST/EDT), or via email at *helpdesk@epacdx.net.* For more information about WIETS, please contact Jin Yoo via phone at 202–564–5721 or via email at *yoo.jin@epa.gov.*

E. Changes to Hazardous Waste Manifest Requirements for Import and Export Shipments

As discussed in the previous section, exporters and receiving facilities will be required to list the consent number for each waste matched to each waste listed in the hazardous waste manifest from the effective date of this action but the regulatory text in 262.83(c)(3), 264.71(a)(3)(i), 265.71(a)(3)(i), and 267.71(a)(6), respectively, does not specify exactly where on the manifest the consent numbers must be added. If additional space is needed to list the consent numbers for each waste on the paper manifest, a continuation sheet (EPA Form 8700–22A) should be used. EPA is not specifying where on the manifest to list the consent number for each waste in order to give the exporters and receiving facilities more flexibility in listing the numbers on paper manifests, and to give EPA more flexibility in determining how best to design data entry of the consent numbers in the e-Manifest currently under development. Unlike the other requirements in this rule that are based on the OECD procedures, these new requirements apply even to existing hazardous waste export and import shipments occurring under the terms of a consent issued prior to the effective date of this action.

Specific to hazardous waste import shipments, receiving facilities continue to be required to submit paper import manifests to EPA's International Compliance Assurance Division (ICAD) within thirty (30) days of shipment delivery, but the text in §§ 264.71(a)(3)(ii), 265.71(a)(3)(ii), and 267.71(a)(6)(ii) now clarifies that submittal to EPA ICAD is required only until the receiving facility can mail the paper manifest to the e-Manifest system per §§ 264.71(a)(2)(v) or 265.71(a)(2)(v).

Specific to hazardous waste export shipments, EPA is not finalizing the regulatory language proposed in §§ 262.83(a)(5) and (6). These provisions had included instructions for the exporter to obtain a confirmation of receipt from the foreign facility and for the exporter to provide direction to the transporter in cases when the shipment was partially or wholly rejected by the foreign facility. This regulatory language had been in the original manifest instructions under 40 CFR part 262 subpart E. However, EPA is elsewhere finalizing similar requirements such that §§ 262.83(a)(5) and (6) are redundant. Specifically, § 262.83(d)(2)(xv) requires the exporter to direct the foreign facility to confirm receipt of each shipment, § 262.83(f)(3)(i) requires contract terms to direct the foreign facility to inform the exporter if the shipment cannot be managed according to the consent, 262.83(e) requires the exporter to arrange for the return of the waste as needed, and 262.83(h) requires the exporter to file an exception reports as needed. In addition, the proposed deletion of the requirement for transporters to give a copy of the signed and dated manifest to the U.S. customs official at the point of departure from the United States has been amended to reflect the transition period prior to the AES filing compliance date during which the exporter may choose to either electronically file EPA information in AES or follow the existing paper-based process at the port. During the transition period, exporters will be required to inform the transporter via mail, email or fax whether they have chosen to follow paper-based processes so that the transporter will know whether or not he or she is required to carry paper documentation of consent (*i.e.,* EPA Acknowledgement of Consent letter, international movement document) with the shipment and to give a copy of the paper manifest to the U.S. customs official at the port or border crossing. On or after the AES filing compliance date, no transporter will be required to give a copy of a paper manifest to the U.S. customs official. Lastly, the final revision to the instructions for Item 16 in the Appendix to Part 262 has been modified to delete the last sentence in the instructions to Item 16 in order to reflect that transporters will not be required to give a copy of the manifest to the U.S. customs official at the point of departure on or after the electronic AES filing compliance date. But this form change and the other form changes from the e-Manifest Final rule (79 FR 7518) will not be implemented until the e-Manifest system is available for use, and on or after the AES filing compliance date. Manifest users and manifest suppliers should therefore continue to use their existing supplies of manifests. EPA encourages exporters following electronic AES filing procedures to manually cross out the last sentence in the instructions for Item 16 to confirm that the transporter will not be required to give a copy of the signed and dated manifest to the U.S. Customs official at the port or border crossing.

F. Additional Requirements for Recognized Traders Arranging for Hazardous Waste Imports or Exports

Under this action, recognized traders arranging for export or import will be required to obtain an EPA ID number prior to arranging for import or export on or after the effective date of this final rule per § 262.12. As with the application of OECD procedures, recognized traders will not have to obtain an EPA ID number to continue managing import and export shipments occurring under the terms of a consent issued by EPA prior to the effective date of this final rule. But any recognized trader must have an EPA ID number prior to requesting a new or renewed

[8] Detailed directions on how to create a CDX account are available at *https://dev.epacdx.net/About/UserGuide.*

consent to export or import. Regulated entities request EPA ID Numbers by submitting EPA Form 8700–12 (or an authorized State's equivalent form). EPA Form 8700–12 will have to be modified in order for recognized traders wishing to arrange for export to request an EPA ID number, as the form and its instructions currently do not reflect this requirement. Changes to EPA Form 8700–12 are developed and approved separate from this action. Until changes to EPA Form 8700–12 can be finalized, EPA recommends that recognized traders wishing to request an EPA ID number in order to arrange for export of hazardous wastes fill out page 1 of the form, reflecting his or her place of business as the site in question, and note on the form in ''Item 13-Comments'' that the requestor is a recognized trader that arranges for import or export of hazardous waste, universal waste or spent lead batteries subject to Part 262 Subpart H requirements.

G. Incorporation by Reference of OECD Waste Lists

This action updates the IBR source material in § 260.11(g)(1) for the OECD amber and green waste lists, and their associated waste codes, which are used to identify a waste. The OECD waste lists, entitled ''List of Wastes Subject to the Green Control Procedures'' and ''List of Wastes Subject to Amber Control Procedures,'' are set forth in Appendix 3 and Appendix 4, respectively, of the OECD Decision. The most current waste lists from the OECD Decision have been consolidated and incorporated in Annex B and C of the 2009 ''Guidance Manual for the Control of Transboundary Movements of Recoverable Wastes.'' Sections 262.82(a), 262.83(b)(1)(xi), 262.83(d)(2)(vi), 262.83(g)(4)(iii), 262.84(b)(1)(xi), and 262.84(d)(2)(vi) reference the IBR material in the revised § 260.11(g)(1). The material is available for inspection at: The U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004 (Docket # EPA–HQ–RCRA–2015–0147) and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F–75775 Paris Cedex 16, France. The material is also available online (for free) at *http://www.oecd.org/env/waste/42262259.pdf.* To contact the EPA Docket Center Public Reading Room, call (202) 566–1744. To contact the OECD, call +33 (0) 1 45 24 81 67.

H. Conforming Changes to Parts 260, 262 Through 267, 271, and 273

A number of technical level corrections to citations previously referencing Part 262 Subparts E or F were made to reflect applying the expanded Part 262 Subpart H. For a full list of the corrections, please see Section III of the proposed rule or the regulatory text in this action.

I. Related Proposed Rulemaking

In order to improve information on the movement and disposition of hazardous wastes, and to enable interested members of the community and the government to benefit from the provision of publicly accessible data, EPA intends to separately propose that U.S. exporters and U.S. receiving facilities be required to post the confirmations of receipt and confirmations of recovery or disposal that they receive for export shipments and import shipments respectively to a public company Web site until the exporters and receiving facilities are required to submit such confirmations electronically to EPA's WIETS on or after the future electronic reporting compliance date that EPA will establish in a separate **Federal Register** notice.

IV. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer their own hazardous waste programs in lieu of the federal program within the State. 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 requirements 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. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the federal program (see also 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

Because of the federal government's special role in matters of foreign policy, EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations. This approach of having Federal, rather than State, administering of the import/export functions promotes national coordination, uniformity and the expeditious transmission of information between the United States and foreign countries.

Although States do not receive authorization to administer the Federal government's export functions in 40 CFR part 262 subpart E, import functions in 40 CFR part 262 subpart F, import/export functions in 40 CFR part 262 subpart H, or the import/export relation functions in any other section of the RCRA hazardous waste regulations, State programs are still required to adopt the provisions in this rule to maintain their equivalency with the Federal program (see 40 CFR 271.10(e) which will also be amended in this rule).

This rule contains many amendments to 40 CFR part 262 subpart H, both for clarity and organization, and replaces the regulations that are currently in 40 CFR part 262 subparts E and F with the more stringent 40 CFR part 262 subpart H regulations. The rule also contains conforming import and export-related

amendments to 40 CFR parts 260, 261, 262, 263, 264, 265, 266, 267, 271 and 273, almost all of which are more stringent.

The States that have already adopted 40 CFR part 262 subparts E, F and H, 40 CFR part 263, 40 CFR part 264, 40 CFR part 265, and any other import/export related regulations must adopt the revisions to those provisions in this final rule. But only States that have previously adopted the optional CRT conditional exclusion in 40 CFR 261.39, or the optional exclusions for samples in 40 CFR 261.4(d) and 40 CFR 261.4(e) are required to adopt the revisions related to those exclusions in this final rule.

When a State adopts the import/export provisions in this rule (if final), they must not replace Federal or international references or terms with State references or terms.

The provisions of this rule will take effect in all States on the effective date of the rule, since these import and export requirements will be administered by the Federal government as a foreign policy matter, and will not be administered by States.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review, because it may raise novel legal or policy issues [3(f)(4)] arising out of legal mandates, although it is not economically significant. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared a regulatory impact analysis of the potential costs and benefits associated with this action. This analysis, titled ''Regulatory Impact Analysis: EPA's Hazardous Waste Export-Import Revisions Final Rule,'' is available in the docket.

This rule is projected to result in aggregate annualized costs (*i.e.,* including both industry and government costs) of approximately $2.42 and $2.44 million using a discount rate of 3 percent or 7 percent, and assuming a 2018 electronic import-export reporting compliance date for EPA's WIETS. Costs are $2.37 and 2.38 million assuming a 2022 electronic import-export reporting compliance date for EPA's WIET and 3 and 7 percent discount rates, respectively. Costs to industry represent approximately 62 percent of this total. This is significantly below the $100 million threshold established under part 3(f)(1) of the Executive Order. This rule is therefore not considered to be an economically significant action.

In addition to calling for assessment of regulatory costs, the Executive Order 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 described in Chapter 3 of the RIA, monetization of all the rule's benefits is not possible given limitations in the available data. The analysis, however, estimates that the rule will lead to quantifiable annualized cost savings of $0.7 million using a discount rate of 3 percent or 7 percent associated with the relaxation of certain requirements and Agency benefits associated with the electronic submission of notices, annual reports, and other documents. Cost savings to industry represent approximately 66 percent of this total. In addition, the rule would lead to certain benefits that cannot be quantified. These include increased efficiency and convenience of electronic submission, enhanced tracking of hazardous waste transportation recognized trader activities, increased regulatory efficiency, consistency with trade requirements for OECD countries, reduction of risks associated with the treatment and disposal of hazardous wastes, and improved ability to acquire information regarding exports and imports of hazardous waste.

B. Paperwork Reduction Act (PRA)

The information collection activities in this 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 2519.02, OMB ICR Control Number 2050–0214. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The requirements covered in this ICR are necessary for EPA to oversee the international trade of hazardous wastes. EPA is promulgating the above regulatory changes/amendments under the authority of Sections 1006, 1007, 2002(a), 3001 through 3010, 3013 through 3015, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), and as amended by the Hazardous and Solid Waste Amendments, 42 U.S.C. 6905, 6906, 6912, 6921 through 6930, 6934, and 6938.

The Office of Enforcement and Compliance Assurance, U.S. EPA, uses the information provided by each U.S. exporter, receiving facility, transporter, and recognized trader to determine compliance with the applicable RCRA regulatory provisions. In addition, the information is used to determine the number, origin, destination, and type of exports from and imports to the U.S. for tracking purposes and for reporting to the OECD. This information also is used to assess the efficiency of the program.

Most of the information required by the regulations covered by this ICR is not available from any source but the respondents. In certain occasions, such as the notification of intent to export hazardous waste, EPA allows the primary exporter to submit one notice that covers activities over a period of twelve months.

Except as described below, this rule does not result in the collection of duplicate data. Although some of the information required for the hazardous waste manifest and the movement document is substantively the same, up to six pieces of additional information are required for the movement document. In addition, these two documents serve different purposes. A signed copy of the hazardous waste manifest, which is not valid beyond U.S. borders, is sent back to the U.S. exporter when the shipment leaves the U.S. to verify pertinent information, including point of departure, date of departure, destination, and contents of the shipment. The movement document must accompany the shipment until it reaches the foreign recovery facility. The signed movement document is subsequently returned to EPA and the U.S. exporter to acknowledge receipt of the shipment.

In certain cases, some of the information on the tracking document also may be collected in the Automated Export System (AES), or successor system. An AES filing is required for all shipments that are valued over $2,500 per Schedule B number or when a license is required. However, the information currently contained in the AES is not adequate for EPA's purpose of tracking and identifying the export of hazardous waste from the U.S. For example, the wastes are identified by tariff codes that are less precise than the waste codes required by the tracking document.

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which defines EPA's

general policy on public disclosure of information, contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the final rule. If such a claim were asserted, EPA must and will treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108.

Respondents/affected entities: Importers, exporters, and recycling and disposal facilities.

Respondent's obligation to respond: Mandatory (RCRA 3002 (42 U.S.C 6922) and RCRA 3003 (42 U.S.C 6923)).

Estimated number of respondents: 1,305.

Frequency of response: Annual or on occasion.

Total estimated burden: 29,563 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,958,103 million, includes $19,455 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. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are exporters, importers, transporters, and recognized traders. The Agency has determined that between 22 and 25 percent of exporters, importers, and recognized traders, and approximately 80 percent of transporters, are small entities, for a total of 555 small entities, may experience an impact between 0.1 and 0.3 percent of annual revenues. Thus, the average costs of the rule, on a per entity basis, is expected to be less than one percent of annual revenues for any regulated entity. Details of this analysis are presented in the document titled ''Regulatory Impact Analysis: EPA's Hazardous Waste Export-Import Revisions Final Rule,'' which is available in the docket.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Further, UMRA does not apply to the portions of this action concerning application of OECD import and export procedures because those portions are necessary for the national security or the ratification or implementation of international treaty obligations (*i.e.,* the 1986 OECD Decision-Recommendation and the Amended 2001 OECD Decision).

E. Executive Order 13132: Federalism

This action does not have federalism implications because the state and local governments do not administer the export and import requirements under RCRA. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No exporters, importers or transporters affected by this action are known to be owned by Tribal governments or located within or adjacent to Tribal lands. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The procedural requirements in this action should prevent mismanagement of hazardous wastes in foreign countries and better document proper management of imported hazardous wastes in the United States.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action will have little to no effect on the supply, distribution, or use of energy, as this action is intended to prevent mismanagement of hazardous wastes in foreign countries and better document proper management of imported hazardous wastes in the United States.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because this action should prevent mismanagement of hazardous wastes in foreign countries and better document proper management of imported hazardous wastes in the United States. Specifically, this action is designed to increase tracking of individual hazardous waste import and export shipments, improve regulatory efficiency and improve information collection on imports and exports of hazardous wastes subject to RCRA notice and consent requirements.

K. Executive Order 13659: Streamlining the Export/Import Process for America's Businesses

Executive Order 13659, titled ''Streamlining the Export/Import Process for America's Businesses'' (79 FR 10657, February 25, 2014), establishes federal executive policy on improving the technologies, policies, and other controls governing the movement of goods across our national borders. It directs participating agencies to have capabilities, agreements, and other requirements in place by December 31, 2016, to utilize the ITDS and supporting systems as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export. To meet the requirement of

the Executive Order, portions of this action directly require exporters subject to RCRA export consent requirements to electronically file consent related data and the manifest tracking number within AES, the supporting IT system for exports under the ITDS after a transition period. Additionally, this action improves regulatory efficiency related to hazardous waste imports and exports by consolidating import and export procedures for hazardous waste into one set of procedures that are widely accepted by other countries, and by replacing existing submittals to EPA of paper documentation related to hazardous waste imports and exports with electronic submittal into EPA's WIETS. Thus, this action complies with Executive Order 13659.

L. Congressional Review Act

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference.

40 CFR Part 261

Environmental protection, Hazardous materials, Intergovernmental relations, Recycling, Waste treatment and disposal.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, International organizations, Labeling, Packaging and containers, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Exports, Hazardous materials transportation.

40 CFR Part 264

Environmental protection, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 265

Environmental protection, Hazardous waste, Imports, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Exports, Hazardous recyclable materials, Imports, Precious metal recovery, Recycling, Spent lead-acid batteries, Waste treatment and disposal.

40 CFR Part 267

Environmental protection, Hazardous waste, Imports, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 273

Environmental protection, Exports, Imports, Universal waste.

Dated: October 28, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, EPA amends title 40, chapter 1 of the Code of Federal Regulations 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. Amend § 260.10 by adding, in alphabetical order, the definitions of ''AES filing compliance date,'' ''Electronic import-export reporting compliance date,'' and ''Recognized trader'' to read as follows:

§ 260.10 Definitions.

* * * * *

AES filing compliance date means the date that EPA announces in the **Federal Register**, on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System (ITDS) platform.

* * * * *

Electronic import-export reporting compliance date means the date that EPA announces in the **Federal Register**, on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to EPA using EPA's Waste Import Export Tracking System, or its successor system.

* * * * *

Recognized trader means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

* * * * *

■ 3. Amend § 260.11 by revising paragraph (g) to read as follows:

§ 260.11 Incorporation by reference.

* * * * *

(g) The following materials are available for purchase from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F–75775 Paris Cedex 16, France.

(1) Guidance Manual for the Control of Transboundary Movements of Recoverable Wastes, copyright 2009, Annex B: OECD Consolidated List of Wastes Subject to the Green Control Procedure and Annex C: OECD Consolidated List of Wastes Subject to the Amber Control Procedure, IBR approved for §§ 262.82(a), 262.83(b),(d), and (g), and 262.84(b) and (d) of this chapter.

(2) [Reserved]

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 4. 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.

■ 5. Amend § 261.4 by:

■ a. Revising paragraph (d)(1) introductory text;

■ b. Adding paragraph (d)(4);

■ c. Revising paragraph (e)(1) introductory text; and

■ d. Adding paragraph (e)(4).

The revisions and additions read as follows:

§ 261.4 Exclusions.

* * * * *

(d) * * * (1) Except as provided in paragraphs (d)(2) and (4) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this part or parts 262 through 268 or part 270 or part 124 of this chapter or to the

notification requirements of section 3010 of RCRA, when:

* * * * *

(4) In order to qualify for the exemption in paragraphs (d)(1)(i) and (ii) of this section, the mass of a sample that will be exported to a foreign laboratory or that will be imported to a U.S. laboratory from a foreign source must additionally not exceed 25 kg.

(e) * * * (1) Except as provided in paragraphs (e)(2) and (4) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in 40 CFR 260.10, are not subject to any requirement of 40 CFR parts 261 through 263 or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of 40 CFR 261.5 and 262.34(d) when:

* * * * *

(4) In order to qualify for the exemption in paragraph (e)(1)(i) of this section, the mass of a sample that will be exported to a foreign laboratory or testing facility, or that will be imported to a U.S. laboratory or testing facility from a foreign source must additionally not exceed 25 kg.

* * * * *

■ 6. Amend § 261.6 by revising paragraphs (a)(3)(i) and (a)(5) to read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(3) * * *

(i) Industrial ethyl alcohol that is reclaimed except that exports and imports of such recyclable materials must comply with the requirements of 40 CFR part 262, subpart H.

* * * * *

(5) Hazardous waste that is exported or imported for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H.

* * * * *

■ 7. Amend § 261.39 by revising paragraphs (a)(5)(ii), (v), (vi), (ix), and (xi) to read as follows:

§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

* * * * *

(a) * * *

(5) * * *

(ii) Notifications must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

* * * * *

(v) The export of CRTs is prohibited unless all of the following occur:

(A) The receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(B) On or after the AES filing compliance date, the exporter or a U.S. authorized agent must:

(*1*) Submit Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b).

(*2*) Include the following items in the EEI, along with the other information required under 15 CFR 30.6:

(*i*) EPA license code;

(*ii*) Commodity classification code per 15 CFR 30.6(a)(12);

(*iii*) EPA consent number;

(*iv*) Country of ultimate destination per 15 CFR 30.6(a)(5);

(*v*) Date of export per 15 CFR 30.6(a)(2);

(*vi*) Quantity of waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

(*vii*) EPA net quantity reported in units of kilograms, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(vi) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change using the allowable methods listed in paragraph (a)(5)(ii) of this section, except for changes to the telephone number in paragraph (a)(5)(i)(A) of this section and decreases in the quantity indicated pursuant to paragraph (a)(5)(i)(C) of this section. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to paragraphs (a)(5)(i)(D) and (H) of this section) and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

* * * * *

(ix) Exporters must keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment. Exporters may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgements in the CRT exporter's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No CRT exporter may be held liable for the inability to produce a notification or Acknowledgement for inspection under this section if the CRT exporter can demonstrate that the inability to produce such copies are due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the CRT exporter bears no responsibility.

* * * * *

(xi) Prior to one year after the AES filing compliance date, annual reports must be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Hand-delivered annual reports on used CRTs exported during 2016 should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave. NW., Washington, DC. Subsequently, annual reports must be submitted to the office listed using the allowable methods specified in paragraph (a)(5)(ii) of this section. Exporters must keep copies of each annual report for a period of at least three years from the due date of the report. Exporters may satisfy this recordkeeping requirement by retaining electronically submitted annual reports in the CRT exporter's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that a copy is readily available for viewing and production if requested by any EPA or authorized state inspector. No CRT exporter may be held liable for the inability to produce an annual report for inspection under this section if the CRT exporter can demonstrate that the inability to produce the annual report is due

exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the CRT exporter bears no responsibility.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 8. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C 6906, 6912, 6922–6925, 6937, and 6938.

■ 9. Amend § 262.10 by revising paragraph (d) to read as follows:

§ 262.10 Purpose, scope, and applicability.

* * * * *

(d) Any person who exports or imports hazardous wastes must comply with § 262.12 and subpart H of this part.

* * * * *

■ 10. Amend § 262.12 by adding paragraph (d) to read as follows:

§ 262.12 EPA identification numbers.

* * * * *

(d) A recognized trader must not arrange for import or export of hazardous waste without having received an EPA identification number from the Administrator.

■ 11. Amend § 262.41 by revising the last sentence in paragraph (b) to read as follows:

§ 262.41 Biennial report.

* * * * *

(b) * * * A separate annual report requirement is set forth at § 262.83(g) for hazardous waste exporters.

Subpart E—[Removed and Reserved]

■ 12. Remove and reserve subpart E, consisting of §§ 262.50 through 262.58.

Subpart F—[Removed and Reserved]

■ 13. Remove and reserve subpart F, consisting of § 262.60.

■ 14. Subpart H is revised to read as follows:

Subpart H—Transboundary Movements of Hazardous Waste for Recovery or Disposal

Sec.

262.80 Applicability.
262.81 Definitions.
262.82 General conditions.
262.83 Exports of hazardous waste.
262.84 Imports of hazardous waste.
262.85–262.89 [Reserved]

Subpart H—Transboundary Movements of Hazardous Waste for Recovery or Disposal

§ 262.80 Applicability.

(a) The requirements of this subpart apply to transboundary movements of hazardous wastes.

(b) Any person (including exporter, importer, disposal facility operator, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under this subpart.

§ 262.81 Definitions.

In addition to the definitions set forth at 40 CFR 260.10, the following definitions apply to this subpart:

Competent authority means the regulatory authority or authorities of concerned countries having jurisdiction over transboundary movements of wastes.

Countries concerned means the countries of export or import and any countries of transit.

Country of export means any country from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated.

Country of import means any country to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of submitting the wastes to recovery or disposal operations therein.

Country of transit means any country other than the country of export or country of import across which a transboundary movement of hazardous wastes is planned or takes place.

Disposal operations means activities which do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternate uses, which include:

(1) D1 Release or Deposit into or onto land, other than by any of operations D2 through D5 or D12.

(2) D2 Land treatment, such as biodegradation of liquids or sludges in soils.

(3) D3 Deep injection, such as injection into wells, salt domes or naturally occurring repositories.

(4) D4 Surface impoundment, such as placing of liquids or sludges into pits, ponds or lagoons.

(5) D5 Specially engineered landfill, such as placement into lined discrete cells which are capped and isolated from one another and the environment.

(6) D6 Release into a water body other than a sea or ocean, and other than by operation D4.

(7) D7 Release into a sea or ocean, including sea-bed insertion, other than by operation D4.

(8) D8 Biological treatment not specified elsewhere in operations D1 through D12, which results in final compounds or mixtures which are discarded by means of any of operations D1 through D12.

(9) D9 Physical or chemical treatment not specified elsewhere in operations D1 through D12, such as evaporation, drying, calcination, neutralization, or precipitation, which results in final compounds or mixtures which are discarded by means of any of operations D1through D12.

(10) D10 Incineration on land.

(11) D11 Incineration at sea.

(12) D12 Permanent storage.

(13) D13 Blending or mixing, prior to any of operations D1 through D12.

(14) D14 Repackaging, prior to any of operations D1 through D13.

(15) D15 (or DC17 for transboundary movements with Canada only) Interim Storage, prior to any of operations D1 through D12.

(16) DC15 Release, including the venting of compressed or liquified gases, or treatment, other than by any of operations D1 to D12 (for transboundary movements with Canada only).

(17) DC16 Testing of a new technology to dispose of a hazardous waste (for transboundary movements with Canada only).

EPA Acknowledgment of Consent (AOC) means the letter EPA sends to the exporter documenting the specific terms of the country of import's consent and the country(ies) of transit's consent(s). The AOC meets the definition of an export license in U.S. Census Bureau regulations 15 CFR 30.1.

Export means the transportation of hazardous waste from a location under the jurisdiction of the United States to a location under the jurisdiction of another country, or a location not under the jurisdiction of any country, for the purposes of recovery or disposal operations therein.

Exporter, also known as primary exporter on the RCRA hazardous waste manifest, means the person domiciled in the United States who is required to originate the movement document in accordance with § 262.83(d) or the manifest for a shipment of hazardous waste in accordance with subpart B of this part, or equivalent State provision, which specifies a foreign receiving facility as the facility to which the

hazardous wastes will be sent, or any recognized trader who proposes export of the hazardous wastes for recovery or disposal operations in the country of import.

Foreign exporter means the person under the jurisdiction of the country of export who has, or will have at the time the planned transboundary movement commences, possession or other forms of legal control of the hazardous wastes and who proposes shipment of the hazardous wastes to the United States for recovery or disposal operations.

Foreign importer means the person to whom possession or other form of legal control of the hazardous waste is assigned at the time the exported hazardous waste is received in the country of import.

Foreign receiving facility means a facility which, under the importing country's applicable domestic law, is operating or is authorized to operate in the country of import to receive the hazardous wastes and to perform recovery or disposal operations on them.

Import means the transportation of hazardous waste from a location under the jurisdiction of another country to a location under the jurisdiction of the United States for the purposes of recovery or disposal operations therein.

Importer means the person to whom possession or other form of legal control of the hazardous waste is assigned at the time the imported hazardous waste is received in the United States.

OECD area means all land or marine areas under the national jurisdiction of any OECD Member country. When the regulations refer to shipments to or from an OECD Member country, this means OECD area.

OECD means the Organization for Economic Cooperation and Development.

OECD Member country means the countries that are members of the OECD and participate in the Amended 2001 OECD Decision. (EPA provides a list of OECD Member countries at *https://www.epa.gov/hwgenerators/international-agreements-transboundary-shipments-waste*).

Receiving facility means a U.S. facility which, under RCRA and other applicable domestic laws, is operating or is authorized to operate to receive hazardous wastes and to perform recovery or disposal operations on them.

Recovery operations means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses, which include:

(1) R1 Use as a fuel (other than in direct incineration) or other means to generate energy.

(2) R2 Solvent reclamation/regeneration.

(3) R3 Recycling/reclamation of organic substances which are not used as solvents.

(4) R4 Recycling/reclamation of metals and metal compounds.

(5) R5 Recycling/reclamation of other inorganic materials.

(6) R6 Regeneration of acids or bases.

(7) R7 Recovery of components used for pollution abatement.

(8) R8 Recovery of components used from catalysts.

(9) R9 Used oil re-refining or other reuses of previously used oil.

(10) R10 Land treatment resulting in benefit to agriculture or ecological improvement.

(11) R11 Uses of residual materials obtained from any of the operations numbered R1 through R10 or RC14 (for transboundary shipments with Canada only).

(12) R12 Exchange of wastes for submission to any of the operations numbered R1 through R11 or RC14 (for transboundary shipments with Canada only).

(13) R13 Accumulation of material intended for any operation numbered R1 through R12 or RC14 (for transboundary shipments with Canada only).

(14) RC14 Recovery or regeneration of a substance or use or re-use of a recyclable material, other than by any of operations R1 to R10 (for transboundary shipments with Canada only).

(15) RC15 Testing of a new technology to recycle a hazardous recyclable material (for transboundary shipments with Canada only).

(16) RC16 Interim storage prior to any of operations R1 to R11 or RC14 (for transboundary shipments with Canada only).

Transboundary movement means any movement of hazardous wastes from an area under the national jurisdiction of one country to an area under the national jurisdiction of another country.

§ 262.82 General conditions.

(a) *Scope.* The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the Green control procedures or a list of wastes subject to the Amber control procedures and whether the waste is or is not hazardous waste. The OECD Green and Amber lists are incorporated by reference in 40 CFR 260.11.

(1) *Green list wastes.* (i) Green wastes that are not hazardous wastes are subject to existing controls normally applied to commercial transactions, and are not subject to the requirements of this subpart.

(ii) Green wastes that are hazardous wastes are subject to the requirements of this subpart.

(2) *Amber list wastes.* (i) Amber wastes that are hazardous wastes are subject to the requirements of this subpart, even if they are imported to or exported from a country that does not consider the waste to be hazardous or control the transboundary shipment as a hazardous waste import or export.

(A) For exports, the exporter must comply with § 262.83.

(B) For imports, the recovery or disposal facility and the importer must comply with § 262.84.

(ii) Amber wastes that are not hazardous wastes, but are considered hazardous by the other country are subject to the Amber control procedures in the country that considers the waste hazardous, and are not subject to the requirements of this subpart. All responsibilities of the importer or exporter shift to the foreign importer or foreign exporter in the other country that considers the waste hazardous unless the parties make other arrangements through contracts.

Note to paragraph (a)(2): Some Amber list wastes are not listed or otherwise identified as hazardous under RCRA, and therefore are not subject to the requirements of this subpart. Regardless of the status of the waste under RCRA, however, other Federal environmental statutes (*e.g.,* the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply with regard to this subpart.

(3) *Mixtures of wastes.* (i) A Green waste that is mixed with one or more other Green wastes such that the resulting mixture is not hazardous waste is not subject to the requirements of this subpart.

Note to paragraph (a)(3)(i): The regulated community should note that some countries may require, by domestic law, that mixtures of different Green wastes be subject to the Amber control procedures.

(ii) A Green waste that is mixed with one or more Amber wastes, in any amount, de minimis or otherwise, or a mixture of two or more Amber wastes, such that the resulting waste mixture is hazardous waste is subject to the requirements of this subpart.

Note to paragraph (a)(3)(ii): The regulated community should note that some countries may require, by domestic law, that a mixture of a Green waste and more than a de minimis amount of an Amber waste or a mixture of two or more Amber wastes be subject to the Amber control procedures.

(4) Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

(i) If such wastes are hazardous wastes, such wastes are subject to the requirements of this subpart.

(ii) If such wastes are not hazardous wastes, such wastes are not subject to the requirements of this subpart.

(b) *General conditions applicable to transboundary movements of hazardous waste.* (1) The hazardous waste must be destined for recovery or disposal operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the country of import;

(2) The transboundary movement must be in compliance with applicable international transport agreements; and

Note to paragraph (b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADNR (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of hazardous waste through one or more countries must be conducted in compliance with all applicable international and national laws and regulations.

(c) *Duty to return wastes subject to the Amber control procedures during transit through the United States.* When a transboundary movement of hazardous wastes transiting the United States and subject to the Amber control procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover or dispose of these wastes in an environmentally sound manner, the waste must be returned to the country of export. The U.S. transporter must inform EPA at the specified mailing address in paragraph (e) of this section of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter must complete the return within ninety (90) days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned countries.

(d) *Laboratory analysis exemption.* Export or import of a hazardous waste sample is exempt from the requirements of this subpart if the sample is destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery or disposal operations, does not exceed twenty-five kilograms (25 kg) in quantity, is appropriately packaged and labeled, and complies with the conditions of 40 CFR 261.4(d) or (e).

(e) *EPA Address for submittals by postal mail or hand delivery.* Submittals required in this subpart to be made by postal mail or hand delivery should be sent to the following addresses:

(1) For postal mail delivery, the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

(2) For hand-delivery, the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, William Jefferson Clinton South Bldg., Room 6144, 12th St. and Pennsylvania Ave NW., Washington, DC 20004.

§ 262.83 Exports of hazardous waste.

(a) *General export requirements.* Except as provided in paragraphs (a)(5) and (6) of this section, exporters that have received an AOC from EPA before December 31, 2016 are subject to that approval and the requirements listed in the AOC that existed at the time of that approval until such time the approval period expires. All other exports of hazardous waste are prohibited unless:

(1) The exporter complies with the contract requirements in paragraph (f) of this section;

(2) The exporter complies with the notification requirements in paragraph (b) of this section;

(3) The exporter receives an AOC from EPA documenting consent from the countries of import and transit (and original country of export if exporting previously imported hazardous waste);

(4) The exporter ensures compliance with the movement documents requirements in paragraph (d) of this section;

(5) The exporter ensures compliance with the manifest instructions for export shipments in paragraph (c) of this section; and

(6) The exporter or a U.S. authorized agent:

(i) For shipments initiated prior to the AES filing compliance date, does one of the following:

(A) Submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b), and includes the following items in the EEI, along with the other information required under 15 CFR 30.6:

(*1*) EPA license code;

(*2*) Commodity classification code for each hazardous waste per 15 CFR 30.6(a)(12);

(*3*) EPA consent number for each hazardous waste;

(*4*) Country of ultimate destination code per 15 CFR 30.6(a)(5);

(*5*) Date of export per 15 CFR 30.6(a)(2);

(*6*) RCRA hazardous waste manifest tracking number, if required;

(*7*) Quantity of each hazardous waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

(*8*) EPA net quantity for each hazardous waste reported in units of kilograms if solid or in units of liters if liquid, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(B) Complies with a paper-based process by:

(*1*) Attaching paper documentation of consent (*i.e.,* a copy of the EPA Acknowledgment of Consent, international movement document) to the manifest, or shipping papers if a manifest is not required, which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with the paper documentation of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the paper documentation of consent to the shipping paper.

(*2*) Providing the transporter with an additional copy of the manifest, and instructing the transporter via mail, email or fax to deliver that copy to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with 40 CFR 263.20(g)(4)(ii)

(ii) For shipments initiated on or after the AES filing compliance date, submits Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b), and includes the following items in the EEI, along with the other information required under 15 CFR 30.6:

(A) EPA license code;

(B) Commodity classification code for each hazardous waste per 15 CFR 30.6(a)(12);

(C) EPA consent number for each hazardous waste;

(D) Country of ultimate destination code per 15 CFR 30.6(a)(5);

(E) Date of export per 15 CFR 30.6(a)(2);

(F) RCRA hazardous waste manifest tracking number, if required;

(G) Quantity of each hazardous waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

(H) EPA net quantity for each hazardous waste reported in units of kilograms if solid or in units of liters if liquid, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

(b) *Notifications*—(1) *General notifications.* At least sixty (60) days before the first shipment of hazardous waste is expected to leave the United States, the exporter must provide notification in English to EPA of the proposed transboundary movement. Notifications must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The notification may cover up to one year of shipments of one or more hazardous wastes being sent to the same recovery or disposal facility, and must include all of the following information:

(i) Exporter name and EPA identification number, address, telephone, fax numbers, and email address;

(ii) Foreign receiving facility name, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(iii) Foreign importer name (if not the owner or operator of the foreign receiving facility), address, telephone, fax numbers, and email address;

(iv) Intended transporter(s) and/or their agent(s); address, telephone, fax, and email address;

(v) ''U.S.'' as the country of export name, ''USA01'' as the relevant competent authority code, and the intended U.S. port(s) of exit;

(vi) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and the ports of entry and exit for each country of transit;

(vii) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and port of entry for the country of import;

(viii) Statement of whether the notification covers a single shipment or multiple shipments;

(ix) Start and End Dates requested for transboundary movements;

(x) Means of transport planned to be used;

(xi) Description(s) of each hazardous waste, including whether each hazardous waste is regulated universal waste under 40 CFR part 273, or the state equivalent, spent lead-acid batteries being exported for recovery of lead under 40 CFR part 266, subpart G, or the state equivalent, or industrial ethyl alcohol being exported for reclamation under 40 CFR 261.6(a)(3)(i), or the state equivalent, estimated total quantity of each waste in either metric tons or cubic meters, the applicable RCRA waste code(s) for each hazardous waste, the applicable OECD waste code from the lists incorporated by reference in 40 CFR 260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each waste;

(xii) Specification of the recovery or disposal operation(s) as defined in § 262.81.

(xiii) Certification/Declaration signed by the exporter that states:

> I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into and that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement.
>
> Name:
> Signature:
> Date:

(2) *Exports to pre-consented recovery facilities in OECD Member countries.* If the recovery facility is located in an OECD member country and has been pre-consented by the competent authority of the OECD member country to recover the waste sent by exporters located in other OECD member countries, the notification may cover up to three years of shipments. Notifications proposing export to a pre-consented facility in an OECD member country must include all information listed in paragraphs (b)(1)(i) through (b)(1)(xiii) of this section and additionally state that the facility is pre-consented. Exporters must submit the notification to EPA using the allowable methods listed in paragraph (b)(1) of this section at least ten days before the first shipment is expected to leave the United States.

(3) Notifications listing interim recycling operations or interim disposal operations. If the foreign receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the interim recovery operations R12 or R13 or interim disposal operations D13 through D15, or in the case of transboundary movements with Canada, any of the interim recovery operations R12, R13, or RC16, or interim disposal operations D13 to D14, or DC17, the notification submitted according to paragraph (b)(1) of this section must also include the final foreign recovery or disposal facility name, address, telephone, fax numbers, email address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, or in the case of transboundary movements with Canada, which of the applicable recovery or disposal operations R1 through R11, RC14 to RC15, D1 through D12, and DC15 to DC16 will be employed at the final foreign recovery or disposal facility. The recovery and disposal operations in this paragraph are defined in § 262.81.

(4) *Renotifications.* When the exporter wishes to change any of the information specified on the original notification (including increasing the estimate of the total quantity of hazardous waste specified in the original notification or adding transporters), the exporter must submit a renotification of the changes to EPA using the allowable methods in paragraph (b)(1) of this section. Any shipment using the requested changes cannot take place until the countries of import and transit consent to the changes and the exporter receives an EPA AOC letter documenting the countries' consents to the changes.

(5) For cases where the proposed country of import and recovery or disposal operations are not covered under an international agreement to which both the United States and the country of import are parties, EPA will coordinate with the Department of State to provide the complete notification to country of import and any countries of transit. In all other cases, EPA will provide the notification directly to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (b)(1)(i) through (b)(1)(xiii) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraphs (b)(1)(i) through (b)(1)(xiii) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(6) Where the countries of import and transit consent to the proposed transboundary movement(s) of the hazardous waste(s), EPA will forward an EPA AOC letter to the exporter documenting the countries' consents. Where any of the countries of import and transit objects to the proposed transboundary movement(s) of the hazardous waste or withdraws a prior consent, EPA will notify the exporter.

(7) Export of hazardous wastes for recycling or disposal operations that were originally imported into the United States for recycling or disposal operations in a third country is prohibited unless an exporter in the United States complies with the export requirements in § 262.83, including providing notification to EPA in accordance with paragraph (b)(1) of this section. In addition to listing all required information in paragraphs (b)(1)(i) through (b)(1)(xiii) of this section, the exporter must provide the original consent number issued for the initial import of the wastes in the notification, and receive an AOC from EPA documenting the consent of the competent authorities in new country of import, the original country of export, and any transit countries prior to re-export.

(8) Upon request by EPA, the exporter must furnish to EPA any additional information which the country of import requests in order to respond to a notification.

(c) *RCRA manifest instructions for export shipments.* The exporter must comply with the manifest requirements of §§ 262.20 through 262.23 except that:

(1) In lieu of the name, site address and EPA ID number of the designated permitted facility, the exporter must enter the name and site address of the foreign receiving facility;

(2) In the International Shipments block, the exporter must check the export box and enter the U.S. port of exit (city and State) from the United States.

(3) The exporter must list the consent number from the AOC for each hazardous waste listed on the manifest, matched to the relevant list number for the hazardous waste from block 9b. If additional space is needed, the exporter should use a Continuation Sheet(s) (EPA Form 8700–22A).

(4) The exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests (*e.g.,* states, waste handlers, and/or commercial forms printers).

(d) *Movement document requirements for export shipments.* (1) All exporters must ensure that a movement document meeting the conditions of paragraph (d)(2) of this section accompanies each transboundary movement of hazardous wastes from the initiation of the shipment until it reaches the foreign receiving facility, including cases in which the hazardous waste is stored and/or sorted by the foreign importer prior to shipment to the foreign receiving facility, except as provided in paragraphs (d)(1)(i) and (ii) of this section.

(i) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the exporter must forward the movement document to the last water (bulk shipment) transporter to handle the hazardous waste in the United States if exported by water.

(ii) For rail shipments of hazardous waste within the United States which start from the company originating the export shipment, the exporter must forward the movement document to the next non-rail transporter, if any, or the last rail transporter to handle the hazardous waste in the United States if exported by rail.

(2) The movement document must include the following paragraphs (d)(2)(i) through (xv) of this section:

(i) The corresponding consent number(s) and hazardous waste number(s) for the listed hazardous waste from the relevant EPA AOC(s);

(ii) The shipment number and the total number of shipments from the EPA AOC;

(iii) Exporter name and EPA identification number, address, telephone, fax numbers, and email address;

(iv) Foreign receiving facility name, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(v) Foreign importer name (if not the owner or operator of the foreign receiving facility), address, telephone, fax numbers, and email address;

(vi) Description(s) of each hazardous waste, quantity of each hazardous waste in the shipment, applicable RCRA hazardous waste code(s) for each hazardous waste, applicable OECD waste code for each hazardous waste from the lists incorporated by reference in 40 CFR 260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(vii) Date movement commenced;

(viii) Name (if not exporter), address, telephone, fax numbers, and email of company originating the shipment;

(ix) Company name, EPA ID number, address, telephone, fax, and email address of all transporters;

(x) Identification (license, registered name or registration number) of means of transport, including types of packaging;

(xi) Any special precautions to be taken by transporter(s);

(xii) Certification/declaration signed and dated by the exporter that the information in the movement document is complete and correct;

(xiii) Appropriate signatures for each custody transfer (*e.g.,* transporter, importer, and owner or operator of the foreign receiving facility);

(xiv) Each U.S. person that has physical custody of the hazardous waste from the time the movement commences until it arrives at the foreign receiving facility must sign the movement document (*e.g.,* transporter, foreign importer, and owner or operator of the foreign receiving facility); and

(xv) As part of the contract requirements per paragraph (f) of this section, the exporter must require that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter, to the competent authorities of the countries of import and transit, and for shipments occurring on or after the electronic import-export reporting compliance date, the exporter must additionally require that the foreign receiving facility send a copy to EPA at the same time using the allowable methods listed in paragraph (b)(1) of this section.

(e) *Duty to return or re-export hazardous wastes.* When a transboundary movement of hazardous wastes cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover or dispose of the waste in an environmentally sound manner in the country of import, the exporter must ensure that the hazardous waste is returned to the United States or re-exported to a third country. If the waste must be returned, the exporter must provide for the return of the hazardous waste shipment within ninety days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned countries agree. In all cases, the exporter must submit an exception report to EPA in accordance with paragraph (h) of this section.

(f) *Export contract requirements.* (1) Exports of hazardous waste are prohibited unless they occur under the terms of a valid written contract, chain

of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter, foreign importer (if different from the foreign receiving facility), and the owner or operator of the foreign receiving facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(2) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (f)(2)(i) through (iv) of this section:

(i) The company from where each export shipment of hazardous waste is initiated;

(ii) Each person who will have physical custody of the hazardous wastes;

(iii) Each person who will have legal control of the hazardous wastes; and

(iv) The foreign receiving facility.

(3) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the hazardous wastes if their disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

(i) The transporter or foreign receiving facility having actual possession or physical control over the hazardous wastes will immediately inform the exporter, EPA, and either the competent authority of the country of transit or the competent authority of the country of import of the need to make alternate management arrangements; and

(ii) The person specified in the contract will assume responsibility for the adequate management of the hazardous wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of hazardous wastes and, as the case may be, shall provide the notification for re-export to the competent authority in the country of import and include the equivalent of the information required in paragraph (b)(1) of this section, the original consent number issued for the initial export of the hazardous wastes in the notification, and obtain consent from EPA and the competent authorities in the new country of import and any transit countries prior to re-export.

(4) Contracts must specify that the foreign receiving facility send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the exporter and to the competent authorities of the countries of import and transit. For contracts that will be in effect on or after the electronic import-export reporting compliance date, the contracts must additionally specify that the foreign receiving facility send a copy to EPA at the same time using the allowable methods listed in paragraph (b)(1) of this section on or after that date.

(5) Contracts must specify that the foreign receiving facility shall send a copy of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the exporter and to the competent authority of the country of import. For contracts that will be in effect on or after the electronic import-export reporting compliance date, the contracts must additionally specify that the foreign receiving facility send a copy to EPA at the same time using the allowable methods listed in paragraph (b)(1) of this section on or after that date.

(6) Contracts must specify that the foreign importer or the foreign receiving facility that performed interim recycling operations R12, R13, or RC16, or interim disposal operations D13 through D15 or DC17, (recovery and disposal operations defined in 40 CFR 262.81) as appropriate, will:

(i) Provide the notification required in paragraph (f)(3)(ii) of this section prior to any re-export of the hazardous wastes to a final foreign recovery or disposal facility in a third country; and

(ii) Promptly send copies of the confirmation of recovery or disposal that it receives from the final foreign recovery or disposal facility within one year of shipment delivery to the final foreign recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, DC15 or DC16 to the competent authority of the country of import. For contracts that will be in effect on or after the electronic import-export reporting compliance date, the contracts must additionally specify that the foreign facility send copies to EPA at the same time using the allowable method listed in paragraph (b)(1) of this section on or after that date.

(7) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of the country of import and any countries of transit, in accordance with applicable national or international law requirements.

Note 1 to paragraph (f)(7): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries and other foreign countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, persons or facilities located in those OECD Member countries or other foreign countries may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(8) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.

(9) Upon request by EPA, U.S. exporters, importers, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

(g*) Annual reports.* The exporter shall file an annual report with EPA no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. Prior to one year after the AES filing compliance date, the exporter must mail or hand-deliver annual reports to EPA using one of the addresses specified in § 262.82(e), or submit to EPA using the allowable methods specified in paragraph (b)(1) of this section if the exporter has electronically filed EPA information in AES, or its successor system, per paragraph (a)(6)(i)(A) of this section for all shipments made the previous calendar year. Subsequently, the exporter must submit annual reports to EPA using the allowable methods specified in paragraph (b)(1) of this section. The annual report must include all of the following paragraphs (g)(1) through (6) of this section specified as follows:

(1) The EPA identification number, name, and mailing and site address of the exporter filing the report;

(2) The calendar year covered by the report;

(3) The name and site address of each foreign receiving facility;

(4) By foreign receiving facility, for each hazardous waste exported:

(i) A description of the hazardous waste;

(ii) The applicable EPA hazardous waste code(s) (from 40 CFR part 261, subpart C or D) for each waste;

(iii) The applicable waste code from the appropriate OECD waste list incorporated by reference in 40 CFR 260.11;

(iv) The applicable DOT ID number;

(v) The name and U.S. EPA ID number (where applicable) for each transporter used over the calendar year covered by the report; and

(vi) The consent number(s) under which the hazardous waste was shipped, and for each consent number, the total amount of the hazardous waste and the number of shipments exported during the calendar year covered by the report;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1,000kg in a calendar month, and except for hazardous waste for which information was already provided pursuant to § 262.41:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of the waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the exporter that states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(h) *Exception reports.* (1) The exporter must file an exception report in lieu of the requirements of § 262.42 (if applicable) with EPA if any of the following occurs:

(i) The exporter has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the hazardous waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter, in which case the exporter must file the exception report within the next thirty (30) days;

(ii) The exporter has not received a written confirmation of receipt from the foreign receiving facility in accordance with paragraph (d) of this section within ninety (90) days from the date the waste was accepted by the initial transporter in which case the exporter must file the exception report within the next thirty (30) days; or

(iii) The foreign receiving facility notifies the exporter, or the country of import notifies EPA, of the need to return the shipment to the U.S. or arrange alternate management, in which case the exporter must file the exception report within thirty (30) days of notification, or one (1) day prior to the date the return shipment commences, whichever is sooner.

(2) Prior to the electronic import-export reporting compliance date, exception reports must be mailed or hand delivered to EPA using the addresses listed in § 262.82(e). Subsequently, exception reports must be submitted to EPA using the allowable methods listed in paragraph (b)(1) of this section.

(i) *Recordkeeping.* (1) The exporter shall keep the following records in paragraphs (i)(1)(i) through (v) of this section and provide them to EPA or authorized state personnel upon request:

(i) A copy of each notification of intent to export and each EPA AOC for a period of at least three (3) years from the date the hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three (3) years from the due date of the report;

(iii) A copy of any exception reports and a copy of each confirmation of receipt (*i.e.,* movement document) sent by the foreign receiving facility to the exporter for at least three (3) years from the date the hazardous waste was accepted by the initial transporter; and

(iv) A copy of each confirmation of recovery or disposal sent by the foreign receiving facility to the exporter for at least three (3) years from the date that the foreign receiving facility completed interim or final processing of the hazardous waste shipment.

(v) A copy of each contract or equivalent arrangement established per § 262.85 for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(2) Exporters may satisfy these recordkeeping requirements by retaining electronically submitted documents in the exporter's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No exporter may be held liable for the inability to produce such documents for inspection under this section if the exporter can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the exporter bears no responsibility.

(3) 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 Administrator.

§ 262.84 Imports of hazardous waste.

(a) *General import requirements.* (1) With the exception of paragraph (a)(5) of this section, importers of shipments covered under a consent from EPA to the country of export issued before December 31, 2016 are subject to that approval and the requirements that existed at the time of that approval until such time the approval period expires. Otherwise, any other person who imports hazardous waste from a foreign country into the United States must comply with the requirements of this part and the special requirements of this subpart.

(2) In cases where the country of export does not require the foreign exporter to submit a notification and obtain consent to the export prior to shipment, the importer must submit a notification to EPA in accordance with paragraph (b) of this section.

(3) The importer must comply with the contract requirements in paragraph (f) of this section.

(4) The importer must ensure compliance with the movement documents requirements in paragraph (d) of this section; and

(5) The importer must ensure compliance with the manifest instructions for import shipments in paragraph (c) of this section.

(b) *Notifications.* In cases where the competent authority of the country of export does not regulate the waste as hazardous waste and, thus, does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, but EPA does regulate the waste as hazardous waste:

(1) The importer is required to provide notification in English to EPA

of the proposed transboundary movement of hazardous waste at least sixty (60) days before the first shipment is expected to depart the country of export. Notifications submitted prior to the electronic import-export reporting compliance date must be mailed or hand delivered to EPA at the addresses specified in § 262.82(e). Notifications submitted on or after the electronic import-export reporting compliance date must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The notification may cover up to one year of shipments of one or more hazardous wastes being sent from the same foreign exporter, and must include all of the following information:

(i) Foreign exporter name, address, telephone, fax numbers, and email address;

(ii) Receiving facility name, EPA ID number, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(iii) Importer name (if not the owner or operator of the receiving facility), EPA ID number, address, telephone, fax numbers, and email address;

(iv) Intended transporter(s) and/or their agent(s); address, telephone, fax, and email address;

(v) ''U.S.'' as the country of import, ''USA01'' as the relevant competent authority code, and the intended U.S. port(s) of entry;

(vi) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and the ports of entry and exit for each country of transit;

(vii) The ISO standard 3166 country name 2-digit code, OECD/Basel competent authority code, and port of exit for the country of export;

(viii) Statement of whether the notification covers a single shipment or multiple shipments;

(ix) Start and End Dates requested for transboundary movements;

(x) Means of transport planned to be used;

(xi) Description(s) of each hazardous waste, including whether each hazardous waste is regulated universal waste under 40 CFR part 273, or the state equivalent, spent lead-acid batteries being exported for recovery of lead under 40 CFR part 266, subpart G, or the state equivalent, or industrial ethyl alcohol being exported for reclamation under 40 CFR 261.6(a)(3)(i), or the state equivalent, estimated total quantity of each hazardous waste, the applicable RCRA hazardous waste code(s) for each hazardous waste, the applicable OECD waste code from the lists incorporated by reference in 40 CFR 260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(xii) Specification of the recovery or disposal operation(s) as defined in § 262.81; and

(xiii) Certification/Declaration signed by the importer that states:

> I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into and that any applicable insurance or other financial guarantee is or shall be in force covering the transboundary movement.
>
> Name:
> Signature:
> Date:

Note to paragraph (b)(1)(xiii): The United States does not currently require financial assurance for these waste shipments.

(2) Notifications listing interim recycling operations or interim disposal operations. If the receiving facility listed in paragraph (b)(1)(ii) of this section will engage in any of the interim recovery operations R12 or R13 or interim disposal operations D13 through D15, the notification submitted according to paragraph (b)(1) of this section must also include the final recovery or disposal facility name, address, telephone, fax numbers, email address, technologies employed, and which of the applicable recovery or disposal operations R1 through R11 and D1 through D12, will be employed at the final recovery or disposal facility. The recovery and disposal operations in this paragraph are defined in § 262.81.

(3) *Renotifications.* When the foreign exporter wishes to change any of the conditions specified on the original notification (including increasing the estimate of the total quantity of hazardous waste specified in the original notification or adding transporters), the importer must submit a renotification of the changes to EPA using the allowable methods in paragraph (b)(1) of this section. Any shipment using the requested changes cannot take place until EPA and the countries of transit consent to the changes and the importer receives an EPA AOC letter documenting the consents to the changes.

(4) A notification is complete when EPA determines the notification satisfies the requirements of paragraph (b)(1)(i) through (xiii) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraphs (b)(1)(i) through (xiii) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(5) Where EPA and the countries of transit consent to the proposed transboundary movement(s) of the hazardous waste(s), EPA will forward an EPA AOC letter to the importer documenting the countries' consents and EPA's consent. Where any of the countries of transit or EPA objects to the proposed transboundary movement(s) of the hazardous waste or withdraws a prior consent, EPA will notify the importer.

(6) Export of hazardous wastes originally imported into the United States. Export of hazardous wastes that were originally imported into the United States for recycling or disposal operations is prohibited unless an exporter in the United States complies with the export requirements in § 262.83(b)(7).

(c) *RCRA Manifest instructions for import shipments.* (1) When importing hazardous waste, the importer must meet all the requirements of § 262.20 for the manifest except that:

(i) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used.

(ii) In place of the generator's signature on the certification statement, the importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

(2) The importer may obtain the manifest form from any source that is registered with the EPA as a supplier of manifests (*e.g.,* states, waste handlers, and/or commercial forms printers).

(3) In the International Shipments block, the importer must check the import box and enter the point of entry (city and State) into the United States.

(4) The importer must provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with 40 CFR 264.71(a)(3) and 265.71(a)(3).

(5) In lieu of the requirements of § 262.20(d), where a shipment cannot be delivered for any reason to the receiving facility, the importer must instruct the transporter in writing via fax, email or mail to:

(i) Return the hazardous waste to the foreign exporter or designate another facility within the United States; and

(ii) Revise the manifest in accordance with the importer's instructions.

(d) *Movement document requirements for import shipments.* (1) The importer

must ensure that a movement document meeting the conditions of paragraph (d)(2) of this section accompanies each transboundary movement of hazardous wastes from the initiation of the shipment in the country of export until it reaches the receiving facility, including cases in which the hazardous waste is stored and/or sorted by the importer prior to shipment to the receiving facility, except as provided in paragraphs (d)(1)(i) and (ii) of this section.

(i) For shipments of hazardous waste within the United States by water (bulk shipments only), the importer must forward the movement document to the last water (bulk shipment) transporter to handle the hazardous waste in the United States if imported by water.

(ii) For rail shipments of hazardous waste within the United States which start from the company originating the export shipment, the importer must forward the movement document to the next non-rail transporter, if any, or the last rail transporter to handle the hazardous waste in the United States if imported by rail.

(2) The movement document must include the following paragraphs (d)(2)(i) through (xv) of this section:

(i) The corresponding AOC number(s) and waste number(s) for the listed waste;

(ii) The shipment number and the total number of shipments under the AOC number;

(iii) Foreign exporter name, address, telephone, fax numbers, and email address;

(iv) Receiving facility name, EPA ID number, address, telephone, fax numbers, email address, technologies employed, and the applicable recovery or disposal operations as defined in § 262.81;

(v) Importer name (if not the owner or operator of the receiving facility), EPA ID number, address, telephone, fax numbers, and email address;

(vi) Description(s) of each hazardous waste, quantity of each hazardous waste in the shipment, applicable RCRA hazardous waste code(s) for each hazardous waste, the applicable OECD waste code for each hazardous waste from the lists incorporated by reference in 40 CFR 260.11, and the United Nations/U.S. Department of Transportation (DOT) ID number for each hazardous waste;

(vii) Date movement commenced;

(viii) Name (if not the foreign exporter), address, telephone, fax numbers, and email of the foreign company originating the shipment;

(ix) Company name, EPA ID number, address, telephone, fax, and email address of all transporters;

(x) Identification (license, registered name or registration number) of means of transport, including types of packaging;

(xi) Any special precautions to be taken by transporter(s);

(xii) Certification/declaration signed and dated by the foreign exporter that the information in the movement document is complete and correct;

(xiii) Appropriate signatures for each custody transfer (*e.g.,* transporter, importer, and owner or operator of the receiving facility);

(xiv) Each person that has physical custody of the waste from the time the movement commences until it arrives at the receiving facility must sign the movement document (*e.g.,* transporter, importer, and owner or operator of the receiving facility); and

(xv) The receiving facility must send a copy of the signed movement document to confirm receipt within three working days of shipment delivery to the foreign exporter, to the competent authorities of the countries of export and transit, and for shipments received on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(e) *Duty to return or export hazardous wastes.* When a transboundary movement of hazardous wastes cannot be completed in accordance with the terms of the contract or the consent(s), the provisions of paragraph (f)(4) of this section apply. If alternative arrangements cannot be made to recover the hazardous waste in an environmentally sound manner in the United States, the hazardous waste must be returned to the country of export or exported to a third country. The provisions of paragraph (b)(6) of this section apply to any hazardous waste shipments to be exported to a third country. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the importer.

(f) *Import contract requirements.* (1) Imports of hazardous waste must occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the foreign exporter, importer, and the owner or operator of the receiving facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangements.

(2) Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of paragraph (f)(2)(i) through (iv) of this section:

(i) The foreign company from where each import shipment of hazardous waste is initiated;

(ii) Each person who will have physical custody of the hazardous wastes;

(iii) Each person who will have legal control of the hazardous wastes; and

(iv) The receiving facility.

(3) Contracts or equivalent arrangements must specify the use of a movement document in accordance with § 262.84(d).

(4) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the hazardous wastes if their disposition cannot be carried out as described in the notification of intent to export submitted by either the foreign exporter or the importer. In such cases, contracts must specify that:

(i) The transporter or receiving facility having actual possession or physical control over the hazardous wastes will immediately inform the foreign exporter and importer, and the competent authority where the shipment is located of the need to arrange alternate management or return; and

(ii) The person specified in the contract will assume responsibility for the adequate management of the hazardous wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of the hazardous wastes and, as the case may be, shall provide the notification for re-export required in § 262.83(b)(7).

(5) Contracts must specify that the importer or the receiving facility that performed interim recycling operations R12, R13, or RC16, or interim disposal operations D13 through D15 or DC15 through DC17, as appropriate, will provide the notification required in § 262.83(b)(7) prior to the re-export of hazardous wastes. The recovery and disposal operations in this paragraph are defined in § 262.81.

(6) Contracts or equivalent arrangements must include provisions

for financial guarantees, if required by the competent authorities of any countries concerned, in accordance with applicable national or international law requirements.

Note to paragraph (f)(6): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD Member countries or other foreign countries do. It is the responsibility of the importer to ascertain and comply with such requirements; in some cases, persons or facilities located in those countries may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(7) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subpart.

(8) Upon request by EPA, importers or disposal or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

(g) *Confirmation of recovery or disposal.* The receiving facility must do the following:

(1) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export, and for shipments recycled or disposed of on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(2) If the receiving facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, the receiving facility shall promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC14 to RC15, or one of disposal operations D1 through D12, or DC15 to DC16, to the competent authority of the country of export, and for confirmations received on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The recovery and disposal operations in this paragraph are defined in § 262.81.

(h) *Recordkeeping.* (1) The importer shall keep the following records and provide them to EPA or authorized state personnel upon request:

(i) A copy of each notification that the importer sends to EPA under paragraph (b)(1) of this section and each EPA AOC it receives in response for a period of at least three (3) years from the date the hazardous waste was accepted by the initial foreign transporter; and

(ii) A copy of each contract or equivalent arrangement established per paragraph (f) of this section for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(2) The receiving facility shall keep the following records:

(i) A copy of each confirmation of receipt (*i.e.,* movement document) that the receiving facility sends to the foreign exporter for at least three (3) years from the date it received the hazardous waste;

(ii) A copy of each confirmation of recovery or disposal that the receiving facility sends to the foreign exporter for at least three (3) years from the date that it completed processing the waste shipment;

(iii) For the receiving facility that performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17 (recovery and disposal operations defined in § 262.81), a copy of each confirmation of recovery or disposal that the final recovery or disposal facility sent to it for at least three (3) years from the date that the final recovery or disposal facility completed processing the waste shipment; and

(iv) A copy of each contract or equivalent arrangement established per paragraph (f) of this section for at least three (3) years from the expiration date of the contract or equivalent arrangement.

(3) Importers and receiving facilities may satisfy these recordkeeping requirements by retaining electronically submitted documents in the importer's or receiving facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No importer or receiving facility may be held liable for the inability to produce such documents for inspection under this section if the importer or receiving facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the importer or receiving facility bears no responsibility.

(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 Administrator.

§§ 262.85–262.89 [Reserved]

Appendix to Part 262 [Amended]

■ 15. Amend the Appendix to Part 262, under ''II Instructions for International Shipment Block'' by removing the last sentence in the instructions for Item 16.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

■ 16. The authority citation for part 263 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

■ 17. Amend § 263.10 by:

■ a. Removing from paragraph (a), in the Note, the last paragraph; and

■ b. Revising paragraph (d).

The revisions read as follows:

§ 263.10 Scope.

* * * * *

(d) A transporter of hazardous waste that is being imported from or exported to any other country for purposes of recovery or disposal is subject to this Subpart and to all other relevant requirements of subpart H of 40 CFR part 262, including, but not limited to, 40 CFR 262.83(d) and 262.84(d) for movement documents.

* * * * *

■ 18. Amend § 263.20 by revising paragraphs (a)(2), (c), (e)(2), (f)(2), and (g) to read as follows:

§ 263.20 The manifest system.

(a) * * *

(2) *Exports.* For exports of hazardous waste subject to the requirements of subpart H of 40 CFR part 262, a transporter may not accept hazardous waste without a manifest signed by the generator in accordance with this section, as appropriate, and for exports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that

includes all information required by 40 CFR 262.83(d).

* * * * *

(c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports occurring under the terms of a consent issued by EPA to the exporter on or after December 31, 2016, the transporter must ensure that a movement document that includes all information required by 40 CFR 262.83(d) also accompanies the hazardous waste. In the case of imports occurring under the terms of a consent issued by EPA to the country of export or the importer on or after December 31, 2016, the transporter must ensure that a movement document that includes all information required by 40 CFR 262.84(d) also accompanies the hazardous waste.

* * * * *

(e) * * *

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all information required by 40 CFR 262.83(d) or 262.84(d) accompanies the hazardous waste; and

* * * * *

(f) * * *

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports or imports occurring under the terms of a consent issued by EPA on or after December 31, 2016, a movement document that includes all information required by 40 CFR 262.83(d) or 262.84(d) accompanies the hazardous waste at all times.

Note to paragraph (f)(2): Intermediate rail transporters are not required to sign the manifest, movement document, or shipping paper.

* * * * *

(g) Transporters who transport hazardous waste out of the United States must:

(1) Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;

(2) Retain one copy in accordance with § 263.22(d);

(3) Return a signed copy of the manifest to the generator; and

(4) For paper manifests only,

(i) Send a copy of the manifest to the e-Manifest system in accordance with the allowable methods specified in 40 CFR 264.71(a)(2)(v); and

(ii) For shipments initiated prior to the AES filing compliance date, when instructed by the exporter to do so, give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 19. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

■ 20. Amend § 264.12 by revising paragraph (a) to read as follows:

§ 264.12 Required notices.

(a) The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must submit the following required notices:

(1) As per 40 CFR 262.84(b), for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, such owner or operator of the facility, if acting as the importer, must provide notification of the proposed transboundary movement in English to EPA using the allowable methods listed in 40 CFR 262.84(b)(1) at least 60 days before the first shipment is expected to depart the country of export. The notification may cover up to one year of shipments of wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes and OECD waste codes, and being sent from the same foreign exporter.

(2) As per 40 CFR 262.84(d)(2)(xv), a copy of the movement document bearing all required signatures within three (3) working days of receipt of the shipment to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original of the signed movement document must be maintained at the facility for at least three (3) years. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the owner or operator of a facility bears no responsibility.

(3) As per 40 CFR 262.84(f)(4), if the facility has physical control of the waste and it must be sent to an alternate facility or returned to the country of export, such owner or operator of the facility must inform EPA, using the allowable methods listed in 40 CFR 262.84(b)(1) of the need to return or arrange alternate management of the shipment.

(4) As per 40 CFR 262.84(g), such owner or operator shall:

(i) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and for shipments recycled or disposed of on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(ii) If the facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, or DC15 to DC16, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import

Export Tracking System (WIETS), or its successor system. The recovery and disposal operations in this paragraph are defined in 40 CFR 262.81.

* * * * *

■ 21. Amend § 264.71 by revising paragraphs (a)(3) and (d) to read as follows:

§ 264.71 Use of manifest system.

(a) * * *

(3) The owner or operator of a facility receiving hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use a Continuation Sheet(s) (EPA Form 8700–22A); and

(ii) Send a copy of the manifest within thirty (30) days of delivery to EPA using the addresses listed in 40 CFR 262.82(e) until the facility can submit such a copy to the e-Manifest system per paragraph (a)(2)(v) of this section.

* * * * *

(d) As per 40 CFR 262.84(d)(2)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 22. 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.

■ 23. Amend § 265.12 by revising paragraph (a) to read as follows:

§ 265.12 Required notices.

(a) The owner or operator of a facility that is arranging or has arranged to receive hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must submit the following required notices:

(1) As per 40 CFR 262.84(b), for imports where the competent authority of the country of export does not require the foreign exporter to submit to it a notification proposing export and obtain consent from EPA and the competent authorities for the countries of transit, such owner or operator of the facility, if acting as the importer, must provide notification of the proposed transboundary movement in English to EPA using the allowable methods listed in 40 CFR 262.84(b)(1) at least 60 days before the first shipment is expected to depart the country of export. The notification may cover up to one year of shipments of wastes having similar physical and chemical characteristics, the same United Nations classification, the same RCRA waste codes and OECD waste codes, and being sent from the same foreign exporter.

(2) As per 40 CFR 262.84(d)(2)(xv), a copy of the movement document bearing all required signatures within three (3) working days of receipt of the shipment to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original of the signed movement document must be maintained at the facility for at least three (3) years. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

(3) As per 40 CFR 262.84(f)(4), if the facility has physical control of the waste and it must be sent to an alternate facility or returned to the country of export, such owner or operator of the facility must inform EPA, using the allowable methods listed in 40 CFR 262.84(b)(1) of the need to return or arrange alternate management of the shipment.

(4) As per 40 CFR 262.84(g), such owner or operator shall:

(i) Send copies of the signed and dated confirmation of recovery or disposal, as soon as possible, but no later than thirty days after completing recovery or disposal on the waste in the shipment and no later than one calendar year following receipt of the waste, to the foreign exporter, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system.

(ii) If the facility performed any of recovery operations R12, R13, or RC16, or disposal operations D13 through D15, or DC17, promptly send copies of the confirmation of recovery or disposal that it receives from the final recovery or disposal facility within one year of shipment delivery to the final recovery or disposal facility that performed one of recovery operations R1 through R11, or RC16, or one of disposal operations D1 through D12, or DC15 to DC16, to the competent authority of the country of export that controls the shipment as an export of hazardous waste, and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The recovery and

disposal operations in this paragraph are defined in 40 CFR 262.81.

* * * * *

■ 24. Amend § 265.71 by revising paragraphs (a)(3) and (d) to read as follows:

§ 265.71 Use of manifest system.

(a) * * *

(3) The owner or operator of a facility that receives hazardous waste subject to 40 CFR part 262, subpart H from a foreign source must:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is needed, the owner or operator should use a Continuation Sheet(s) (EPA Form 8700–22A); and

(ii) Send a copy of the manifest to EPA using the addresses listed in 40 CFR 262.82(e) within thirty (30) days of delivery until the facility can submit such a copy to the e-Manifest system per paragraph (a)(2)(v) of this section.

* * * * *

(d) As per 40 CFR 262.84(d)(2)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 25. 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.

■ 26. Amend § 266.70 by revising paragraph (b) to read as follows:

§ 266.70 Applicability and requirements.

* * * * *

(b) Persons who generate, transport, or store recyclable materials that are regulated under this subpart are subject to the following requirements:

(1) Notification requirements under section 3010 of RCRA;

(2) Subpart B of part 262 (for generators), 40 CFR 263.20 and 263.21 (for transporters), and 40 CFR 265.71 and 265.72 (for persons who store) of this chapter; and

(3) For precious metals exported to or imported from other countries for recovery, 40 CFR part 262, subpart H and 265.12.

* * * * *

■ 27. Amend § 266.80 by revising paragraphs (a)(6) and (7) and adding paragraphs (a)(8), (9), and (10) to read as follows:

§ 266.80 Applicability and requirements.

(a) * * *

If your batteries . . .	And if you . . .	Then you . . .	And you . . .
*	*	*	*
(6) Will be reclaimed through regeneration or any other means.	export these batteries for reclamation in a foreign country.	are exempt from 40 CFR parts 262 (except for § 262.11, § 262.12 and subpart H), 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR part 261, § 262.11, § 262.12, and 40 CFR part 262, subpart H.
(7) Will be reclaimed through regeneration or any other means.	Transport these batteries in the U.S. to export them for reclamation in a foreign country.	are exempt from 40 CFR parts 263, 264, 265, 266, 268, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	must comply with applicable requirements in 40 CFR part 262, subpart H.
(8) Will be reclaimed other than through regeneration.	Import these batteries from foreign country and store these batteries but you aren't the reclaimer.	are exempt from 40 CFR parts 262 (except for § 262.11, § 262.12 and subpart H), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261, § 262.11, § 262.12, part 262 subpart H, and applicable provisions under part 268.
(9) Will be reclaimed other than through regeneration.	Import these batteries from foreign country and store these batteries before you reclaim them.	must comply with 40 CFR 266.80(b) and as appropriate other regulatory provisions described in 266.80(b).	are subject to 40 CFR parts 261, § 262.11, § 262.12, part 262 subpart H, and applicable provisions under part 268.

If your batteries . . .	And if you . . .	Then you . . .	And you . . .
(10) Will be reclaimed other than through regeneration.	Import these batteries from foreign country and don't store these batteries before you reclaim them.	are exempt from 40 CFR parts 262 (except for § 262.11, § 262.12 and subpart H), 263, 264, 265, 266, 270, 124 of this chapter, and the notification requirements at section 3010 of RCRA.	are subject to 40 CFR parts 261, § 262.11, § 262.12, part 262 subpart H, and applicable provisions under part 268.

* * * * *

PART 267—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

■ 28. The authority citation for part 267 continues to read as follows:

Authority: 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

■ 29. Amend § 267.71 by:
■ a. Revising paragraphs (a)(4) and (5);
■ b. Adding paragraph (a)(6); and
■ c. Revising paragraph (d).

The revisions and additions read as follows:

§ 267.71 Use of the manifest system.

(a) * * *

(4) Within 30 days after the delivery, send a copy of the manifest to the generator;

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery; and

(6) If a facility receives hazardous waste subject to 40 CFR part 262, subpart H from a foreign source, the receiving facility must:

(i) Additionally list the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b. If additional space is needed, the receiving facility should use a Continuation Sheet(s) (EPA Form 8700–22A); and

(ii) Mail a copy of the manifest to EPA using the addresses listed in 40 CFR 262.82(e) within thirty (30) days of delivery until the facility can submit such a copy to the e-Manifest system per 40 CFR 264.71(a)(2)(v) or 265.71(a)(2)(v).

* * * * *

(d) As per 40 CFR 262.84(d)(2)(xv), within three (3) working days of the receipt of a shipment subject to 40 CFR part 262, subpart H, the owner or operator of a facility must provide a copy of the movement document bearing all required signatures to the foreign exporter; to the competent authorities of the countries of export and transit that control the shipment as an export and transit shipment of hazardous waste respectively; and on or after the electronic import-export reporting compliance date, to EPA electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. The original copy of the movement document must be maintained at the facility for at least three (3) years from the date of signature. The owner or operator of a facility may satisfy this recordkeeping requirement by retaining electronically submitted documents in the facility's account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No owner or operator of a facility may be held liable for the inability to produce the documents for inspection under this section if the owner or operator of a facility can demonstrate that the inability to produce the document is due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system, for which the owner or operator of a facility bears no responsibility.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 30. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

■ 31. Amend § 271.1(j)(2) by:
■ a. Adding an entry to Table 1 in chronological order by ''Promulgation date'' and
■ b. Adding an entry to Table 2 in chronological order by ''Effective date''.

The additions read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

(2) * * *

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* *	* *	* *	*
[*Date of publication of final rule in the Federal Register (FR)*].	Hazardous Waste Export-Import Revisions.	[*Insert FR page citation*]	December 31, 2016.

* * * * *

TABLE 2—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* *	* *	*	* *
December 31, 2016	Hazardous Waste Export-Import Revisions.	3017(a)	[Insert ***Federal Register*** page citation].

* * * * *

■ 32. Amend § 271.10 by revising paragraph (e) to read as follows:

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

(e) The State program shall provide requirements respecting international shipments which are equivalent to those at 40 CFR part 262 subpart H, other hazardous waste import and export regulations in 40 CFR parts 260, 262, 263, 264, 265, 266, 267 and 273, and exclusion conditions for export or import in 40 CFR part 261 to the extent that State has adopted such exclusion conditions, except that States shall not replace EPA or international references with State references.

* * * * *

■ 33. Amend § 271.11 by revising paragraph (c)(4) to read as follows:

§ 271.11 Requirements for transporters of hazardous wastes.

(c) * * *

(4) For exports of hazardous waste, the state must require the transporter to refuse to accept hazardous waste for export if the exporter has not provided: A manifest listing the consent numbers for the hazardous waste shipment; a movement document for shipments occurring under consents issued by EPA on or after December 31, 2016; and on or after the AES filing compliance date, the ITN number for the hazardous waste shipment. The state must further require the transporter to carry a movement document and manifest with the shipment, as required; to sign and date the International Shipments Block of the manifest to indicate the date the shipment leaves the U.S.; to carry paper documentation of consent (*i.e.,* Acknowledgement of Consent, movement document) with the shipment and to give a copy of the manifest to the U.S. customs official at the point of departure if instructed by mail, email or fax by the exporter to do so; and to send a copy of the manifest, if in paper form, to the e-Manifest system using the allowable methods listed in 40 CFR 264.71(a)(2)(v).

* * * * *

■ 34. Amend § 271.12 by revising paragraph (i)(2) to read as follows:

§ 271.12 Requirements for hazardous waste management facilities.

* * * * *

(i) * * *

(2) After listing the relevant consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest, matched to the relevant list number for the waste from block 9b, to EPA using the allowable methods listed in 40 CFR 262.84(b)(1) until the facility can submit such a copy to the e-Manifest system per 40 CFR 264.71(a)(2)(v) and 265.71(a)(2)(v).

* * * * *

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

■ 35. The authority citation for part 273 continues to read as follows:

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

■ 36. Revise § 273.20 to read as follows:

§ 273.20 Exports.

A small quantity handler of universal waste who sends universal waste to a foreign destination is subject to the requirements of 40 CFR part 262, subpart H.

■ 37. Amend § 273.39 by revsing the introductory text of paragraphs (a) and (b) to read as follows:

§ 273.39 Tracking universal waste shipments.

(a) *Receipt of shipments.* A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, movement document or other shipping document. The record for each shipment of universal waste received must include the following information:

* * * * *

(b) *Shipments off-site*. A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading, movement document or other shipping document. The record for each shipment of universal waste sent must include the following information:

* * * * *

■ 38. Revise § 273.40 to read as follows:

§ 273.40 Exports.

A large quantity handler of universal waste who sends universal waste to a foreign destination is subject to the requirements of 40 CFR part 262, subpart H.

■ 39. Revise § 273.56 to read as follows:

§ 273.56 Exports.

A universal waste transporter transporting a shipment of universal waste to a foreign destination is subject to the requirements of 40 CFR part 262, subpart H.

■ 40. Amend § 273.62 by revising the introductory text of paragraph (a) to read as follows:

§ 273.62 Tracking universal waste shipments.

(a) The owner or operator of a destination facility must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, movement document or other shipping document. The record for each shipment of universal waste received must include the following information:

* * * * *

■ 41. Revise § 273.70 to read as follows:

§ 273.70 Imports.

Persons managing universal waste that is imported from a foreign country into the United States are subject to the requirements of 40 CFR part 262 subpart H and the applicable requirements of this part, immediately after the waste enters the United States, as indicated in paragraphs (a) through (c) of this section:

(a) A universal waste transporter is subject to the universal waste transporter requirements of subpart D of this part.

(b) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of subparts B or C, as applicable.

(c) An owner or operator of a destination facility is subject to the destination facility requirements of subpart E of this part.

[FR Doc. 2016–27428 Filed 11–25–16; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Parts 257, 258, 260, et al.
Hazardous Waste Generator Improvements Rule; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 258, 260, 261, 262, 263, 264, 265, 266, 267, 268, 270, 271, 273, and 279

[EPA–HQ–RCRA–2012–0121; FRL 9947–26–OLEM]

RIN 2050–AG70

Hazardous Waste Generator Improvements Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, the United States Environmental Protection Agency (EPA) is finalizing revisions to the Resource Conservation and Recovery Act's (RCRA) hazardous waste generator regulatory program proposed on September 25, 2015. There are several objectives to these revisions. They include reorganizing the hazardous waste generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. This final rule responds to the comments of EPA stakeholders, taking into consideration the mission of EPA and the goals of RCRA.

DATES: This final rule is effective on May 30, 2017. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–2012–0121. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

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*).

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L. EPA Identification Numbers and Re-Notification for SQGs and LQGs (40 CFR 262.18)
M. Provision Prohibiting Generators from Disposing of Liquids in Landfills (40 CFR 262.14(b) and 262.35)
N. Clarification of Biennial Reporting Requirements (40 CFR 262.41, 264.75 and 265.75)
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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
K. Congressional Review Act (CRA)

II. General Information

A. Does this action apply to me?

Entities potentially affected by this action include between 424,099 and 676,890 industrial entities that generate hazardous waste regulated under the RCRA Subtitle C regulations. Of this universe, between 353,441 and 591,809 are very small quantity generators (VSQGs),[1] previously called conditionally exempt small quantity generators, whose regulatory obligations will only be affected if they choose to take advantage of either of the two voluntary programs being promulgated. Entities potentially affected by this final 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 XVI.A, 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 requirements is between $5.9 and $13.3 million (at a 7% discount rate). The estimated annualized benefits for entities opting to take advantage of two voluntary programs in the final rule (*e.g.,* consolidation of VSQG waste by large quantity generators (LQGs) under the same ownership, and generators who change regulatory status episodically) are between $8.3 and $14.4 million (at a 7% discount rate). This results in a net annualized benefit for the rule of $2.4 million for the low-end estimate and $1.1 million for the high-end estimate at a 7% discount rate.

The 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 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; sufficient data are not available to support a detailed quantitative analysis for a majority of the benefit categories. For example, the added flexibility from allowing a large quantity generator accumulating ignitable or reactive hazardous waste to obtain an approval from the authority having jurisdiction (AHJ) over the fire code for the 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 final rule is not adding any new IBR material; however, EPA is reorganizing one of the existing requirements containing IBR material to make the regulation easier for the reader to follow. EPA is copying § 265.201(g)(2) to § 262.16(b)(3)(vii)(B). To accommodate this change, EPA is updating § 260.11(d)(1), which is the IBR reference section for these regulations, by adding a reference to § 262.16. The materials being incorporated by reference are for the National Fire Protection Association (NFPA), Flammable and Combustible Liquids Code (NFPA 30), 1977 and 1981. NFPA 30 addresses the fire and prevention codes associated with flammable and combustible liquids. The 1981 edition modifies Chapter 4, Container and Portable Tank Storage of the 1977 edition to address such areas as portable tanks, basement storage areas, cutoff rooms and attached buildings, indoor storage and general purpose warehouses. They are available for inspection through NFPA's Free Access site, *http://www.nfpa.org/freeaccess*. 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 or visit *http://www.nfpa.org/codes-and-standards*.)

III. Statutory Authority

These regulations are promulgated under the authority of sections 2002, 3001, 3002, 3003, 3004, 3005, 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.''

IV. What is the intent of this final rule?

This final rule promulgates over 60 revisions and new provisions to the hazardous waste generator regulatory program. The primary intent of these provisions is to foster improved compliance by hazardous waste generators in the identification and management of the hazardous waste they generate and, as a result, improve protection of human health and the environment. Another major objective of this rule is to support the efficient implementation of the hazardous waste generator regulations by the states.

The Agency intends to achieve these objectives in several ways. For example, the most frequent comment the Agency received when it conducted a program evaluation of the hazardous waste generator regulatory program in 2004 was to improve the user-friendliness of the regulations. Prior to this action, the generator regulations were found in several parts of the Code of Federal Regulations (CFR). This final rule reorganizes and consolidates most of the generator regulatory program into 40 CFR part 262, with exceptions for very technical and lengthy regulations, such as the RCRA air emissions standards and the land disposal restriction requirements.

Another important component of this rule is to explain in greater detail how the hazardous waste generator regulations actually work. As explained later on, there are two types of regulatory standards for the hazardous waste generator program: Conditions that must be met in order to obtain an exemption from permitting (''conditions for exemption'') and requirements that apply to generators regardless of

[1] EPA is finalizing its proposed change to rename ''Conditionally exempt small quantity generators'' as ''Very small quantity generators.'' A discussion of this change can be found in section VII.A.

whether or not they choose to obtain an exemption from the permit requirement (''independent requirements''). The Agency notes that these clarifications regarding the distinction between independent generator requirements and the conditions for exemption do not fundamentally alter the way the generator regulatory scheme has operated over the last 30 years. Similarly, the enforcement consequences of independent requirement violations and non-compliance with conditions for exemption do not signal a change from how the great majority of enforcement efforts have been pursued when violations of these regulations are detected.

This final rule also incorporates numerous clarifications to different components of the hazardous waste generator regulatory program made by the Agency through the years in **Federal Register** notices, guidance, correspondence, and policy. For example, a key component of the program is that generators need to make accurate hazardous waste determinations. While the Agency has stated in **Federal Register** preambles and correspondence from the beginning of the program that solid and hazardous waste determinations must be made at the point of generation before any dilution, mixing, or other alteration of the waste occurs, we have never incorporated such an important concept into regulation. This final rule does so. Also, most generators use knowledge of their processes and feedstocks to determine if they have generated a hazardous waste. In response to comments from the regulated community, this final rule provides additional information and clarity as to what constitutes ''generator knowledge'' to determine whether a listed and/or characteristic hazardous waste has been generated. Providing this information to the regulated community enables the generators to more readily comply with the requirements.

Similarly, this final rule clarifies that a generator can only be in one category for a calendar month and explains how to count the hazardous waste it generates (*i.e.,* acute hazardous waste, non-acute hazardous waste, and residues from the cleanup of acute hazardous waste generated in a calendar month) to determine its regulatory category, and therefore, which set of regulations to comply with. Another important clarification explains the implications of when a generator mixes a solid waste with a hazardous waste, and the regulations a generator must be aware of if it decides to mix wastes. Further clarifications address closure, biennial reporting, waste accumulation, liquids in landfills, emergency response, and the marking and labeling of containers, tanks, drip pads, and containment buildings. All together, these revisions to the generator program provide the generators themselves better access to both the regulations with which they are required to comply and some of the information that was previously only available in guidance.

From experience through the years, the Agency also has identified regulatory gaps resulting in either program inefficiencies or ineffectiveness. For example, prior to this final rule, large quantity generators (LQGs) were not required to notify EPA or most states when they close their facility. Without such information, implementing agencies did not have confirmation a whether or not the generators complied with specified closure performance standards. Generators also were not required to identify and communicate the hazards associated with the hazardous waste they generate and accumulate on-site, nor to ensure working relationships with local emergency authorities. This final rule addresses these concerns.

Similarly, prior to this rulemaking, SQGs were only required to submit a notification when they first identified themselves as a hazardous waste generator to obtain a RCRA identification number, and to be able to ship hazardous waste off-site to a permitted treatment, storage and disposal facility (TSDF). As a result, the Agency and many states databases for this universe of generators became unreliable because there was no notification if the generator went out of business, changed ownership, or changed their regulatory category. This final rule addresses this data gap by requiring SQGs to re-notify every four years.

With this final rule, the Agency also has responded to requests that additional flexibility be provided in the implementation of the program. For example, VSQGs will now be able to send their hazardous waste to LQGs under the control of the same person to allow consolidation and improved management of their hazardous waste. Another provision being added in this final rule will allow VSQGs and SQGs to maintain their existing regulatory category when they generate additional amounts of hazardous wastes as a result of an episodic event, provided they comply with specific conditions. This final rule also will allow an LQG to apply for a site-specific approval from the authority having jurisdiction (AHJ) over the fire code when they are unable to meet the 50 feet property line requirement for the accumulation of ignitable or reactive waste. Together, these provisions that add flexibility to the regulations better represent the real-world conditions that many of the smaller hazardous waste generators operate under and ensure and allow proper management of hazardous waste while under those conditions.

The RCRA hazardous waste generator regulatory program is primarily administered by the states, and therefore, its success is predicated in EPA supporting their inspection, enforcement and permitting activities. The Agency will work with the states to support their efforts in becoming authorized for these program revisions and will support both the regulated community and the implementing agencies in their efforts to comply with these new provisions.

V. Background

A. History of the Hazardous Waste Generator Program

For the most part, the regulations for hazardous waste generators have not changed significantly since 1980, except for three major modifications. First, as a result of the Hazardous and Solid Waste Amendments (HSWA) of 1984, EPA promulgated a rule that created three generator categories; *i.e.,* conditionally exempt small quantity generators, small quantity generators and large quantity generators (51 FR 10146, March 24, 1986). Prior to that rule the regulatory framework for hazardous waste generators consisted of two categories: Small quantity generators and large quantity generators. The 1986 rule split the SQG category in two and created conditionally exempt small quantity generators (CESQG) (now known in this final rule as very small quantity generators).

Second, also as a result of HSWA and the Land Disposal Restriction (LDRs) regulations,[2] hazardous waste generators were required to ensure that their hazardous waste either met a specified treatment standard or performance standard, or, if neither, that the waste was treated to specified concentrations or performance standards prior to land disposal.

Third, the Agency modified the Uniform Hazardous Waste Manifest regulations and associated manifest

[2] There are several regulations associated with LDRs. The more important **Federal Register** notices associated with these regulations include: 51 FR 40636, November 7, 1986; 52 FR 25787, July 8, 1987; 53 FR 31211, August 17, 1988; 54 FR 26647, June 23, 1989; 55 FR 22520, June 1, 1990; 57 FR 37194, August 18, 1992.

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 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 relatively minor.

B. Hazardous Waste Generator Demographics

In 2013, approximately 25,300 generators reported generating approximately 35.2 million tons of hazardous waste. Of the total number of reporting generators, approximately 20,800 were LQGs while 4,500 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.[3]

In 2013, LQGs generated approximately 35.2 million tons of hazardous waste in the aggregate. The 50 largest hazardous waste generators reported generating 29.2 million tons, or 83 percent of the total reported amount. While in total LQGs managed on average 13 waste streams (the mean), approximately 11,000 LQGs (or approximately 53 percent) managed 6 waste streams (the median) or less. Approximately 9600 LQGs (or approximately 46 percent) generated between 1 and 5 waste streams. These generators included sites from the waste treatment industry as well as academic and industrial laboratories. Overall, the Agency estimates that LQGs generate between 6 and 13 hazardous waste streams each year, which represents the median and mean number of wastes streams per LQG.[4]

Of the 35.2 million tons of hazardous waste generated by LQGs in 2013, 33.4 million tons, or 95 percent, were generated in just five industrial sectors: Chemical manufacturing (NAICS 325); petroleum and coal products manufacturing (NAICS 324); waste management and remediation services (NAICS 562); primary metal manufacturing (NAICS 331); and mining (NAICS 212).[5]

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 have not been required to provide such information to the Agency. Consequently, EPA 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[6] (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 approximately 49,900 to 64,300.[7]

Because VSQGs are not required to obtain a RCRA ID, the information available to the Agency is limited to those states that require their VSQGs to obtain a RCRA ID. Therefore, in estimating the size of the VSQG universe, the Agency developed a methodology that extrapolated the size of the VSQG universes based on the data available in those states that require VSQGs to obtain a RCRA ID. We first calculated the ratio of VSQGs to SQGs and VSQGs to LQGs in those states where information was available on the VSQG universe. Wethen used those ratios to estimate the size of a state's VSQG universe where VSQG information was unavailable. Using this methodology, EPA currently estimates the size of the VSQG universe to range from 353,400 to 591,800.[8]

VI. Reorganization of the Hazardous Waste Generator Regulations and Organization of the Preamble

EPA is finalizing its proposal to reorganize the hazardous waste generator regulations to make the regulations more user-friendly, which EPA expects will improve generator compliance. The most frequent stakeholder comment EPA received as part of its 2004 Program Evaluation of the hazardous waste generator program was to improve the user-friendliness of the regulations. EPA proposed a reorganization on September 25, 2015 (80 FR 57918), and took comment on all aspects of that reorganization. The majority of the commenters supported EPA's proposal to reorganize the regulations, stating that they agreed with the Agency that the new framework is easier to understand, simpler, and will facilitate improved compliance by the regulated community. EPA also received some comments opposing the reorganization from commenters who were concerned that the changes would result in confusion for those who already understand the regulations and from commenters concerned about the cost of any necessary changes. After considering the comments, EPA has determined that reorganizing the regulations will result in a better, more straightforward set of regulations that is, on balance, easier for most people to understand, now and in the future of the generator program.

This section serves as an introduction and a reference to the new look and feel of the generator regulations. This section makes passing mention of many of the provisions and revisions that we cover in much more detail later in the preamble. EPA has organized this preamble to correspond with the new organization of the regulations, discussing each provision being changed in its new relative place within the structure of the generator regulations. In addition, after the discussion in this section of where each provision will be found in the reorganized regulations, all following citations to regulatory text in this final rule will use the new citations found in the promulgated regulatory text. If applicable, we are including a note at the end of each section to direct the reader to where the same provision was found before the reorganization.

EPA recognizes that the reorganization of these regulations may be a big adjustment for all those who use them, but has determined that the new structure makes better sense for a generator navigating through the system for the first time. 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.

EPA intends to work closely with the states and other implementing agencies as well as the regulated community, particularly during the initial implementation period. EPA's efforts

[3] See ''Regulatory Impact Assessment of the Potential Costs, Benefits, and Other Impacts of the Final Hazardous Waste Generator Improvements Rule.'' A copy of the analysis is available in the docket for this action.

[4] Ibid.

[5] Ibid.

[6] See the Waste Received (WR) form as part of Biennial Report (EPA Form 8700–13A/B).

[7] See ''Regulatory Impact Assessment of the Potential Costs, Benefits, and Other Impacts of the Final Hazardous Waste Generator Improvements Rule.'' A copy of the analysis is available in the docket for this action.

[8] Ibid.

will be to ensure all stakeholders are trained on the new organization and are given an opportunity to revise forms, guidance, and other materials as necessary. EPA will also be revising its own materials to reflect the new citations in the regulations.

EPA is finalizing the following general organizational changes:

(1) Integrating the generator regulations in § 261.5 into the generator regulations at part 262 by moving § 261.5 (which contains the regulations applicable to VSQGs, counting of hazardous waste, and mixing of hazardous wastes with non-hazardous wastes);

(2) Separating the existing regulations at § 262.34 for SQGs, LQGs and SAAs into three new sections:

(a) Conditions for exemption for satellite accumulation areas (SAA) 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) Using subtitles in these new sections; and

(4) Where reasonable, incorporating the text of relevant part 265 regulations into these new sections, rather than merely cross referencing them, as was the former approach.

A. Moving and Integrating Regulations From 40 CFR 261.5 Into 40 CFR Part 262

Historically, certain hazardous waste generator regulations have been located in a different part of the regulations (40 CFR 261.5) from the rest of the generator regulations (40 CFR part 262). Many of the commenters on the proposal confirmed what EPA had heard from stakeholders who stated that the location of § 261.5 was confusing and not user-friendly. Many commenters agreed that locating those requirements in part 262 to consolidate all the generator regulations in the same part was a useful revision that will alleviate much confusion in the regulated community and, in the process, will foster greater compliance with the regulations.

Specifically, EPA is moving the definition of a VSQG that generates non-acute hazardous waste at § 261.5(a) into the VSQG definition at § 260.10, moving § 261.5(c) through (e) about counting hazardous waste and § 261.5(h) though (j) about VSQGs mixing waste to a new section at § 262.13 titled ''Generator category determination'' and moving § 261.5(b) and (f) and (g) to a new section at § 262.14 titled ''Conditions for exemption for a very small quantity generator.'' [9]

1. Hazardous Waste Generation Quantity Limits for VSQGs (40 CFR 260.10)

Section 261.5(a) was previously used to set forth the non-acute hazardous waste quantity limits for a VSQG and § 261.5(e) to provide 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 acute hazardous waste. Under the reorganized regulations, EPA now defines each category of generator at § 260.10, and, thus, § 261.5(a) and (e) are incorporated into those definitions.

2. Determining Generator Category (40 CFR 262.13)

Section 261.5(c) and (d) previously set forth the provisions for a hazardous waste generator to use in making its generator category determination. Every hazardous waste generator must because determine its generator category in order to identify which regulations are applicable to it. Because § 261.5(c) and (d) are applicable to all hazardous waste generators, it makes sense to move them into 40 CFR part 262, with the other hazardous waste generator regulations. To further aid in making the regulations more user friendly, the Agency has promulgated a new section for generator category determination at § 262.13, titled ''Generator category determination.'' This new section is thus located 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.

In addition, § 261.5(h) through (j), regarding the rules that apply for the mixing of hazardous waste with solid waste, including mixtures with used oil by VSQGs, have been relocated to § 262.13, making them independent requirements rather than conditions for exemption. This move is logical in the context of the reorganization because the outcome of any determination a VSQG makes about the consequences of mixing waste ultimately affect its generator category first. In addition, § 262.13 also contains a new citation to the mixing rule in § 261.3 and makes it clear that the mixing rule applies to SQGs and LQGs. These revisions to the generator regulations are all discussed in more depth later in this preamble.

Table 1—Crosswalk of Previous Citations to New Citations for Definitions and General Standards provides a summary of the crosswalk between the previous and new regulatory citations for determining a generator's category.

TABLE 1—CROSSWALK OF PREVIOUS CITATIONS TO NEW CITATIONS FOR DEFINITIONS AND GENERAL STANDARDS

Regulation	Previous citation	New citation	Comment
Definitions of Generator Categories.	§§ 260.10, 261.5 and 262.34	§ 260.10	Previous definition of SQG in § 260.10 was outdated. Generator categories were based on §§ 261.5 and 262.34.
Hazardous Waste Limits for VSQGs.	§ 261.5(a) and (e)	§ 260.10	Included in the new definition of VSQG.
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.

[9] EPA is renaming CESQGs to VSQGs (very small quantity generators). For a detailed discussion on this change, see section VII.A of this preamble.

TABLE 1—CROSSWALK OF PREVIOUS CITATIONS TO NEW CITATIONS FOR DEFINITIONS AND GENERAL STANDARDS—Continued

Regulation	Previous citation	New citation	Comment
Generator Category Determination	§ 261.5(c), (d), and (h)–(j)	§ 262.13	New section that explains how to count hazardous waste to determine generator category.
EPA Identification Numbers	§ 262.12	§ 262.18	Re-notification requirements are also in this section.
Landfill Ban for Liquids	§ 258.28	§ 262.35	For SQGs and LQGs.

3. VSQG Conditions for Exemption (40 CFR 262.14)

Previous sections 261.5(b) and (f) through (j) established the regulations for VSQGs when accumulating acute and non-acute hazardous waste, identified where the acute and non-acute hazardous waste may be managed off site, and explained the implications of mixing hazardous waste with solid waste or used oil. Since these regulations set forth conditions for exemption for VSQGs, similar to how the regulations found in previous § 262.34 set forth conditions for exemption for SQGs and LQGs, EPA is moving § 261.5(b) and (f) and (g) to the newly created § 262.14 titled, ''Conditions for exemption for a very small quantity generator.'' All the conditions for exemption for generators are now located parallel to one another in part 262. Section 262.14 also includes the VSQG landfill ban for liquids and a new VSQG consolidation provision by LQGs under the control of the same person.

In addition, VSQGs who episodically generate higher amounts of hazardous waste may follow the newly promulgated standards for episodic generation in part 262 subpart L in order to maintain their VSQG status while managing these higher amounts of hazardous waste. Table 2—Crosswalk of Previous Citations to New Citations for VSQGs provides a crosswalk between the previous and the new VSQG conditions for exemption.

TABLE 2—CROSSWALK OF PREVIOUS CITATIONS TO NEW CITATIONS FOR VSQGS

Regulation	Previous citation	New citation	Comment
VSQG Definition	§ 261.5(a)	§ 260.10	Moved into new definition of VSQG.
VSQG Mixtures	§ 261.5(h)–(j)	§ 262.13(f)	Moved into Generator category determination.
Conditions for Exemption for a Very Small Quantity Generator.	§ 261.5(b), (f), and (g)	§ 262.14	Included in VSQG conditions for exemption.
VSQG Consolidation by LQGs Within the Same Company.	N/A	§ 262.14(a)(5)(viii)	New provision.
Landfill Ban for Liquids	§ 258.28	§ 262.14(b)	Specific citation for VSQGs.
Episodic Generation	N/A	Part 262 subpart L	New provision.

B. SQG and LQG Conditions for Exemption (40 CFR 262.16 and 262.17)

SQGs and LQGs may accumulate their hazardous waste on site without complying with the storage facility permit and operating requirements, provided they follow all of the conditions for exemption established originally in § 262.34. Section 262.34 became difficult to navigate because the SQG and LQG conditions for exemption were intertwined and contained many cross-references to sections in 40 CFR part 265. Therefore, the Agency is dividing § 262.34 into three new sections at §§ 262.15, 262.16 and 262.17. Section 262.15 lays out the conditions for exemption for SQGs and LQGs operating an SAA, § 262.16 identifies conditions for exemption for SQGs, and § 262.17 identifies the conditions for exemption for LQGs.

1. Satellite Accumulation Area Conditions for Exemption for SQGs and LQGs (40 CFR 262.15)

Many generators use SAAs at their sites. These areas allow generators to accumulate hazardous waste near the point of generation under the control of the operator of the process generating the waste, which provides for efficiency and greater safety in the handling of hazardous waste. When the generator has accumulated 55 gallons of hazardous waste (or one quart of acute 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. Under the old framework, the conditions for exemption for operating an SAA were located at § 262.34(c), between the hazardous waste accumulation conditions for LQGs and those for SQGs. This created confusion as to whether the provisions apply to LQGs only or to both SQGs and LQGs. In this final rule, the Agency is therefore moving 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 copying the text in §§ 265.171, 265.172 and 265.173(a) (which previously were simply referenced in § 262.34(c)(1)(i)) into § 262.15 in order to eliminate cross-referencing and improve the user friendliness of the regulations. Table 3—Crosswalk of Previous Citations to New Citations for SAAs provides a summary of the crosswalk between previous and new regulations for SAAs.

TABLE 3—CROSSWALK OF PREVIOUS CITATIONS TO NEW CITATIONS FOR SAAS

Regulation	Previous citation	New citation	Comment
Satellite Accumulation Area Provisions.	§ 262.34(c)	§ 262.15	Moved from § 262.34.
Selected Part 265 Subpart I Provisions.	§ 265.171	§ 262.15(a)(1)	Duplicated from part 265.
Selected Part 265 Subpart I Provisions.	§ 265.172	§ 262.15(a)(2)	Duplicated from part 265.
Selected Part 265 Subpart I Provisions.	§ 265.173(a)	§ 262.15(a)(4)	Duplicated from part 265.

2. Conditions for Exemption for an SQG Accumulating Hazardous Waste (40 CFR 262.16)

As previously mentioned, the Agency is promulgating a new section 40 CFR 262.16 titled, ''Conditions for exemption for a small quantity generator that accumulates hazardous waste.'' This reorganization moves § 262.34(d) through (f) and (m) into § 262.16. Specifically, the Agency is moving the bulk of § 262.34(d) to § 262.16(b),[10] § 262.34(e) to § 262.16(c), § 262.34(f) to § 262.16(d) and § 262.34(m) to § 262.16(e). EPA has also added subtitles and eliminated several cross-references to 40 CFR part 265 in order to make the regulations easier to navigate.

a. Addition of subtitles. EPA has added subtitles throughout § 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 of hazardous waste in containers.*''

b. Incorporating 40 CFR part 265 subpart I, § 265.201, and part 265 subpart C into 40 CFR 262.16. EPA has integrated three portions of 40 CFR part 265 into § 262.16: Subpart I, § 265.201 and subpart C. First, the regulations previously found at § 262.34(d)(2) stated an SQG must comply with subpart I of part 265 except for §§ 265.176 and 265.178. Therefore, EPA has simply incorporated the text of the appropriate subpart I regulations at § 262.16(b)(2). Second, the regulations previously found at § 262.34(d)(3) stated that an SQG must comply with § 265.201 in subpart J when using a tank. Thus, EPA has incorporated the text of § 265.201—except for paragraph (a)—into § 262.16(b)(3). Incorporation of paragraph (a) of § 265.201 is not necessary because it describes what is already stated in § 262.16—the conditions for exemption 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, the regulations previously found at § 262.34(d)(4) stated that an SQG must comply with subpart C of part 265. Therefore, EPA has incorporated the text of subpart C—Preparedness and Prevention—at § 262.16(b)(8) and (9).

c. Other part 262 provisions for SQGs. In addition, part 262 subpart L contains new standards for SQGs who episodically generate higher amounts of hazardous waste to maintain their designation as SQGs during these episodic events. Also, § 262.35 is the landfill ban for liquids that applies to SQGs and LQGs.

Table 4—Crosswalk of Previous Citations to New Citations for SQGs provides a summary of changes between the previous citations in the regulations and new citations for SQGs.

TABLE 4—CROSSWALK OF PREVIOUS CITATIONS TO NEW CITATIONS FOR SQGS

Regulation	Previous citation	New citation	Comment
Definition of Small Quantity Generator.	§ 262.34(d)	§ 260.10	Moved into new definition of SQG.
Accumulation Time Limit	§ 262.34(d)	§ 262.16(b)	Moved.
Accumulation Limit	§ 262.34(d)(1)	§ 262.16(b)(1)	Moved.
Accumulation in Containers	§ 262.34(d)(2) (references part 265 subpart I).	§ 262.16(b)(2)	Duplicated from part 265.
Accumulation in Tanks	§ 262.34(d)(3) (references part 265 subpart J).	§ 262.16(b)(3)	Duplicated from part 265.
Accumulation on Drip Pads		§ 262.16(b)(4) references part 265 subpart W.	No previous regulatory reference for SQGs using drip pads.
Accumulation in Containment Buildings.		§ 262.16(b)(5) references part 265 subpart DD.	No previous regulatory reference for SQGs using containment buildings.
Marking of Tanks and Containers	§ 262.34(d)(4) (references § 262.34(a)(2) and (3)).	§ 262.16(b)(6)	Copied from § 262.34 with some changes.
Preparedness and Prevention	§ 262.34(d)(4) (references part 265 subpart C) and. § 262.34(d)(5)	§ 262.16(b)(8) and (9)	Duplicated from part 265 and moved from § 262.34.
Land Disposal Restrictions	§ 262.34(d)(4) (references part 268).	§ 262.16(b)(7)	There is still a cross reference to part 268.
Transporting Over 200 Miles	§ 262.34(e)	§ 262.16(c)	Moved from § 262.34.
Accumulation Time Limit Extension	§ 262.34(f)	§ 262.16(d)	Moved from § 262.34.
Rejected Loads	§ 262.34(m)	§ 262.16(e)	Moved from § 262.34.
Episodic Generation	N/A	Part 262 subpart L	New provision.

[10] The portions of § 262.34(d) that state what the generation limits are for this category of generator are moved to the definition of ''small quantity generator'' in § 262.10.

3. Conditions for Exemption for an LQG Accumulating Hazardous Waste (40 CFR 262.17)

As previously mentioned, the Agency is promulgating a new section 40 CFR 262.17 titled, ''Conditions for exemption for a large quantity generator that accumulates hazardous waste.'' The Agency is moving § 262.34(a),(b),(g) through (i) and (m) into § 262.17. Specifically, the Agency is moving § 262.34(a) to § 262.17(a), moving § 262.34(b) to § 262.17(b), moving § 262.34(g) to § 262.17(c), moving § 262.34(h) to § 262.17(d), moving § 262.34(i) to § 262.17(e), and moving § 262.34(m) to § 262.16(g). EPA has also deleted paragraphs (j) through (l), which deal with Performance Track, since the program is no longer in operation. EPA has also added subtitles and eliminated some cross-references to part 265 in order to make the regulations easier to navigate.

a. Addition of subtitles. EPA is adding 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 of hazardous waste in containers.*''

b. Incorporating 40 CFR part 265 subpart I into 40 CFR 262.17. EPA is incorporating the 40 CFR part 265 subpart I regulations, which were previously referenced at § 262.34(a)(1)(i), into § 262.17(a)(1). EPA also considered incorporating the text of other subparts of part 265 that contain technical standards for LQGs into the new section § 262.17 (*i.e.,* part 265 subparts J, W, AA, BB, and CC), but ultimately decided not to incorporate the text of these subparts due to their length.

c. Emergency planning and procedures regulations for LQGs in part 265 subpart M. For generator preparedness and planning regulations, EPA removed the reference to part 265 subparts C and D for the preparedness, prevention, and emergency procedure regulations for LQGs and instead incorporated 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 created a new subpart M in part 262. EPA believes including these provisions in part 262, along with the rest of the generator regulations, will make the regulations easier to navigate.

d. *Other part 262 provisions for LQGs.* In addition, § 262.17(f) contains the newly promulgated standards for LQGs who accept and consolidate hazardous waste from VSQGs. Also, § 262.35 includes the landfill ban for liquids that applies to SQGs and LQGs.

Table 5—Crosswalk of Previous Citations to New Citations for LQGs provides a summary of changes between the previous citations and the new citations for LQGs.

TABLE 5—CROSSWALK OF PREVIOUS CITATIONS TO NEW CITATIONS FOR LQGS

Regulation	Previous citation	New citation	Comment
Definition of Large Quantity Generator.	N/A	§ 260.10	New definition.
Accumulation Time Limit	§ 262.34(a)	§ 262.17(a)	Moved from § 262.34.
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 cross- reference to part 265 subparts J, AA, BB, CC 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).	Accumulation time limit and recordkeeping provisions move to § 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).	Accumulation time limit, labeling, and recordkeeping provisions move to § 262.17 and the extensive technical standards remain in part 265.
Marking and Labeling	§ 262.34(a)(2) and (3)	§ 262.17(a)(5)	Moved from § 262.34.
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 new subpart of the generator regulations.
Personnel Training	§ 262.34(a)(4)	§ 262.17(a)(7)	Moved from § 262.34.
Closure	§ 262.34(a)(1)(iv)B) references §§ 265.11 and 265.114. Section 265.111 references other sections in part 265.	§ 262.17(a)(8)	Duplicated from §§ 265.11 and 114 with some revisions.
Land Disposal Restrictions	§ 262.34(a)(4) references applicable parts of part 268.	§ 262.17(a)(9)	There is still a cross-reference to part 268.
Extension of Accumulation Times	§ 262.34(b)	§ 262.17(b)	Moved from § 262.34.
Accumulation of F006	§ 262.34(g) through (i)	§ 262.17(c) through (e)	Moved from § 262.34.
Accepting waste from VSQGs under the control of the same person to consolidate before sending to TSDF.	N/A	§ 262.17(f)	New provision.
Rejected Loads	§ 262.34(m)	§ 262.17(g)	Moved from § 262.34.

C. EPA Identification Number (40 CFR 262.12)

In the interest in keeping the generator regulations in a logical order for a generator proceeding through the process for the first time, EPA has relocated the previous § 262.12—EPA identification number—to § 262.18. Section 262.12 has been reserved to prevent confusion by anyone referring to old guidance documents. EPA believes this move 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 sequence is appropriate because a hazardous waste generator must first determine its generator category 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 VSQG does not).

D. What changed since proposal?

In the final rule, EPA is not making any significant changes to the structure of the reorganization in the proposal. The majority of commenters supported the changes EPA proposed and stated the changes would make the regulations more clear to the majority of stakeholders.

One minor change from the proposal that EPA is making in this final rule is to relocate the regulations on mixing solid waste and hazardous waste from each generator category section into § 262.13 for the reasons discussed previously.

E. Guidance and Implementation

As part of the implementation of this final rule, EPA is planning outreach to all stakeholders to discuss the reorganization in particular. The reorganization of the regulations will require adjustment by all parties that rely on EPA's generator regulations and EPA is committed to easing that adjustment through guidance and training.

VII. Detailed Discussion of Revisions to 40 CFR Part 260—Hazardous Waste Management System: General

A. Generator Category Definitions (40 CFR 260.10)

1. Introduction

As part of the reorganization of the regulations and in an effort to make the generator regulations more accessible and easier to understand, EPA proposed to codify definitions for the three categories of hazardous waste generators (VSQG, SQG and LQG) and, in conjunction with those definitions, to also define ''acute hazardous waste'' and ''non-acute hazardous waste'' for the purposes of use in the definitions (80 FR 57925–6).

In the proposal, EPA noted that 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 among the categories by stating the quantity of hazardous waste generated in a calendar month in each instance, leading to cumbersome phrasing throughout the text.

As a part of the codification of these definitions, EPA also proposed replacing ''conditionally exempt small quantity generator,'' the term for the smallest quantity category of generator, with ''very small quantity generator.'' [11] EPA proposed this revision to remove confusion behind the phrase ''conditionally exempt.'' All three categories of generators are conditionally exempt from storage facility permit, interim status, and operating requirements, not just the smallest category. In addition, the new term is more descriptive of what the definition of the category actually represents. EPA notes this change is consistent with some states, such as Minnesota, that are already using the VSQG term. All regulations previously applicable to a CESQG apply to a VSQG.

VSQGs 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. Codifying definitions for these terms clarifies what categories of waste must be considered in determining generator category.

[11] EPA is finalizing this revision and, therefore, will use this term to refer to the smallest generator category in this preamble discussion.

2. What is EPA finalizing?

EPA is finalizing the generator category definitions as proposed 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. Users of the generator regulations will benefit from the inclusion of the definitions of terms that are commonly used throughout the program. As a part of these revisions, EPA is also finalizing the definitions for ''acute hazardous waste'' and ''non-acute hazardous waste'' and the replacement of ''conditionally exempt small quantity generator'' with ''very small quantity generator.''

The 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 adding definitions for each of the generator categories to § 260.10.

A 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 § 261.31 or § 261.33(e).

A 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 1,000 kilograms (2,200 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).

A large quantity generator is a generator who generates any of the following amounts in a calendar month: (1) Greater than or equal to 1,000 kilograms (2,200 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, of any acute hazardous waste listed in § 261.31 or § 261.33(e).

In the comments addressing these revisions, several commenters suggested that the use of the word ''and'' between the types of waste being considered in the definitions of VSQG and SQG would mean that a generator must generate all three types of waste to qualify for the generator category. EPA disagrees, noting that zero kilograms of acute hazardous waste would qualify as ''less than or equal to 1 kilogram'' and zero kilograms of residue from a spill would qualify as ''less than or equal to 100 kilograms.'' If these ''and''s were changed to ''or''s, as many of the commenters suggested, then a generator could, for instance, qualify as a VSQG just by having less than 1 kilogram of acute hazardous waste regardless of how much non-acute hazardous waste or residues it had generated.

EPA is also finalizing the proposal to replace ''conditionally exempt small quantity generator'' with ''very small quantity generator'' and is replacing all references in the regulations with this term. EPA will also be updating its materials and guidance to take into consideration the new term.

In addition, EPA is adding definitions to § 260.10 for the terms ''acute hazardous waste'' and ''non-acute hazardous waste.'' These terms are necessary because they are used in the definitions of the generator categories discussed above and because they have specific meanings within the hazardous waste generator program. 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 rulemaking, any distinctions between acute and non-acute hazardous wastes are made only in the context of determining generator category. Otherwise, throughout the regulations, preamble, and guidance, the term ''hazardous waste'' refers to both acute and non-acute hazardous waste.

3. What changed since proposal?

EPA is finalizing the definitions for the generator categories as proposed with no changes. EPA is finalizing the replacement of ''conditionally exempt small quantity generator'' with ''very small quantity generator'' with no changes. EPA is finalizing the definitions of acute and non-acute hazardous waste as proposed with no changes.

EPA is making some changes to another area of the regulations as a result of some comments that showed that there is confusion about how the accumulation limits for VSQGs operate. EPA received multiple comments stating that the accumulation limits for VSQGs of 1,000 kg of hazardous waste, 1 kg of acute waste or 100 kg of residues from cleanup of a spill of acute hazardous waste (in § 262.14) and for SQGs of 6,000 kg of hazardous waste (in § 262.16) should be part of the definitions of the generator categories in § 260.10 and a factor in making a generator category determination.

EPA maintains that although these limits are related to the generator definitions, particularly for SQGs, the accumulation limits are not part of the definition of a generator's category, but instead have operated as a separate provision. For SQGs, the accumulation limit has always been a condition for the exemption from permitting and certain other hazardous waste regulations, meaning that if the limit is violated, the generator is no longer exempt from these regulations. The generator category is, as is stated in the statute, based on the amount of waste generated ''during a calendar month.'' [12] An SQG is limited to generating less than 1,000 kg of hazardous waste per month and to shipping that waste off site within 180 days of generation. Therefore, an SQG cannot accumulate more than 6,000 kg of hazardous waste without either generating more than 1,000 kg in one of the past six months (which would make it an LQG) or accumulating its waste beyond the 180-day limit. In this situation, the SQG can choose to become an LQG and manage the hazardous waste as an LQG. Alternatively, the SQG will lose its exemption from regulation as a storage facility and be subject to the requirements in parts 264–268, part 270, and the notification requirements at section 3010 of RCRA.

If a VSQG exceeds the accumulation limit, the exemption can be maintained if the waste is managed under the more extensive conditions for exemption of a larger generator category, but the VSQG does not itself have to become an SQG or LQG. To maintain the exemption, VSQGs that accumulate more than 1,000 kg of non-acute hazardous waste must manage the waste under the conditions for exemption for SQGs, and VSQGs that accumulate more than 1 kg of acute waste or 100 kilograms of any residue from the cleanup of a spill of acute hazardous waste must manage the waste under the conditions for exemption of an LQG.

EPA based the language in the final rule on accumulation limits for VSQGs on the previous regulations in § 261.5(f)(2) and (g)(2), which state the same principle. However, in order to make it more clear how these provisions operate, EPA has included the exact provisions that would apply to the excess waste to clarify this provision in § 262.14(a)(3) and (4). In addition, EPA is clarifying here that when the amount of waste that is accumulated exceeds the accumulation limit, all the accumulated waste at the VSQG must be managed under the requirements for an LQG, as EPA stated in the preamble to the 1980 generator final rule at 45 FR 76621 (November 19): ''The revised regulation also clarifies that once the accumulated amounts exceed *1000* kilograms, all of those wastes and those subsequently added to that accumulation are fully regulated until all the waste is sent to a hazardous waste treatment, storage or disposal facility. This rule means that those wastes remain subject to full regulation even if the quantity of wastes accumulated or stored becomes less than 1000 kilograms.''

4. Major Comments

EPA received support from a variety of stakeholders on its proposal to promulgate definitions for the generator categories in the final rule. Many stakeholders agreed with EPA's assessment that officially defining the commonly-used terms for these generators in the regulations would be a helpful addition.

Some commenters offered additional suggestions, such as revising the SQG threshold to be greater than 100 kg and less than or equal to 1,000 kg to be easier to remember, to use ''less than'' (<) and ''greater than'' (>) signs in the regulations, to change the primary unit of measurement in the regulations to pounds from kilograms and to rely on monthly averages for waste generation rather than actual monthly amounts. EPA is not making changes to the regulations in response to these comments. Although EPA understands that the quantity limits in the regulations for SQGs are not exactly parallel to the other generator categories, EPA sees little or no benefit in making a change that shifts the generator category by a single kilogram of hazardous waste or a revision of the units of measurement in the regulations. Both these revisions would require administrative changes throughout the

[12] The Solid Waste Disposal Act as Amended by the Hazardous and Solid Waste Amendments of 1984, Section 3001(d).

hazardous waste generator system. In addition, EPA believes that the meaning of ''greater than'' and ''less than'' is clear without the use of the arithmetic symbols.

Finally, EPA does not agree with the commenters who stated that it would be appropriate to allow a generator to average hazardous waste generation over several months and use the average to determine its generator category. Beyond the practical implementation concerns with this approach, and despite the commenters' argument that this approach would be consistent with the statute's intent, EPA has long interpreted the RCRA statement that a generator's category be based on the amount of waste generated ''during a calendar month'' at face value: The generator must know the quantity of hazardous waste it generates per month, not as an average of some sort, and be regulated accordingly.[13] EPA rejected similar approaches in the March 24, 1986, final rule that established the current small quantity generator regulations and is not changing that interpretation as a part of this rulemaking.[14]

EPA does agree with the comment that any acute hazardous waste cleaned up in debris is counted as part of the ''residue or contaminated soil, water, or other debris resulting from the cleanup of a spill . . . of any acute hazardous waste'' and is not counted separately as acute hazardous waste.

Regarding ''conditionally exempt small quantity generators,'' EPA received comments on the proposal arguing that the users of the term ''conditionally exempt small quantity generator'' are familiar with its meaning and do not need a revision and that states will need to update materials and forms with the new term, VSQG. EPA has determined that although the users of the regulation are familiar with this term as it is used currently, there is real value in revising it so that those who will be introduced to the RCRA generator program in the future can make more sense of the terms. As stated previously, EPA will be revising its own materials, as necessary, to account for the new term and will work with states to phase in the changed terminology over time.

Effect of the Reorganization: This section is not affected by the reorganization.

B. Generators That Generate Both Acute and Non-Acute Hazardous Waste in the Same Calendar Month (40 CFR 260.10)

1. Introduction

As stated previously in the discussion of the definitions of the categories, when a generator is determining its generator category, it must consider three relevant types 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. Historically, the RCRA hazardous waste regulations have not addressed situations involving combinations of wastes and Agency statements about this issue have been inconsistent. This situation led EPA to propose regulations to clarify a generator's category for a calendar month during which it generates any combination of non-acute hazardous waste, acute hazardous waste, and residues from the cleanup of a spill of acute hazardous waste.

EPA discussed its history of statements on this topic in the proposed rule at 80 FR 57927, noting examples of contradictory EPA statements that a generator can have just one category per calendar month and EPA statements that a generator can manage acute hazardous waste as one category of generator and non-acute hazardous waste as a different category of generator in the same calendar month.

EPA proposed a more practical approach that a generator can be in only one generator category in a calendar month and noted that many EPA Regions and states have taken this same approach in implementing the RCRA hazardous waste program.

2. What is EPA finalizing?

EPA is finalizing definitions of the generator categories that expressly state 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 earlier in this section of the preamble.

In conjunction with these changes, EPA is finalizing a new section § 262.13 explaining how a generator determines its applicable generator category. This topic is fully discussed in section IX.C of this preamble.

EPA's decision to finalize this approach is based partially on developing a practical solution to situations where a generator generates, for example, acute and non-acute hazardous waste in the same month. This approach is analogous to situations in which a generator that generates only non-acute hazardous wastes counts its various hazardous wastes. In those situations, a generator must consider the total amount of all its different kinds of non-acute hazardous waste, not the amount of each type of hazardous waste (*e.g.,* type of waste identified by individual EPA hazardous waste number) separately. Therefore, a generator must similarly follow the same logic in 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 which category a generator belongs to.

We note that many EPA Regions and states have taken this same approach in implementing the RCRA hazardous waste program and many of the state agencies that commented on the proposed rule stated they were in support of these changes to the regulations for the reasons EPA described in the preamble to the proposed rule, particularly because of the inconsistencies in the guidance.

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 6—Generator Categories Based on Quantity of Waste Generated.[15]

[13] The Solid Waste Disposal Act as Amended by the Hazardous and Solid Waste Amendments of 1984, Section 3001(d).

[14] 51 FR 10154, March 24, 1986.

[15] This table is being finalized in the regulations as Table 1 to § 262.13.

TABLE 6—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 spilled acute hazardous waste generated in a calendar month	Generator category
> 1 kg	Any amount	Any amount	LQG.
Any amount	≥ 1,000 kg	Any amount	LQG.
Any amount	Any amount	> 100 kg	LQG.
≤ 1 kg	> 100 kg and < 1,000 kg	≤ 100 kg	SQG.
≤ 1 kg	≤ 100 kg	≤ 100 kg	VSQG.

Note: When calculating generator categories, the quantities of acute hazardous waste and non-acute hazardous waste are considered separately.

In three of the five possible scenarios, the generator is an LQG; in one scenario, the generator is an SQG; and in one scenario, the generator is a VSQG.

As the table indicates, in the first three scenarios, the generator is an LQG if it generates any of the following in a calendar month: 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 true regardless of the amount of waste generated in the other categories. This fact is made clear in the final regulatory definition of ''LQG'' by stating that a generator is an LQG if it generates ''any'' of the types of hazardous waste in the amounts listed and by using of the word ''or'' between (1), (2), and (3).

As an LQG, the generator must comply with the independent requirements for LQGs (specified in § 262.10) and the conditions for exemption for LQGs (specified in § 262.17), as well as any applicable conditions for exemption for SAAs at § 262.15.

In the fourth scenario, the generator is 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.[16] The final regulatory text expresses this scenario by using the word ''and'' between (1), (2), and (3) in the definition of SQG.

As an SQG, the generator must comply with the independent requirements for SQGs (specified in § 262.10) and the conditions for the exemption for SQGs (specified in § 262.16), as well as any applicable conditions for exemption 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 VSQG for that calendar month. The regulatory text expresses this scenario by using the word ''and'' between (1), (2), and (3) in the definition.

As a VSQG, the generator must comply with the independent requirements for VSQGs (specified in § 262.10) and the conditions for exemption for VSQGs (specified in § 262.14).

3. What changed since proposal?

EPA is finalizing the definitions for the generator categories as proposed and has not made revisions to how it expects generators to determine their generator category when they generate acute and non-acute hazardous waste.

4. Major Comments

Some commenters who opposed EPA's proposal that a generator should manage all its waste under the same generator category argued this would be a change to how they are currently operating and that it is burdensome to operate a whole generator site as an LQG because of the existence of LQG levels of acute hazardous waste.

EPA recognizes commenters' concerns about disruption to, and burdens on, current operations. However, EPA has determined that if the definitions of the generator categories are going to depend on the amounts of hazardous waste generated, it does not, in the end, make practical sense to have a generator that is operating in more than one category. EPA notes that some comments stated that there will be a difference for those generators that have been managing acute hazardous waste in a separate area and only having a RCRA contingency plan for that area, but believes that those generators are LQGs and should be following the independent requirements and conditions for exemption for LQGs for all waste areas. Again, many states and EPA Regions commented that they are already interpreting the regulations in this way so EPA does not anticipate that these changes will have a major effect in program implementation. In fact, these revisions are making the regulations consistent with how most programs are operating currently.

Effect of the Reorganization: This section is not affected by the reorganization.

C. Definition of Central Accumulation Area (40 CFR 260.10)

1. Introduction

In the proposal at 80 FR 57927, the Agency discussed defining the term ''central accumulation area'' (CAA) in § 260.10. 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 the conditions of § 262.17 and SQGs may do the same for up to 180 days, provided they comply with the conditions of § 262.16.[17] 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.[18] 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 in that rule. At the time, EPA promulgated the term in

[16] Amount of hazardous waste accumulated on site at any given time can also impact what regulations the SQG must comply with.

[17] SQGs can also accumulate hazardous waste for up to 270 days if they ship the hazardous waste greater than 200 miles.

[18] ''Academic Labs Rule''; 73 FR 72912, December 1, 2008.

§ 262.200 and indicated the definition only applied to part 262 subpart K. Since then, the term has become more widely used and therefore EPA proposed to define the term ''central accumulation area'' in § 260.10 to allow its use when referring to all generator accumulation areas, including those that are not operating under part 262 subpart K.

2. What is EPA finalizing?

EPA is finalizing the definition of ''central accumulation area'' 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).[19] The definition also states that a CAA 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.

EPA emphasizes again that we are defining the term ''central accumulation area'' only as a matter of convenience. It is helpful for both the regulated community and the implementers to use a common term 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.

EPA also wants to emphasize that generators may continue to have more than one CAA on site, as long as all CAAs meet the conditions for accumulation of hazardous waste. We are making this clear in the definition by stating that a ''central accumulation area'' means *any* on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either § 262.16 or § 262.17.

Further, the use of the word ''central'' does not denote a physical location or indicate that the generator must establish the CAA in a location that is centrally located within the site. The term ''central'' is used in the sense that many generators consolidate or *centralize* their hazardous waste from multiple satellite accumulation areas at a CAA prior to shipment off site. The CAA can be in any location at the generator site as long as it meets the conditions for the accumulation of hazardous waste.

As a result of making this change for all of part 262, we are also removing the definition of ''central accumulation area'' from part 262 subpart K.

3. What changed since proposal?

EPA is finalizing the definition for ''central accumulation area'' as proposed.

4. Major Comments

EPA received comments on the proposed revisions that expressed concern that the word ''central'' might be misconstrued to mean a generator might be limited to maintaining just one CAA or that the CAA might have to be in the center of the generator's property. Commenters suggested other terms, such as ''generator accumulation area'' or ''hazardous waste accumulation area.'' Although these terms would likely work equally well in many respects, ''central accumulation area'' is already commonly understood by many stakeholders. It has been in use for many years and has been in the regulations since the promulgation of the Academic Labs Rule. EPA has addressed the commenters concerns about the word ''central'' in the previous discussion and does not see a compelling reason to promulgate a term different than the one proposed.

Effect of the Reorganization: This section is affected by the reorganization. The definition of ''central accumulation area'' references other regulatory citations that are part of the reorganization. The reorganization is discussed in section VI of this preamble.

VIII. Detailed Discussion of Revisions to 40 CFR Part 261—Requiring Biennial Reporting for Owners or Operators of Facilities That Recycle Hazardous Waste Without Storing It (40 CFR 261.6(c)(2))

A. Introduction

As part of this rulemaking, EPA proposed to modify 40 CFR 261.6(c)(2) and require owners or operators of facilities that recycle hazardous waste without storing the wastes, or facilities that receive and partially reclaim hazardous wastes prior to producing a commodity-like material as described at § 260.31, to comply with the biennial reporting requirements at 40 CFR 265.75. This modification was primarily a clarification of the existing rules because the Agency was concerned, based on an analysis of biennial reports, that not all of these type facilities were completing a biennial report when they should have been doing so. Recycling facilities and partial reclamation facilities receiving manifested hazardous waste by a hazardous waste transporter are similar to permitted TSDFs that also must complete a biennial report. Without biennial report 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 EPA and the states' 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 if they are affected by this change.

B. What is EPA finalizing?

The Agency is finalizing the proposal at § 261.6(c)(2). Owners or operators of facilities that receive and partially reclaim hazardous wastes into a commodity like material, or recycle regulated hazardous waste (*i.e.,* hazardous secondary materials not excluded from the definition of solid waste, or hazardous waste not exempt other recycling regulations) without storing it prior to recycling must comply with the biennial reporting requirements at 40 CFR 265.75. However, based on a few comments, the Agency wishes to make clear that this provision is only applicable to owners and operators of facilities that receive regulated hazardous waste from off site and/or do not store incoming hazardous waste prior to recycling. LQGs that generate and recycle their own regulated hazardous wastes continue to be regulated under § 261.6(b).

In an effort to ensure the universe of facilities affected by this new provision is aware of their obligation to complete and submit a biennial report, the Agency will highlight these changes in the Biennial Report Instructions and Forms and describe what facilities must do to complete and submit a report. Similarly, the Agency, as part of its outreach efforts for this new rule, will educate facilities about this new reporting requirement where appropriate.

C. Major Comments

Most commenters supported this provision but a few commenters questioned the utility of this provision. As stated previously, the Agency is

[19] This definition includes citations to the newly promulgated sections of part 262 that are as part of the reorganization of the generator regulations. The predecessors to the small quantity generator regulations are at § 262.34(d) through (f) and the predecessors to large quantity generator regulations are at § 262.34(a). For a full discussion of the reorganization, see section VI of the preamble.

aware of situations through the years where a partial reclamation facility or a recycling facility that does not store prior to recycling (and hence may not have a need for a RCRA storage permit) failed to complete and submit a required Biennial Report because they were receiving regulated hazardous waste. Without this information, the Agency and states have an incomplete understanding of hazardous waste recycling activities occurring nationally. This provision is meant to make such facilities aware of their biennial reporting obligations. In addition, such recycling facilities cannot accept regulated hazardous waste from generating facilities without the recycling facilities having a RCRA identification number.

IX. Detailed Discussion of Revisions to 40 CFR part 262—Standards Applicable to Generators of Hazardous Waste

A. 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 rulemaking 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. The hazardous waste generator regulations have long been located primarily in three different parts of the CFR (40 CFR parts 261, 262, and 265), making it sometimes difficult to determine what components of the regulations apply to different categories of hazardous waste generators.

The reorganization is addressing some of these problems by reducing the need to refer to separate parts of the regulations through consolidation of the generator regulations into part 262 and by organizing the regulations based on a generator's category so generators can more easily determine which regulations apply to them. As described in section VI, EPA is finalizing three new sections in part 262 subpart A to set forth the conditions for exemption for each of the categories of generators that accumulate waste on site and one new section to set forth the conditions for exemption for SAAs. These new sections are § 262.14 for VSQGs, § 262.15 for SAAs, § 262.16 for SQGs, and § 262.17 for exemption for LQGs.

In concert with the reorganization of the generator conditions for exemption for on-site accumulation of hazardous waste, EPA is adding regulatory language to more clearly explain how the regulations work for generators and to lay out which provisions apply to each of the different categories of generators. EPA is making additional changes to otherwise clarify the framework of the hazardous waste generator program, including the addition of § 262.1 and the revisions to § 262.10. EPA is also adding an explicit prohibition on sending hazardous waste to a facility that is not authorized to accept it and is removing outdated and unnecessary provisions.

Note that the changes to the regulatory text for § 262.10 in this action take into account the revisions being made as a part of the ''Hazardous Waste Export-Import Revisions'' Final Rule (Docket ID EPA–HQ–RCRA–2015–0147; FRL–9947–74–OLEM), including replacing the reference to § 262.12 in paragraph (d) with a reference to § 262.18 and referring to subpart H of part 262 for provisions on imports and exports of hazardous waste instead of to subparts E and F, which are being removed and reserved.

1. Regulatory Framework for Independent Requirements and Conditional Exemptions for Generators (Sections 262.1, 262.10(a), and 262.10(g))

a. *Introduction.* In developing the proposed rule, EPA determined that the RCRA regulations could be clarified regarding the distinction between the two types of generator requirements: (1) Those requirements that any generator generating hazardous waste must meet, which EPA is calling ''independent requirements,'' and (2) those conditional requirements that a generator who also accumulates waste must meet only if it wants the benefits of an exemption from RCRA storage facility permitting (or interim status) requirements, which EPA is calling ''conditions for exemption.'' In order to make the regulations clearer regarding this distinction, EPA proposed to include definitions for these types of provisions in a new section of the regulations, to list which regulations for generators are independent requirements and which are conditions, and to clarify the regulatory difference between those types of requirements with regards to enforcement. These changes were proposed in a new § 262.1 and in revisions to the existing § 262.10(a) and (g).

b. *What is EPA finalizing?* EPA is finalizing the proposal to clearly define and reflect in the regulations the distinction between independent requirements and conditions for exemption that has existed, less explicitly, in the RCRA generator regulations since their initial implementation over 30 years ago. Because some commenters expressed continuing confusion over the distinction, a more extended discussion here will help to address and further clarify the meanings of the terms.

The difference between independent requirements and conditions for exemption lies in the nature of each type of provision and in the consequences that may result if each is not met. An ''independent requirement'' in part 262 is the common type of regulatory requirement one usually thinks of, equivalent to a law that can be broken: It is the statement of a duty that must be met, or else a violation of RCRA or the regulations has occurred that is subject to a penalty. In other words, in the context of 40 CFR part 262, an ''independent requirement'' is an unconditional requirement or demand that is imposed upon the generator and with which the generator must comply. Because the sole purpose of the independent requirement is to achieve or prohibit the stated behavior, event, or standard, the only potential legal consequence to the generator from failing to meet an independent requirement, is some form of enforcement action for violating that particular requirement (*e.g.,* a notice of violation, civil or criminal penalties, or injunctive relief under section 3008 of RCRA).

Most important to the distinction between an ''independent requirement'' and a ''condition for exemption'' in part 262 is the fact that an independent requirement does not provide a mechanism for the generator to avoid having to comply with other requirements, such as the storage facility regulations in parts 264, 265 and 270.

Also important to note is that the ''independent requirements'' of part 262 are not legally tied to the accumulation of hazardous waste. These part 262 independent requirements are applicable and enforceable, and must be met, by a generator of hazardous waste, whether or not the generator actually accumulates hazardous waste on site. In that sense, they are ''independent'' of the conditions for exemption from storage facility regulation, which are only applicable to generators who also accumulate hazardous waste. The independent requirements of part 262 are therefore enforceable whether or not the generator has obtained, or is attempting to obtain, an exemption from the storage facility permit (or interim status) and operations requirements by meeting the conditions for that exemption in §§ 262.14, 262.15, 262.16, or 262.17.

An example of such an ''independent requirement'' is § 262.30, the pre-transport waste packaging requirement. This requirement is an unconditional demand, and failure to meet this requirement is subject to penalty or injunctive relief for violating § 262.30. The requirement applies without regard to whether the generator accumulates waste on site; and it applies and is enforceable regardless of whether the generator has an exemption from storage facility permit and operations regulations.

A condition for exemption, on the other hand, is a requirement that is contingent in nature: It is only necessary to meet the condition if the generator is using it to obtain an optional exemption from other requirements. A condition for exemption is not the common type of regulatory requirement that absolutely demands compliance under threat of penalty for violation of that requirement. Meeting a condition for exemption is required only if the generator wants an exemption, and then is ''required'' only in the sense that it is a necessary step to take in order to successfully obtain that optional exemption.

The primary legal consequence of *not* complying with the condition for exemption is that the generator who accumulates waste on site can be charged with operating a non-exempt storage facility (unless it is meeting the conditions for exemption of a larger generator category). A generator operating a storage facility without any exemption is subject to, and potentially in violation of, many storage permit and operations requirements in parts 124, 264 through 268, and 270.

As an example, § 262.17 provides the conditions for the LQG exemption from storage facility regulation by stating that the LQG may accumulate hazardous waste on site without a permit or interim status, and without complying with storage facility operating requirements, provided it meets the conditions stated in that paragraph. The stated conditions for exemption in § 262.17 are the necessary steps the LQG can take to obtain the exemption, if it chooses to do so.

The distinction between part 262 independent requirements and part 262 conditions for exemption is also important because violation of an independent requirement (as discussed previously in this section), such as an SQG failing to obtain an EPA identification number, can result in a notice of violation and enforcement action for that particular independent requirement only. In contrast, noncompliance with a condition for exemption, such as an LQG accumulating hazardous waste for more than 90 days may result in an entity losing its storage facility exemptions and becoming the operator of a non-exempt storage facility subject to the applicable requirements for storage facilities in parts 124, 264 through 268, and 270.

The first part of the revisions EPA is finalizing contains the definitions for ''independent requirement'' and ''condition of exemption,'' so that the meaning of the terms will be clear as we have described them here. We use these terms throughout this preamble and the final regulations to distinguish between these two types of provisions for generators in part 262.

EPA is also finalizing the changes to § 262.10(a) with some revisions. Section 262.10(a) addresses the purpose, scope, and applicability of the hazardous waste generator regulations and contains both a list of which independent requirements apply to each generator category and also references to the later sections at which generators can find the full list of conditions for the applicable generator exemption. At the same time, § 262.10(a) distinguishes which generator provisions are independent requirements and which are conditions for a generator exemption.

The language in § 262.10(a) also continues to explain the significance of the conditional exemption from storage facility permit, interim status, and operating requirements by stating specifically that if the conditions for exemption (those requirements in § 262.14, 262.15, 262.16, or 262.17) are not met, then the generator will be subject to the permitting or interim facility provisions in parts 124, 264 through 268, 270, and section 3010 of RCRA.

The reaction to the proposed changes was mixed among the states. Many states agreed that the explanations of conditions for exemption from permitting for generators accurately describes how the generator regulations have operated all along and stated that including this explanation in a straightforward way in the regulations would be a benefit and would make the RCRA program more transparent to the regulated community. Some states, however, expressed concern that the new regulations would limit their flexibility in how they enforce the RCRA regulations within their states and were opposed to the changes for that reason.

Comments from industry stakeholders expressed great concern that the language EPA proposed represented a major shift in the Agency's enforcement paradigm to a draconian system of enforcement that would lead to an excessive number of violations and penalties. EPA disagrees with this comments and did not intend to create any sort of shift in EPA's enforcement actions. In response to these comments on the proposal, EPA has revised the final language to be clearer and to further explain the regulations.

In this final rule, EPA reiterates that the distinction between independent requirements for all generators and conditions for exemption from the storage facility regulations that are available to generators who are accumulating hazardous waste on site has always existed in the RCRA program. 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 a larger generator exemption) they would be considered an operator of a non-exempt storage facility, in addition to being a generator. The changes to § 262.10 in this rule do not constitute a substantive change to this long-standing position.

Thus, these revisions to the regulations make this distinction more clear to all generators by listing the independent requirements and conditions for exemption applicable to all hazardous waste generators based on their generator category. The reason for this change is to reduce confusion for the regulated community in the context of compliance and any enforcement actions.

Additionally, EPA is revising another part of § 262.10 in its effort to make the framework of the regulations more clear. Historically § 262.10(g) has stated 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 part 262. However, this paragraph did not previously explain the distinction between the potential penalties for violating part 262 independent requirements and the consequences of not complying with the conditions for a generator exemption that are not subject to direct penalties. As a result, confusion has persisted over the legal consequences of failure to comply with the conditions for exemption and this confusion is reflected in the comments to our proposed rule.

Therefore, EPA is revising § 262.10(g) to make the legal framework clear to the regulated community. Section 262.10(g)(1) establishes that violation of an independent requirement, such as the hazardous waste determination

requirement of § 262.11 or the EPA ID number requirement of § 262.18 is subject to penalty and injunctive relief under section 3008 of RCRA. However, § 262.10(g)(2) establishes, as explained throughout this portion of the preamble, that noncompliance with a condition for exemption is not subject to penalty and injunctive relief under section 3008 of RCRA as a violation of part 262. Rather, noncompliance with a condition for exemption by a generator accumulating waste on site results in the generator losing the storage facility exemption from parts 124, 264 through 268, and 270. Without an exemption, the generator is subject to the requirements of those parts of the storage facility regulations, the violation of which is subject to penalty and injunctive relief under section 3008 of RCRA.

As a whole, EPA believes that these three sets of revisions—the new definitions in § 262.1 and the revisions to § 262.10(a) and (g)—will clarify EPA's longstanding position on how the RCRA generator program works and how the two types of requirements—independent requirements and conditions for exemption—interact and apply. As stated previously, EPA does not consider these revisions to the regulatory language as a change to the RCRA generator program because the regulations that were previously in § 262.34 (now in §§ 262.14–17) and the provisions for VSQGs that were in § 261.5 [20] were always conditions for exemption from storage facility permit, interim status, and operating requirements and have always worked in the same way as we are explaining in this rule.

As explained in the preamble to the proposal, the clarifications regarding the distinction between independent generator requirements, and the conditions for exemption from storage facility regulations for generators that accumulate hazardous waste on site, do not alter the way the generator regulatory scheme has operated over the last 30 years. Similarly, the clarifications regarding the enforcement consequences of independent requirement violations and non-compliance with conditions for exemption do not signal a change from how most enforcement actions have been pursued when a generator has been found in noncompliance with a condition for exemption.

For violations of independent generator requirements, federal and state regulatory agencies continue to retain full enforcement discretion authority to determine whether an enforcement action is warranted and if so, what enforcement tools, including notices of violation, civil and criminal complaints, penalties and injunctive relief, are appropriate to address any detected violations.

Likewise, regulatory agencies retain the same discretion and authority regarding bringing various types of enforcement actions that they have always exercised in situations where non-compliance with conditions for exemptions have been detected. The clarifications in this rule do not mandate that regulatory agencies pursue enforcement actions where they previously would have exercised enforcement discretion in forgoing such actions. In addition, this final rule does not mandate charging and penalization of every violation of regulatory requirements that legally may result when a generator loses its exemption from the storage permit and operations requirements, when, for example, such action would be disproportionate to the seriousness of the generator's violations. EPA and states have always had, and continue to have, enforcement discretion to bring charges and seek penalties that accurately reflect the seriousness of the violations and their potential for harm.

In addition, we do note that when implementing the regulations, enforcement agencies can elect to cite violations based on the failure to obtain a permit in part 270; or on a specific requirement in the storage facility operations regulations in parts 264 and 265 that is a companion to the out-of-compliance condition found in part 262; or both; and/or other violations found in the operations regulations that are applicable to the generator as a result of the non-compliance.

c. What changed since proposal? In the definitions in § 262.1, EPA made some changes to the language of the definition of ''condition for exemption'' to clarify the wording, to complete the list of sections in which conditions for exemption are found, and to correct the list of parts of 40 CFR from which generators can be exempted. EPA removed part 268 from that list. Although part 268 focuses on the technical requirements for land disposal, some parts of it apply to generators, notably parts of § 268.7 and § 268.9. EPA did not want to cause confusion by stating generators would be exempt from part 268 provisions, because those particular part 268 provisions are designed specifically for generators and do apply.

EPA has also made a few changes to the language in § 262.10(a) since the proposal. Some commenters on the proposed rule suggested that we include a list of the independent requirements applicable to VSQGs in § 262.10(a)(1) to make the regulations parallel for VSQGs, SQGs, and LQGs. VSQGs have very few independent requirements, but a VSQG does have to make a waste determination and determine its generator category. EPA agrees with this comment and, therefore, we have inserted a new § 262.10(a)(1)(i) for VSQGs and listed these two independent requirements there.

In addition to that change, we also revised the language in § 262.10(a)(2) to clarify the language and to correct the list of parts that would be applicable to generators that fail to meet the conditions for exemption by deleting part 263 for transporters of hazardous waste and adding the permit requirements in part 270. EPA realized the proposed language was not consistent and, in some places, included references that would not be accurate.

EPA also made changes to the revisions in § 262.10(g) in response to comments that this language was confusing and too ''legalistic.'' It is important to EPA that the regulated community understand the concepts we are describing. Therefore, in § 262.10(g)(1), EPA revised the language to make it clear that the provision is focused on the independent requirements for generators that, by definition, appear in part 262 of the regulations and not requirements in other parts.

EPA also made changes to § 262.10(g)(2), which addresses noncompliance with conditions for exemption. Several comments stated that the language here was confusing. To address this concern, EPA revised the language in an attempt to clarify it for the average generator. The language now explains what might happen in the case of noncompliance in a more narrative fashion, stating what the consequences are of not qualifying for the exemption from the permitting regulations, as EPA has already described in this preamble. Finally, EPA revised the list of parts that apply to a generator that does not qualify for the exemption from the storage facility regulations, in order to be consistent with other places in the rule.

Effect of the Reorganization: Sections 262.1 and 262.10(g) are not affected by the reorganization. Section 262.10(a) is affected by the reorganization—the section now describes the structure of much of part 262. The reorganization is discussed in section VI of this preamble.

[20] Previously referred to as ''conditionally exempt small quantity generators.''

2. Generators Shall Not Transport to a Non-Designated Facility

a. Introduction. 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, §§ 262.18(c),[21] 262.20(b), 262.40(a). However, from experience with implementing 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 that a statement expressly prohibiting a generator from sending hazardous waste to a facility not authorized to accept it is necessary to ensure that generators understand they have this obligation. Therefore, the Agency proposed adding such a new independent requirement at § 262.10(a)(3).

b. What is EPA finalizing? EPA is finalizing this provision as proposed and is promulgating § 262.10(a)(3), which clearly and explicitly states that a generator cannot offer or otherwise cause its waste to be sent to a facility that is not authorized to accept it.

This provision is being added to the regulatory framework and not replacing §§ 262.18(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).

EPA received general support from most of the commenters on this provision, with one commenter stating that the provision was unnecessary. EPA believes that the provision is necessary, as it is a cornerstone of the generator program and should be explicitly stated in the regulations to ensure that all generators are aware of it.

Effect of the Reorganization: This section is not affected by the reorganization.

3. Deletion of § 262.10(c)

a. Introduction. EPA proposed deleting and reserving § 262.10(c) of the hazardous waste regulations because it is outdated, confusing and unnecessary. The provision 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.

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 provisions that apply to a generator that treats, stores, or disposes of hazardous waste on site. 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, thus, should be deleted and reserved.

b. What is EPA finalizing? EPA received general support from most commenters who addressed this issue and is finalizing the deletion of the paragraph. Section 262.10(c) will be reserved to avoid reusing that specific paragraph.

Effect of the Reorganization: This deletion is not affected by the reorganization.

4. Deletion of Reference to 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 deleting paragraph (j) from § 262.10, as well as part 262 subpart J and reserving them.

Effect of the Reorganization: This deletion is not affected by the reorganization.

B. Waste Determinations (40 CFR 262.11)

1. Introduction

Under RCRA, generators are the first critical link in ensuring safe management of hazardous waste. They are the cradle in the cradle-to-grave RCRA system. The first and most important step in the regulations is for generators of solid waste (as defined at § 261.2) to determine whether their waste is also a hazardous waste by using § 262.11. If a generator fails to identify a hazardous waste as hazardous, it will not start the waste down the hazardous waste management path and the critical gateway to the RCRA Subtitle C safe management system will be missed. Such mismanagement of hazardous waste may result in damage to human health and/or the environment.

Thus, the success of the hazardous waste regulatory program depends, to a great extent, on generators making accurate hazardous waste determinations. However, as described in the proposal, EPA has observed through various efforts that generators struggle with this crucial first step with the estimated rates of non-compliance ranging from 20 to 30 percent.[22] With an estimated generator universe in the hundreds of thousands, the potential for the mismanagement of hazardous waste and the impact on public health and the environment is significant. Therefore, given the importance of this regulatory provision, the Agency proposed several changes to the waste determination regulations at § 262.11 in an effort to clarify them, and thereby foster

[21] Section 262.18(c) has been moved as part of the reorganization from § 262.12(c).

[22] Hazardous Waste Determination Program Evaluation, IEc, April 2013. *http://www.epa.gov/evaluate/pdf/waste/haz-waste-determination.pdf*; and Summary of Waste Determination Meetings with VT and NH State Officials on September 27–28, 2010; and ''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*. For more citations, see the proposed Generator Improvements Rule, page 57936–57937, September 25, 2015.

improved compliance by generators. These proposed changes were intended primarily to codify Agency interpretations that have been developed and implemented over the last 35 years in **Federal Register** notices, policy, letters, and other guidance.

Specifically, the proposed rule included revisions to the § 262.11 regulations that would (1) clarify that hazardous waste determinations must be accurate; (2) confirm 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 in such a way as to change the hazardous waste determination; (3) revise the language on how to make a determination for listed hazardous waste in § 262.11 to explain more fully how generators can make this kind of determination using generator knowledge; (4) explain more completely in the regulations at § 262.11 how a generator should evaluate its waste to determine whether the waste may exhibit one of the hazardous characteristics; (5) move 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; (6) revise 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); (7) revise 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 (8) require generators identify all applicable EPA hazardous waste numbers (EPA hazardous waste codes) in subparts C and D of part 261 if the solid waste is determined to be a hazardous waste.

The Agency also requested comment regarding how best to emphasize the importance of accurate hazardous waste determinations and the length of time records must be maintained. Finally, EPA also asked for comment on the utility of developing an electronic decision making tool for hazardous waste determinations.

2. What is EPA finalizing?

The Agency is finalizing the following changes to § 262.11:

(1) Requiring that a solid and hazardous waste determination must be accurate, and expanding on why this determination is important; *i.e.,* to ensure the proper management of the waste within the RCRA framework;

(2) Requiring 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 such that its waste classification may have changed;

(3) Incorporating regulatory language that elaborates on how to make a hazardous waste determination for listed and characteristic hazardous waste;

(4) Referencing the applicable RCRA regulations for identifying possible exclusions or exemptions for the hazardous waste at in § 262.11(e).

(5) Moving the independent recordkeeping and retention requirements for hazardous waste determinations currently found at § 262.40(c) into § 262.11(f), with clarifications on what records must be kept; and

(6) Requiring SQGs and LQGs to identify the applicable RCRA waste codes for the hazardous waste they have generated, but clarifying that such identification must occur no later than immediately prior to shipping hazardous waste off site to a RCRA permitted treatment, storage and disposal facility in accordance with the requirements of § 262.32.

The Agency is not finalizing the proposed requirement that SQGs and LQGs maintain records of their non-hazardous waste determinations. Nor is the EPA finalizing a requirement for SQGs and LQGs to maintain records of their hazardous waste determinations until the generator closes its site.

Finally, EPA requested feedback regarding the feasibility and effectiveness of developing electronic decision-making tools for hazardous waste determinations and whether such tools would be a helpful to generators. Based on comments, the Agency is not finalizing any provision related to electronic decision-making tools for hazardous waste determinations but will continue to explore feasibility in the future. The Agency took comment on a number of electronic tools and reporting options and has organized our discussions of all of these options in section XIII of this preamble. See this section for a more in-depth discussion regarding electronic waste determination decision tools and other electronic options.

a. Solid and hazardous waste determinations must be accurate. The Agency is finalizing the proposed requirement for generators to make accurate hazardous waste determinations. However, we are also modifying the proposed regulatory text in response to comments to provide a rationale for this change by stating that the accurate determination is in order to ensure wastes are properly managed under RCRA. Accurate hazardous waste determinations are necessary to ensure the proper management of waste within the RCRA framework; in doing so, environmental protection will be enhanced and greater generator accountability fostered.

EPA believes that waste determinations are of utmost importance and warrant this emphasis regarding accuracy. As one commenter stated, ''Accurate waste determinations are required to ensure that each waste stream generated by a company is properly managed. Additionally, accurate waste determinations protect workers by making the company and the worker(s) aware of the dangers of the waste(s) being managed. Further, accurate waste determinations will ultimately lead to an accurate generator status determination.'' [23]

Some commenters argued that addition of the term ''accurate'' to the regulation would be superfluous, as the Agency's intent that hazardous waste determinations be accurate is self-evident, and that adding this term may even imply that other aspects of the RCRA program need not be accurately implemented. The Agency's intent is that all parts of the RCRA regulatory program be implemented in the manner required by the regulations. In adding the term ''accurate'' to the waste determination requirement of § 262.11, the Agency intends to emphasize the importance of this step in the waste management process. Inaccurate hazardous waste determinations will lead to violation of other RCRA regulatory requirements and mismanagement of the waste, which may result in damage to human health or the environment.

[23] Comment by individual consumer. Docket number: EPA–HQ–RCRA–2012–0121–0160

Another reason for including the language explaining a generator must make an accurate waste determination to ensure the wastes are properly managed is to clarify the applicability of § 262.11 in instances in which generators choose to manage their non-hazardous wastes as hazardous wastes. Even if the waste may not be hazardous, ''over managing'' the waste is acceptable and meets the requirements in § 262.11 because the generator has made a determination intended to ensure, beyond a doubt, proper and protective management of the waste within the RCRA regulatory program. The practice of over-managing non-hazardous waste as hazardous waste has been in existence for years and EPA's final language in § 262.11 continues to allow this practice.

In addition to concerns about the regulatory status of over-classified wastes, commenters also expressed concerns about generators using the best available information and still making an inaccurate determination because of the errors and omissions of others. Generators are, and always have been, ultimately responsible for making accurate hazardous waste determinations. Hiring a third party contractor, waste broker, or consultant, or reliance on information provided by suppliers does not transfer this responsibility to those third parties. While the Agency understands that reliance on third parties may sometimes result in an inaccurate waste determination, the responsibility remains with the generator. It would be prudent for the generators to practice due diligence and establish processes and procedures that ask questions of their suppliers and waste management companies to understand why their materials are hazardous or not.

One commenter mentioned that the term 'accurate' also does not provide any guidance about how intensive or deep a generator's research must be to meet the intended standard. This commenter goes on to discuss that a five-minute review of a Safety Data Sheet (SDS) and product brochure may well be 'accurate' but much too superficial to ensure the generator has considered all potentially hazardous attributes of the waste. The Agency disagrees with this commenter. Waste determinations are site specific and each generator must evaluate the amount of time and effort needed to make an accurate waste determination. In some cases, a review of an SDS may suffice because the identification of the constituents and their concentration ranges may make it clear whether the chemical is or is not a hazardous waste upon disposal. Conversely, the Agency can see a number of situations where a generator must conduct analysis and testing to meet this requirement. Regardless of the effort invested in making a hazardous waste determination, the Agency's intent is that the *results* of the determination be accurate and bring about the proper management of the waste under the RCRA regulatory framework.

b. A hazardous waste determination must be made at the point of generation before any dilution, mixing, or other alteration of the waste occurs. As described in the proposed rule, the Agency's policy and position from the beginning of the RCRA program has been that a waste determination must be made at the point of generation (*i.e.,* the point at which the material first becomes a solid waste under RCRA; See, for example, 55 FR 11830, March 29, 1990). This includes both the time and place the waste was first generated. By requiring that the hazardous waste determination be made at the point of generation in § 262.11(a), the final 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 may have changed its physical or chemical characteristics. 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 on the generator's determination to allow them to safely manage the waste and provide appropriate treatment and disposal. This proposed revision to § 262.11 is not a substantive change to the program; preambles to a number of previous rules explain that EPA has always maintained that hazardous waste determinations must be made at the initial point of generation.[24] The Agency is finalizing this requirement as proposed.

Many commenters expressed concern with EPA's proposed requirement that hazardous waste determinations must be made at the point of generation. For many generators, the Agency believes making a hazardous waste determination on new wastes should be an infrequent evaluation. An analysis of 2013 biennial report data identified 46 percent of LQGs generated between one and five waste streams. Similarly, this same analysis found that overall LQGs generated a median of 6 hazardous waste streams and a mean of 13 hazardous waste streams.[25] Many of these generators continue to generate the same wastes over long time periods, and absent changes in the waste, the generator may continue to rely on an initial determination of the waste's RCRA status (particularly for listed hazardous wastes). Of course, should a generator in this scenario change either its production feedstocks or production process, or know of any other factors that may result in changes to the waste's origin or properties, the generator may have a new waste requiring a new waste determination.

Based on EPA's 2013 Hazardous Waste Determination Program Evaluation [26] and stakeholder discussions, the Agency has determined that most generators make a hazardous waste determination by using knowledge of their processes, including feedstocks and possible side reactions, and other materials used at the facility to evaluate whether waste is hazardous or not. In order to properly classify and manage waste, generators must make a hazardous waste determination when the waste is first generated. Most generators should have sufficient knowledge of their waste to determine whether the waste is hazardous and why it is hazardous *i.e.,* whether the waste meets one of the listing descriptions in subpart D of part 261 [27] or whether the waste may exhibit one or more hazardous waste characteristics described in subpart C of part 261, and to manage the hazardous waste according to its hazards, under RCRA. When generator knowledge is inconclusive or uncertain, testing may be appropriate.

We have and continue to recognize that situations will occur where a generator is not able to make an accurate waste determination based on knowledge alone, and the generator will need to send a representative sample of the waste to be tested. However, as the EPA has stated in the past, the generator must manage the waste as hazardous waste until the results of the test are received, and continue to manage it as

[24] See 45 FR 33095–96, May 19, 1980 and 55 FR 11830, March 29, 1990.

[25] See ''Regulatory Impact Assessment of the Potential Costs, Benefits, and Other Impacts of the Final Hazardous Waste Generator Improvements Rule.'' A copy of the analysis is available in the docket for this action.

[26] Hazardous Waste Determination Program Evaluation, IEc, April 2013. *http://www.epa.gov/evaluate/pdf/waste/haz-waste-determination.pdf.*

[27] **Note:** If the waste is listed, a generator may file a delisting petition under 40 CFR 260.20 and 260.22 to EPA or the authorized state to demonstrate that the waste from this particular site or operation is not a hazardous waste.

hazardous waste if the hazardous waste determination is confirmed by the test.[28]

The Agency is also aware that many generators, such as academic and industrial laboratories, generate new or different waste streams frequently, and that making hazardous waste determinations for multiple waste streams is more difficult than when a generator has a small number of waste streams that seldom vary. However, EPA stresses that in the laboratory setting, it may be even more important to make accurate hazardous waste determinations at the point of generation, so that emergency scenarios involving mixing of incompatible wastes or other dangerous situations can be avoided and lab worker safety maintained. Whether a generator generates one new waste daily or annually, the process for making a hazardous waste determination is still the same. Through knowledge of the process or materials, and/or through testing, all generators must make a hazardous waste determination at the point of generation. The Agency would expect generators producing new wastes frequently to establish efficient processes to make those waste determinations, particularly to the extent they can use knowledge of the materials or feedstocks in the waste determination process.

Both the retail and laboratory sectors raised concerns about the undue waste determination burden from the large numbers of potentially hazardous wastes that might be generated at their sites. EPA realizes that both of these sectors operate differently from the traditional industrial hazardous waste generators. In fact, to address laboratory sector concerns, EPA developed an optional set of alternative standards in 40 CFR part 262 subpart K, entitled, ''Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities.'' This rule was designed to account for the manner in which academic laboratories operate. In addition, a few years ago, the EPA began a review of how RCRA hazardous waste regulations apply to the retail sector in order to better understand retailers' challenges in complying with RCRA regulation. These efforts are on-going.

A few commenters disagreed with the proposal to add language clarifying that waste determinations must be made at the ''point of generation,'' arguing that the Agency has issued waste determinations in the past contradicting this policy. The Agency disagrees with this commenter. EPA has been consistent in its position that a waste determination must be made at the point of generation, unless for some unforeseen and rare circumstance, the determination must be made in a subsequent location. Without clarifying in the regulation that a waste determination must be made at the point of generation, the RCRA ''cradle to grave'' system could be easily circumvented, with generators and handlers able to delay the waste determination process until a convenient time and place, including by a subsequent handler who knows little about the waste.

However, in response to comments, the Agency is stating that existing guidance and memoranda addressing specific situations relating to the point of generation are not superseded by this final rule. Specific examples of such situations are discussed in the Agency's Response to Comment document found in the docket to this rule.

As part of finalizing § 262.11(a), the Agency is also finalizing the language that explicitly clarifies the waste determination policies identified and discussed in 1980 (45 FR 33095–96, May 19, 1980); *i.e.,* that the point of generation is identified as the point at which the material is first identified as a solid waste under RCRA, before any dilution, mixing, or other alteration of the waste occurs. Further, RCRA solid and hazardous waste must be reevaluated 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, such that the RCRA classification may have changed. As discussed in the proposal rule at 80 FR 57938, and in referring to characteristic hazardous wastes, the Agency stated:

> 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.

Many commenters were concerned that in practice, this provision would require them to constantly re-evaluate their wastes. However, the Agency stands by and is not changing this long-standing position. Generators have a responsibility to understand the properties of their waste, not only to make an accurate determination, but also to manage the waste properly. In many instances, the properties of the waste most likely will not change. But in other situations, exposure to the elements, or the very nature of the chemicals in the waste may cause its properties to change. Generators have a responsibility as part of the waste determination and waste management processes to be aware of those situations.[29] In such situations, generators should also notify any subsequent waste handlers to monitor for changes in waste properties. The Agency emphasizes that a generator needs to understand what type of waste it has generated, why it is or is not hazardous at the point of generation, and proceed accordingly in managing and monitoring its waste. If a generator is aware that its waste tends to have the potential to change over time, the generator may wish to establish processes to determine whether the nature of its waste has changed and make a new hazardous waste determination.

c. Use of generator knowledge and testing in making a hazardous waste determination. At § 262.11(c) and at § 262.11(d)(2), the Agency, in its proposed rule, elaborated on the existing regulatory text associated with the use of generator knowledge to determine whether wastes are either listed hazardous wastes and/or characteristically hazardous waste, respectively. As part of this proposed change, the Agency provided examples of the types of knowledge and information deemed acceptable that generators may use. The types of information identified in § 262.11(c) and § 262.11(d)(2) that generators could use as acceptable knowledge in determining if their wastes are listed wastes, or characteristically hazardous, were not all inclusive, or limited to those examples. However, this may not have been clear in the proposal. The Agency, therefore, is finalizing § 262.11(c) and now § 262.11(d)(1) with slight changes to clarify that the examples identified in the regulatory text are not limited to those kinds of information.[30]

[28] See letter from Lowrance to Axtell, April 21, 1989, RCRA Online 11424.

[29] See for example, discussion at 80 FR 57939 and 55 FR 39410, September 27, 1990.

[30] **Note:** As stated below, the Agency reversed § 262.11(d)(1) and (d)(2) in the final rule, with paragraph (d)(1) emphasizing the types of knowledge a generator could use in making a hazardous waste determination and paragraph (d)(2) addressing test methods.

Similarly, in the proposal at § 262.11(d)(1), the Agency elaborated on the test methods generators may use to determine whether their wastes are hazardous. Included were test methods set forth in subpart C of part 261 or an equivalent method approved by the Administrator under § 260.21. The Agency, in its proposal, also stated under § 262.11(d)(2) that 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.

The Agency received numerous comments on this latter provision, with commenters expressing concerns that by stating a regulatory test, when properly performed, is ''definitive'' in determining a waste's regulatory status, EPA was also implying that use of generator knowledge was not definitive and less trustworthy as a means to make a hazardous waste determination. Several commenters went so far as to suggest the Agency, for all practical purposes, was eliminating the ability to use process knowledge for waste determinations and was requiring actual testing.

These commenters misinterpreted the proposed change. The Agency reaffirms that generators may use knowledge of their processes and of the materials used in the process, among other types of information (as described in the proposal preamble), to make a hazardous waste determination. In fact, generators can only use knowledge of their process and knowledge of the materials used in the production process to determine whether their waste meets any of the F-, K-, P- and U-waste listings.

Further, in determining whether wastes may exhibit a hazardous characteristic, EPA expects that most generators will use generator knowledge to make waste determinations, and this is appropriate provided that such knowledge results in an accurate determination. Where generator knowledge is inconclusive or uncertain, testing using the test methods described in part 261 subpart C, or equivalent methods approved by the Agency in § 260.21, will resolve any uncertainty. The results of such testing, when properly performed, are definitive because these tests are part of the regulatory definition for those parts of the hazardous characteristics that include them. The Agency is reversing the order of the proposed § 262.11(d)(1) and (d)(2) in the final regulations to clarify the roles of knowledge and testing in making hazardous waste determinations.

One commenter mentioned that while EPA has adopted the terminology ''acceptable knowledge'' in the rule from its waste analysis guidance, we have not identified what is unacceptable knowledge and we may be adding confusion to the process. While the Agency believes the term ''acceptable knowledge'' is clear, and has used it in discussing this topic in older **Federal Register** notices, and also included examples of those types of information that may assist a generator in making an accurate hazardous waste determination in the proposal preamble, the Agency also stated above that the examples provided do not comprise an inclusive list, but rather are examples. As to what the Agency would view as ''unacceptable,'' guessing is not acceptable. The Agency also views using resources that do not contain information about the process that produced the waste or the chemicals in the waste as unacceptable. It is also unacceptable for generators to simply assume their waste is non-hazardous until told otherwise by the relevant regulatory agency. In using the phrase ''acceptable knowledge'', the Agency intends that knowledge-based determinations be based on relevant and reliable (*i.e.,* verifiable) information from any source that indicates, to a greater or lesser degree, that the waste is either hazardous or non-hazardous under part 261 subpart C and D regulations, and that such information is organized or presented in a logical way that illustrates how it supports the generator's conclusions. Such determinations are inherently done on a case-by-case basis. In some cases, this may be clear and straightforward and in others more complex or uncertain, depending on the waste and the availability of reliable and relevant information. Similarly, the Agency cannot *a priori* determine how much information is ''enough'', as this too is case-specific. As discussed previously, the Agency's intent is that hazardous waste determinations, regardless of their basis, be accurate and result in appropriate management of the waste under RCRA.[31]

One commenter also suggested that the word ''applicable'' be inserted before ''methods'' in proposed § 262.11(d)(1) to read: ''The person must test the waste according to the *applicable* methods set forth in Subpart C of § Part 261 or according to an equivalent method approved by the administrator under § 260.21 and in accordance with the following . . . (emphasis added)''. The commenter argued that by adding the word ''applicable,'' this rule will make clear, for example, that if a waste is being evaluated for the toxicity characteristic, a Method 1311 test should be used, as opposed to one of the test methods that must be used to evaluate whether a waste is ignitable. The Agency agrees with this clarification and has modified the regulatory text accordingly.

d. Possible exclusions and restrictions for the waste at § 262.11(e). The Agency is moving the language that was proposed at § 262.11(g) to § 262.11(e) in the final rule. This language states that if the waste is determined to be hazardous, the generator must refer to the applicable RCRA regulations of this chapter to determine whether other possible exclusions or restrictions apply to the management of the specific waste. The Agency believes, in retrospect, that this paragraph belongs more appropriately immediately after the generator has determined whether it has generated either a listed and/or characteristically hazardous waste. As a result of this change, subsequent paragraphs in this section shift in numbering as well.

e. Recordkeeping Requirements at § 262.11(f). The Agency is finalizing, with clarifications, a number of revisions to the waste determination recordkeeping requirements proposed at § 262.11(e), but being finalized at § 262.11(f). First, we are finalizing the move of the waste determination recordkeeping requirements previously found in § 262.40(c), into § 262.11, in order to highlight the recordkeeping requirement for hazardous waste determinations. The Agency is also providing a reference in § 262.40(c) to the new regulatory location of the hazardous waste determination recordkeeping requirement in § 262.11(f) instead of deleting and reserving § 262.40(c). EPA is finalizing this change as a conforming change with the reorganization to prevent generators that are looking for recordkeeping requirements in § 262.40 to miss the other recordkeeping requirement now located in § 262.11.

Second, we are finalizing the proposed expanded language to better articulate the types of waste determination information that must be maintained as records of hazardous waste determinations made using

[31] In using knowledge of a waste to make a hazardous waste determination, the Agency would also offer the advice that generators review and account for information they may identify that may tend to refute their conclusions. A conclusion that considers and honestly weighs adverse information is much more likely to be accepted by the Agency than is a conclusion based on data carefully selected to support the conclusion and which ignores contrary information that may be more convincing.

generator knowledge and/or testing. This language includes a list of specific types of records that might be used when making a waste determination by either method. To further clarify, the Agency is incorporating into the final rule language the term ''other determinations,'' which was previously in the text in § 262.40(c). This term captures the concept that records must be kept for hazardous waste determinations made by any method.

While the Agency is aware that some states interpret the words ''other determinations'' in the existing § 262.40(c) recordkeeping requirement to include non-hazardous waste determinations, as discussed in the proposed rule, EPA has not held, and continues to not hold, the same interpretation. By adding this language back into the final hazardous waste determination recordkeeping regulatory section rather than deleting it, as proposed, it is possible that those states will maintain their more stringent interpretation.

As discussed in more detail later on, EPA is not finalizing the requirement that generators maintain records of their non-hazardous waste determinations. However, the Agency will continue to recommend that generators document their non-hazardous waste determinations as a best management practice, particularly in situations where wastes contain known hazardous chemical attributes that could be mistaken for a hazardous waste.

Third, the Agency is finalizing the time period as proposed: Waste determination records must be maintained for at least three years. EPA asked for comment on extending the time period to the life of the facility and commenters were practically unanimous in opposing the extension, responding with various reasons why extending this time period is not practical, including the existence of a statute of limitations after which no enforcement actions can be brought against a generator, and the fact that once a production process changes and a particular waste is no longer generated, those records are not needed for the life of the facility.

EPA proposed to change when the three-year clock would start for this recordkeeping requirement to the date last generated. However, we are reverting to the original § 262.40(c) language that states that three years is measured from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. The few comments on this proposed change referred to previously existing regulatory language as if the commenters did not realize we had proposed a change. The Agency has reconsidered this issue and concludes that generators will have an easier time maintaining records of when their waste was sent for disposal rather than generated. Moreover, maintaining the status quo in the original regulations eliminates the need for generators to change operating procedures.

Fourth, the Agency is deleting the sentence regarding the co-mingling of wastes proposed at § 262.11(e). With the Agency addressing the mixing of solid with hazardous wastes by generators at § 262.13(f), this statement in § 262.11 is not needed.

Fifth, a few commenters suggested that types of information not be limited to those cited in the proposed rule at § 262.11(e). The Agency believes that the language in § 262.11(e) is very broad intentionally to capture any type of information used to support a hazardous waste determination. Thus, we believe that the examples provided are not all-inclusive and this is already implicit in the regulatory text and we have not made a change.

Finally, the Agency is reaffirming in preamble that inspectors have the existing authority to require a generator to perform a waste determination during an inspection to support their finding that the waste of concern is not a hazardous waste if no documentation exists.

f. SQGs and LQGs must identify the RCRA waste codes associated with the hazardous waste. The Agency is finalizing at § 262.11(g), the requirement proposed at § 262.11(f) that all applicable EPA hazardous waste numbers (EPA hazardous waste codes) be identified, but with two clarifications: (1) This requirement only applies to SQGs and LQGs; and (2) the codes do not need to be marked on the container until the hazardous waste is being prepared for shipment off site (*i.e.* pre-transport requirements). However, SQGs and LQGs may have waste management practices in place and choose to identify the RCRA waste codes sooner than prior to shipment.

EPA is limiting this requirement in the final rule to SQGs and LQGs because VSQGs have no requirement to label or mark their hazardous waste. Without this labeling or marking requirement, the Agency believes it is unnecessary for the VSQG to identify all applicable hazardous waste codes.

Currently, there is no direct or explicit regulatory linkage between the hazardous waste identification requirements of § 262.11 and hazardous waste manifesting requirements of subpart B of part 262 where RCRA waste codes must be identified. From stakeholder discussions, the EPA understands that some states interpret the hazardous waste determination process to include identifying the waste codes. We view this requirement to simply provide the connection between what wastes are in the container and what is on the hazardous waste manifest document. The Agency believes this linkage is important to program integrity and received support from commenters.

These commenters mentioned that the proposed identification of RCRA waste codes on containers at the time of the pre-transport requirements at § 262.32 provides another level of hazard communication for regulatory inspectors and emergency responders. They also suggested that this requirement decreases overall burden for generators, transporters and TSDFs because there will be fewer instances when a generator has failed to identify its hazardous waste, and therefore fewer cases where a designated facility needs to identify the hazardous waste or send the wastes back to the generator for proper identification. Similarly, this additional marking information also provides for quicker and more confident acceptance screening at the receiving facility.

Commenters opposing this requirement raised concerns about the increase in burden and potential conflicts with DOT requirements, such as with 49 CFR 172.401. EPA disagrees that this is an increase in burden. Generators have always had to identify hazardous waste codes for the manifest and many states already require waste codes on containers. Without EPA hazardous waste codes, TSDFs may not be able to treat the waste to meet LDR requirements. In terms of potential DOT conflicts, EPA's pre-shipment marking requirements in § 262.32 (where we are finalizing the marking of hazardous waste codes on containers) are designed to be in compliance with 49 CFR 172.304 and these regulations reference that the marking must be in compliance with the DOT regulations.

Other commenters raised the concern that adding waste codes to containers managed on site does not improve a generator's ability to properly manage that waste. EPA agrees with these comments that generators treating, storing, or disposing their hazardous waste on site do not need to identify the hazardous waste codes because they should have sufficient information already about their waste to ensure they meet the proper LDR requirements.

Finally, as discussed in more detail in the marking and labeling section IX.E, EPA is finalizing the requirement in

§ 262.32 to add the waste codes to containers with the clarification that in lieu of marking their containers with EPA waste codes, generators may use a nationally recognized electronic systems such as bar coding (common industry practice) that includes the EPA waste codes. Also, EPA reaffirms that it is not changing the manifest waste code procedures. See the marking and labeling section IX.E for additional discussion.

g. Non-hazardous waste determination documentation. The Agency is not finalizing the proposed recordkeeping requirement that generators maintain documentation of their non-hazardous waste determinations. The objective of this proposed change was to foster a change in generator behavior related to their waste determination processes and procedures. By requiring such documentation, generators would need to further consider why the solid waste was not a hazardous waste and provide a rationale in writing.

Numerous organizations voiced disapproval of the Agency's proposal to require SQGs and LQGs to document their non-hazardous waste determinations. Reasons included, but were not limited to, the following themes:

(1) The Agency has no legal authority to require such documentation because the Subtitle C regulations do not regulate non-hazardous wastes;

(2) There is no compelling reason to require such documentation because generators have a very strong incentive to ensure they have accurately classified their wastes, given that failure to do so can result in significant penalties for the illegal management of hazardous waste;

(3) The Agency failed to account for generators that generate numerous waste streams every day, such as the retail sector and academic and industrial laboratories; and

(4) The rule would create so much regulatory uncertainty that the only way to protect themselves against non-compliance would be to document every waste stream generated.

Counterbalancing these arguments were comments from other organizations supportive of the non-hazardous waste determination recordkeeping requirement with the following themes:

(1) Accurate waste determinations are difficult for regulators to verify if records are not kept, particularly for unknown waste that reasonably may display the attributes of a hazardous waste but for which there is no written evaluation showing it as non-hazardous;

(2) Unknown wastes must be assumed to be hazardous and managed accordingly unless and until evaluated to be otherwise;

(3) Recordkeeping costs are overstated. Businesses spend time and effort identifying and purchasing certain materials based on their characteristics so they should already have information about the nature of these materials;

(4) Lack of documentation of waste determinations leads to confusion when knowledge is lost during staff turnover and must be re-created by the replacement staff; and

(5) Most generators already keep this information as part of best practices.

The Agency concludes that many of these arguments, both in favor of and against the proposal, have some measure of validity. However, the Agency strongly recommends that as a best management practice, generators document their non-hazardous waste determinations, particularly in situations where the waste may display the attributes of a hazardous waste and where staff turnover may cause a worker to question the contents of a container. Most importantly, when situations warrant, inspectors have the authority to ask that a hazardous waste determination be performed by the generator in the absence of any documentation and the attributes of the waste suggest a potential problem.

Several commenters questioned the Agency's authority to require such documentation of non-hazardous waste determinations because the Subtitle C regulations do not regulate non-hazardous wastes. The commenters are incorrect. The Agency has the authority under sections 3007 and 2002 of RCRA to require such records be kept, but instead has chosen not to finalize our use of such authority in this case and rather follow an alternative approach.

Specifically, RCRA section 3007 allows us to gather information about any material when we have reason to believe that it may be a solid waste and possibly a hazardous waste within the meaning of RCRA section 1004(5). A generator will not know definitively whether a waste that has potential to be hazardous is hazardous or non-hazardous unless it identifies the waste and documents that identification, even if the waste turns out to be non-hazardous. Moreover, RCRA section 2002 also gives EPA authority to issue regulations necessary to carry out the purposes of RCRA. The intent of the proposed requirement to document non-hazardous waste determinations is to provide basic information to EPA about the potentially hazardous nature of the waste that is generated (even if it is ultimately determined to be non-hazardous) in order to ensure its proper management, enable regulatory agencies to monitor compliance adequately and to ensure appropriate environmental protection.

Several commenters also questioned the need for such documentation because generators have a very strong incentive to ensure they have accurately classified their wastes, given that failure to do so can result in significant penalties for the illegal management of hazardous waste. The Agency does not disagree with this argument, but in reality, not all generators are motivated to comply, given the high rate of non-compliance with making accurate hazardous waste determinations.

Other commenters, particularly in the retail and academic and industrial laboratory sectors, stated that the Agency failed to account for organizations with numerous waste streams generated every day when proposing documentation of non-hazardous waste determinations. The Agency was aware of and did identify several sectors (including these) in the proposal where this requirement had the potential to be more challenging, given the high number of waste streams generated. Also, the Agency sought comment on how best to address this potential burden. However, the Agency is not finalizing this provision.

A few commenters also stated that most generators already keep this information because their state requires it or because they realize the importance of systematically evaluating the waste streams they generate to ensure they are managing it properly. As stated previously, the Agency supports this non-hazardous waste determination recordkeeping practice by industry and recommends it as a best management practice.

The Agency did receive a number of comments supporting the proposal to require SQGs and LQGs to document their non-hazardous waste determinations. This support bolsters the Agency's conclusion that more work is needed to ensure generators make accurate hazardous waste determinations. At this time, in lieu of requiring such documentation, the Agency is considering initiating a dialogue with industry and states to identify the root causes of this problem and identify potential solutions. Such solutions may include establishing best management processes and practices, along with the possible development of generic decision tools or other technical assistance information that can assist generators with the process of

evaluating whether the solid waste they have generated is a hazardous waste.

C. Determining Generator Category (40 CFR 262.13)

A generator must correctly count the quantity of hazardous waste that it generates in order to determine its generator category. During the development of the proposed rule, EPA determined that the extent of the counting requirements in the generator regulations at the time consisted of lists in § 261.5(c)–(d) and (h)–(j) of what materials must and must not be included when counting waste. These regulations did not address other counting considerations. EPA therefore proposed a new § 262.13 to describe how a generator determines its generator category, containing the previously existing language in § 261.5(c)–(d) as well as some specific steps to calculate an amount that includes the correct amounts of hazardous waste.

Elsewhere in the proposed rule, EPA proposed regulatory language for each of the categories of generators describing how the rules regarding mixing from § 261.5(h)–(j) would impact their generator categories and how to count mixtures of hazardous waste and solid waste. EPA is consolidating the discussion of counting hazardous waste from all these areas of the proposed rule into § 262.13 for the final rule in order to make these requirements easily understandable by the regulated community and thus improve compliance and consistency.

1. Counting Hazardous Waste

a. Introduction. The purpose of proposed § 262.13 was to lay out the framework for making a generator category determination in paragraph (a) and to stress that the generator's category can change from month to month. The proposed regulation set forth procedures to determine whether a generator is a VSQG, an SQG, or an LQG for a particular month, as defined in § 260.10. As EPA discussed in the proposed rule, the regulations in § 262.13 do not constitute a new requirement for generators, but in the regulations up to this point, the counting requirements have not been presented in a clear and succinct manner.

b. What is EPA finalizing? EPA is finalizing a new § 262.13 to address how to make a generator category determination. It includes the language discussed in this section on counting as well as the mixing requirements discussed later in this chapter of the preamble. The addition of the definitions of generator categories to § 260.10 and this paragraph on how to make a generator category determination provide specific instructions on this matter for the regulated community and thereby improve compliance with the generator regulations.

The introductory language of § 262.13 states that a generator must determine its generator category and that the category is based on the amount of hazardous waste that is generated in a calendar month. This requirement for a generator category to be based on a monthly generation amount is derived from the RCRA statute and is critical to the framework of the generator regulations.[32] The regulations also state that a generator's category can change from month to month. Although many generators change categories several times a year, depending on various factors such as inputs, demand, processing volume, and production, EPA knows many generators choose to operate as LQGs all the time to simplify their regulatory compliance. EPA encourages this practice, but notes in the regulations that actual generator category can change month to month.

In addition, EPA notes that a VSQG or an SQG that generates more hazardous waste in a particular calendar month than allowed in its generator category must make a determination that it now meets the higher generator category (if it is not covered by the episodic generation provisions discussed in section X of this preamble).

Paragraph (a) of § 262.13 presents basic procedures for counting hazardous waste generated in the calendar month, subtracting or excluding anything that is exempt and using the difference to determine the generator category. Paragraph (b) of § 262.13 specifically addresses 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 it selects the appropriate category for the total amount and types of hazardous waste generated.

Sections 262.13(c) and (d) are existing provisions that EPA is moving 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.

Section 262.13(e) completes the main process of counting by stating that based on the generator category that is determined under the steps laid out in the section, the generator should determine which of the sets of generator provisions apply to it.

c. What changed since proposal? EPA made several changes to § 262.13(a)–(e) in response to the comments received on the proposed rule. First, several commenters pointed out that this section tailors its procedures for generators that generator acute and non-acute hazardous waste in the same month, but does not directly address generators that generator only acute hazardous waste or non-acute hazardous waste. EPA agrees with this comment and, therefore, converted the proposed paragraph (a) to introductory language for the section and made a new § 262.13(a) that addresses those generators that generate only acute or non-acute hazardous waste. This section includes a simplified version of the same procedures in paragraph (b) for those without both types of hazardous waste.

Commenters also noted that although EPA included a Table 1 to § 262.13 in the regulations, the table was not referenced in the regulations. EPA therefore added references to Table 1 in the regulatory text in paragraphs (a) and (b). Also, in Table 1 in this section, we are deleting the first column of numbers that denoted which generation scenario was being represented by each row. This column was potentially useful in the preamble discussion, but served no purpose in the regulations and has been removed.

In addition, several commenters stated that although a generator's category is based on the amount of hazardous waste it generates in a calendar month, every generator need not make an exact category determination every month. The commenters argued that many generators have a very accurate sense of what category they are month-to-month because their processes generate consistent amounts of hazardous waste over time. Only those generators with generation amounts near the limit would have to count regularly to make the category determination. These commenters stated that many generators with categories that fluctuate from month-to-month choose to operate as LQGs full time and would, therefore, not need to count every month to determine generator category.

EPA agrees with the commenters and therefore has made revisions to the introductory language for the section to state that a generator is required to determine its generator category. The language continues to stress that a category is based on monthly generation

[32] RCRA 3001(d).

and may change from month to month, but generators are not required to follow the included steps every month. EPA notes, however, that an LQG must keep track of its amounts of hazardous waste for the purpose of completing the Biennial Report, when applicable.

Finally, EPA added the language in § 262.13(e) upon determining that although the purpose of the section is to lead the generator through counting its hazardous waste for the purpose of determining the correct generator category, the proposed regulations did not include the final step in the process.

Effect of the Reorganization: This section is partially affected by the reorganization. Some of the language in § 262.13 on what materials to count when determining generator category moved from previous § 261.5, but much of this regulation is new text. Section VI of this preamble discusses the reorganization.

2. Mixtures of Non-Hazardous Waste and Hazardous Waste

a. *Introduction.* In an effort to explain how mixtures of non-hazardous waste (solid waste) and hazardous waste affect generator category determinations, the Agency proposed a series of modifications in §§ 262.14, 262.16 and 262.17 for VSQGs, SQGs and LQGs, respectively. The proposed rule also discussed how SQGs and LQGs are subject to the mixture rules in § 261.3. As explained in the preamble to the proposed rule on page 57928, this clarification was also designed to clarify the language that was found at §§ 261.5(h) and (i) which addressed the mixing of hazardous waste and non-hazardous waste by a VSQG and the implications to its generator category if the mixture is determined to be a hazardous waste. The language specifically addressed how the regulations apply when VSQG hazardous waste is mixed with non-hazardous solid waste and the resulting combination exceeds the VSQG quantity limits.

b. *What is EPA finalizing?* The Agency is finalizing the regulations applicable to generators mixing hazardous waste with solid waste as follows:

1. Moving the proposed relevant provisions of §§ 262.14(b), 262.16(d) and 262.17(f) applicable to mixtures of hazardous waste and solid waste to § 262.13(f). The act of mixing a solid waste and a hazardous waste is not the same as a generator accumulating hazardous waste, nor is the act of mixing in any way related to the conditions for exemption from permitting. The purpose of moving the requirements for mixtures to § 262.13 is to make generators aware of the regulations applicable to mixtures of hazardous waste and solid waste, and to accurately explain how the mixing of a hazardous waste with a solid waste may affect a generator's category determination for the calendar month.

2. Clarifying that a VSQG mixing hazardous waste with solid waste can remain subject to § 262.14, even though the mixture may exceed the VSQG quantity limits (either 100 kg per month generated or 1,000 kg accumulated on site at any one time) unless the mixture exhibits one or more of the characteristics of a hazardous waste. If the resultant mixture exhibits a hazardous waste characteristic, the VSQG must add the quantity from the resulting mixture with any other regulated hazardous waste generated in the calendar month and determine whether the total quantity generated exceeds the generator calendar month quantity identified in the definition of generator categories found in 40 CFR 260.10.

3. For both SQGs and LQGs:

a. Reemphasizing that both the hazardous waste portion of the resulting mixture and other amounts of hazardous waste generated in a calendar month must be counted towards a generator's category determination.

b. Making SQGs and LQGs aware of the § 268.3(a) prohibition of impermissible dilution of a hazardous waste with a solid waste to decharacterize the hazardous waste. The regulation at 40 CFR 268.3(a) states, ''. . . no generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a *substitute for adequate treatment to achieve compliance* (emphasis added) with Subpart D of this part . . .'' In particular, if a solid waste is mixed with a characteristic hazardous waste, the solid waste must provide a useful and effective contribution to de-characterizing the hazardous waste (*i.e.* possess a unique property to remove the hazardous characteristic from the hazardous waste instead of merely diluting it).

c. Stating that SQGs and LQGs are subject to the regulations applicable to mixtures found in § 261.3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i).

d. Stating that SQGs or LQGs that mix a characteristic hazardous waste with a solid waste to remove any hazardous characteristics are subject to the treatment standards found at § 268.40, as well as the ''impermissible dilution'' requirements in § 268.3.[33]

4. For all generators, reminding them they must make a hazardous waste determination at § 262.11 when mixing a hazardous waste with a solid waste.

c. What changed since proposal? As discussed previously, the Agency made a significant number of clarifying changes in the final rule for this provision based on review and evaluation of comments. These include the following: Moving the relevant proposed provisions of §§ 262.14, 262.16 and 262.17 applicable to mixtures of hazardous waste and solid waste to § 262.13 (f); stating that SQGs and LQGs are subject to the mixture rule found in §§ 261.3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i); stating that SQGs and LQGs must comply with § 268.3(a), which prohibit's impermissible dilution to avoid regulation; for all generators, stating that both the hazardous waste portion generated from mixing and the hazardous waste generated in a calendar month must be counted for establishing the generator category for that month; and stating that all generators must make a hazardous waste determination for their mixed waste.

d. Major comments. Many commenters supported the proposed changes to include the application of the mixture rules in a generator's regulatory category determination. Others, however, requested greater clarity and specificity regarding these regulatory provisions. They asked for an explanation of the parameters allowed when mixing a solid waste and a hazardous waste. They also asked for clarification about when an SQG or LQG that mixes a characteristic hazardous waste with a solid waste and generates a mixture that no longer exhibits the hazardous characteristic must also meet the treatment standards found at § 268.40, and a clarification that a hazardous waste determination is also required for wastes resulting from mixing of solid waste and hazardous waste. EPA made adjustments to § 262.13(f) in response to these comments where appropriate.

One commenter pointed out that the applicable regulations for mixtures are unrelated to the conditions for an exemption from operating without a permit and therefore, the requirements applicable to mixtures do not belong under §§ 262.14, 262.16, and 262.17. The Agency agrees these are valid

[33] Also see EPA document, Land Disposal Restrictions: Summary of Requirements, U.S. EPA Office of Solid Waste and Emergency Response and Office of Enforcement and Compliance Assurance, EPA–530–R–01–007, Revised August 2001.

comments and has incorporated these changes as already described.

Effect of the Reorganization: This section is affected by the reorganization. The mixing provisions for VSQGs that are now found in § 262.13 were previously located in § 261.5(i) and (h). The reorganization is discussed in section VI of this preamble.

D. Very Small Quantity Generator Conditions for Exemption (40 CFR 262.14)

The regulations for VSQGs have moved, with some changes, from their previous location in § 261.5 to § 262.14 as part of the reorganization of the generator regulations. Although there are some changes to these regulations, they were mainly relocated from one part to the other. Please see section VI of this preamble for a discussion of the reorganization and for an overview of the new § 262.14.

E. Marking and Labeling and Hazardous Waste Numbers (40 CFR 262.15(a)(5), 262.16(b)(6), 262.17(a)(5), 262.32(b)–(d), 263.12(b) and 268.50(a)(2)(i)

This section discusses the final rules associated with the marking and labeling of hazardous waste accumulated on site by SQGs and LQGs in containers and tanks. This section also addresses the marking and labeling requirements for (1) hazardous waste transporters that store containers of hazardous waste at transfer facilities (see 40 CFR 263.12) and (2) TSDFs that store containers of hazardous waste under the storage prohibition of the land disposal restriction requirements at 40 CFR 268.50(a)(2)(i). Lastly, in this section, we discuss the application of EPA hazardous waste codes to containers prior to shipment off site to a designated facility.

The regulatory changes EPA proposed to the marking and labeling for waste accumulation units are designed to enhance three critical areas: Risk communication, emergency preparedness and prevention, and the accuracy of hazardous waste determinations. Although labeling may appear to be an inconsequential ''paperwork'' exercise, it is, in fact, vitally important to ensuring that waste is identified and managed properly. Without proper labeling, hazardous waste may be mismanaged as non-hazardous waste, or as the wrong type of hazardous waste, which could cause harm to human health and the environment. As one commenter stated, ''The department appreciates the opportunity to revisit this important topic, as we believe [it] is of critical importance in both the prevention of releases and in ensuring that, in the event of a release, the response to the incident is appropriate for the materials being stored.'' [34] Accordingly, EPA proposed to strengthen the marking and labeling for containers and tanks throughout the cradle to grave management chain, including for SAAs, SQGs, LQGs, VSQGs that send their hazardous waste to LQGs under the same control, episodic generators, transfer facilities, and TSDFs. The Agency proposed consistent changes for marking and labeling throughout the regulations, and many of the comments we received on the topic marking and labeling are relevant throughout, so the primary discussion of those changes will be in this section. In certain instances, specific aspects of the marking and labeling requirements are addressed in other sections of this preamble, such as with VSQGs that send their hazardous waste to LQGs under the same control, episodic generators, and SQGs and LQGs that accumulate on drip pads and in containment buildings.

1. Marking and Labeling for SQGs and LQGs With Containers in SAAs (40 CFR 262.15(a)(5))

a. Introduction. The previous regulations for SAAs in § 262.34(c)(1)(ii) required an SQG or LQG to mark its SAA containers ''either with the words 'Hazardous Waste' *or* with other words that identify the contents of the containers'' [emphasis added]. The Agency proposed two modifications to strengthen the labeling and marking regulations for containers accumulating hazardous waste in SAAs. First, EPA proposed 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.'' 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 that workers must be familiar with for purposes of on-site handling.

Second, while the words ''Hazardous Waste'' on containers provide some measure of information regarding the contents, 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. Therefore, EPA proposed that SQGs and LQGs must indicate the hazards of the contents of the containers while giving them flexibility in how to comply with this new provision. That is, we proposed that generators could 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 1910.1200; a chemical hazard label consistent with NFPA code 704; or a hazard pictogram consistent with the United Nations' Global Harmonized System (GHS). We also proposed that generators could also 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 proposed changes were designed to alert workers, emergency responders, and others to the potential hazards posed by the contents of a container. 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. EPA reasoned that 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 information on container labels while *on site,* the Agency proposed 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. Because, in most cases the hazardous waste will be shipped off site and thus be subject to DOT regulations, we proposed that SQGs and LQGs could use the DOT hazard class labels to comply with the new labeling and marking regulation for containers in SAAs. However, we proposed several alternatives to using DOT hazard labels (as noted previously)

[34] Missouri Department of Natural Resources, EPA–HQ–RCRA–2012–0121–0223.

from which generators could choose to indicate the hazards of the container.

In summary, EPA proposed to modify the marking and labeling regulations for SAAs to require SQGs and LQGs to mark containers with the following: (1) The words ''Hazardous Waste''; (2) other words that identify the contents of the containers (examples which 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 part 172 subpart E (labeling); a label consistent with the OSHA Hazard Communication Standard at 29 CFR 1910.1200; a chemical hazard label consistent with the NFPA code 704; or a hazard pictogram consistent with the United Nations' GHS. EPA also proposed that SQGs and LQGs could 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. EPA did not propose to change the existing requirement for when the SAA maximum accumulation volumes are exceeded, to ''mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating'' (40 CFR 262.34(c)(2)).

b. What is EPA finalizing for the marking and labeling of containers in SAAs? The final regulations for marking and labeling of containers in SAAs require SQGs and LQGs to mark containers with the following: (1) The words ''Hazardous Waste''; and (2) an indication of the hazards of the contents of the container including, but not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the OSHA Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the NFPA code 704).

c. What changed since proposal? The Agency received a large number of comments regarding the marking and labeling changes throughout the proposed rule. In response to comments, we have simplified the proposed marking and labeling for containers in SAAs by eliminating the requirement that SQGs and LQGs mark their containers with words that identify the contents of their containers. Commenters argued, and EPA agrees, that a requirement to identify the contents of a container could be subject to much interpretation and problems with implementation and compliance could emerge. One commenter suggested that EPA's regulations should not interfere with a practice that is often already done as a best management practice.[35] Another commenter suggested that we allow generators to choose between identifying the contents of the container and identifying the hazards of the contents.[36] EPA considered this option, but concluded the potential for interpretation and implementation problems would remain for those generators that chose the option of identifying the contents of the container and, therefore, decided against this approach. Nevertheless, while the Agency is not finalizing the requirement that generators identify the contents of their containers, we not only encourage, but would expect, that generators would identify the contents of hazardous waste in their containers considering both the operational and potential downstream regulatory problems that would likely emerge if the contents were not identified. As one commenter noted, ''it is a best management practice for generators to know the nature of the wastes they generate and accumulate, as well as for emergency responders to know the nature of the wastes they may encounter.'' [37] One other minor change is that we removed the mention of the United Nations Globally Harmonized System (GHS) as a means of identifying the hazards of the contents of the container. Now that OSHA has aligned its regulations with the GHS, it is no longer necessary to identify the GHS separately.

d. Major comments. While some commenters supported our proposed marking/labeling regulations, many other commenters objected to the burden imposed by the additional marking/labeling requirements. Commenters questioned the benefits and the practicality of the proposed requirements, although one commenter noted it had similar marking and labeling procedures in place for over twenty years and they worked very well.[38] Several commenters, particularly emergency responders, expressed a preference for identifying the hazards of the contents over identifying the contents in the container. In large part, this expressed preference helped EPA decide to retain the requirement to identify the hazards of the contents and eliminate the requirement to identify the contents of the container.

Some commenters had the misperception that we are requiring the use of DOT hazard class labels on containers during on-site accumulation. In actuality, the Agency is providing flexibility to generators in how they identify the hazards of the hazardous waste in the container, and using DOT hazard communication such as hazard class labels (or placards, if appropriate) is one option for complying with this requirement. In fact, one commenter supported EPA's approach of ''giving generators options to accomplish this strengthened communication.'' [39] However, as a matter of practicality, it would benefit many generators to consider the use of DOT hazard communication, since such a method would not only satisfy EPA's requirement, but it may also satisfy DOT requirements when the wastes are shipped off site to a RCRA-designated facility, such as an interim status or permitted TSDF. It is important to note that if generators choose to identify the hazards of the contents of their containers using the DOT, OSHA or NFPA labeling methods, those methods must be used appropriately. Furthermore, if a method other than DOT hazard communication is used while the waste is accumulating on site, when the waste is shipped off site, generators and transporters must ensure that those markings and labels are located away from and do not obscure DOT marking and labeling.[40]

A number of commenters also had the misperception that the requirement for identifying the hazards of the contents is duplicative with OSHA requirements and/or DOT requirements. On the contrary, EPA notes that the marking

[35] Colorado Department of Public Health and Environment (CDPHE), EPA–HQ–RCRA–2012–0121–0085.

[36] Department of Energy, EPA–HQ–RCRA–2012–0121–0123.

[37] Savannah River Site, EPA–HQ–RCRA–2012–0121–0092.

[38] Savannah River Site, EPA–HQ–RCRA–2012–0121–0092.

[39] Institute of Makers of Explosives, EPA–HQ–RCRA–2012–0121–0126.

[40] See 49 CFR 172.304(a)(4) which requires DOT markings to be ''located away from any other marking (such as advertising) that could substantially reduce its effectiveness. Also see 49 CFR 172.406(f) which states that a ''label must be clearly visible and may not be obscured by markings or attachments.

and labeling of containers is not duplicative of other regulations: OSHA Hazard Communication does not apply to hazardous waste (See 29 CFR 1900.1200(b)(6)(i)) and DOT requirements only apply during transportation. In fact, under the RCRA rules being finalized in this rulemaking, the Agency believes it is closing a loophole for hazard communication for hazardous wastes accumulated on site.

On a separate but related matter, one commenter reminded EPA that OSHA has new regulations for hazard communication that align with the GHS system and that the regulated community needs to adjust to these before RCRA changes are adopted.[41] OSHA's transition to the GHS regulations have been phased in over time, with June 1, 2016, as the final phase-in date. These RCRA final regulations will not be effective in most states until the authorized state adopts the revised regulations, and therefore, most generators will have ample time to plan for these RCRA marking and labeling changes before they become effective. Furthermore, generators may choose to use the OSHA/GHS system for identifying the hazards of the contents of their containers and thereby reduce the burden of learning additional marking/labeling mechanisms. It is important to note, however, that EPA is requiring only that the hazards of the contents are identified. And although generators may use the OSHA/GHS system to comply with this provision, we are not requiring full OSHA/GHS compliant marking and labeling for hazardous wastes. For our purposes, an OSHA/GHS hazard statement or pictogram would be sufficient.

Finally, commenters asked EPA to clarify several aspects of the container marking and labeling requirements. First, one commenter asked us to specify that the labeling should occur at the initial point of generation.[42] We concur with this commenter that the marking and labeling requirements apply at the point of generation of the hazardous waste which is both the time and place where the hazardous waste is initially generated. Second, in keeping with existing EPA guidance, generators would be able to continue to mark outer/secondary containers, such as labpacks, color-coded bins, etc. with the words ''Hazardous Waste'' and the hazards of the hazardous waste instead of marking a small container (*e.g.,* tubes, vials, etc.) that is placed inside the secondary container.[43] Alternatively, as one commenter suggested, generators using small containers may attach a tag to a container to comply with the marking and labeling requirements.[44] Third, if a hazardous waste is in a container that already has the appropriate marking and labeling (*e.g.,* the hazardous waste is an unused commercial chemical product that is in its original container with an intact label), the existing marking and labeling would be sufficient. The generator would not need to duplicate the marking and labeling, assuming the original label contains the information necessary to comply with the marking and labeling requirements.

2. Marking and Labeling for SQGs and LQGs With Containers in CAAs (40 CFR 262.16(b)(6) and 262.17(a)(5))

a. Introduction. The previous LQG and SQG regulations in § 262.34(a)(3) and § 262.34(d)(4), respectively, required each container to be labeled or marked clearly with the words, ''Hazardous Waste.'' The Agency proposed two modifications to strengthen the labeling and marking for SQGs and LQGs accumulating hazardous waste in containers. In order to provide continuity and consistency, these changes were similar to those proposed for containers in satellite accumulation areas (see section IX.E.1.) First, the Agency proposed that SQGs and LQGs accumulating hazardous waste in containers mark them with the words ''Hazardous Waste.'' Second, EPA proposed that SQGs and LQGs mark or label their containers in CAAs with ''other words that identify the contents of the containers.'' Third, we proposed that SQGs and LQGs mark and label their containers with an indication of the hazards of the contents. EPA stated that this approach would establish consistency between the marking and labeling practices of hazardous wastes accumulated in containers in SAAs and CAAs, and thereby allowing some degree of business efficiency as containers are moved from SAAs into CAAs. We did not propose to change the existing provision that requires SQGs and LQGs to mark clearly and visibly the date accumulation began on each container and make that marking visible for inspection.

b. What is EPA finalizing? The Agency is finalizing the following marking and labeling provisions for SQGs and LQGs accumulating hazardous wastes in containers located in CAAs. SQGs and LQGs accumulating hazardous waste in containers must mark their containers with the words ''Hazardous Waste.'' SQGs and LQGs also must mark and label their containers with an indication of the hazards of the contents of the containers. Examples of hazards include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the OSHA Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the NFPA code 704. Also, as discussed in section IX.E.7, SQGs and LQGs are required to mark their containers with the applicable EPA hazardous waste number(s) prior to shipping their containers off site to a RCRA-permitted TSDF.

The marking and labeling requirements for containers in CAAs are consistent and identical to the marking and labeling requirements for hazardous wastes accumulated in containers located in SAAs. For the reasons cited under the SAA discussion (*i.e.,* simplifying requirements, avoiding implementation problems, responding to commenter concerns), EPA is finalizing the same marking and labeling requirements for hazardous wastes accumulated in containers located in CAAs and SAAs. The only difference is that SQGs and LQGs must mark or label containers in SAAs with the date that maximum volumes (or mass) are exceeded, while SQGs and LQGs must mark or label containers in CAAs with the date the hazardous waste first began accumulating. Both of these dating requirements are existing requirements that remain unaffected by this final rule.

c. What changed since proposal? For the same reasons discussed under section IX.E.1, the Agency is not finalizing the requirement for SQGs and LQGs with CAAs to mark or label their containers with ''other words that identify the contents of the container.''

3. Marking and Labeling for SQGs and LQGs With Tanks in CAAs (40 CFR 262.16(b)(6)(ii) and 262.17(a)(5)(ii))

a. Introduction. The Agency also proposed a number of changes to improve the marking and labeling of hazardous wastes accumulated in tanks by both SQGs and LQGs at § 262.16(b)(6)(ii) and § 262.17(a)(5)(ii),

[41] Tennessee Chamber of Commerce & Industry, EPA–HQ–RCRA–2012–0121–0225.

[42] Tennessee Department of Environment and Conservation, EPA–HQ–RCRA–2012–0121–0116.

[43] See Robert Springer, Director of Office of Solid Waste to RCRA Directors, Regions 1–10, Frequently Asked Questions About Satellite Accumulation Areas, March 17, 2004.

[44] Carl Severn, EPA–HQ–RCRA–2012–0121–0079.

respectively. Specifically, the Agency proposed that SQGs and LQGs: (1) Mark or label their tanks with the words ''Hazardous Waste''; (2) use inventory logs, monitoring equipment, or records to identify the contents of the tank and its associated hazards; (3) use inventory logs, monitoring equipment or records to identify the date each period of accumulation begins; and (4) keep inventory logs or records with the above information in close proximity to the tank.

b. What is EPA finalizing? EPA is finalizing the following marking and labeling requirements for SQGs and LQGs accumulating hazardous waste in tanks: (1) While hazardous wastes are being accumulated on site, SQGs and LQGs must mark their tanks with the words ''Hazardous Waste''; (2) consistent with the revised requirements for the marking and labeling of containers, SQGs and LQGs must mark or label their tanks with an indication of the hazards of the contents. Examples of hazards include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the OSHA Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the NFPA code 704); (3) use inventory logs, monitoring equipment, or other records to demonstrate that hazardous waste has been emptied within 180 days for SQGs (or 90 days for LQGs) of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 180 days for SQGs (or 90 days for LQGs) of first entering; and (4) keep inventory logs or records with the above information on site and readily available for inspections.

c. What changed since proposal? Three changes were made between the proposed rule and the final rule. First, consistent with the changes to container marking and labeling, SQGs and LQGs are not required to identify the contents of their tanks, although we strongly recommend generators maintain records identifying the contents of the tanks as a best management practice. Second, we have modified where inventory logs or records for tanks must be kept. We had proposed that the information must be in close proximity to the tank. Commenters indicated that having records in close proximity may not always be practical or even desirable. For instance, some hazardous waste accumulation tanks are outside and having records in close proximity would mean that the records would be exposed to the elements. In response to comments, we have modified the regulations so that the records must be kept on site and readily available for inspections. Ideally these records will be in close proximity to where hazardous waste is being accumulated in the tank, or if not practical (*i.e.,* exposure to weather, physically infeasible, etc.) in a control room, or other central location at the facility.

Third, the Agency changed the dating requirement for tanks at SQGs and LQGs so that instead of using logs, monitoring equipment or records to identify when the 180- or 90-day accumulation period begins, generators must use logs, monitoring equipment or other records to demonstrate that hazardous waste is either emptied or removed from the tank within 180 or 90 days, with the final regulations now addressing both batch and continuous flow processes. While the Agency discussed both types of processes in the preamble to the proposed rule, the regulatory text in the proposed rule failed to address continuous flow processes. SQGs and LQGs with batch process tanks must demonstrate that their tanks are emptied every 180 or 90 days, respectively. However, the Agency recognizes that when hazardous waste is accumulated in tanks with continuous flow processes it may not be possible for SQGs and LQGs to demonstrate that a tank is emptied every 180 or 90 days, respectively, from when the hazardous waste first entered the tank. Therefore, generators with tanks with a continuous flow process have flexibility in how to demonstrate that hazardous waste has been turned over (as opposed to emptied) in a tank. For a continuous flow process, this demonstration involves a generator identifying the estimated daily input or inflow of hazardous wastes into the tank, the estimated outflow from the tank, and the capacity of the tank to estimate how many days the hazardous waste will reside in the tank before exiting.

As an example, if a tank with a continuous flow process has a capacity of 10,000 gallons, an inflow of hazardous wastes of 1,000 gallons per day and an outflow estimated at 500 gallons per day, then the expected residence time of the hazardous waste in the tank would be 20 days. The residence time would be calculated by first subtracting the daily outflow from the daily inflow (1,000 − 500 = 500). Then the tank capacity would be divided by the difference between the outflow and the inflow (10,000/500 = 20). The resulting residence time is 20 days.

d. Major comments. Commenters were supportive of the proposed changes for marking and labeling of tanks with the words ''Hazardous Waste'' and maintaining records that prove the amount of time hazardous waste remained in the tank did not exceed either 90 or 180 days for LQGs and SQGs, respectively. One commenter mentioned, and EPA agrees, that the markings must be visible and legible to a person observing the tank. Another commenter supported the options we proposed for indicating the hazards of tanks, noting that it will help generators be able to choose the method that work best for their facility. Several commenters were supportive of the flexibility provided to generators to prove the amount of time hazardous waste remained in the tank (*e.g.,* inventory logs, monitoring equipment, or records). EPA notes that generators may use paper or electronic records, provided they are on site and readily available for inspection. Several commenters expressed concern that EPA did not explicitly discuss tanks with continuous flow processes in the proposed regulatory text (though they are discussed in the preamble to the proposed rule). As discussed previously, the Agency has revised the regulatory text of the final rule to explicitly address these comments.

4. Marking and Labeling for SQGs and LQGs With Drip Pads and Containment Buildings

In the proposed rule, the Agency proposed marking and labeling requirements for generators accumulating hazardous waste on drip pads and in containment buildings. Upon review of comments and further evaluation, the Agency now believes the marking and labeling provisions for these type of units belongs more appropriately under the discussion of the waste accumulation regulations for these types of units. Therefore, for further discussion, the Agency directs the reader to section IX.G.—Accumulation of Hazardous Waste by SQGs and LQGs on Drip Pads and in Containment Buildings.

5. Marking and Labeling for Transfer Facilities (40 CFR 263.12(b))

a. Introduction. The Agency proposed to change the marking and labeling requirements for transporters handling hazardous waste in containers at transfer facilities, found at § 263.12(b), to be consistent with the proposed

changes for marking and labeling for containers for SQGs, for LQGs, and in SAAs. More specifically, EPA proposed that transporters storing hazardous wastes in containers at transfer facilities mark the containers with the following: (1) The words ''Hazardous Waste''; (2) other words that identify the contents of the containers, with examples that may include, but are not limited, the name of the chemical(s), 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. In addition to these proposed changes, EPA also proposed to require that containers of hazardous waste at transfer facilities be labeled with the applicable EPA hazardous waste number(s) (EPA hazardous waste codes), which would help the TSDF receiving the hazardous waste comply with the LDR regulations in 40 CFR part 268.

The Agency proposed these modifications to ensure hazardous wastes are appropriately labeled and marked throughout its cradle-to-grave management, including transportation to a RCRA-permitted or interim status TSDF or to another transfer facility. Similarly, this additional information on the container would alert workers and other handlers to the contents of the container and the potential hazards of the materials therein.

In proposing these changes, the Agency believed that, in almost all cases, containers received by the transfer facility would already be marked and labeled by the generator, and therefore, any additional burden on the transfer facility would be minimal. However, in the preamble to the proposed rule, the Agency identified other situations where a transporter would be required to initiate the marking and labeling of a container; *e.g.,* when the transporter 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.

b. What is EPA finalizing? The Agency is requiring that transporters must mark or label containers with the words ''Hazardous Waste'' when they consolidate the contents of two or more containers with the same hazardous waste into a new container, or when the transporter consolidates hazardous wastes that are compatible with each other. As discussed in section IX.E.7, when such consolidation occurs, the transporter will also be required to mark or label the container with the applicable RCRA waste codes, in compliance with § 262.32(b) or (c).

c. What changed since proposal? First, consistent with the marking and labeling requirements being finalized in several sections of this rule, transporters are not required to mark or label the container with its contents. However, the Agency expects that transporters, as well as generators, will identify the contents of the container as a best management practice. Second, as discussed elsewhere, in cases where a transporter must mark its containers with the applicable EPA hazardous waste codes, they will have flexibility in how they comply. Third, because containers at transfer facilities are, by definition, in transport, DOT marking and labeling apply to them. As a result, we have removed the proposed requirement to identify the hazards of the container, since it would be duplicative of (and possibly even contradictory to) the DOT requirements. Fourth, consistent with the pre-transport requirements for SQGs and LQGs in § 262.32, the Agency is clarifying that the marking and labeling applies to transporters using containers of 119 gallons or less (*i.e.,* what DOT refers to as non-bulk packaging).

d. Major comments. Comments both supported and opposed this provision. Critical comments questioned the need for this provision because generators are responsible for the marking and labeling of containers that subsequently arrive at transfer facilities. Similarly, more than one commenter questioned the need for transporters to mark containers with the applicable EPA hazardous waste codes and discussed the problems requiring this information would cause to the waste management industry since they have well-established waste profile systems that accomplish that function. One commenter also was critical of the manner in which the regulatory text was written whereby the Agency made it the responsibility of the transporter to ensure all marking and labeling information is correct. Another commenter pointed out that as per DOT regulations, rail cars used to accumulate and transport hazardous waste and other bulk shipments do not have to be labeled ''Hazardous Waste'' in transit. As discussed in an earlier section, the Agency took these comments into account when finalizing this rule.

6. Marking and Labeling for TSDFs With Containers and Tanks (40 CFR 268.50(a)(2)(i))

a. Introduction. As part of its effort to improve risk communication with respect to the management of hazardous waste, the Agency also proposed changing the regulations for marking and labeling containers at TSDFs in § 268.50(a)(2)(i)—consistent with the proposed marking and labeling changes for SAAs, SQGs, LQGs, and for transfer facilities. More specifically, EPA proposed that TSDFs storing hazardous wastes in containers mark their containers with the following: (1) The words ''Hazardous Waste''; (2) other words that identify the contents of the containers, with examples that may include, but are not limited, the name of the chemical(s), 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. The Agency also proposed that containers must be labeled with the applicable EPA hazardous waste number(s) (EPA hazardous waste codes), which help the TSDF comply with the applicable land disposal restriction (LDR) regulations. The LDR regulations list many of the treatment standards based on the hazardous waste code. In the proposal, the Agency left unchanged the pre-existing provisions of § 268.50(a)(2)(i), which require TSDFs to clearly mark each container to identify its contents and the date each period of accumulation begins.

b. What is EPA finalizing? The Agency is finalizing the requirement for TSDFs to mark or label containers of hazardous waste with the words ''Hazardous Waste,'' an indication of the hazards of the contents, and the applicable EPA hazardous waste numbers (waste codes) consistent with § 262.32(b)–(d). As with transfer facilities, EPA expects almost all incoming containers received by a TSDF will already have the appropriate marking and labeling information and, therefore, that a TSDF will usually only need to mark or label a container themselves when receiving shipments from facilities that are neither SQGs nor LQGs. As an example, TSDFs may receive hazardous wastes directly from VSQGs. Under the federal program, VSQGs are not required to mark and label their containers ''Hazardous Wastes'' and identify the hazards associated with the wastes in the container. In this situation, the TSDF must mark or label the container with the words ''Hazardous Waste,'' the

applicable hazardous waste codes, and identify the hazards of the container. Additionally, consistent with the pre-existing regulations at § 268.50(a)(2)(i), a TSDF must also continue to mark or label each container of hazardous waste to identify the contents of the container and the date each period of accumulation begins, regardless of whether the TSDF receives the containers from a VSQG, SQG, LQG, or transfer facility. The Agency is also reiterating that if a TSDF generates its own hazardous waste, it must follow the applicable RCRA generator regulations in part 262, including the marking and labeling provisions for containers and tanks.

c. What changed since proposal? The Agency revised the marking and labeling requirements pertaining to identifying the hazards of the container, consistent with changes in other parts of this rule (*i.e.,* the SAAs, SQGs, LQGs, and transfer facilities marking and labeling requirements).

d. Major comments. The Agency received few comments concerning this provision of the rule. Some commenters supported the proposed changes while other commenters stated that these changes were unnecessary. As discussed previously, the Agency believes it has responded to commenters who expressed concerns by clarifying the applicability of this provision.

7. Hazardous Waste Numbers (Waste Codes) (40 CFR 262.32(b) and (c))

a. Introduction. The Agency proposed § 262.32(c) 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 proposed 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 LDRs. As stated in the preamble to the proposed rule, the Agency believes most generators, or their designated waste handlers, already mark their containers with the applicable EPA hazardous waste numbers prior to transporting their hazardous waste off site. As part of this discussion, the Agency stated that by marking containers with EPA hazardous waste numbers, the overall burden would be decreased because the TSDF would avoid the need to identify the hazardous waste or send the waste back to the generator for proper identification.

b. What is EPA finalizing? The Agency is finalizing the pre-transport marking requirements at § 262.32 by modifying § 262.32(b) to include the EPA hazardous waste number or code as part of the marking requirements for containers, and also adding § 262.32(c) to allow generators, transporters and TSDFs, in lieu of § 262.32(b), to use a nationally recognized electronic system, such as a bar-coding system that is part of a waste management industry's waste profiling system, to identify the applicable EPA hazardous waste numbers. A waste profiling system typically consists of bar codes, scanners, and an associated computer system. Waste management industry commenters indicated that they use bar code electronic systems, similar to commercial transport companies, to profile hazardous waste. Information often includes a description of the hazardous waste in terms of physical state, common name, hazard codes, LDR treatment standards, and DOT description.[45] Some of these electronic systems also include the EPA hazardous waste numbers. This approach also allows for the development of future technologies to accomplish the same function as the bar-coding system. The Agency is providing this flexibility because while there is considerable movement by generators and the waste management industry in adopting the use of electronic systems that contain detailed waste profiling information, it is neither universal nor mandatory. EPA is requiring that SQGs and LQGs include EPA hazardous waste codes, either by marking their containers or through electronic means, to inform the receiving TSDF of the container's contents in order to ensure hazardous wastes are managed to meet the applicable LDR treatment standards.

For lab packs, which typically contain many different wastes, we are providing an exception to the requirement to include EPA hazardous waste numbers if the lab packs will be incinerated. Specifically, lab packs that will be treated using the alternative treatment standard of incineration, as allowed by § 268.42(c), do not have to be marked or labeled with the EPA hazardous waste numbers. However, lab packs that contain D004 (arsenic), D005 (barium), D006 (cadmium), D007 (chromium), D008 (lead), D010 (selenium) or D011 (silver), the EPA hazardous waste number must be marked or labeled with the EPA hazardous waste numbers (or use electronic means may be used). These specific metals must be identified because § 268.42(c)(4) requires any incinerator residues from lab packs that contain any of these specific metals to undergo further treatment prior to land disposal.

c. What changed from proposal? In response to comments, the Agency is providing needed flexibility in complying with this requirement to account for alternative ways of marking containers with EPA hazardous waste codes. By doing so, the Agency is accommodating existing processes used by many generators and the waste management industry. Also in response to comment, we are providing an exception for lab packs that will be incinerated.

d. Major comments. Several commenters pointed out that while many generators still mark their containers with the applicable EPA hazardous waste codes, the industry trend is for generators to rely on their waste handlers who have developed sophisticated computerized systems that use detailed waste profiling procedures with bar codes and scanners (similar to package shipping and other national logistics companies). They use these systems to accurately identify individual drum contents and some include the EPA hazardous waste numbers. As stated by one commenter, TSDFs commonly prepare labels and shipping papers for their generator customers, and as part of this service, also utilize a waste profiling process that fully describes the waste in terms of physical state, common name, hazard codes, LDR applicability, and DOT description.[46] This commenter argues that to not allow this industry-wide service to continue would only cause confusion to a well-established process. EPA agrees and has modified the requirement accordingly.

F. Revisions to Satellite Accumulation Area (SAA) Regulations for SQGs and LQGs (262.15)

Hazardous waste generators are allowed, though not required, to use SAAs, provided that the generators meet the conditions for their use. SAAs are designed to assist generators who generate and accumulate small amounts of hazardous waste in different areas of their facilities. Alternatively, SQGs and LQGs may choose to accumulate hazardous waste only in CAAs rather than in SAAs. If an SQG or LQG does choose to accumulate hazardous waste in an SAA, the generator may accumulate a limited amount of

[45] See comments from Veolia ES Technical Solutions LLC, EPA–HQ–RCRA–2012–0121–0181; Environmental Technology Council, EPA–HQ–RCRA–2012–0121–0134; Waste Management, EPA–HQ–RCRA–2012–0121–0159

[46] Environmental Technology Council, EPA–HQ–RCRA–2012–0121–0134.

hazardous waste within each SAA. Once that threshold is reached, the SQG or LQG must transfer the hazardous waste to a CAA. Alternatively, a generator may accumulate hazardous waste within an SAA and never move the waste to a CAA once the threshold is reached, but instead, ship the waste directly off site to a RCRA designated facility (*e.g.,* a TSDF).

The Agency proposed six changes to the regulations for SAAs, now found at § 262.15. These six proposed regulatory changes and the final regulatory changes are individually discussed here in detail. In addition to these six proposed regulatory changes, EPA discussed two additional issues in the preamble to the proposed rule: (1) Our intention to rescind a guidance memo regarding the accumulation of reactive (D003) hazardous waste at locations away from the point of generation and (2) examples to help generators better understand the term ''under the control of the operator,'' which is used in the SAA regulations. These proposed changes were in response to stakeholder requests for additional clarification, additional flexibility or increased environmental protection that have been expressed through the years in various interactions, including the 2004 Generator Initiative,[47] with the regulated community, as well as state and regional regulators.

The Agency is finalizing these six proposed regulatory changes, with minor modifications, along with three additional minor changes. These nine regulatory changes are all summarized individually here, and six of the changes are discussed in further detail later on. First, SQGs and LQGs that accumulate hazardous waste in SAAs will now be required to comply with the special requirements for incompatible wastes found at § 265.177 (with minor revisions). Second, we are providing regulatory flexibility by providing limited exceptions to the regulation requiring generators to keep containers closed at all times (with minor revisions). Third, when maximum volumes are reached in SAAs, we are clarifying that generators will have three consecutive calendar days to remove the hazardous waste from the SAA or come into compliance with the CAA regulations. Fourth, we are providing additional flexibility to allow generators that accumulate acute hazardous waste in SAAs to choose between using a maximum accumulation volume (1 quart for liquids) or maximum accumulation weight (1 kg or 2.2 lbs for solids). Fifth, we are clarifying the regulations for situations when the maximum volume (or weight) is exceeded in an SAA. Sixth, containers used in SAAs will be subject to the strengthened marking and labeling standards (note these marking and labeling changes are the same as those for containers in CAAs and were discussed previously in section IX.E. of the preamble to this final rule). The seventh change being made to SAA regulations pertains to the applicability of preparedness, prevention and emergency procedures. The eighth change is a minor wording change in response to a comment from the Association of State and Territorial Solid Waste Management Officials (ASTSWMO).[48] They recommend, and we agree, that under § 262.15(a)(1), the regulatory language should have the word ''immediately'' added to state explicitly that if a container in an SAA is leaking, the generator must *immediately* transfer the hazardous waste to a container in good condition that does not leak (emphasis added). Similarly, a generator has the option to transfer a damaged or leaking container to a CAA, also immediately, and we have added language to clarify that the CAA must be operated in compliance with the CAA regulations. Therefore, § 262.15(a)(1) now states that if a container holding hazardous waste is not in good condition, or if it begins to leak, the generator must immediately transfer the hazardous waste from this container to a container that is in good condition and does not leak, or immediately transfer and manage the waste in a central accumulation area operated in compliance with § 262.16(b) or § 262.17(a). The ninth change is rewording of § 262.15(a) to be consistent with changes made to the SQG and LQG regulations to make it clear that an SQG or LQG can choose to operate an SAA and that the SAA is not required to comply with the SQG regulations of § 262.16(b) or LQG regulations of § 262.17(a), and is not required to have a permit or interim status, and is not required to comply with parts 124, 264 through 267, and 270, provided the generator complies with the conditions of exemption for an SAA.

With regard to the non-regulatory actions pertaining to SAAs that were discussed in the proposed rule, we are moving forward to rescind the January 13, 1988 memo that allowed a storage shed outside of a building where a reactive hazardous waste (D003) is initially generated to be considered an SAA.[49] Finally, we will further discuss in the preamble what is meant by ''under the control of the operator,'' a term that is used in the SAA regulations. These two non-regulatory actions are discussed individually in detail later.

1. Requiring SQGs and LQGs To Comply With the Special Requirements for Incompatible Wastes for Containers Accumulating Hazardous Wastes in SAAs (40 CFR 262.15(a)(3))

We *proposed* that SQGs and LQGs accumulating hazardous waste in SAAs must comply with the special requirements for incompatible wastes found at § 265.177. The regulations at § 265.177 include three requirements (1) incompatibles must not be placed in the same container unless § 265.17 (b)[50] is complied with, (2) hazardous waste must not be placed in an unwashed container that previously held an incompatible unless § 265.17 (b) is complied with and (3) a container holding an incompatible must be separated from the other material by means of a dike, berm, wall, or other device. The Agency believes that in developing the regulations for SAAs in 1984, it inadvertently failed to account for SQGs and LQGs that might accumulate incompatible wastes. Most commenters were supportive of requiring SQGs and LQGs that accumulate hazardous waste in SAAs to comply with the special requirements for incompatible wastes found at § 265.177, including a few states that said they already have corrected this oversight in their state regulations. However, some commenters argued it was unnecessary to add it to the regulations because it is in a generator's best interest to keep incompatibles separate and therefore they already comply with this best management practice at their SAAs. The Agency is encouraged to hear from commenters that they believe generators already routinely segregate their incompatibles. Nevertheless, for additional clarity and to ensure generators that are not following these best management practices adopt them, the Agency is finalizing the requirement that SQGs

[47] In 2004, EPA held a series of public meetings to solicit input from stakeholders about the generator regulations.

[48] Association of State and Territorial Solid Waste Management Officials (ASTSWMO), EPA–HQ–RCRA–2012–0121–0217.

[49] 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.

[50] Section 265.17(b), which is entitled General requirements for ignitable, reactive, or incompatible wastes is in part 265 subpart B, the General Facility Standards that apply to interim status TSDFs. Section 265.17(b) also applies to SQGs and LQGs that accumulate ignitable, reactive, or incompatible wastes in CAAs.

and LQGs accumulating hazardous waste in SAAs comply with the part 265 subpart I container management standards for incompatible hazardous wastes at § 265.177. We agree with the commenter who ''view[s] this as a codification of an existing safe practice.'' [51]

Several commenters objected to the third requirement of § 265.177 in that they felt it unnecessary and impracticable to require that a container holding an incompatible hazardous waste in an SAA be separated from the other material by means of a dike, berm, wall, or other device. This proposed regulatory language was taken directly from the language in § 265.177, which applies to interim status TSDFs, as well as CAAs at SQGs and LQGs. The commenters argue that a dike, berm or wall would not be feasible in the confines of an SAA, which is only allowed to accumulate a maximum of 55 gallons of hazardous waste. The Agency agrees that most SAAs would not accommodate a dike, berm or wall. Although, the proposed regulatory language also allows for ''other device[s],'' to keep incompatibles segregated, the Agency has decided to replace the regulatory language ''by means of a dike, berm, wall or other device'' with the phrase ''by any practical means'' in order to address commenters' concerns. One commenter provided an example of what they do to avoid potential comingling of incompatible wastes in their CAA—they ''. . . segregate incompatible wastes onto separate pallets in the 90-day accumulation area. Pallets holding incompatible wastes are separated by at least one pallet width (*i.e.,* the ''pallet footprint'') in all directions. For example, a pallet of oxidizers and a pallet of flammables cannot be placed next to, above, or below each other.'' [52] Another commenter suggested that drip trays, or secondary containers would be more appropriate means to segregate incompatibles accumulating in SAAs.[53] The Agency believes that either of these practices constitute ''any practical means,'' and are allowed by the SAA regulations for separating incompatibles in SAAs.

EPA is making one additional minor revision to this section of the SAA regulations. We are removing the reference to piles, open tanks and surface impoundments. Containers are the only type of waste accumulation units allowed in SAAs. As previously noted, these regulations were copied from the interim status TSDF regulations, where these additional waste accumulation units are allowed. At the time of proposal, the Agency inadvertently overlooked this and is therefore making conforming changes as part of this rulemaking.

2. Limited Exceptions To Keeping Containers Closed at all Times in SAAs (40 CFR 262.15(a)(4))

The previous regulations for generators accumulating hazardous waste in SAAs required containers accumulating hazardous waste to be kept closed, except when it is necessary to add or remove waste (§ 262.34(c)(1)(i), which referenced the container regulations for interim status TSDFs in § 265.173(a)). We proposed to modify this provision for SAAs, now found at § 262.15, in order to allow containers of hazardous waste in SAAs to remain open under limited circumstances. These changes pertain only to containers accumulating hazardous waste in SAAs; it will not affect the requirements for container management at CAAs or interim status TSDFs. Specifically, we proposed 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 had 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 had 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 proposed to modify the regulations to allow containers to be vented in such situations. In 2008, the Agency finalized these limited exceptions to the closed container requirement as part of the Academic Laboratories rule (subpart K) and thought they would benefit other generators as well.

Nearly all commenters supported this proposed change. However, some state commenters were concerned the regulatory language was not sufficiently clear that this exception to requiring closed containers was intended for temporary situations only. In the preamble to the proposed rule, we indicated that the requirement to keep the container closed applies when the danger passes (*e.g.,* the contents cool), and when the equipment is not in operation. However, these commenters thought the regulatory text should include language to make our intent clear. In response to these concerns, EPA is finalizing this provision, as proposed, with a minor addition. The regulatory language has been modified so that a container holding hazardous waste must be closed at all times during accumulation, except when adding, removing, or consolidating waste, or when *temporary* venting of a container is necessary (1) for the proper operation of equipment, or (2) to prevent dangerous situations, such as build-up of extreme pressure (emphasis added). EPA stresses it does not intend to create a loophole to the closed container requirement or to allow intentional evaporation of hazardous waste. Rather, the intent of the flexibility is to address the limited cases in which ''strict adherence to the ''container closure'' requirements could substantially increase a risk of a hazardous waste incident rather than decrease it.'' [54] As with the proposed rule, the flexibility for containers to remain open in specific situations applies only to containers in SAAs because that is where hazardous waste initially accumulates. At this time, we are not extending this flexibility to containers accumulating in CAAs.

3. Clarify What Is Meant by ''Three Days'' (40 CFR 262.15(a)(6)(i))

The previous SAA regulations at § 262.34(c)(2) stated 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. Over the years, the Agency was frequently asked what was meant by ''three days.'' As a result, the Agency proposed to amend the regulations to replace the term ''three days'' with ''three calendar days,'' as opposed to ''three business days'' or ''three working days.'' The Agency already clarified this term in a 2004 memo,[55] which was based on preamble discussions from the

[51] University of Nebraska-Lincoln (UNL), comment number EPA–HQ–RCRA–2012–0121–0121.

[52] Stericycle, comment number EPA–HQ–RCRA–2012–0121–0127.

[53] Pacific Northwest National Laboratory, comment number EPA–HQ–RCRA–2012–0121–0078.

[54] Minnesota Pollution Control Agency, EPA–HQ–RCRA–2012–0121–0232.

[55] Memorandum from Robert Springer, Director or EPA's Office of Solid Waste, to RCRA Regional Directors, ''Frequently Asked Questions About Satellite Accumulation Areas,'' March 17, 2004, RCRA Online 14703.

proposed and final SAA regulations.[56] 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 was simply proposing to codify long-standing, existing policy on the issue of what ''three days'' meant, as it is used in the SAA regulations.

Comments on this issue were mixed, with some commenters supporting the codification of the policy, while others preferred that we allow the term ''three days'' to mean ''three business days'' or ''three working days.'' Still others suggested that we take this opportunity to lengthen the time frame to 5, 7, or even 10 days. Although many commenters argued that we should allow ''three working days,'' one commenter conceded that, ''due to differences in business schedules, this becomes difficult to define in a rule.'' [57] For example, some companies shut down completely for lengthy periods around the holidays or during seasonal slowdowns. As a result, if we relied on ''three working days,'' it would create an uneven and unfair implementation of this SAA provision. Further, it's easy to imagine a raft of implementation questions that would ensue about the definition of a ''working day.'' Therefore, the Agency is finalizing this provision, as proposed, with one minor revision. While in the preamble to the proposed rule we used the term ''three consecutive calendar days,'' in the proposed regulatory language, we used ''three calendar days.'' To promote the most clarity, in the final rule, we will use ''three consecutive calendar days.''

4. Providing a Maximum Weight for the Accumulations of Acute Hazardous Waste in Containers at SAAs (40 CFR 262.15(a))

The SAA regulations impose maximum volumes of hazardous waste that may be accumulated in an SAA without a permit, or interim status, or complying with the central accumulation area standards for SQGs or LQGs. For non-acute hazardous waste, the maximum volume is 55 gallons. For acute hazardous waste, the maximum volume has been, until this rulemaking, 1 quart. When the SAA regulations were finalized in 1984, 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.[58] EPA also explained in that final SAA rule that 1 quart was chosen for acute hazardous waste because it is the volumetric equivalent of 1 kilogram of acute hazardous waste used elsewhere in the regulations [59] and that 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 proposed to add a weight measurement [60] to the SAA regulations for the maximum accumulation of acute hazardous wastes. Specifically, we proposed that 1 quart or 1 kilogram (2.2 pounds) of acute hazardous waste may be accumulated in an SAA. We proposed that generators that accumulate acute hazardous waste in SAAs would have the choice of whether to use 1 quart or 1 kilogram, but they would be required to identify which metric they choose. We did not propose to add a similar weight equivalent to the 55-gallon threshold for non-acute hazardous waste because stakeholders had not expressed a similar need; however, we did request comment on whether it would be useful to have a maximum weight for the accumulation of non-acute hazardous waste in SAAs.

Although some commenters did not see the need for the additional flexibility for the accumulation of acute hazardous waste in SAAs, most commenters supported the change, with a minor revision. Specifically, commenters suggested that, instead of allowing a generator to choose which unit to use, we should specify in the regulations that the 1 quart maximum for acute hazardous waste in an SAA should apply to liquids and the 1 kg maximum for acute hazardous waste in an SAA should apply to solids. We agree with these commenters and we are revising the final regulatory language for SAAs so that acute hazardous wastes that are liquids have a maximum volume of 1 quart, and acute hazardous wastes that are solids have a maximum mass of 1 kg (or 2.2 lbs). The maximum thresholds for acute hazardous wastes are not intended to be additive, so in cases where a generator has both liquid and solid acute hazardous waste accumulating in an SAA, the 1 kg or 2.2 lb limit will be applied.

In contrast, for non-acute hazardous waste, commenters indicated that the existing volumetric accumulation limit of 55 gallons for SAAs is sufficient and that it is not necessary to add a mass equivalent. Therefore, for non-acute hazardous waste, 55 gallons will remain the only unit for measuring maximum accumulation limits in SAAs. EPA continues to rely on its existing interpretation that at an SAA where more than one type of waste is accumulated, the *total* allowable accumulation is 55 gallons of hazardous waste—not 55 gallons per waste stream.[61]

One commenter asked for clarification about whether the weight of the packaging (such as fully dispensed vials that once held P-listed pharmaceuticals) would have to be included in determining the maximum mass or volume of an acute hazardous waste in an SAA. In a February 17, 2016, memo, EPA clarified that the container (*e.g.,* packaging) does not need to be included when calculating the maximum accumulation volume of acute hazardous waste in an SAA.[62] This would also be the case when calculating the maximum accumulation weight (mass) of acute hazardous waste in an SAA.

5. Modifying the Language for When the Maximum Volume or Weight Is Exceeded in an SAA (40 CFR 262.15(a)(6))

Previously, the regulation at § 262.34(c)(2) stated 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 proposed to reword this regulation in order to more clearly state the generator's options for managing the materials that exceed the limit. The

[56] Proposed rule: January 3, 1983 48 FR 118; Final rule: December 20, 1984; 49 FR 49569.

[57] The Boeing Company, EPA–HQ–RCRA–2012–0121–0133.

[58] December 20, 1984; 49 FR 49569–70.

[59] Though this is only a rough equivalent, as 1 quart is an English unit and 1 kg is a metric unit. Further, as one commenter noted, whether 1 quart (or liter) is equivalent to 1 kg depends on the density of the waste (Iowa State University, EPA–HQ–RCRA–2012–0121–0099).

[60] As one commenter pointed out, 1 kg is more accurately a measurement of mass, not weight (Minnesota Pollution Control Agency, EPA–HQ–RCRA–2012–0121–0232).

[61] Memorandum from Robert Springer, Director or EPA's Office of Solid Waste, to RCRA Regional Directors, ''Frequently Asked Questions About Satellite Accumulation Areas,'' March 17, 2004, RCRA Online 14703.

[62] Letter from Barnes Johnson, Director of EPA's Office of Resource Conservation and Recovery, to Charlotte A. Smith, PharmEcology Services, February 17, 2016, RCRA Online 14875.

proposed regulatory text stated 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 (1) a central accumulation area, (2) an on-site interim status or permitted treatment, storage, or disposal facility, or (3) an off-site designated facility. The proposed regulatory text also stated that 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 did not view this as a substantive change to the SAA regulations.

We are finalizing this change, with two minor changes to address commenters' concerns. First, commenters pointed out that the proposed rewording of this section of the SAA regulations expands a generator's options for where the excess hazardous waste can be sent when the maximum volumes (or mass) are reached, but it removed the option that had originally existed to convert the SAA to a CAA and manage the hazardous waste in place. At the time of proposal, the Agency did not anticipate that generators would choose to convert SAAs into CAAs. However, one commenter pointed out that some generators do not have a CAA to move the waste to and therefore must manage the SAA as an CAA when volumes (or mass) are exceeded. In response to comments, in the final rule the Agency has amended the regulatory text to retain the option to allow generators to convert an SAA to a CAA when maximum volumes (or mass) are exceeded. Second, in this section of the SAA regulations, as well as other sections of the SAA regulations, where we mention CAAs, we have inserted the citation for the CAA regulations.

Other comments on this section of the SAA regulations were related to the phrasing of the previous SAA regulations that we did not propose to change. Specifically, the Connecticut Department of Energy and Environmental Protection (CT DEEP) ''believes that the revised language should not focus on the ''excess waste,'' but on the waste that was accumulated before the excess amount was generated. That is, the rule should require that the waste that was in storage before the generation of the ''excess waste'' be removed from the area, not just the ''excess waste.'' This would prevent situations in which only the ''excess waste'' is removed time and time again, leaving the remaining waste behind indefinitely.'' [63] EPA agrees with CT DEEP and, during the development of the proposed rule, we sought to revise this aspect of the SAA regulations. We also agree with CT DEEP that ''In reality, what happens in most cases is that the generator removes the older waste, and continues to accumulate the most-recently generated waste. For example, if a generator has a 55-gallon drum in an SAA and that drum becomes full, the generator might begin accumulating newly generated waste in a second 55-gallon drum.'' Unfortunately, during the development of the proposed rule, EPA's attempts to convey this idea through regulatory changes were unsuccessful and therefore were not included in the proposed rule. Nevertheless, we endorse CT DEEP's description as a best management practice for removing hazardous waste from an SAA. One alternative suggested by Wisconsin Department of Natural Resources (WDNR) is to ''clarify that a full 55-gallon drum must be moved from the satellite accumulation area. As the proposed rule reads now, a full 55-gallon drum may be under the satellite accumulation requirements indefinitely because 40 CFR 262.15(a)(6) refers to excess amounts . . . If a satellite accumulation drum is at capacity it should be moved into the central accumulation area.'' [64] Again, the Agency agrees that a full 55-gallon drum should be moved to a CAA. During the development of the proposed rule, we considered rewording this section of the proposed regulations as the WDNR suggested but we declined to use this construct in the proposal out of concern that generators would be able to easily circumvent our intent by not completely filling a container before beginning to fill another container.

6. Preparedness, Prevention, and Emergency Procedures for SQGs and LQGs

EPA is adding paragraphs (a)(7) and (a)(8) to the SAA regulations in § 262.15 to clarify that the preparedness, prevention, and emergency procedures for SQGs and LQGs that are found in § 262.16(b)(8) and part 262 subpart M, respectively, extend to any SAAs on site, as well as CAAs. These specific changes to the SAA regulatory text were not proposed, although we did request comment, but are being added in the final rule in response to comments we received on the proposed addition of part 262 subpart M, which is discussed more thoroughly in section XI 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.[65] According to the company's incoming letter to EPA, the Atlantic Research Corporation (ARC) ''manufactures solid rocket propellant. In it's [sic] operations, ARC generates waste chemicals which are accumulated in containers located in storage sheds outside of the buildings generating the materials. The waste chemicals are accumulated outside of the buildings for safety reasons due to the explosive nature of the work conducted.'' [66]

There were no proposed regulatory changes associated with this action; however, in the preamble to the proposed rule, EPA gave notice that it was proposing to revoke this interpretation. EPA agreed with ARC that in some instances it is safer to accumulate hazardous waste away from the initial point of generation, such as hazardous wastes that are explosive. However, in the preamble to the proposed rule, EPA reasoned that, because SAAs are subject to less stringent conditions than CAAs, it is not appropriate for such dangerous hazardous wastes to be stored in SAAs. Rather, EPA stated 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.

We received more than a dozen comments on this action. Several commenters supported the action to rescind the memo. Others, such as Pacific Northwest National Laboratory (PNNL), Utility Solid Waste Activities Group (USWAG) and Institute of Makers of Explosives (IME) supported it, but suggested that additional clarity was

[63] Comment number EPA–HQ–RCRA–2012–0121–0178.

[64] Comment number EPA–HQ–RCRA–2012–0121–0206.

[65] 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.

[66] Ibid.

needed.[67] We intend to rescind the memo, as proposed, while addressing commenters' concerns. First, not only do SAAs have fewer regulations and safeguards associated with them than CAAs, but the regulations require that they must be ''at or near the point of generation.'' EPA would not consider a shed outside a building where the waste is initially generated to be ''at or near the point of generation.'' Nevertheless, as this term is not particularly specific, implementing regulatory agencies will retain authority in determining what they consider ''at or near the point of generation.''

Both PNNL and USWAG were concerned that EPA was implying that all reactive hazardous wastes (D003) were required to be accumulated away from the initial area of generation and, therefore, could not be accumulated in SAAs. Additionally, PNNL was concerned that there might be a ''Catch-22 where EPA does not allow remote accumulation and OSHA or the International Fire Code does not allow them to be accumulated at the point of generation.'' This was not our intent. Our intent was that if, for safety reasons, which may be driven by fire codes or OSHA regulations, a reactive hazardous waste (or other hazardous waste, for that matter) needs to be accumulated away from the initial area of generation, then that accumulation area should be considered a CAA, not an SAA. EPA is not prohibiting remote accumulation; rather, we are clarifying that it is more appropriate to regulate the remote accumulation area as a CAA than an SAA. Likewise, EPA did not intend to suggest that all storage sheds would necessarily be CAAs. For example, a storage shed that is located ''at or near the point of generation'' could be considered an SAA.

In its comments IME said it ''would have no objection to rescinding this memorandum so long as the agency allows accumulated SAA waste to be temporarily moved from the initial point of generation for purposes of complying with the regulations of other federal agencies. For example, a number of IME member companies collect hazardous waste in containers at SAAs. Regulations administered by the Bureau of Alcohol, Tobacco, Firearms and Explosives (''ATF'') require that these containers be moved to a magazine at the end of a shift . . . The containers are returned to the SAA at the start of the subsequent shift.'' [68] EPA's SAA and CAA regulations do not prohibit generators from moving hazardous waste from the SAA's initial point of generation to a CAA (*e.g.* magazine) and back again to the SAA for further accumulation.

8. Examples of the Meaning of ''Under the Control of the Operator''

The previous SAA regulation at § 262.34(c)(1) used the term ' ''under the control of the operator,'' as do the revised SAA regulations being finalized at § 262.15(a). EPA has not defined this term in the regulations, has not discussed it in preamble and discussed it only minimally in guidance letters.[69] 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 provided examples in the preamble to the proposed rule. For example, EPA stated that it would consider waste to be ''under the control of the operator'' if the operator controlled access to an area, building, or room in which the SAA is located, such as with entry by access card, key or lock box. Another example EPA provided was 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.

Commenters were concerned that EPA is imposing new requirements on SAAs. To the contrary, the Agency requested comment on this issue in the hope of developing a list of best management practices that regulators and the regulated community could rely on to fulfill this existing requirement. The Agency deliberately did not propose any regulatory text to define the term ''under the control of the operator.''

A number of commenters provided helpful examples of what they believe constitutes ''under the control of the operator'' as it pertains to the SAA regulations. For example, the Oklahoma Department of Environmental Quality ''believes that the term ''Under the control of the operator'' has a much broader meaning than those examples in the proposed rules; *e.g.* a situation where the operator is regularly within view of the SAA during the course of their job, or a situation where the operator is expected to be able to observe any individuals that may enter or exit the SAA.'' [70] One state commenting as part of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) ''believes as a general rule the SAAs in a manufacturing plant are not in locked cabinets or in locked rooms. They are generally in centralized locations along the assembly lines so all the employees, in several shifts, have access to them. SAA closest to the assembly line employees would be under their control and be at or near the point of generation. This state does not believe the regulated community would agree to buying several locked cabinets and placing them on the plant floor. It would be very inconvenient for the employees to run and look for the person with the keys to unlock the cabinet every time they need to place waste in the SAA. The sites have controlled access so the entire building would be under control of the operator.'' [71] The District of Columbia (DC) Department of Energy and Environment suggests that '' 'under control of the operator' would not include situations where the waste cannot be seen unless the area is equipped with 24 hour video surveillance or 24 hour sensor surveillance. DC also suggests adding criteria such as: the area must be monitored daily by trained personnel and access to the area must be limited to prevent access by untrained personnel or visitors.'' [72]

In addition, one commenter referenced an EPA memo that discussed the term ''under control of the operator.'' [73] EPA states: ''The condition that wastes accumulated under the satellite provision 'be under control of the operator of the process generating the waste' is met provided the generator demonstrates that the personnel responsible for generating/or accumulating the waste have adequate control over the temporary storage of these wastes. The EPA recognizes that for many wastes, the person who first generates the waste may not be the same person responsible for the accumulation of all of these wastes; rather, another worker may have responsibility of overseeing the temporary storage of wastes.'' The Agency then states that ''the goal is that this temporary accumulation is performed responsibly and safely, with adequate oversight and control.'' On a related matter, commenters asked EPA to clarify whether an ''operator'' must be a single

[67] Comments EPA–HQ–RCRA–2012–0121–0078, EPA–HQ–RCRA–2012–0121–0093 and EPA–HQ–RCRA–2012–0121–0126, respectively.

[68] Comment EPA–HQ–RCRA–2012–0121–0126.

[69] Letter from Sylvia K. Lowrance, Director of the Office of Solid Waste to Mr. D.B. Redington, February 23, 1993, RCRA Online 11728.

[70] Comment Number EPA–HQ–RCRA–2012–0121–0182.

[71] Comment Number EPA–HQ–RCRA–2012–0121–0217.

[72] Comment Number EPA–HQ–RCRA–2012–0121–0248.

[73] Letter from Sylvia K. Lowrance, Director of the Office of Solid Waste to Mr. D.B. Redington, February 23, 1993, RCRA Online 11728.

individual. The Agency believes that there can be more than one operator per SAA over time. For example, as employees change shifts over the course of a day, the role of the operator can be transferred from one employee to another. Likewise, the Agency believes that there can also be more than one operator per SAA at the same time. For example, multiple operators may be running laboratory equipment in the same room and share hazardous waste containers located in a single SAA.[74] However, the term operator does refer to an individual or individuals responsible for the equipment or processes generating the hazardous waste and does not refer to a company or entity as a whole.

The examples discussed in the preamble to the proposed rule and final rule are not an all-inclusive or exhaustive list of practices that may be used to meet the requirement that hazardous waste in an SAA must be ''under the control of the operator.'' Implementing regulatory agencies may consider these examples or alternatives to meet the intent of the term, which is to ensure that someone familiar with the operations generating the hazardous waste is aware of and able to attend to the operations, if needed, while also providing some measure of controlled access.

G. Accumulation of Hazardous Waste by SQGs and LQGs on Drip Pads and in Containment Buildings

As part of its reorganization efforts to improve the user-friendliness of the hazardous waste generator regulations, the Agency proposed to consolidate the waste accumulation provisions for tanks, drip pads and containment buildings into one section. The Agency also proposed to include specific provisions for SQGs that may accumulate hazardous waste on drip pads and in containment buildings at § 262.16 (b)(4) and (5), respectively. Previously, the regulatory provisions for LQGs referred to drip pads and containment buildings, but these accumulation units were not specifically identified in the SQG provisions. Therefore, if an SQG desired to accumulate hazardous waste in these type units, they could only do so by complying with the more stringent LQG regulations. In the proposed rule, the Agency attempted to provide clarity by adding the regulations applicable to LQG drip pads and containment buildings (previously found at § 262.34 (a)(1)(iii) and (iv)) to provisions for SQGs accumulating hazardous waste in these units.

With respect to the marking and labeling provisions for hazardous waste accumulated on drip pads and in containment buildings, the Agency proposed that SQGs and LQGs mark or label its waste accumulation units with the words ''Hazardous Waste'' in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, etc. We also proposed that SQGs and LQGs use inventory logs, monitoring equipment, or records to: Identify the contents of the drip pad and containment building and its associated hazards; to identify the date upon which each period of accumulation begins; and keep inventory logs or records with the above information in close proximity to the drip pad and containment building.

1. Drip Pads

a. What is EPA finalizing? The Agency is finalizing the regulations associated with the accumulation of hazardous waste on drip pads for SQGs and LQGs § 262.16(b)(4) and § 262.17(a)(3), respectively. This provision was previously found at § 262.34(a)(1)(iii) for LQGs only. This provision states that a generator with drip pads must comply with subpart W of 40 CFR part 265, and, consistent with existing regulations, must remove all hazardous wastes from the drip pad and associated collection system at least once every 90 days. Similarly, at closure, SQGs and LQGs must comply with § 265.445(a) and (b), but not (c). Once the hazardous wastes are removed from a drip pad, LQGs would have up to 90 days and SQGs up to 180 days to accumulate the hazardous wastes without a permit or interim status. SQGs and LQGs would also have to maintain the following records at the facility by use of inventory logs, monitoring equipment, or any other effective means: Records that describe the procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and records that document 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.

These records would need to be kept on site and readily available for inspections. Ideally these records would be in close proximity to where hazardous waste is being accumulated after removal from the drip pad, such as in a control room, or other central location at the facility.

In addition, consistent with guidance previously issued by the Agency for wood treaters, that if hazardous waste is placed in a satellite accumulation area, the waste can remain there until the drum is full. Once the drum is full, it must be dated and moved to the hazardous waste storage area. Thereafter, the 90 or 180 day accumulation clock for LQGs and SQGs, respectively, begins.[75]

Additionally, consistent with this same guidance for wood preservers, EPA is clarifying in this final rule that VSQGs may accumulate hazardous waste on drip pads as long as they also comply with the technical standards of 40 CFR part 265 subpart W to ensure the drip pads are operated in an environmentally safe and responsible manner.[76]

b. *What changed since proposal?* In the process of trying to consolidate the waste accumulating provisions for tanks, drip pads and containment buildings in the proposed rule, the Agency failed to properly take notice that drip pads are very different in operation than tanks and containment buildings. The unique nature of drip pads was addressed through several earlier rulemakings. For example, on December 6, 1990, EPA promulgated several new hazardous waste listings specific to the wood preserving industry, along with unit-specific hazardous waste standards for drip pads ('subpart W') and corresponding generator accumulation provisions for persons generating hazardous waste and managing the waste on drip pads (55 FR 50450). As part of that rulemaking, EPA established a standard by which generators must remove all hazardous wastes from their drip pad at least once every 90 days, while still allowing for additional time to accumulate the hazardous waste (*e.g.,* in tanks or containers) depending on their generator status. This latter issue was clarified in subsequent guidance, but is being further clarified in this final rule. Therefore, for both LQGs and SQGs, hazardous wastes must be removed from the drip pad and associated collection system at least once every 90 days, and the Agency is retaining the regulatory text previously found at § 262.34 (a)(1)(iii). By incorporating this provision, the Agency will also address the requirements that generators

[74] Memorandum from Robert Springer, Director or EPA's Office of Solid Waste, to RCRA Regional Directors, ''Frequently Asked Questions About Satellite Accumulation Areas,'' March 17, 2004, RCRA Online 14703.

[75] *See* U.S. Environmental Protection Agency, *Wood Preserving Resource Conservation and Recovery Act Compliance Guide: A Guide to Federal Environmental Regulation,* EPA–305–B–96–001, at section 5–17 (June 1996).

[76] Ibid., 5–8

describe the procedures to demonstrate that all wastes have been removed from the drip pad and associated collection system at least once every 90 days.

The Agency is not finalizing the provision that would require SQGs and LQGs to mark drip pads with the words ''Hazardous Waste'' in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, etc. As stated by one commenter, labeling the entire drip pad with the words ''Hazardous Waste'' is inaccurate because not all of the materials on the drip pad are hazardous waste, such as the poles and lumber being treated on the drip pad. Finally, the drums stored on the drip pad or drum storage area that contain hazardous waste and the drum storage area would already be labeled with those words. Similarly, identifying the hazards of wastes is inappropriate because drip pads contain both wastes and components of treated wood operations.

Similarly, we have modified where inventory logs or records for drip pads must be kept. We had proposed that the information must be in close proximity to the drip pad. Commenters indicated that having records in close proximity may not always be practical or even desirable. In response to comments, we have modified the regulations so that the records must be kept on site and readily available for inspections.

c. *Major Comments.* Commenters primarily focused on explaining how drip pad operations work and identifying the mistake the Agency inadvertently made in consolidating the waste accumulation regulations for all types of units. Commenters also requested that the Agency change the waste accumulation time for SQGs from 90 days to 180 days for wastes removed from the drip pad to be consistent with other waste accumulation unit time limits. This comment is also consistent with Agency guidance issued for drip pads.[77] One commenter identified a number of problems associated with the marking and labeling of hazardous wastes on drip pads, including generators marking drip pads with the words ''Hazardous Waste'' in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, etc, and identifying the hazards of wastes as being inappropriate. As discussed previously, the Agency has responded to these comments.

[77] Ibid, section 5–17.

2. Containment Buildings

a. *What is EPA finalizing?* The Agency is finalizing the regulations that were proposed in § 262.16 (b)(5) and § 262.17 (a)(4) for hazardous wastes accumulated in containment buildings by both SQGs and LQGs, respectively.[78] This provision states that an SQG or LQG accumulating hazardous waste in a containment building must comply with subpart DD of 40 CFR part 265, 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, and maintain the following records by use of inventory logs, monitoring equipment, records, or any other effective means: (1) 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 (2) documentation that the unit is emptied at least once every 90 days. The Agency is also stating that these records must be readily available upon request from the implementing agency. These recordkeeping provisions were found under the marking and labeling provisions for containment buildings in the proposed rule.

The Agency is also requiring SQGs and LQGs accumulating hazardous waste in containment buildings to label their containment building with the words ''Hazardous Waste'' located in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers or other persons on site and also provide an indication of the hazards of the waste using one of several methods described under § 262.16(b)(6)(i)(B) and (b)(6)(ii)(B)—Labeling of containers and tanks.

b. What changed from proposal? Similar to the changes made for drip pads, the Agency moved the marking and labeling provisions to the waste accumulation section because these provisions more appropriately address how generators will meet the 90 day waste accumulation time limit. The Agency is also adding a provision to clarify that the records used to demonstrate that hazardous wastes have been removed within 90 days must be readily available upon request from the implementing agency.

[78] This regulatory text was originally found at § 262.34(a)(1)(iv).

c. *Major comments.* There were very few comments about this provision. One commenter did not support the provision allowing SQGs to accumulate hazardous waste in containment buildings because these are complicated units requiring a fairly high level of knowledge and expertise to properly construct and operate. While the Agency agrees with this commenter conceptually, we have no basis to prohibit such an operation, such as damage cases from generators accumulating hazardous wastes in such units. Another commenter sought clarification to differentiate between containment buildings and manufacturing process buildings. As described at subpart DD of part 265, containment buildings are specially designed and constructed buildings that address the waste accumulation of hazardous wastes. Manufacturing process buildings may or may not have similar design specifications, but if they are not generating or accumulating hazardous wastes, they need not comply with subpart DD requirements. Also, the Agency maintained the 90 day accumulation time period for any SQGs accumulating hazardous wastes in containment buildings consistent with what was proposed.

H. Special Requirements for Ignitable and Reactive Wastes for LQGs (40 CFR 262.17(a)(1)(vi))

Some generators, especially as those located in urban environments, have expressed their concern regarding the LQG provision requiring generators to place containers holding ignitable or reactive waste 15 meters (50 feet) from the site's property line. In some cases, 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 generator from complying with this condition.

The Agency proposed to allow LQGs to apply for a site-specific waiver from their local fire department if they are unable to meet the 15 meter ignitable and reactive hazardous waste accumulation property line condition. This proposed change would require LQGs to obtain a written approval from a local fire department and keep the written approval in their records.

Additional details are discussed in section XI of the preamble of the proposed rule (80 FR 57979).

1. What is EPA finalizing?

The Agency is finalizing the proposed regulation with a minor modification. The final regulation allows an LQG to apply for a site-specific waiver from the authority having jurisdiction (AHJ) over the fire code if the LQG is unable to meet the 15 meter ignitable and reactive hazardous waste accumulation property line condition. If an LQG wants this waiver, they are required to obtain a written approved waiver from the AHJ who has the ability to determine a safe and practical location for the facility to store ignitable or reactive waste that is within 15 meters (50 feet) of the facility's property line. LQGs are then required to keep the written approval in their records.

2. What changed since proposal?

EPA originally proposed that the facility contact their local fire department for the site-specific approval. While several commenters agreed that most fire departments are well qualified to approve this waiver, some commenters indicated that there may be some confusion as to who can approve this waiver. For example, some areas may require a designated official to interpret and enforce the fire code rather than the local fire department. In this case, the designated official will grant the approval. The Agency did not intend to restrict the ability of those who can grant this approval to only local fire departments. However, the Agency did intend that the entity or individual granting this approval has detailed knowledge of the fire code, has the ability to evaluate the site conditions to determine a safe and practical place for storing ignitable and reactive wastes, and is authorized by the state or local government to enforce the fire code.

To address these comments, the Agency changed the terminology from the ''fire department'' to the ''authority having jurisdiction (AHJ)'' over the fire code within the facility's state or locality. An AHJ may or may not be the fire marshal, fire chief, building official, or another official as designated by the state or local government. AHJ is a term developed by the National Fire Protection Association (NFPA) and has been adopted by several state and local governments. Considering the wide use of the term ''AHJ'' in various fire codes, the Agency believes the more general term will ensure that regardless of who has the authority (local/state), the generator will be able to apply for the site-specific waiver. Furthermore, the Agency believes that the AHJ is well qualified at finding the most appropriate place to accumulate this waste and to determine that there is a sufficient level of protection for the facility and the surrounding community prior to issuing this approval.

We requested comment on whether EPA should set conditions for the waiver, but determined from the commenters that the decision should be made on a site-specific basis dependent on the characteristics of the generator, the physical make-up of the site, and the surrounding area. EPA expects the AHJ to be sufficiently qualified to make a site-specific determination for the waiver and consider relevant factors when making that decision, such as the length of time the hazardous waste can be accumulated, the amount of hazardous waste that can be accumulated, and any physical or technical controls. The AHJ should also consider any potential off-site conditions, such as the proximity to populated public areas (schools, hospitals, or playgrounds), off-site sources of ignition, and the proximity to an adjacent property's storage area of ignitable or reactive waste.

3. Major Comments

A few commenters recommended that EPA directly allow deference to locally applicable fire codes rather than requiring the generator to obtain an approval. EPA proposed a rule in 1984 that is similar to the commenters' recommendation. It would have amended the buffer zone requirements and adopted NFPA fire codes but the rule was never finalized.[79] However, the 1984 proposal shows that adopting the fire code appears to be more complicated than the commenters realize due to the differences in terms and definitions. Furthermore, fire codes differ from locality to locality and some rural areas have no fire code or fire department. While EPA agrees that this recommendation would be easier to implement for the generator since it removes the approval process, at this time, the Agency cannot defer to local fire codes because the complexity involved may increase confusion and in some cases it may present a danger for the community or for the facility itself. However, the Agency may reevaluate this topic in future rulemakings.

The Agency took comment on whether owners and operators of permitted and interim TSDFs should also be able to apply for this approval. While several commenters agreed that TSDFs should be included, EPA determined that TSDFs already go through an existing permit process, including public notice and comment, to determine site-specific conditions that include identifying locations for accumulating hazardous waste.[80] Considering that parts of the permit process may be bypassed if owners/operators of TSDFs were allowed to apply for this waiver, EPA concludes that it is not appropriate to include TSDFs in this waiver.

Effect of the Reorganization: This section is affected by the reorganization. The special requirements for ignitable and reactive waste were found at 40 CFR 265.176.

I. LQG Closure Regulations (40 CFR 262.17(a)(8))

In an effort to improve the clarity and understanding of the closure regulations for LQGs, as well as to strengthen M. he closure regulations to improve environmental protection, the Agency proposed three changes to the closure provisions for LQGs previously found at § 262.34(a)(1)(iv)(B).

First, EPA proposed to consolidate the closure regulations for LQGs accumulating hazardous waste at § 262.17(a)(8). EPA believed the organization of the closure regulations previously found at § 262.34(a)(1)(iv)(B) (which referred to various closure requirements in part 265) was confusing and difficult to follow. The proposed consolidation included both the facility-wide general performance requirements found at §§ 265.111 and 265.114 for hazardous wastes accumulated in 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 proposed to strengthen the closure regulations for LQGs accumulating hazardous waste in containers in central accumulation areas that plan to stop hazardous waste accumulation by requiring them to meet the same type of closure regulations that apply to tanks, drip pads and containment buildings, including those situations where a generator is not able to demonstrate that its hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products can be practicably removed or decontaminated (*i.e.,* cannot ''clean close''). The Agency demonstrated the need for closure requirements to apply to LQGs accumulating hazardous waste in containers as discussed in detail in the

[79] 49 FR 23290, June 5, 1984.

[80] 40 CFR part 270.

preamble to the proposed rule at 80 FR 57955 and provided in the docket a list of Superfund damage cases to the environment caused by generators who accumulated hazardous wastes in containers and abandoned these facilities.

Third, EPA proposed 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 facility or when the generator closes a unit accumulating hazardous waste. Additionally, EPA proposed that an LQG notify EPA or its authorized state within 90 days after closing the facility or the unit accumulating the hazardous waste. This notification would state the LQG had clean closed or failed to clean close and therefore, must close as a landfill.

1. What is EPA finalizing?

Based on review and evaluation of comments, the Agency is finalizing the following provisions associated with the closure regulations for LQGs. First, we are consolidating the closure regulations at § 262.17(a)(8). These regulations consist of two components: Closure of a waste accumulation unit, such as a tank system and container accumulation area, and closure of a generator's facility.

When closing a waste accumulation unit at § 262.17(a)(8), a generator may either elect to place a notice in its operating record that identifies the unit they are closing and not conduct the formal closure performance standards of § 262.17(a)(8)(iii) in the case of a container, tank or containment accumulation unit, or § 262.17(a)(8)(iv) in the case of a drip pad unit, until the facility closes, or they can formally perform the closure provisions in § 262.17(a)(8)(ii)(B) through § 262.17(a)(8)(iv) including clean closure performance standards and notification to EPA that the facility has closed that accumulation unit within 90 days of closing the unit.

When closing the facility, the generator would be required to meet the notification standards of § 262.17(a)(8)(ii) and performance standards of § 262.17(a)(8)(iii) for container, tank and containment building units, and § 262.17(a)(8) (iv) for drip pad units. The performance standards of § 262.17(a)(8)(iii) include four paragraphs. The first two paragraphs incorporate the closure performance requirements at §§ 265.111 and 265.114 when an LQG's waste accumulation unit or facility closes. The third paragraph addresses what must be done with any hazardous wastes generated as a result of an LQG clean closing its waste accumulation areas. The fourth paragraph addresses the situation when an LQG that has accumulated hazardous waste in a container, tank or containment building waste accumulation area cannot meet the closure performance standards or clean close (*i.e.,* situations where contaminated soils and wastes cannot be practicably removed or decontaminated).

In addition, LQGs with drip pads must continue to comply with the unit-specific closure performance standards found at § 265.445(a) and (b) [81] and the general closure requirements now found at § 262.17(a)(8)(iii)(A)(*1*) and (*3*). In the proposed rule, the Agency consolidated drip pad closure requirements with tanks and containment buildings and in the process, incorrectly modified the closure requirements. In this final rule, § 262.17(a)(8)(iv) has been added to specifically address the closure requirements for drip pads and correct the modification.

As mentioned previously, LQGs need to notify EPA or their authorized state using the Site ID form (EPA Form 8700–12) when they are closing their facility. Specifically, LQGs must notify EPA or the authorized state using the Site ID form (EPA Form 8700–12) at least 30 days prior to closing their facility, and also notify EPA or the authorized state within 90 days after closing the facility. This second notification using form 8700–12 would state that the LQG has either met the closure performance standards of § 262.17(a)(8)(iii) or failed to meet such standards, in which case they must notify that they are closing as a landfill. In the case of LQGs with drip pads, they would either notify using form 8700–12 they had met the closure performance standards of § 265.445(a), or if they failed to meet those standards, notify that they must close in comply with the requirements of § 265.445(b). In response to comments, the Agency is allowing LQGs to request additional time to clean close at § 262.17(a)(8)(ii)(C). However, the LQG must notify EPA using form 8700–12 or its authorized state within 75 days after closing their site to request an extension and provide an explanation as to why the additional time is required.

Third, the Agency is clarifying that closure requirements do not apply to satellite accumulation areas at § 262.17(a)(8)(v). While the Agency did not receive any specific comments on the scope of closure requirements, we are clarifying that the closure requirements do not apply to satellite accumulation areas.

2. What changed since proposal?

The Agency simplified and clarified the closure process. First, EPA is providing LQGs a choice for when they close a hazardous waste accumulation unit (*i.e.,* CAA, tank, containment building, drip pad): (1) Put a notice in the operating record stating they closed the accumulation unit, or (2) follow the closure procedures in § 262.17(a)(8)(ii)–(iv). The Agency is making this change in the final rule based on information from commenters who described normal operating situations where accumulation units close and reopen, or are relocated to another part of the site. The Agency did not want the accumulation unit closure provisions to interfere with facility operations and the generation and accumulation of hazardous wastes, especially as the Agency is aware of situations where hazardous wastes are placed in containers that are mobile storage devices. However, when closing their overall facility, generators must ensure all remaining hazardous wastes they have generated and accumulated are removed from their facility and clean close per § 262.17(a)(8)(iii) (*i.e.,* minimize the need for further maintenance by controlling, minimizing, or eliminating 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 to the extent necessary to protect human health and the environment).

Second, rather than have LQGs notify EPA or an authorized state every time they close a waste accumulation unit, they must now notify only when they are closing their facility. The Agency received many comments that providing a notification every time a waste accumulation unit is closing, particularly for container waste accumulation units, is impractical. Commenters noted that opening, closing and reopening waste accumulation units, even temporarily, occurs periodically and the Agency does not want to interfere with the operations of the facility.

Third, in finalizing the closure performance standards § 262.17(a)(8)(iii), the Agency has reverted back to the existing regulatory text previously found at § 265.197(a) for closure of tanks and § 265.1102(a) for closure of containment buildings for purposes of consistency, and because one of the primary purposes of this

[81] See Generator Closure Requirements, RCRA/Superfund Hotline Monthly Report, December 1998, EPA530–R–98–005.

section is to consolidate the closure regulations found in different parts of the program.

Finally, the Agency separated the closure performance requirements for drip pads because they are different than those of containers, tanks and containment buildings.

3. Major Comments

Many commenters supported the consolidation of closure requirements to make them more user-friendly and easier to comply with. Many commenters did not support EPA's proposal to require notification every time a waste accumulation area was closing and requiring LQGs to clean close every time a waste accumulation area closed. In both cases, commenters stated the proposed changes were inefficient, impractical and/or unnecessary. One commenter, representing several generator organizations, did not believe closure standards should be identified as conditions for exemption. However, EPA notes that closure standards are a condition for exemption under the existing RCRA program. See section IX.A for a more detailed discussion of the distinction between conditions for exemption and independent requirements. This commenter also recommended that the concept proposed in § 262.17(a)(8)(ii)(A)(*1*) that closure should be undertaken ''to the extent necessary to protect human health and the environment,'' should be moved up to the introductory paragraph since this is an important risk-based concept applicable to all of the requirements in § 262.17(a)(8)(ii)(A), not just to subparagraph (*1*). The Agency believes the regulations being finalized already take into account a risk-based concept because ''minimizing the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment'' is a risk-based standard. Hence, we have not finalized this change.

This same commenter expressed serious concerns that this proposal was a major departure from existing regulations regarding the clean closure of container central accumulation areas and specifically, the requirement that if the facility could not clean close, then the generator must close as a landfill with all the associated requirements (*e.g.,* installing groundwater monitoring wells upgradient and downgradient from the container area; installing monitoring wells for 30 years or longer during a post-closure care groundwater monitoring program, etc.)

The Agency agrees that this is a new provision. However, as discussed in the proposal (80 FR 57955), many Superfund removal actions over the years have resulted from generators who failed to clean close their hazardous waste container accumulation areas. The EPA believes that facilities accumulating hazardous wastes in containers should have to close as a landfill if they cannot clean close like all other LQGs accumulating hazardous waste. The inability to clean close would indicate major environmental problems have occurred at the generator's facility. If so, the responsibility falls on the generator to address the potential contamination just as a generator would address any problems that resulted from its accumulated hazardous wastes in tanks, drip pads, or containment buildings. Whether a generator would actually have to meet all the requirements of closing as a landfill would be a site-specific decision, made in conjunction with EPA or the authorized state., Generally, if a LQG has been managing its hazardous waste in accordance with the LQG provisions including proper accumulation standards and spill clean-up, then clean closure will consist of removing the containers from the accumulation area. EPA anticipates this will be the case in most situations for container central accumulation areas. The Agency has determined that clean closure requirements should apply equally to all hazardous waste accumulation areas.

Finally, one commenter pointed out that the proposal to consolidate the closure standards for drip pads with tanks and containment buildings would modify existing drip pad closure requirements. The Agency acknowledges this was an inadvertent mistake and has reverted back to the existing subpart W requirements of part 265. However, for purposes of consolidation and consistency, LQGs that accumulate hazardous waste on drip pads and that are closing their facility must still comply with the notification and waste management provisions found at § 262.17(a)(8)(ii) and (a)(8)(iii)(A)(*3*), as well as 40 CFR part 265 subpart W.

Effect of the Reorganization: This section is affected by the reorganization. The closure requirements were previously found in § 262.34(a)(1)(iv)(B). The reorganization is discussed in section VI of the preamble.

J. Documentation of Inspections of Waste Accumulation Units

As part of the of the proposed Hazardous Waste Generator Improvements rule, the Agency at 80 FR 57952–53 requested comment on requiring generators to document the results of their container, tank and drip pad inspections. More specifically, the Agency requested comment on whether to require the following: (1) Both SQGs and LQGs document the results of their required ''at least weekly'' container inspections; (2) SQGs accumulating hazardous waste in tank systems document the results of their tank inspections; and (3) both SQGs and LQGs accumulating hazardous waste on drip pads document the results of their drip pad inspections.

The Agency requested comment on modifying these provisions to require documentation of inspections for these waste accumulation units to emphasize the importance of these inspections in preventing releases into the environment and to provide a measure of accountability that a generator's inspection of its containers, tanks or drip pads actually took place when required. Currently, the only way an inspector can determine whether the required inspections actually occurred is to inspect a generator site at the same time that the inspection is supposed to occur, or conduct an inspection within one week of the first inspection—assuming the inspector knew when the first inspection actually occurred. Both situations have low probabilities of occurring.

As part of the proposed rule, the Agency noted that many states already require generators accumulating hazardous waste in waste accumulation units to maintain records of their inspections. Many of these states provide templates for generators to use to assist them in recording the results of their inspections. Similarly, EPA stated the burden imposed upon generators to record the results of its inspections would not be significant, particularly if generators use a template to document the results of inspections.

The Agency also stated that documenting the results of these inspections is an important best management practice for generators to use not only to prevent any releases, but also to identify situations, such as damaged containers, tanks or drip pads that could lead to a potential release to the environment.

1. What is EPA finalizing?

The Agency is not moving forward at this time to require SQGs and LQGs to

document those situations identified earlier where documentation of inspections is currently not required. At this time, the Agency believes further analysis and evaluation is required before a final decision can be made. However, as already noted, the Agency believes this is a best management practice that serves to protect generators from possible releases and cleanup and which also bolsters the preventive aspects of the RCRA program. EPA encourages generators to examine the feasibility of adopting this practice as part of their standard operating procedures.

2. Major Comments

Commenters were mixed on the need to require SQGs and LQGs to document the results of their inspections associated with containers, tanks and drip pads. Among the reasons commenters cited for supporting documentation of inspections included: Such a process acts as a reminder to ensure there are no problems; the requirement is not unduly burdensome; companies are already in the habit of preparing and maintaining these types of records; the records are useful in tracking containers within the accumulation areas and corrective actions needed and taken, and in documenting that no releases occurred within the unit; and documentation will result in greater protection against hazardous waste releases into the environment.

Commenters who opposed this requirement stated that adding additional recordkeeping requirements shifts the focus away from actual storage practices to secondary recordkeeping practices; there is not sufficient justification for imposing this requirement; there is no added benefit because accumulation units in poor condition have obviously not been regularly inspected; and the Agency would be better served by increasing outreach to small generators to increase awareness of the inspection requirement.

K. Allowing VSQGs To Send Hazardous Waste to LQGs Under the Control of the Same Person (40 CFR 262.14(a)(5)(viii) and 262.17(f))

EPA is finalizing the proposed provision to allow VSQGs 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 VSQG and LQG comply with specified conditions.

1. Introduction

Before the revisions in this rulemaking, under the regulations at § 261.5(f)(3) for acute hazardous waste, and § 261.5(g)(3) for non-acute hazardous waste, a VSQG was allowed to 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, which included 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 previous VSQG regulations did not allow a generator to send its hazardous waste off site to another generator unless the receiving generator had a storage permit or was otherwise one of the types of facilities cited previously. Thus, persons looking to reduce their overall environmental liability across multiple facilities were prohibited from managing their VSQG hazardous waste at one or more of their LQG facilities without first obtaining a permit or complying with the interim status standards.

EPA determined that providing the option for VSQGs to send their hazardous waste to an LQG that is under the control of the same person will improve the management of that hazardous waste for the following reasons. First, LQGs are subject to more stringent management conditions compared to VSQGs, such as accumulation time, labeling, training, emergency planning, and containment standards. In addition, LQGs may only transport (using a hazardous waste manifest) hazardous waste to RCRA-permitted or interim status hazardous waste TSDFs, which in turn, are subject to more stringent management standards than the municipal or non-municipal solid waste facilities that VSQGs are allowed to use. Therefore, allowing hazardous waste generated by a VSQG to be sent to an LQG under the control of the same person will improve overall tracking, 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 VSQG facilities, as it would be handled under the more comprehensive LQG and TSDF regulatory programs. Consolidation by an LQG of hazardous waste generated by several VSQGs under its control may also increase potential opportunities for hazardous waste recycling by the LQG.

In addition, 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, VSQGs 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 VSQGs 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 VSQGs to send their hazardous waste to an LQG under the control of the same person will likely reduce the overall time that the VSQG accumulates hazardous waste on site, which would further reduce the potential risk to human health and the environment.

Finally, this new provision will give companies flexibility in allocating labor and resources required to manage the company's total quantity of hazardous waste generated, as the company is now allowed to consolidate its hazardous waste from VSQG facilities at its LQG facilities.

EPA has received requests over the years from industry to amend the regulations to allow VSQGs to send their hazardous waste to LQGs for consolidation. Many of the commenters, including state agencies, the generator industry, and the waste management industry, supported adding this option to the regulations. Commenters expressed their support for consolidation, stating that it will ease the financial and administrative burden for VSQGs and encourage responsible waste management, treatment, and disposal. Specifically, some commenters stated that consolidation at an LQG would ensure greater safety and environmental protection because LQG staff are generally more knowledgeable than those at a VSQG. In addition, the Minnesota Pollution Control Agency confirmed with direct observation that allowing a VSQG to send its hazardous waste to another site where proper and safe management is available at a reasonable financial and management price, such as is provided by a VSQG collection site, does consistently reduce the average time that VSQGs accumulate waste on site, reducing on-site health and safety risks and also lowering the potential for both accidental releases

and the temptation for improper disposal of larger amounts.[82]

Adding the consolidation option in the regulations will enable generators to employ greater control over the management of their hazardous waste, thereby resulting in improved efficiency and reduced liability for the generator. Commenters noted numerous examples where VSQGs and LQGs under the same ownership may take advantage of the new consolidation provision. For example, Army National Guard and Reserve units that may be VSQGs can 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 commented that they supported this provision. Often, individual laboratory buildings qualify as VSQGs. Allowing different laboratory buildings within a university or industrial environment that are VSQGs to send their hazardous waste to another university or industrial entity that is an LQG under the same control will provide both economic and environmental benefits. Furthermore, utilities, retailers, and remote oil and gas production facilities also represent examples of industrial sectors that indicated they expect to benefit from the intra-company transfer of hazardous waste from VSQGs to LQGs.

2. What is EPA finalizing?

The Agency is finalizing the provision that allows a VSQG to send its hazardous waste to an LQG that is under the control of the same person, provided specified conditions are met.

a. *Scope.* EPA is finalizing its proposal to amend the regulations under the previous regulatory framework at § 261.5(f)(3) and (g)(3) to allow VSQGs to send hazardous waste to an LQG under the control of the same person. ''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 body. For the purposes of this section, ''control'' means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate as generators on behalf of a different person shall not be deemed to ''control'' such generators. EPA notes that these are the same key terms used in the exclusion from the definition of solid waste for hazardous secondary materials that are generated and legitimately reclaimed under the control of the generator (40 CFR 261.4(a)(23)), which was promulgated on October 30, 2008, (73 FR 64668) and revised on January 13, 2015 (80 FR 57918). Consistent with the October 30, 2008, final rule, companies within the same corporate structure would be considered ''under the control of the same person'' if they meet the definition of same ''person'' and ''control'' as outlined above.

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 liability incentives to ensure the hazardous waste is safely managed. Additionally, if a VSQG sends hazardous waste to an LQG under the control of the same person, the LQG is likely to be more familiar with the type of hazardous waste generated by the VSQG. Furthermore, questions regarding liability and responsibility for such hazardous waste are clearer than is the case with facilities from unrelated companies. The majority of commenters, including most of the states, supported limiting the VSQG consolidation option to facilities under the control of the same person at this time for similar reasons.

EPA is also finalizing the proposed requirements for certain labeling and marking standards for VSQG waste being transferred to LQGs under the control of the same person under this provision. Note that aside from these conditions, the same standards for management of VSQG waste apply to materials going to an LQG under this provision as to other VSQG waste, including the exemption from the requirement to ship using a hazardous waste manifest. However, DOT shipping requirements do still apply as appropriate.

b. Conditions for Exemption

Condition for Exemption for VSQGs

As part of this provision, VSQGs are required to meet the following conditions for exemption, found at § 262.14(a)(5)(viii).

Under control of the same person. As described previously, the VSQG and the LQG must be under control of the same person, according to the definition in § 260.10.

Labeling and marking of containers. The Agency is requiring that a VSQG transferring waste to an LQG under the control of the same person label its containers with (1) the words ''Hazardous waste'' and (2) 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); hazard communication consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association (NFPA) code 704). This condition is also consistent with the revisions for labeling and marking of containers found in 40 CFR parts 262, 263, and 268 and discussed in section IX.E.1 of this preamble.

Conditions for Exemption for LQGs

EPA is finalizing the following conditions for exemption for LQGs receiving hazardous waste from VSQGs under the control of the same person, all found at § 262.17(f).

Notification. LQGs receiving hazardous waste from VSQGs under the control of the same person must submit a notification to EPA or their authorized state using EPA Form 8700–12 (*i.e.,* the Site Identification (Site ID) form) at least 30 days prior to receiving the first shipment of hazardous waste from the VSQG. LQGs are required to identify on the Site ID form the name(s), site address(es), and contact information for the VSQG(s) that will be transferring hazardous waste to the LQG. LQGs are also required to submit an updated Site ID form within 30 days should the name or site address for the VSQG change. Since the process to update the Site ID form to reflect this final rule will not be completed by the time some facilities are required to notify, EPA will create an interim procedure for submitting notifications for the regulated community to aid their compliance efforts with the new consolidation provision and publish it on the EPA Web site.

Notification in this instance serves to inform the regulatory authorities of which LQGs are receiving hazardous waste from which VSQGs under the control of the same person. The Agency has determined notification is necessary in order to communicate to inspectors the origin of the hazardous waste received by the LQG and to ensure the received shipment is managed in compliance with the conditions of the provision. EPA also believes notification by the LQG, rather than notification by the VSQG, is more efficient and less

[82] Minnesota Pollution Control Agency (MPCA), Comment Number: EPA–HQ–RCRA–2012–0121–0232.

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 numerous VSQGs.

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 and when their state will use EPA's electronic submittal process.

Recordkeeping. LQGs are required to maintain records for three years from the date the hazardous waste was received from the VSQG with the following information:

—The name, site address, and contact information for each VSQG; and
—A description of each waste shipment received from the VSQG, including the quantity and the date the hazardous waste was received.

Recordkeeping is necessary to ensure the VSQG and LQGs operating under the consolidation provision are meeting the conditions of the provision, including that the VSQG and LQG are under control of the same person. Records can also be used to ensure that the hazardous waste from the VSQG is managed according to the other conditions for exemption of this provision, such as the requirement that LQGs are receiving shipments of hazardous waste from VSQGs in quantities commensurate with the VSQG's generator category. This recordkeeping condition can be fulfilled through routine business records, such as a bill of lading, and will not present an undue burden to the LQG. Additionally, the LQG can then use this information to report the hazardous waste from the VSQG on its biennial report forms.

Labeling and marking of containers. The Agency is requiring that LQGs comply with the same labeling and marking conditions for exemption under § 262.17(a)(5), including the date accumulation started (*i.e.,* the date the hazardous waste was received from the VSQG). (Note: These are the same standards that VSQGs must comply with in labeling and marking containers that they send to LQGs, as discussed previously, with the exception of the accumulation start date.) If the LQG is consolidating incoming hazardous waste from a VSQG with either its own hazardous waste or with hazardous waste from another VSQG, the LQG must mark each container with the earliest date any hazardous waste in the container was accumulated on site. This will prevent an LQG from starting the accumulation clock over again, which could lead to an endless loop of accumulation.

Because the LQG must manage the hazardous waste it receives from VSQGs according to the LQG regulations, EPA has determined the same labeling and marking requirements should apply to both its own hazardous waste and hazardous waste received from a VSQG. 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.

Waste management. Under the finalized consolidation provision, an LQG is required to manage all incoming hazardous waste from a VSQG in compliance with the regulations applicable to its LQG generator category. In other words, there will be no difference in how the hazardous waste from a VSQG is managed relative to the management of the LQG's own hazardous waste, although hazardous waste from a VSQG is not eligible for management under the satellite accumulation regulations (§ 262.15) (That is, VSQG waste must be placed in a central accumulation area or immediately shipped off site from the LQG.)

Biennial Reporting. An LQG must also report the hazardous waste it receives from VSQGs on its biennial report, as required under § 262.41. EPA will include a new source code in the biennial report instructions that LQGs will use to identify the hazardous waste received from a VSQG (to differentiate from hazardous waste the LQG generates on site). Generators are required to report hazardous waste they receive from VSQGs by type of hazardous waste. In other words, if an LQG receives the same type of hazardous waste from multiple VSQGs, it only need report the total quantity of that hazardous waste received from all VSQGs. This will 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.

c. No maximum limit of hazardous waste LQGs receive from VSQGs. 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 has determined there is no need to establish a maximum limit on the amount or types of hazardous waste that an LQG can receive from VSQGs. In fact, we believe the more hazardous waste that is shipped to LQGs, the greater potential for better management, since these hazardous wastes will be managed under the more comprehensive hazardous waste regulations, as opposed to potentially being sent to non-hazardous waste disposal facilities. In addition, the LQG will need to move the VSQG waste off site in a timely manner since the 90-day accumulation limit for the exemption from permitting will still apply.

d. Enforcement. The conditions in this final rule that allow VSQGs 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 consolidation provision who fail to meet one or more of the conditions for exemption would lose their exemption from a permit, interim status, and operating requirements and be subject to an enforcement action under RCRA section 3008 for violations of the applicable requirements in part 264 through 268, 270, and the notification requirements of section 3010 of RCRA. EPA and authorized states also have the authority to cease specific transfers of hazardous waste from VSQGs 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 VSQG is subject to a permit, interim status, and operating requirements, provided that the VSQG met its conditions for exemption and vice versa.

e. Interstate shipments. Under RCRA, authorized state programs may be more stringent than the federal program and thus states may choose not to adopt the finalized consolidation provision allowing VSQGs to send their hazardous waste to an LQG under the control of the same person. In the case of interstate shipments where a VSQG wants to transfer its waste to an LQG located in a different state than the VSQG, the VSQG must ensure that both states have adopted the provision (including the exemption from the requirement to ship using a hazardous waste manifest). Additionally, if a VSQG wants to transit its waste through states that have not adopted the consolidation provision, EPA recommends that generators contact any transit states through which

the hazardous waste will be shipped to ascertain their policy about such shipments.

2. What changed since proposal?

a. Labeling and Marking of Containers. EPA proposed that the VSQG would label its containers with the words ''Very small quantity generator hazardous waste.'' However, several commenters stated that having two ''systems'' of labeling was confusing and discussed other ways to distinguish the VSQG waste from the LQG's own waste when it is consolidated. Specifically, the records that an LQG are required to keep should be sufficient to distinguish VSQG waste from the LQG's own waste. In addition, there will likely be situations where an LQG supplies the labels to the VSQG, so using one common label is reasonable. EPA has determined that using a different label would not improve management of the hazardous waste at either generator. Therefore, EPA has decided that labeling the VSQG's waste to be consolidated with the words ''Hazardous Waste'' (along with the other labeling requirements) are sufficient under the consolidation provision.

In addition, we are not requiring the following marking and labeling: (1) Other words that identify the contents of the containers and (2) the applicable hazardous waste number(s) (EPA hazardous waste code). First, we are not requiring ''the contents'' of the container to be consistent with the finalized marking and labeling requirements for all generators as discussed in section IX.E.1. In addition, we are not requiring the applicable hazardous waste number(s) be included on the label because we have determined that it is not necessary at this point in the management of the VSQG waste. Due to the fact that LQGs do not need to add the hazardous waste codes until the waste is ready to be shipped off site to a designated RCRA facility for subsequent management, we determined that was also the best option for the VSQG waste being consolidated at an LQG. Therefore, the VSQG waste only needs to be labeled with the words ''Hazardous Waste'' and an indication of the hazards of the contents when it is sent for consolidation at an LQG under the same control. Once at the LQG, the date the accumulation starts (*i.e.,* the date the hazardous waste was received from the VSQG) must be added to the label. Of course, if the VSQG wants to include words that identify the contents of the containers and/or the applicable EPA hazardous waste number(s) (hazardous waste codes), that is encouraged as discussed in the general marking and labeling provisions in this preamble (section IX.E.1). Due to the fact that the VSQG and the LQG are under the control of the same person, EPA assumes that the two parties will consult and determine the most appropriate labeling for the safe management of their hazardous waste that meets the minimum requirements laid out in the regulations.

b. LQG notification. EPA proposed that LQGs notify using an updated Site ID form 8700–12 within 30 days of a change in the site name, site address, or contact information for a VSQG sending their hazardous waste for consolidation at the LQG. Several commenters recommended only requiring notification of changes to the site name and/or address of the VSQG. EPA agrees that if the site name and address remains the same, it is not necessary for the LQG to notify again simply because the contact information for the VSQG changes. Due to the fact that the VSQG consolidation provision is limited to facilities under the control of the same person, the LQG would likely have knowledge of any change in contact information and could provide that to the implementing agencies if necessary.

3. Major Comments

a. Expanding scope of the provision. EPA also requested comment on whether to establish a process that would allow a generator (whether VSQG or LQG) to request approval from its EPA Regional Administrator or the authorized state to transfer hazardous waste from VSQGs to LQGs that are not under the control of the same person. Additionally, the Agency also requested comment on a variation that would allow LQGs to consolidate VSQG hazardous waste from VSQGs that are not under the control of the same person by submitting a request for approval. The difference under this variation was that after 60 days, the generator could start consolidating regardless of whether it had heard back from the implementing agency.

After consideration of the comments received, EPA has decided not to finalize an inter-company consolidation provision at this time. There was not enough support in the public comments and significant implementation issues were identified. It is likely that additional safeguards would need to be put in place to allow VSQG consolidation at an LQG that is not under the control of the same person. After a sufficient number of states adopt the intra-company consolidation provision, the Agency plans to evaluate how the consolidation option is working. EPA will then consider possible expansion of the provision in the future, including whether to allow VSQG consolidation at SQGs under the same control and/or LQGs under the control of a different person.

b. Effect on existing state programs. EPA received comments from the retail sector suggesting that, under the existing RCRA regulations, VSQG hazardous waste can be consolidated at any intermediate location, as long as the VSQG ensures ultimate delivery to an acceptable facility listed under the regulations. However, EPA does not agree with that characterization of the existing regulations and has expressed that in writing as far back as 1987.[83] As explained in the guidance, a VSQG must either treat or dispose of its hazardous waste in an on-site facility or ensure delivery to an off-site facility listed in previous § 261.5(f)(3) and now found at § 262.14(a)(4).

In addition, other commenters noted that certain states already operate consolidation programs that go beyond what EPA is finalizing in this document. For example, Minnesota operates a VSQG collection program (VSQGCP) where non-affiliated LQGs apply and are individually reviewed and approved by the state to receive hazardous waste from any VSQG at their discretion. Currently, Minnesota has approved 31 such VSQGCPs, providing relatively convenient safe disposal for VSQGs across the state.[84] The Utility Solid Waste Activities Group also expressed their concern that EPA has not acknowledged many state practices that facilitate the removal of small hazardous waste streams from remote, unmanned locations.[85]

It is not EPA's intention to interfere with existing state consolidation programs. If a state has authorized a facility to manage hazardous waste or has permitted, licensed, or registered a facility to manage municipal solid waste or non-municipal, non-hazardous waste, EPA would consider that to be a facility allowed to receive VSQG waste under § 262.14(a)(5). In addition, EPA notes that states can be more stringent and thus, can adopt the VSQG consolidation provision finalized in this rule and add other requirements as they deem necessary and allowable under state law.

[83] See RCRA Hotline Monthly Report Question, April, 1987, RCRA Online 12894.

[84] Minnesota Pollution Control Agency (MPCA), Comment Number: EPA–HQ–RCRA–2012–0121–0232.

[85] The Utility Solid Waste Activities Group, Comment Number: EPA–HQ–RCRA–2012–0121–0093.

Effect of the Reorganization: This section is affected by the reorganization. The reorganization of the generator regulations moved the conditions for VSQGs from § 261.5 to § 262.14 and the conditions for LQGs from § 262.34 to § 262.17. The reorganization is discussed in section VI of this preamble.

L. EPA Identification Numbers and Re-notification for SQGs and LQGs (40 CFR 262.18)

Under existing RCRA regulations, SQGs and LQGs are required to notify EPA using form 8700–12 (Site ID form) in order to obtain an EPA identification number. The Site ID form contains such information as the name and address of the generator, the industrial sector in which it belongs (*i.e.,* NAICS code), name of a facility contact, what type of waste activities take place at the facility, etc. Without such an identification number, a generator cannot treat, store, dispose of, or transport its hazardous waste. Subsequent to obtaining an EPA ID, there is no federal regulation requiring SQGs or LQGs to re-notify EPA to update their site information or confirm the information remains accurate. However, LQGs do update their site information every two years as part of the biennial report, as the Site ID form is part of the biennial report submission.

The lack of a re-notification requirement, especially for SQGs 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.

To address these issues, the Agency proposed several changes to the RCRA SQG and LQG site-identification and re-notification processes. First, we proposed to add an independent requirement for LQGs that reflects existing processes by which LQGs already submit Site ID forms as part of the biennial reporting process. Second, we proposed that SQGs must re-notify EPA using the Site ID form prior to February 1 of each even-numbered year, similar to the biennial report with the SQG re-notifications occurring one month prior. EPA took comment on alternative time frames for SQG re-notification such as every four years, alternate cycles from the biennial report, and rolling re-notifications. Finally, EPA took comment on whether a better approach 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 change in ownership or generator category.

1. What is EPA finalizing?

The Agency is finalizing the requirement for SQGs to re-notify EPA (or an authorized state program) beginning in 2021 and every four years thereafter using EPA Form 8700–12. While still several years away, states must become authorized for this provision. In the meantime, the Agency will work with the states and the regulated community to develop the necessary software and instructions to effectively implement this new requirement. This re-notification requirement will also occur in years in which federal biennial reporting is not required. This form must be submitted by September 1st of each year in which re-notifications are required.

In addition, EPA is finalizing in § 262.18(d)(2) the formalization of LQGs re-notifying using EPA Form 8700–12, the RCRA Site Identification form, as part of the LQG's biennial report required under § 262.41.

Note that the changes to the regulatory text for § 262.18 in this action take into account the revisions being made as a part of the ''Hazardous Waste Export-Import Revisions'' Final Rule (Docket ID EPA–HQ–RCRA–2015–0147; FRL–9947–74–OLEM), including the reference in § 262.18(e) for recognized traders.

2. What changed since proposal?

The Agency, in response to comments, increased the interval for SQG re-notifying from every two years to every four years. A number of commenters responded to our requests for alternative timing for SQG notification. Significantly, we heard from a number of states as well as the RCRAInfo Expert Group (a group of EPA and state RCRAInfo data experts), that keeping the SQG notifications on the same cycle as the biennial report is too burdensome and not practical given the large volume of data they receive for the biennial report. These commenters suggested that we reduce the frequency of SQG notifications from two years to every four years and stagger it from the timing of the biennial report. The EPA agrees with these experts and, as described previously, is finalizing the SQG re-notification requirement with these changes as recommended.

There was varied support from commenters on alterative timing for SQG notification. Some commenters supported keeping the timing to every two years both on the biennial report cycle and off. EPA agrees there is general awareness in the generator population of when the biennial report is due, which could make it easier for SQGs to comply with this new requirement. Also, the Agency understands that for companies or facilities that may have multiple sites that are LQGs and SQGs, it may be difficult to keep track of one schedule for LQGs and the biennial report and another for the SQG re-notification. However, the Agency decided to defer to the comments regarding how keeping SQG re-notification timing on the same cycle as the biennial report would overwhelm state and EPA workload capacity to keep up with the data submissions. In order for the data to be usable and the collection effort worthwhile, the Agency must be able to ensure it is entered into our system correctly and we believe the four year cycle alternating with the biennial report will best address capacity issues.

Both state and industry commenters pointed out that many states already require annual re-notification by LQGs and some for SQGs as well. Most asked that EPA clarify that this collected state data can be used to satisfy the federal SQG re-notification requirement. We are clarifying that as long as the more frequently state-collected data is transferred into the national RCRA information management system or RCRAInfo by the state on the timetable EPA is finalizing in this rulemaking for SQG re-notification, these existing state regulations would meet the requirement.

Two concepts were raised by commenters that EPA intends to investigate for possible changes to the Site ID form in the future. First, commenters asked for the ability to check a box certifying that their site ID information had not changed rather than have to fill out the entire Site ID form each time they re-notify. By increasing the time interval for SQG re-notification to every four years, EPA believes there will be reduced burden, but understands this option would increase efficiency for the regulated community and implementers. We intend to work with our national data experts to explore a possible form change to accommodate this idea. Second, commenters asked for a check box or another mechanism to inactivate a RCRA Site ID number. EPA intended for the SQG re-notification process to provide a mechanism for EPA and the states to deactivate RCRA identification numbers when no activity occurred for long periods of time. The Agency intends to work with our state partners in exploring whether the Site ID form or data system changes can be made, or

guidance issued, to allow this action to occur.

Some in industry questioned the need for such information. Commenters suggested that alternative information collection mechanisms already exist, such as using the Biennial Report submission for LQGs and manifest data. First, the existing one-time notification for SQGs provides no assurance that the information collected by EPA and many states, over time, will accurately reflect which facilities are generating hazardous waste and whether they still are SQGs. EPA agrees that the Biennial Report required by LQGs does provide a mechanism by which LQGs regularly re-notify, and we are simply codifying that process in this final rule. While TSDFs report hazardous waste received by SQGs in their Waste Received (WR) form, they do not identify the generator category of the facility they are receiving waste from, only the RCRA identification number. From experience, the Agency has found there is no guarantee that cross walking the RCRA identification number of a facility reported in the WR form with the information found in an existing RCRA Site Identification form will guarantee that the regulatory category of the generator is correct. Therefore, the Agency believes periodic re-notification is required.

With respect to using manifest data, currently manifest data is owned by the states and not required to be sent EPA. This is changing with the e-Manifest system under development, in that the e-manifest data will be available to EPA and the states. However, as the system is being designed, specifications do not include a generator category data element, nor is including this data element possible without a regulatory change. However, the Agency will continue to investigate the feasibility of using e-Manifest data to identify active SQGs and LQGs.

A number of commenters supported the idea that SQG re-notification be required when a specified event occurs. Technically, generators already have this capability. The existing instructions for completing EPA Form 8700–12 include the statement, ''You must use this form to submit a subsequent notification if your site already has an EPA Identification Number *and you wish to change information* (*e.g.,* generator status, new site contact person, new owner, new mailing address, new regulated waste activity, etc.).'' [86]

While the Agency took comment on this option, we believe that having EPA and states conduct a census re-notification process every four years is a more cost effective process guaranteeing a greater response rate than requiring a self-initiation process on the part of generators (*i.e.,* from past experience, EPA and the states have had to remind many generators they failed to re-notify). In fact, the Minnesota Pollution Control Agency comments strongly cautioned EPA to not adopt this approach and to learn from Minnesota's negative experience requiring re-notification when events occur. EPA and the states also have experience regarding how to implement a census re-notification process via the Biennial Reporting process for LQGs that they can apply to the new SQG re-notification process.

The retail sector also requested that the Agency limit the periodic re-notification requirement for their stores, and provide a streamlined process for large retail chains (*e.g.,* allowing a consolidated update that identifies only key changes).[87] The Agency understands the retailers' concerns, which are among the reasons we are not finalizing re-notification based on specified events. EPA continues to explore the various approaches to the retail sector as they, similar to laboratories, tend to operate very differently than typical hazardous waste generators and face unique issues with the RCRA regulations.

Finally, EPA is clarifying that when an SQG or LQG changes location, it is required to notify EPA because a new RCRA identification number will be needed as these numbers are tied to a physical site. EPA and the states will work with the generator to inactivate the previous RCRA identification number held by the generator while also assigning a new RCRA Identification number. Also, while not required, EPA recommends that generators who change ownership re-notify and alert EPA or their state that a new owner is responsible for the management of hazardous waste at the facility.

Overall, this provision of the final rule provides a balanced approach between the re-notification needs of EPA, the states, and SQGs. We will work with all parties to ensure its effective implementation.

Effect of Reorganization: This section is affected by the reorganization. The reorganization of the generator regulations moved the requirements for EPA identification numbers from § 262.12 to § 262.18. The reorganization is discussed in section VI of this preamble.

M. Provision Prohibiting Generators From Disposing of Liquids in Landfills (40 CFR 262.14(b) and 262.35)

RCRA section 3004(c) prohibits the disposal of bulk or non-containerized liquid hazardous waste or free liquids contained in hazardous waste in any landfill. This prohibition is necessary because the disposal of liquids in landfills can be a significant source of leachate generation. 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.[88] The Agency codified this prohibition for municipal solid waste landfills (MSWLFs) at § 258.28, and at § 264.314 and § 265.314 for permitted and interim status hazardous waste landfills. This prohibition is not a new provision and has been in place for almost 25 years. However, the Agency believes it is important to emphasize that the responsibility for complying with this statutory provision resides not only with municipal and hazardous waste haulers and landfill operators, but also with hazardous waste generators. Additional information can be found in the preamble of the proposed rule (80 FR 57971).

1. What is EPA finalizing?

The Agency is finalizing the proposed regulatory language prohibiting hazardous waste generators from disposing of liquid hazardous wastes in landfills. The final regulatory language is located at § 262.14(b) for VSQGs and at § 262.35 for SQGs and LQGs. As explained in the proposal, EPA is clarifying existing language to emphasize that hazardous waste generators are also responsible for complying with this provision. Also, the Agency is adding references to § 264.314 and § 265.314 in the SQG and LQG regulation (§ 262.35). Liquid waste disposed in a hazardous waste landfill must meet the additional requirements in § 264.314 and § 265.314, notably the requirement that the sorbents be nonbiodegradable. EPA is adding these references to § 262.35 in response to comments about sorbed hazardous waste liquids and to clarify the requirements that must be met prior to disposal in a hazardous waste landfill.

[86] See 2015 Biennial Report Instructions, page 11–12 at *https://www.epa.gov/sites/production/files/2015-11/documents/2015_hwr_instructions_forms.pdf.*

[87] See Comments of the Retail Associations in Response to EPA's proposal, Docket ID NO. EPA–HQ–RCRA–2012–0121, December 23, 2015.

[88] October 9, 1991, 56 FR 51055.

2. Major Comments

Several commenters expressed concern that the proposed regulatory language would cause confusion and force generators to alter their current practices for disposal of liquids. This was not the intent of this proposed regulation; EPA simply wanted to make generators more aware of this prohibition. Because the statutory prohibition was codified in the TSDF regulations and not in the generator regulations, some generators may have been unaware of the prohibition against the disposal of liquids in landfills. EPA disagrees with the commenter's suggestion to alter the proposed regulatory language for generators. EPA concludes that the proposed regulatory language prohibiting liquids in landfills is appropriate because the language was adopted directly from the statute and the same language is found in other parts of the regulations which applies to generators. It would be confusing to have slightly varying versions of this prohibition for each generator category and TSDFs.

A few commenters had concerns over the phrase ''whether or not sorbents have been added'' in the proposed regulatory text. The Agency is clarifying that this phrase does not restrict the use of sorbents as treatment prior to disposing in a landfill. If sorbents have been used but free liquids are still present, then the waste is prohibited from disposal in all landfills. However, if there are no free liquids as defined in § 260.10 after the use of sorbents, then the waste may be disposed in the correct corresponding landfill.

EPA would like to clarify how current practices that remove free liquids prior to disposal in a landfill will not be altered by this proposed regulatory language, although commenters believed otherwise. These current practices will not be altered by this regulation and most generators should be able to continue operating as they have prior to this rule unless their waste contains free liquids when disposed in landfills. If there are free liquids, they are already out of compliance with the current requirements even before this rule takes effect. Methods that remove or solidify free liquids, such as mixing in sorbents until no free liquids are present, must continue to be utilized by all generators prior to disposal in any landfill. However, sorbed hazardous waste liquids by an SQG and LQG must meet additional criteria specified in § 264.314 and § 265.314 prior to disposal in a hazardous waste landfill.[89] [90] For example, one criterion, as some commenters pointed out, is that the sorbent must be non-biodegradable if disposed in a hazardous waste landfill. In instances where biodegradable sorbents are used, such as prior to incineration or energy recovery, then SQGs and LQGs must ensure that these wastes are not disposed in a hazardous waste landfill. VSQGs are not required to follow the additional criteria in § 264.314 and § 265.314 if they are disposing their waste in a MSWLF, but they must still ensure that their waste contains no free liquids prior to disposal in any landfill.

Some generators commented that they have agreements where a TSDF is stabilizing all or some of their liquid hazardous waste. These generators are concerned that this regulation will end these agreements. EPA would like to clarify that this practice is not restricted by this regulation and generators may continue to ship their liquid waste to TSDFs for stabilization.

Effect of the Reorganization: This section is not affected by the reorganization. Regulatory language regarding the prohibition of liquids in landfills was duplicated from § 258.28, and at § 264.314 and § 265.314.

N. Clarification of Biennial Reporting Requirements (40 CFR 262.41, 264.75 and 265.75)

The Agency proposed changes to biennial reporting requirements at § 262.41, § 264.75 and § 265.75. For purposes of convenience and efficiency, a discussion of proposed changes being finalized in this rulemaking are consolidated here.

The biennial report provides EPA and the states with important information from all LQGs and RCRA treatment, storage and disposal facilities associated with hazardous waste generation and management. For LQGs, this information includes, for each hazardous waste generated, the quantity generated and the hazardous waste composition, as well as how and where this waste is managed. For TSDFs, this information includes hazardous wastes received from not only LQGs but also SQGs and VSQGs. This information is used to support various EPA and state program management and compliance monitoring functions.

The regulations associated with biennial reporting by both generators and TSDFs have been in existence for approximately thirty years with very little change over this time period. From experience through years of implementing this program, the Agency identified areas where clarifications and changes to these regulations could improve both program efficiency and effectiveness. The Agency proposed such changes as part of this rulemaking. A discussion of the proposed changes being finalized follows.

EPA proposed 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 proposed 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 proposed to modify the title of part 262 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.

With respect to permitted and interim status TSDFs at § 264.75 and § 265.75, EPA proposed 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).

1. Standards Applicable for LQGs (40 CFR 262.41)

a. What is EPA finalizing for LQGs? First, only LQGs need to complete and submit biennial reports. The previous regulatory text was unclear as to which generators had to submit a biennial report. Previous regulatory text also did not include the word ''complete'' which now has been added. However, the Agency is modifying the regulatory text per a comment to clarify that information is to be reported for every odd-numbered year and that the actual Biennial Report must be completed and submitted using EPA Form 8700–13 A/B to the Regional Administrator by March 1 of the following even-

[89] November 18, 1992, 57 FR 54452.

[90] RCRA Online 11798, November 17, 1993.

numbered year.[91] The states may have more frequent or additional data reporting requirements over and above EPA's and may use a different, but equivalent, form to collect federal data and satisfy their own program data reporting needs.

Second, 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. Almost all states require their LQGs to perform this function already since the Biennial Report instructions require such reporting. This change simply creates consistency between the instruction and regulations. This change also provides EPA and the states with a much more reliable estimate of hazardous waste generated annually. As stated in the preamble to the proposed rule, LQGs should have this information available through their hazardous waste manifests and other counting processes.

Third, rather than citing specific data elements to be reported in § 262.41, as proposed, the Agency is simply referencing the Biennial Report form (EPA Form 8700–13 A/B) at § 262.41(a) and (b) in this final rule. Through the years, the Agency has modified what data elements it was collecting in the biennial report through changes in biennial report instructions but not updating the regulations. Therefore this change formalizes this process. Several commenters had concerns about this process as discussed in this section.

The Agency is also not finalizing a commenter's suggestion that an LQG be allowed to report a solid waste that was generated at the end of a reporting year, but which was not determined to be hazardous until the beginning of the next, or non-reporting, year. With the Agency maintaining the existing regulatory framework for what must be reported (*i.e.,* hazardous waste generated and also sent off site in the reporting year, this situation no longer matters.

b. What changed since proposal? In the proposed rule, the Agency modified the regulatory text at § 262.41(a) to require all LQGs to complete and submit a biennial report for all hazardous wastes generated in the reporting year. This change altered what hazardous waste has to be reported, particularly for LQGs that manage their waste off site. Under the previous biennial reporting regulations, an LQG had to report all hazardous wastes both generated and shipped off site to a TSDF within the United States. Not included were hazardous wastes generated in the reporting year but not yet shipped off site because LQGs have up to 90 days to accumulate hazardous wastes prior to either managing the material on site or shipping it off site to a TSDF. Hence, the possibility existed that EPA and the states were not obtaining a reliable estimate of how much hazardous wastes was generated annually by LQGs.

Several commenters were concerned that such a change would dramatically alter the existing processes and procedures long established by LQGs, and by TSDFs who support LQGs in completing the Biennial Report. Others pointed out that EPA was obtaining a reliable estimate of hazardous wastes generated by LQGs, although not necessarily in a clear cut manner. A closer examination of existing biennial reporting instructions revealed that the amount reported included: (1) Hazardous waste generated and accumulated on site and subsequently managed on site or shipped off site in the reporting year; or (2) hazardous waste generated and accumulated on site in the reporting year but not managed on site or shipped off site until the following year; or (3) hazardous waste generated and accumulated on site prior to the reporting year but either managed on site or shipped off site in the reporting year. In other words, an estimate of hazardous waste generated by LQGs is already being captured and reported for a 12 month period, but not necessarily only in the reporting year.

Based on these comments, EPA is not finalizing the proposed § 262.41(a) changes and will instead revert back to the previous language found in § 262.41(a).

c. Major comments.. Many of the comments submitted by individuals and organizations concerned these issues. However, a number of commenters expressed concern regarding the Agency's process of involving the public in making changes to the Biennial Report forms now that the regulatory language will cite the form and no longer identify the required data to be submitted. Specifically, commenters mistakenly believed that EPA may impose additional substantive reporting requirements by simply changing the form, rather than through a rulemaking to change § 262.41. However, the Agency has been following the Administrative Procedures Act (APA) and will continue to do so. Commenters may not have been aware but changes to EPA Form 8700–13A/B are subject to the Paperwork Reduction Act (PRA), which requires an amendment to the Information Collection Request (ICR), which is approved by the Office of Management and Budget (OMB). Before amending the ICR, EPA publishes a notice in the **Federal Register** informing the public that the ICR is to be amended, and takes comment on the draft form, which is available in the docket. Moreover, there is a follow-up notice in the **Federal Register** informing the public when the ICR amendment has been submitted to OMB for approval. In the future, in order to ensure more transparency, the Agency also will post a copy of the draft form along with a discussion of any proposed changes, including the need for such changes, as part of the **Federal Register** notice. As part of this process, the Agency also will inform stakeholders of this **Federal Register** notice on the RCRAInfo Web page at *https://rcrainfo.epa.gov/rcrainfoweb/*.

One state commenter also disagreed that LQGs had to submit hazardous waste generation information for the months they were either an SQG or VSQG. The Agency believes generators should not find it difficult to submit this information because they will have maintained hazardous waste manifest records which identify the quantity of hazardous waste generated over a particular time period. Likewise, if the generator is an SQG or VSQG for eleven months of the year they may be able to take advantage of the new episodic event regulations being finalized at § 262.230. As already discussed, almost all states already require this information as part of their biennial reporting requirements, and it has long been included in the BR instructions.

Another commenter mentioned that it may be difficult for generators to determine in a precise way the amounts of waste that were generated at the beginning and end of each reporting year, particularly for wastes that are generated in small amounts at a time or that are initially stored in satellite accumulation areas, since they typically do not keep the records necessary to produce this information—especially by the time the reports are due, which could be a year or more after the fact. Generators are responsible for calculating the amount of hazardous waste they generate monthly to determine their generator category. Therefore, generators should have the requisite processes in place to accomplish this function.

One state expressed concerns that any changes to EPA Form 8700–13 A/B would also involve changes to the Biennial Report instructions and forms, as well as the RCRAInfo database, and wanted to ensure state input in this process. The Agency wants to assure all stakeholders that we will work with our

[91] See comments from the staff of the Hazardous Waste Section in the Hawaii Department of Health, Docket No. EPA–HQ–RCRA–2012–0121–0082.

state partners in developing any changes to Biennial Report forms and instructions, as well as any changes to the RCRAInfo database, through established processes and procedures.

Note that the changes to the regulatory text for § 262.41 in this action take into account the revisions being made as a part of the ''Hazardous Waste Export-Import Revisions'' Final Rule (Docket ID EPA–HQ–RCRA–2015–0147; FRL–9947–74–OLEM), including changing the reference to ''§ 262.56'' that used to be in § 262.41(b) to a reference to ''§ 262.83(g)'' in § 262.41(c).

2. Standards Applicable for TSDFs (40 CFR 264.75 and 265.75)

a. What is EPA finalizing? The Agency is also finalizing the provision that requires permitted and interim status TSDFs at § 264.75 and § 265.75, respectively to complete and submit EPA Form 8700–13 A/B to the Regional Administrator by March 1 of each even numbered year for facility activities during the previous calendar year. This change is similar to those proposed for LQGs at § 262.41.

b. Major comments. Comments received were very similar to those discussed under § 262.41 where concern was expressed with the process EPA would use to notify stakeholders that changes to EPA Form 8700–13 A/B were being proposed. Commenters were concerned that EPA might impose substantive reporting requirements merely by reference to a form that can be changed at the Agency's whim which would violate the notice and comment provisions of the APA. As previously described, the Agency will ensure that it follows a transparent process with respect to any proposed changes and that stakeholders will continue to have an opportunity to comment on any proposed form or reporting element changes.

Effect of the Reorganization: This provision is not affected by the reorganization of the generator regulations.

O. Extending Time Limit for Accumulation Under Alternative Requirements for Laboratories Owned by Eligible Academic Entities (40 CFR part 262 Subpart K)

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 262.15. When subpart K was initially promulgated, if the eligible academic entity chose to operate its laboratories under subpart K, the entity had to remove the unwanted material from each laboratory under the following two timetables: (1) every 6 months; or (2) within 10 calendar 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, proposed to increase the accumulation time limit in an eligible academic entity's laboratory to 12 months.

1. What is EPA finalizing?

We are finalizing the increased accumulation time limit, as proposed. Therefore, laboratories at eligible academic entities that have opted into subpart K will be required to remove the unwanted material from each laboratory under the following timetables: (1) Every 12 months; or (2) within 10 calendar days, if the laboratory accumulates more than 55 gallons of unwanted material or 1 quart of reactive acutely hazardous unwanted material. EPA proposed a number of other changes to subpart K, but they were all conforming changes, meaning they were necessary to make the terminology and citations consistent with the new generator regulations (*e.g.,* changing the term ''conditionally exempt small quantity generator'' to ''very small quantity generator''). These conforming changes will also be finalized as proposed.

2. Major Comments

Although we received approximately 60 comments from academic institutions, very few commented on this specific proposed change. All that did comment on this proposed change, were in favor of the longer accumulation time.

The remainder of the comments received from academic institutions were outside the scope of the narrow and specific change that we proposed to subpart K. Although we are not legally obligated to respond to comments outside the scope of the proposal, in this case we are choosing to respond to certain comments in order for EPA to better explain the existing subpart K regulations and some common misunderstandings about them.

Many academic institutions indicated that they are not able to opt into subpart K because they are in states that have not adopted subpart K. Since subpart K was finalized in 2008, EPA has made an effort to track which states have adopted the rule. At this point, subpart K is effective in approximately 22 states.[92] Additional states have told EPA they are in the process of adoption. Some of the states that have not adopted subpart K have told EPA it is because the colleges and universities in their state have not expressed an interest in opting into the rule, so they didn't see the need to go through the process of adopting and becoming authorized for this regulation. Few, if any, states have expressed an outright opposition to adopting subpart K. EPA strongly encourages the states that have not adopted subpart K to do so; however, we do not have the authority to mandate or compel them to adopt this rule, as it was not deemed more stringent than the standard generator regulations.

Another common theme from the commenters was that subpart K, which was designed for laboratory operations, should apply across the academic institution, and not just to laboratories. Commenters argue that opting into subpart K obligates the institution to operate under more than one set of RCRA regulations at the same institution. However, EPA maintains that academic institutions most likely have been operating under more than one set of RCRA regulations for some time, including used oil regulations for the maintenance of their motor vehicle fleets, and universal waste for their fluorescent bulbs. Furthermore, EPA's engagement with academia over the past 25 years has always been limited to the management of hazardous waste from laboratories. This includes the Laboratories eXcellence and Leadership program (XL Project), as well as the pilot project led by the Howard Hughes Medical Institute (HHMI) to develop and implement a performance-based approach to the management of laboratory waste at ten colleges and universities. These efforts regarding hazardous waste were targeted at laboratories because of the way in which hazardous wastes are generated in laboratories: There are a large number of waste streams that vary over time and the wastes are often generated by students, who lack the training and accountability of a professional

[92] *http://www.epa.gov/hwgenerators/where-managing-hazardous-waste-academic-laboratories-rule-effect.*

workforce. For that reason, at no point in developing subpart K did EPA ever indicate it was considering a hazardous waste regulation that would apply to the entire academic institution.

Finally, in its comments, the Campus Safety Health and Environmental Management Association (CSHEMA) offered to lead a dialogue with EPA about how to make subpart K more useful to the academic sector.[93] EPA spent considerable time and resources addressing the needs of the academic community when it developed subpart K. EPA believes that before we enter into additional dialogue on this regulation, more states need to adopt it and more colleges and universities need to opt into it so that data on the rule and its effects are available.

Effect of the Reorganization: This section is not affected by the reorganization.

P. Deletion of Performance Track and Project XL 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 removing 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 will be reserved to reduce the possibility of confusion by replacing them with other regulations. The following references are being removed:

- § 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.

These provisions 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).

EPA is also removing 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 Laboratories Project XL program at subpart J of 40 CFR part 262. The New York State Public Utilities Project XL piloted a program to allow public utilities located in New York State to consolidate at central collection facilities hazardous wastes generated at remote locations. 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). The Laboratories Project XL piloted an alternate hazardous waste management system for college and university laboratories. Originally, the program was to expire on September 30, 2003. On June 21, 2006, EPA extended the program to April 15, 2009 (71 FR 35550). Now that the program has now expired, EPA is removing paragraph (j) from § 262.10, as well as part 262 subpart J. We have also removed and reserved the reference at § 262.10(j) to the University Laboratories Project XL.

Effect of the Reorganization: This section is not affected by the reorganization.

X. Addition to 40 CFR Part 262 for Generators That Temporarily Change Generator Category as a Result of an Episodic Event

A. Introduction

EPA is finalizing the revisions to the generator regulations that allow a VSQG 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 cause the facility to move into a more stringent generator category (*i.e.,* VSQG to either an SQG or an LQG; or an SQG to an LQG). This revision allows a VSQG or an SQG to generate additional quantities of hazardous waste—exceeding its normal generator category limits temporarily—and still maintain its existing generator category, provided it complies with the specified conditions. Because these events are considered to be temporary and episodic in nature, the hazardous waste generator may only use this provision once every calendar year, unless there is a second event for which the generator receives approval from EPA to manage as an additional episodic event.[94]

Under the 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. As described in the proposed rulemaking at 80 FR 57972, 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, one such event would be if a VSQG plans a short-term demolition project that generates an additional 500 kilograms of hazardous waste in the calendar month, resulting in the VSQG 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 VSQG. Other examples of planned episodic events include tank cleanouts, short-term construction projects, short-term site remediation,

[93] EPA–HQ–RCRA–2012–0121–0158.

[94] Note that when a state begins implementing this provision as part of its authorized RCRA program, all petitions and approvals are managed by the authorized state rather than EPA.

equipment maintenance during plant shutdowns, and removal of excess chemical inventories. Unplanned episodic events, which EPA expects would be less frequent, include production process upsets, product recalls, accidental spills, or ''acts of nature,'' such as a tornado, hurricane, or flood.

EPA has determined that requiring a VSQG 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) is unnecessary to protect human health and the environment. Instead, the Agency is finalizing the more practical approach laid out in the proposed rule to ease compliance for episodic generators and still protect human health and the environment, with some minor changes. 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. EPA currently estimates that approximately 1,270 to 2,540 generators may take advantage of this provision once it is adopted by the authorized states.[95]

B. What is EPA finalizing?

Under the final rule, a VSQG or an SQG generating an increased quantity of hazardous waste because of an episodic event that results in a temporary change in a generator's category would be able to maintain its existing generator category, provided specified conditions are met. EPA has determined that these conditions will be sufficient to ensure these additional hazardous wastes are managed in an environmentally sound manner. Like the general framework of the regulations for generators, should a VSQG fail to meet the specified conditions, it loses the VSQG exemption and becomes the operator of a non-exempt storage facility unless it also immediately complies with all of the conditions for exemption for an SQG or LQG. If an SQG fails to meet any specified condition for exemption, it loses its exemption and becomes the operator of a non-exempt storage facility unless it immediately complies with all of the conditions for an exemption for an LQG.

For both VSQGs 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 72 hours after an unplanned episodic event; the generator must identify the start and end dates of the episodic event, which may be no more than 60 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 an emergency related to the episodic event; (3) the generator must obtain an EPA ID number (VSQGs); (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 60 calendar days from the start of the episodic event; and (6) the generator must complete and maintain specified records.

EPA is also finalizing a petition process at § 262.233 to allow hazardous waste generators to request from EPA one additional episodic event within the same calendar year to cover the possibility that a generator could face an unplanned episodic event in the same year it is conducting a planned event. The regulations for episodic generators are found in a new part 262 subpart L, §§ 262.230–262.233.

1. Number of Episodic Events per Calendar Year

Under the episodic generator provisions in subpart L, a VSQG or an SQG may exceed its generator category limits only once per calendar year without affecting its generator category, with the opportunity to petition EPA for a second event. EPA has several reasons for this restriction. First, if a VSQG 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 is 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 is not limiting an episodic event to a single project within the generator's facility. 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 60-day time limit, so long as all projects are completed within the 60-day start and end dates identified on the notification form. Under that scenario, all hazardous waste generated would be considered part of the same episodic event.

2. Notification

A VSQG or an SQG must notify EPA no later than 30 days prior to initiating a planned episodic event using EPA Form 8700–12 (Site ID form). Subsequent to the publication of this final rule, EPA will be revising form 8700–12 to account for the new rule provisions, but in the meantime, we will issue guidance on how to use the form in its current state to make this notification. The hazardous waste generator must identify the dates the episodic event will begin and end—a time frame not to exceed 60 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.

For a generator's first event in a calendar year, the episodic event begins 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 of the release or 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. The end date must be no later than 60 calendar days from the date identified on the notification form as the start date of the episodic event.

If the generator does not know the exact day the event will end at the time of notification, it can notify using an end date that is 60 calendar days from the start of the event as long as it ensures that all hazardous waste from the episodic event is shipped off site by that date.

Should an unplanned event occur, the generator must notify EPA within 72 hours via phone or email, and subsequently submit EPA Form 8700–12 (Site ID form) with the same information laid out above for a planned event. In the case of spills of hazardous materials, a 72-hour time frame for reporting the spill to the authorities is common and allows the facility some time to evaluate

[95] See the docket for the Regulatory Impact Assessment of the Potential costs, Benefits, and Other Impacts of the Final Hazardous Waste Generator Improvements Rule.

the situation before requesting the episodic event. A facility would have to wait for EPA to respond to the petition for a second event, but this should not impact the initial steps that the generator has to take to appropriately manage the hazardous waste since those standards still apply.

3. EPA ID Number

A VSQG generating and accumulating quantities of hazardous waste using the episodic event provisions to manage hazardous waste must obtain an EPA ID number using EPA Form 8700–12 if one has 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 VSQGs.* Under the standard generator regulations, a VSQG 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. However, EPA is finalizing that a VSQG generating episodic hazardous waste that would otherwise cause the VSQG to exceed its generator category limit for the calendar month must comply with the following accumulation standards for containers and tanks that manage the episodic wastes. EPA believes 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 VSQG would be required to mark or label its containers with the following: (1) The words ''Episodic Hazardous Waste'' and (2) 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 hazard communication consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding), use a hazard statement or pictogram consistent with the OSHA Hazard Communication Standard at 29 CFR 1910.1200, or use a chemical hazard label consistent with the NFPA code 704. 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 VSQG must mark the date that the episodic event began clearly on each container.

For tanks, the VSQG must 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 associated hazards and to identify the date that the episodic event began. The records containing this information must be on site and available for inspection.

In addition, the generator must 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 VSQG 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.

If a VSQG is managing episodic hazardous waste in tanks, the following standards must be followed: (1) Having procedures in place to prevent overflow (*e.g.,* the tank is equipped with a means to stop inflow with a system 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); and maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation. For tank management, 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 already, an emergency coordinator (in compliance with § 262.16(b)(9)(i)) must be identified for the duration of the episodic event on the notification form. An emergency coordinator is needed because the VSQG 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.

Under the management standards for VSQGs, the generator may not treat hazardous waste generated on site, except in an on-site elementary neutralization unit.[96] After considering the comments on treatment by VSQGs managing hazardous waste under an episodic event, EPA has determined that the same standards should apply and VSQGs may not treat hazardous waste on site under an episodic event. Although VSQGs must meet some additional waste management requirements for an episodic event, the provisions allowing treatment by SQGs and LQGs in containers and tanks were based on those containers meeting the more extensive standards that containers and tanks at TSDFs must meet in subparts I and J of parts 264 and 265.[97] These same standards still apply to SQGs and LQGs, though they have been copied into part 262 as a part of the reorganization in this final rule. However, under the episodic generation provisions, VSQGs holding an episodic event do not have to meet these same standards for waste management—they must meet a performance standard instead. EPA believes that the performance standard is appropriate for accumulating that waste on site for 60 days or less until it is sent off site for treatment or disposal, but is not appropriate for treatment on site by the VSQG. Several commenters argued that VSQGs are sophisticated facilities with the capability to safely treat, but EPA must design the regulations to be protective and not based solely on the

[96] 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 VSQG 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. RCRA Hotline Q & A, February 1996, RCRA Online 13778.

[97] 51 FR 10168, March 24, 1986.

most sophisticated actors. If a sophisticated VSQG wants to perform generator treatment, it can choose to operate as an SQG and meet the standards that apply to that category.

b. *Manifest use by VSQGs and management at a RCRA-designated facility.* When holding an episodic event and operating under the provisions of subpart L, VSQGs must manifest the hazardous waste generated from the episodic event and send it to a RCRA-designated facility. Generally, VSQGs are not required to manifest their hazardous waste to a RCRA-designated facility, but can ship them without a manifest to one of eight types of facilities listed in § 262.14(a)(5). However, because the VSQG will be generating quantities of hazardous waste that exceed its normal generator category thresholds, the Agency has determined that the use of a hazardous waste manifest and the shipment of the hazardous waste to a RCRA-designated facility is most protective of human health and the environment.

However, the condition to manifest the hazardous waste and send it off site to a RCRA-designated facility only applies to the hazardous waste generated as a result of the episodic event. The condition does not apply to other hazardous waste generated at the same time as, but separately from, the episodic event. However, if the VSQG desires to ship all hazardous waste generated and accumulated on site to a RCRA-designated facility at once, for economic or logistical reasons, then it can be sent off site together. This applies whether the hazardous waste was generated as a result of the episodic event, independent of the episodic event, or prior to the event.

c. *Accumulation standards for SQGs.* For containers and tanks, EPA is finalizing accumulation standards as conditions for managing waste under the episodic generation provisions. When accumulating hazardous waste generated as a result of an episodic event in containers, the SQG must mark its containers with the following: (1) The words ''Episodic Hazardous Waste''; (2) 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), hazard communication consistent with the DOT requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding), a hazard statement or pictogram consistent with the OSHA Hazard Communication Standard at 29 CFR 1910.1200, or a chemical hazard label consistent with the NFPA code 704. 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 standards, the SQG is required to mark the date that the episodic event began clearly on each container.

For tanks, the SQG must mark or label the tank containing hazardous waste accumulated during the event with the words ''Episodic Hazardous Waste'' and is required to use inventory logs, monitoring equipment, or other records to identify the hazards of the contents and to identify the date that the episodic event began and ended. The generator must have records containing this information on site and available for inspection.

EPA is also finalizing its proposal that SQGs may not take advantage of the episodic generation provision for wastes accumulated on drip pads or in containment buildings. EPA has determined that it is most appropriate that hazardous waste that is being accumulated and managed on drip pads and in containment buildings be managed under the specific requirements in part 265 subpart W and subpart DD for those units. If a generator experiences an episodic event in an area of the facility that is separate from its accumulation in these units, it can use subpart L for those hazardous wastes.

In addition, the SQG must comply with all the conditions of the exemption in § 262.16—for example, the waste accumulation, waste management, employee training, and emergency preparedness and prevention conditions.

d. *Manifest use by SQGs.* SQGs must 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 has determined that 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. Note that, unlike VSQGs, the use of the hazardous waste manifest applies not only to the wastes generated from the episodic event, but to all other hazardous wastes the SQG generates.

5. Duration of the Episodic Event

VSQGs and SQGs have 60 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. After considering the comments on the proposal to allow 45 days, the Agency has determined 60 days is a more appropriate time limit and is sufficient time for a generator to complete the episodic event, arrange for treatment or disposal, and complete management of the hazardous waste.

In the case of planned events, EPA believes that in most cases, hazardous waste is likely to be characterized before the event begins and any contracts required for waste removal and disposal can also be arranged before the event. However, in the case of an unplanned event, waste may have to be characterized and contracts for disposal bid and negotiated. In order to maintain a parallel structure for planned and unplanned episodic events, EPA is finalizing a 60-day time frame. In the case of a planned event, the 60 days start on the first day of any activities affiliated with the event and in the case of a storm or spill, the 60 days start on the day of the storm. All hazardous waste generated from the episodic event must be removed, transported by hazardous waste transporter with a hazardous waste manifest, and sent to a RCRA-designated facility by the end date of the event, no more than 60 days from its start. In addition, the Agency sees no reason to preclude a generator from taking advantage of this provision to also dispose of other hazardous wastes generated during the time of the episodic event.

EPA has determined that events requiring more than 60 days to complete are not episodic generation of hazardous waste and the generator should be operating in a higher generator category to accumulate and manage that hazardous waste.

As a result of this longer time frame, EPA is not finalizing the proposed provision regarding a petition for an extension to an episodic event.

6. Recordkeeping

Generators must 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; and (6) an approval letter from EPA, if the generator successfully petitioned to conduct an additional episodic event during the calendar year.

The information required to be maintained in items (1) through (3) above is the same information that must be identified on the generator's notification to EPA about the episodic event. Maintaining records of the name of the RCRA-designated facility that received the waste and the ultimate management of that waste as well as the name of any hazardous waste transporters fulfills the RCRA requirement for the generator to be responsible for its hazardous waste from cradle to grave. In addition, a record of any approval letters from EPA for a second event are critical for generators to be able to show that they were in compliance with subpart L when conducting that second episodic event.

These records must be maintained on site by the generator for three years from the completion date of each episodic event. The recordkeeping condition is critical to enable effective and credible oversight. We also have determined that the required items represent the minimum information necessary to determine that any hazardous waste generated during the episodic event is managed properly.

7. 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 finalizing a provision to allow VSQGs and SQGs to petition EPA for permission to manage one additional planned or unplanned episodic event per year without impacting the hazardous waste generator category (provided that they do not have two of the same type of event within the same calendar year).

EPA proposed that VSQGs and SQGs could petition EPA for permission regarding an additional episodic event per year, either planned or unplanned. However, in response to some of the comments received on the proposed rule from the states that implement the RCRA program, EPA has determined that it is most appropriate to allow only one event of each type per year and to require the generator to petition EPA for the second event and be approved. That is, if a generator holds a planned event early in the year, it can petition the EPA Regional Administrator for an unplanned event later in the year if needed.[98]

In parallel fashion, if the generator has an unplanned event early in the year, it can still petition EPA to hold a planned event later in the year. In both cases, EPA must approve the petition for a second event. EPA wants to allow for the case of a second event, in cases where the generator is legitimately having episodic events, but has determined that not allowing a generator to hold two planned events in a year ensures that the provision is being used for true cases of episodic generation and not as a way for generators to regularly avoid managing hazardous waste at higher generator categories. Similarly, EPA has determined that not allowing the generator to hold two unplanned events in one year will ensure that the episodic generation provision is not used in a way that creates an incentive for irresponsible management of hazardous waste.

Because a petition for a second event distinguishes between an unplanned event and a planned event, EPA is adding definitions of planned episodic event and unplanned episodic event to the regulations in subpart L. A planned episodic event is an episodic event that the generator planned and prepared for, including regular maintenance, tank cleanouts, short-term projects, and removal of excess chemical inventory. An unplanned episodic event is an episodic event that the generator did not plan nor expect to occur, including, but not limited to, production process upsets, product recalls, accidental spills, or ''acts of nature,'' such as a tornado, hurricane, or flood. Some of these events are more sudden than others, but they would all be unanticipated by the generator. EPA is not including excess inventory in the definition of an unplanned event because a case of excess inventory is, more than the others, a result of decisions made by the generator in the regular course of business and is not, therefore, an unplanned episodic event.

Consistent with the notification requirements, the generator must petition EPA for the second event. For a planned event, the generator must submit a petition for a second event and indicate that this is a petition for a second event. For an unplanned event, the petition must be in the form of a notification to EPA within 72 hours of the start of the event by phone, email, or fax and subsequent submittal of a complete petition with the relevant information for the event.

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 60 days; and (5) information regarding previous episodic event(s) managed by the generator and how it complied with the conditions. EPA would then evaluate this and other site-specific information to determine whether a generator should be allowed to complete the episodic event under the alternative standards.

In the case of a planned second episodic event, a generator may not manage the hazardous waste from the event under the episodic generation conditions in subpart L until it has approval from the implementing agency for that second event. There is no mandatory time frame for submitting a petition for a second planned event, but the generator should allow enough time for the implementing agency to review the petition so that they can begin the event on time.

EPA has determined that in the case of a petition for an unplanned second event, the generator may manage hazardous waste for the additional unplanned episodic event under the episodic event standards until written approval by EPA has been received. SQGs requesting a second event will be managing the hazardous waste under the same technical standards in § 262.16 in both situations. It would be impractical for a VSQG requesting a second episodic event to meet § 262.16 accumulation standards while waiting for approval to no longer have to meet them. Therefore, the VSQGs would be required to meet the performance standards outlined in § 262.232(a)(4)(iii). These subpart L accumulation standards for VSQGs are designed to minimize the possibility of a fire, explosion, or release and containers and tanks must be in good condition and compatible with the hazardous waste they contain.

If EPA approves the petition for a second event, the generator must retain the written approval in its records for three years from the date the episodic event ended. If EPA rejects a generator's petition for a second event, the generator must then start managing the hazardous waste from the episodic event and all other hazardous waste at its facility under the standards for the

[98] Authorized states will develop their own procedures for petitions under this provision.

applicable more stringent generator category.

EPA is not promulgating criteria for evaluating petitions for a second unplanned episodic event, but recommends that the implementing agency base its decision on factors including the validity of the proposed episodic event, the generator's enforcement history and evidence of the generator's ability to responsibly manage the waste.

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 VSQG or SQG taking advantage of this rule 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 hazardous waste generation and management.

The following example demonstrates how this provision of the rule will work. A VSQG could have a number of facility operations (*e.g.,* tank cleanouts, disposal of off-spec products it cannot sell or reclaim, and/or repair work involving the removal of lead paint chips) that would result in a temporary change in its regulatory category. The VSQG decides to notify EPA 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 60 days allowed to conduct the event and, therefore, end on September 17. Beginning on July 20, the generator must comply with all of the conditions of subpart L to maintain its exemption as a VSQG. Under this example, if the generator complies with subpart L, it can generate more than 1,000 kilograms of hazardous waste as a result of the events it identified in the identification until September 17.

On or before September 17, the generator must remove and dispose of all the hazardous wastes it generated over the course of the previous 60 days from the episodic event. Provided the generator meets that deadline, that waste does not count when determining the generator's category.

In this example, the generator could choose to also dispose of waste generated from its normal operations in the same shipment. However, in this case, any waste generated from production or events that were not identified in the notification to EPA about the episodic event (or in the petition for a second event) must be counted for the purposes of determining the generator's category for any months impacted by the episodic event. Specifically as an example, the quantity of hazardous waste the VSQG generates outside the episodic event from September 1 through September 17 would be added the amount of hazardous waste generated for the remainder of September (starting on September 18 until the end of the month) to determine the generator's category for that month.

The same approach applies to the accumulation limit for hazardous waste at a VSQG. If the VSQG exceeds 1,000 kg of hazardous waste on site as a part of its episodic event, that waste can be managed under the provisions of subpart L until September 17. If, however, the hazardous waste has not been shipped off site by September 18, the generator must manage the waste as LQG waste. In addition, the generator would be in violation of the conditions of the episodic generation provision.

In summary, if a generator's waste is to be considered part of the episodic event and not be counted toward monthly generator category, then the waste must be part of the episodic event identified in the generator's notification. EPA has determined that this will prevent generators from using the time frame of an episodic event as a free-for-all for generation of all types of waste, regardless of whether it is identified in the notification of the event. EPA has revised this interpretation of how the episodic generation provision will work from the preamble discussion in the proposed rule in reaction to concerns from commenters that the episodic generation provision would provide excessive relief from the hazardous waste regulations for generators.

C. What changed since proposal?

EPA is finalizing the episodic generation provisions in subpart L mostly as they were proposed on September 25, 2015, but with several important revisions: (1) Lengthening the time allowed for an episodic event from 45 days to 60 days and removing the option for a petition to extend an event; (2) revising the situations in which a generator can petition for a second event to ensure that a generator holds no more than one planned and one unplanned episodic event in a calendar year; (3) revising the notification requirements for unplanned events to allow 72 hours for notification; and (4) revising the labeling requirements to remain parallel with the labeling requirements for all generators being revised in the final rule (see section IX.E for more details on marking and labeling revisions).

1. Allowing 60 Days To Complete an Episodic Event

Most of the comments EPA received on the episodic generation provision in the proposal revolved around how long each episodic event could be and the number of events allowed per year. EPA's goal is to find a balance between a time frame that would be useful and workable for industry and not making episodic generation a loophole for generators to use to circumvent the regulations by holding episodic events over a large part of the year. The first part of achieving this balance is determining how long an event should be.

EPA proposed a 45-day limit for an episodic event with an option to petition for a 30-day extension, for a potential total of 75 days. EPA proposed 45 days because it believed that 45 days allowed enough time for an event to be initiated and completed and for the waste to be removed. The petition option was meant to account for any unexpected problems that the generator might have with transporting the waste off site. EPA did not want to extend the episodic event for so long that it might represent a large portion of the year. EPA determined that if the episodic event provision were too expansive, it would be more likely to allow generators that are more permanently generating in a higher category to try to use the provision as a way to avoid those requirements.

However, many commenters on this aspect of the provision argued that the 45-day limit was too restrictive and one stated that the limit ''undermines the benefits to operators of the episodic event rule.'' [99] However, it should be noted that there was also some support for the 45-day time frame in the comments, as well as at least one commenter who argued that 45 days is too long for an episodic event because most truly episodic events are very short-term spikes.[100]

One of the main reasons that commenters argued that 45 days is too restrictive a time period for episodic events was the time needed for waste disposal contracts to be competitively bid and the time needed for generators to classify waste and prepare and schedule shipments. Other commenters also pointed out that events themselves may take place over several weeks and that some remote facilities may have special circumstances that require longer time frames to resolve. Other

[99] Alyeska Pipeline Service, EPA–HQ–RCRA–2012–0121–0088

[100] Minnesota Pollution Control Agency, EPA–HQ–RCRA–2012–0121–0232

commenters argued that some events may be special projects or demolition or remediation projects that would take longer than 45 days.

Many commenters suggested a 90-day time frame, to match up with the requirements for large quantity generators, and some suggested a 60-day time frame. Other commenters suggested time frames as long as 180 days.

EPA was persuaded by the commenters who stated that a longer time frame was appropriate for an episodic event, particularly because of the arguments surrounding the planning needed to remove waste from the generator site in the case of an unplanned event. For planned events, it should be a matter of course for the generator to have characterized waste as hazardous or not and made arrangements for shipment off site in advance. However, in the case of an unplanned event, the generator might not know if the material that must be disposed qualifies as a hazardous waste and may not have a waste hauler available for a pick up. If the generator has to competitively bid for the service, as some of the commenters on the rule argued that they must, the process of getting the waste off site will take longer.

However, EPA was not persuaded by the commenters who argued that some events themselves will take longer than the time allowed, such as long-term demolition or remediation projects. Rather, these bigger long-term projects do not appear to be the kind of event that EPA would consider an ''episodic'' event and warrant the facility shifting into the larger waste category for the duration of the increased waste generation to properly manage the site and the hazardous waste itself.

Therefore, EPA is finalizing a longer time frame than proposed to account for some of the challenges in managing waste from an unplanned episodic event. EPA has determined that 60 days is an effective balance between allowing time for the generators to use the provision without making the time frame so long that it becomes something generators can abuse. A 90-day time frame, suggested by many of the commenters, struck EPA as being excessively long, as it would mean that a generator could consider the waste being generated during a full quarter of the year as waste from an episodic event. Shortening the event time and allowing a full 90 days of accumulation time also went counter to the Agency's goal of encouraging these generators that are generating above their normal category to arrange for the shipment of the waste to a RCRA-designated facility as soon as possible.

As part of our decision to lengthen the time frame for an episodic event, EPA also determined that a petition for a 30-day extension to an episodic event is no longer necessary. The longer time frame of 60 days should mean that extensions are not necessary in many cases. In addition, EPA received comments from the authorized states that they are concerned about the potential volume of petitions they might receive from the proposed episodic generation provisions and eliminating the option to petition for an extension is responsive to their concerns about the effect of the new provision on their resources. Accordingly, if a generator operating under the episodic generator conditions finds itself at the end of the 60-day time period and is unable to remove the waste from its site before the deadline, its generator category will change to SQG or LQG once the deadline has passed and the hazardous waste must be managed under the appropriate generator standards.

2. Petition for a Second Event

EPA proposed that a generator could petition EPA for a second episodic event, planned or unplanned. The proposal was based on the idea that in some cases a generator may want to hold a second event, but EPA did not want to simply allow two episodic events per year for all generators without a petition because of the potential abuse of the provision by generators that are not truly generating higher volumes of waste episodically, but should be operating in the larger generator category. EPA also wanted the petition to operate as a check that an implementing agency could use if it thought that a generator might be abusing the provisions.

The comments EPA received on this aspect of the proposal argued for a wide variety of options. Some commenters suggested that two events per year should be allowed, some suggested allowing a petition for a third, and one commenter supported allowing up to three episodic events in a year provided the generator has a standing agreement with a facility to accept the waste. However, several of the states supported limiting the episodic generation provision to one event per calendar year with no possibility for a second event while others argued that the proposed one event and a petition was appropriate. One state also suggested that the implementing agency should examine the causes of each event at each generator and determine if the episodic event could be held.

After considering the comments, EPA has determined that it is appropriate to allow a facility to petition for a second event in a calendar year, but only if the generator is only holding one planned and one unplanned event in that calendar year. For instance, if the generator has already held a planned episodic event in a year, a planned second 60-day event in the course of the year could indicate that the generator should be operating at a higher generator category. However, a generator that is truly a VSQG or SQG could have an occasion where it has performed a clean out or system shut down already during the year and then an act of nature or other truly unplanned event occurs. EPA would not expect this to be a regular occurrence for generators and will depend on the implementing agencies operating the RCRA programs to take note and act accordingly if a generator is regularly requesting a second episodic event.

At the same time, a generator may be planning to conduct an episodic event such as a tank clean out or maintenance project late in the year when it gets struck with a hurricane that can be managed as an unplanned episodic event for hazardous waste. In this case, the generator can hold an episodic event to respond to the storm and then petition EPA for a second event for the cleanout, while explaining that it needs the second event because of the occurrence of the storm earlier in the year.

EPA also believes that limiting the type of event that a generator can petition for will reduce the numbers of petitions submitted as a part of this provision, which is responsive to some of the comments received by states concerned about increased workload.

3. Notification

EPA proposed notification requirements for episodic events to ensure that the authorized state or EPA is informed of when a generator is holding an event that would otherwise cause that generator to be operating in a higher generator category. The proposed requirement was that in the case of a planned event, the generator must notify EPA no later than 30 days before the event begins. For notification in the case of an unplanned event, EPA proposed that the generator notify within 24 hours or as soon as possible by phone or email and then follow up with a full notification using EPA Form 8700–12 (the Site ID form).

Many of the comments on the notification provision singled out the notification for an unplanned episodic event as difficult to meet. Most of these

commenters stated that 24 hours is an insufficient time frame and did not mention EPA's addition of the phrase ''or as soon as possible'' in the proposal. Commenters noted that in the case of an unplanned event, the generator may not know if the waste is hazardous or if there is enough hazardous waste to make an episodic event necessary. Commenters suggested alternative approaches that included allowing longer time frames for notification, including 72 hours, 7 days or 30 days or simply ''as soon as possible.'' Another suggested approach was to require notification 24 hours after a waste determination was made. EPA also heard that having a specific time frame in which the notification must be made is critical for making the requirement enforceable by the states.

EPA understands that in the case of an unplanned episodic event, a generator will have competing priorities, particularly if a spill has occurred. However, the notification requirement for the episodic generation provision is critical in maintaining the appropriate levels of oversight for the generators taking advantage of this provision. EPA determined that it would not be appropriate to base the time frame for notification on when a waste determination is made, as that would not be parallel to any other area of the generator program and would be difficult to enforce. In addition, EPA found that the suggestions for the notification time limit to be lengthened to 7 or 30 days would result in excessive delays between the start of an episodic event and notification to EPA, compromising the ability to provide adequate oversight.

EPA has determined that it is reasonable, however, to adjust the time frame for initial notification to EPA of an unplanned episodic event by phone, email, or fax within 72 hours from when the event begins. EPA believes that this adjustment provides the generator with some additional time in case there is a necessary delay in contacting EPA due to emergency conditions, but does think that a timely notification to the Agency is important in the case of unplanned events at the generator to ensure proper oversight. A 72-hour limit ensures that timely notification.

If a generator finds that it notifies of an event and then it turns out that the material in question is not hazardous waste or does not in fact top the limit for the generator's category, the generator can work with EPA by explaining that the event was not necessary after all. Under the previous regulations, that generator would have to manage the excess generated material as hazardous waste until it is determined not to be, which would have included a notification of a higher generator category, so the requirement being finalized is not an additional burden.

4. VSQGs Notifying Local Fire Department

EPA proposed that a VSQG would be required 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 stated that the purpose of the notification was 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.

EPA did not receive support in the public comments for this proposal. The commenters stated that the notification requirement was excessive and would be an unnecessary burden to both the VSQGs and to the fire departments that would have received the notifications. Commenters on this provision included both industry stakeholders and state agencies. Therefore, EPA is not finalizing this notification requirement as part of subpart L.

5. Labeling

EPA proposed a labeling requirement as part of episodic generation that paralleled the labeling and marking being proposed throughout the generator program. The proposed requirement was for episodic generators to label their waste as ''episodic hazardous waste,'' to label the container with the contents of the container and the hazards of the contents and to mark the start date of the episodic event as well. The requirements for tanks would have allowed the relevant information about the contents, hazards, and episodic event to be recorded in a log book instead of on the container.

In this final rule, EPA has revised the marking and labeling requirements throughout the generator program to remove the requirement that the contents of the container or tank be noted. The provision focuses instead on the hazards of the contents, as that requirement tracks more directly to the needs of responders in an emergency. EPA does expect that many facilities already label containers with the contents and will continue to do so to ensure that the correct information is available for manifesting when it comes time to ship the materials off site or for proper treatment on site.

The marking and labeling requirements in subpart L for episodic generation have likewise been revised to remain parallel with the requirements in the other parts of the generator program. (See section IX.E for a complete discussion of the marking and labeling revisions.)

6. Management of Other Hazardous Waste Generated During Episodic Event

In EPA's proposal, the preamble included an interpretation of the proposed provision for episodic generation that discussed allowing a generator to include hazardous waste that was generated outside an episodic event to be managed with the hazardous waste from the episodic event. This interpretation included both physical management of the waste and shipment off site, as well as not counting that other hazardous waste toward the generator's category.

Some of the comments that EPA received from the states on this episodic generation provision argued that it would provide excessive relief from the generator regulations and, therefore, that it would not be appropriate to allow this relief. As discussed elsewhere, EPA carefully considered what parts of this proposal could be revised to ensure that the episodic generation provisions are used just for the management of waste that is episodically generated and not be used to allow a generator to avoid managing waste in a larger generator category that it is operating in more regularly. EPA identified this discussion as an area where the interpretation of the final provision should be revised to clearly state that only the waste from the identified episodic event is exempt from being counted toward a generator's category. EPA has therefore revised this discussion for this final preamble.

D. Major Comments

1. Labeling Waste as ''Episodic Hazardous Waste''

EPA received several comments stating that the proposed requirement to label hazardous waste from an episodic event as ''episodic hazardous waste'' rather than ''hazardous waste'' is an unneeded distinction. The commenters stated that it would be a burden to get and use a label that is different than the standard ''hazardous waste'' label.

EPA disagrees with the commenters on the usefulness of the ''episodic hazardous waste'' label. EPA is retaining this requirement because it will be important for generators holding episodic events to be able to distinguish hazardous wastes generated during those events from other hazardous

wastes generated on site. Although both types of hazardous waste can be managed and shipped off site together, if convenient, hazardous waste that was generated before the episodic event began retains its original time frame for being treated or shipped off site whereas hazardous waste from an episodic event must be treated or shipped off site within the 60-day period for the event.

If there is no distinction on the labels for hazardous waste from an episodic event, it would be difficult for a generator or an inspector to be able to determine which hazardous waste is a part of the episodic event with the 60-day limit and which hazardous waste has an alternate schedule for treatment and shipment. EPA does note, however, that the generator does not have to use a specific ''episodic hazardous waste'' label that would have to be purchased separately and, if practicable, can simply add the word ''episodic'' to the labeling with a self-designed label or with a large permanent marker.

2. Notification of Episodic Events

EPA also received several comments that notification of episodic events to EPA is an unneeded burden to the generators and will decrease the likelihood of generators using this provision.

EPA disagrees that there is little to be gained from notification and, instead, has determined that it is critical to the enforceability of this provision and for the states to oversee the hazardous waste activity under their authority. Without a notification requirement for episodic waste, a generator could potentially operate as if under an episodic event at all times, changing the starting date, so that during any given inspection, it appears as though there is an episodic event on site. EPA does not expect that many generators would manage hazardous waste in this way, but the regulations must include checks and balances to prevent such abuse and the notification requirement is one way to allow the implementing agencies to follow up in person if such action is warranted.

3. VSQGs Exceeding Generation Limit During Normal Operations

EPA received some comments stating that a VSQG that does not discover until the end of the month that it has exceeded its threshold for generation of hazardous waste as a VSQG would have difficulty complying with the episodic generation provision because of the notification requirements.

EPA would not consider the situation described by the commenters to be a case of an episodic event because the VSQG in this case is exceeding its generation limit in the course of normal operations. An episodic event is an activity that does not occur within normal operations that causes the generator to exceed its normal limit.

XI. Detailed Discussion of Preparedness, Prevention, and Emergency Procedures Provisions for SQGs (40 CFR 262.16) and LQGs (40 CFR 262.17 and 40 CFR part 262 Subpart M)

A. Introduction

EPA is finalizing a number of proposed modifications to the conditions for exemption for both SQGs and LQGs regarding preparedness, prevention and emergency procedures, as described in the proposed rulemaking (80 FR 57972). Proposed conditions for SQGs were found at § 262.16(b)(8)–(9) and for LQGs at § 262.17(a)(6)–(7), which reference part 262 subpart M. The preamble to the proposed rulemaking discussed in detail the rationale for making several revisions to existing regulations, as well as specifically taking comment on certain proposed revisions and on other potential changes that were not reflected in revisions to existing regulations.

In discussing these modifications in the proposed rule, EPA provided examples of catastrophic chemical accidents in the United States to highlight the need for continued improvement in a number of areas related to chemical facility safety. EPA also noted that, to address these concerns, the President issued Executive Order 13650—Improving Chemical Facility Safety and Security (EO) on August 1, 2013, which directed the EPA and other federal agencies 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. EPA explained that several of these modifications are aligned with EO-related efforts in that they will facilitate collection and analysis of chemical information from local facilities, as well as development of local emergency response plans to mitigate or prevent a devastating chemical disaster. EPA further explained that these modifications will also update the regulations to make them compatible with the current infrastructure of emergency planning and response, as well as provide a more usable contingency plan to emergency responders en route to a time-sensitive emergency at a facility that generates hazardous waste. Proposed or potential modifications, as well as key comments received on each, are discussed in this section in terms of the extent to which they are being incorporated into this final rulemaking.

B. What is EPA finalizing as proposed?

1. Changes to Contingency Plan Regulations for Large Quantity Generators: Eliminating Employee Personal Information in Contingency Plans

The condition for exemption for LQGs at § 262.17(a)(6)–(7) references 40 CFR part 262 subpart M, which includes requirements associated with contingency plan content at § 262.261. EPA proposed to modify the language to allow an LQG the flexibility to eliminate unnecessary employee personal information in the contingency plan in order to protect those individuals' privacy while still providing necessary information to address emergencies. Specifically, while retaining the name of persons qualified to act as emergency coordinators, the Agency proposed to remove references to addresses and changed the reference to home and office telephone numbers to ''emergency telephone number.'' EPA also proposed 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 and 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 requested comment on this proposed modification.

The majority of commenters supported EPA's proposal to remove addresses and home phone numbers for personnel and to allow listing of staffed positions. A few commenters suggested extending this provision to cover SQGs, even though they are not required to have contingency plans, and TSDFs. EPA has decided it is appropriate at this time to focus on changes for LQGs only because they pose the greatest concern in matters of emergency preparedness; consequently, the Agency is finalizing § 262.261(d) as proposed. Although EPA is not extending these requirements to other generator categories or to TSDFs, the Agency would encourage facilities

to adopt these changes as a best management practice.

2. Technical Changes Applicable to Both Small Quantity Generators and Large Quantity Generators

EPA proposed clarifications and modifications to preparedness and prevention procedures dealing with the location of required equipment and access to communications or alarm systems based on 30 years of experience with these rules, feedback from stakeholders as part of the Agency's November 2004 Hazardous Waste Generator Regulatory Program Evaluation (Docket ID No. RCRA–2003–0014), and other discussions with stakeholders. These revisions are discussed below.

a. Proposed technical changes to introductory paragraph on required equipment. EPA noted that existing regulations are unclear regarding whether the required emergency response equipment must be placed in those areas of operation where hazardous waste is generated and accumulated or other parts of the facility where hazardous waste is not generated or accumulated. The Agency added that it may not always be appropriate or safe to store equipment in the actual waste generation or accumulation area—even though the requirement itself applies only to the generation and accumulation (and treatment, as appropriate) of hazardous waste. Therefore, the generator should have the flexibility to store this equipment in other areas of the facility in situations where it is infeasible or inappropriate for safety reasons to have the equipment located immediately next to hazardous waste generation and accumulation areas. EPA proposed to clarify that, while the equipment provision applies to only those areas where hazardous waste is either being generated or accumulated, the generator may determine the most appropriate locations within its facility to locate equipment necessary to prepare for and respond to emergencies. EPA requested comment on this proposal.

Commenters generally supported EPA's proposed clarification as it provides flexibility in determining the most appropriate locations of emergency response equipment, although several commenters suggested various changes/clarifications related to the location and accessibility of emergency equipment. EPA does not believe these other changes/clarifications are necessary and is finalizing § 262.16(b)(8)(ii) and § 262.252 as proposed.

b. The meaning of ''immediate access.'' Preparedness and prevention provisions include the condition 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. At issue is whether the phrase ''immediate access'' is clearly understood or whether additional clarity is necessary. EPA proposed to modify this language to include the parenthetical ''(*e.g.,* direct or unimpeded access)'' after the phrase ''immediate access.'' EPA requested comment on the usefulness of modifying this language.

The majority of commenters supported this modification, although one commenter expressed concern regarding what would constitute immediate or unimpeded access. Another commenter requested clarification as to whether access to a cell phone satisfies the requirement for immediate access to an alarm or communication device. EPA believes that, although cell phones are a useful means of communication, they should not be relied upon solely to satisfy this requirement. The Agency is therefore finalizing § 262.16(b)(8)(iv) and § 262.254 as proposed.

3. Technical Changes Applicable to Small Quantity Generators

Based on experience and feedback received from the regulatory community and other stakeholders, EPA proposed revisions that address two of the four provisions regarding emergency procedures for those areas where SQG hazardous waste is generated and accumulated. These revisions are as follows.

a. Require certain information be posted ''next to the telephone.'' In the proposed rule, EPA explained that existing regulations were unclear where required information (*i.e.,* name/telephone number of the emergency coordinator, the location of fire extinguishers, spill control material, fire alarms and, as necessary, telephone number of the fire department) should be posted in the facility. The Agency stated that a facility may have many operations and components that have no relationship with the generation and accumulation of hazardous waste. EPA noted that stakeholders have recommended deletion of this particular provision because, in this age of near-universal 911 availability, it is not important from a regulatory standpoint to have emergency telephone numbers, including the number (and name) of the emergency coordinator, and have also asserted that locations of the equipment in question should be conveyed to relevant employees and displayed in a worker break area rather than the facility office. EPA disagreed with eliminating this provision since making such information readily available is important for workers and others so that they would know what to do and where to go in the case of an emergency. However, the Agency nevertheless believed the regulation should be modified, adding that it is unclear whether the telephone number for the emergency coordinator refers to a home or business phone. With cell phones and other means of instant communication now prevalent, EPA proposed to modify this language to state that the SQG 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. EPA requested comment on this proposed change.

Commenters generally expressed support for this proposed change, although certain commenters questioned the posting of emergency information where hazardous waste is generated or accumulated. Some commenters requested the option of keeping emergency information on cell phones, while another commenter cautioned that cell phone reliability could be compromised during a widespread emergency. EPA understands that cell phone use may be compromised but also realizes that cell phones are widely used and that the inability to use cell phones for communication purposes would not prevent an employee from accessing stored information, such as land line telephone numbers (*e.g.,* home or business phone). The Agency is finalizing § 262.16(b)(9)(ii) as proposed in order to accord flexibility in complying with this SQG requirement.

b. Allow containment and cleanup to be conducted by a contractor. EPA's understanding was that most SQGs would hire a spill cleanup contractor to perform containment and cleanup of hazardous waste in the event of a spill rather than train employees to perform the response. Although EPA agreed that allowing an SQG to hire a contractor trained to address hazardous waste spills would be appropriate, the Agency indicated that regulations in place arguably do not provide this flexibility. EPA proposed to modify this language to allow containment and cleanup to either be conducted either by the SQG or by a contractor on behalf of the SQG. EPA requested comment on this

proposed change, including whether any unintended consequences could arise from providing SQGs with this flexibility.

Nearly all of the commenters supported EPA's proposed modification, although some commenters opined that existing language already allows for contractors to perform this work. Other commenters mentioned that the generator is ultimately responsible for ensuring proper response and cleanup and a few suggested adding language clarifying contractor liability in performing cleanups. EPA is finalizing § 262.16(b)(9)(iv)(B) as proposed.

C. What is EPA finalizing with changes to proposed rule language?

1. Areas Subject to Preparedness, Contingency Planning, and Emergency Procedures Regulations

EPA stated in the proposal that current preparedness and emergency procedures regulations do not clearly state whether they are applicable to the entire facility or only to areas where hazardous waste is generated and accumulated on site or where allowable treatment may occur in accumulation units (*i.e.,* in containers and tanks per EPA guidance) and when transported off site for subsequent treatment, storage, and disposal. Therefore, EPA proposed that regulations for preparedness and prevention and for contingency planning and emergency procedures apply only to those areas where hazardous waste is generated and accumulated and, where applicable, to those areas where allowable treatment may occur in accumulation units. For this reason, EPA proposed to explicitly state that the RCRA preparedness and emergency procedures regulations are limited strictly to these areas.

EPA acknowledged that previous Agency guidance indicated RCRA preparedness and emergency procedures regulations, including development of contingency plans by LQGs, would only apply to 90-day accumulation units, otherwise known as CAAs. In this guidance, the Agency states that, when developing a contingency plan, LQGs would only need to include those 90-day accumulation units involved in the on-site management of hazardous waste.[101] At that time, Agency expressed a desire 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 facility, such as the storage of chemical materials and substances other than hazardous wastes. The Agency also noted 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. Examples include EO 13650 and the Agency's aforementioned One Plan guidance.

EPA proposed that subpart M apply only to those areas of an LQG where hazardous waste is generated and accumulated on site in accordance with the conditions in § 262.17. This proposal included a parallel change for the emergency procedures regulations for SQGs in § 262.16.

Although the primary objective of these changes was to ensure that preparedness and planning regulations under RCRA did not apply to the entire facility, EPA received several comments on whether SAAs and points of generation should or should not be included. Comments were roughly split on whether areas besides CAAs, such as SAAs and points of generation, should be included within the scope of preparedness and planning regulations. Notwithstanding existing guidance, EPA continues to believe there are benefits to addressing areas besides CAAs. Throughout a facility, there may be many points of generation and associated SAAs from which hazardous wastes are routinely moved to CAAs; therefore, the potential for spills exists during the accumulation and management process. For this reason, EPA has determined it is appropriate to address these additional areas, consistent with the objectives of EO 13650, in order to ensure protection of human health and the environment, as part of preparedness and planning regulations.

With respect to allowable treatment, EPA believes that locations of such treatment would be covered as part of the overall accumulation and management process within a facility. Although EPA has not specifically defined allowable treatment in the regulations, the Agency has determined at this time to continue to address allowable treatment at generator facilities within the framework of existing guidance.[102]

EPA is, therefore, finalizing regulations making it clear that points of generation and SAAs, in addition to CAAs, fall within the scope of regulations for preparedness and planning in § 262.16(b)(8) for SQGs and 40 CFR part 262 subpart M for LQGs. This includes adding clarifying language in § 262.15(a)(7) and (8) regarding the conditions for exemption for both SQGs and LQGs that specifically relate to SAAs.

2. Making and Documenting Arrangements With the Local Emergency Planning Committees

EPA noted in the proposal that RCRA generator regulations, which were finalized in 1980, have not been updated to reflect significant changes to the national, state and local infrastructure for emergency planning and response, one of which was passage of the Emergency Planning and Community Right-To-Know Act (EPCRA) in 1986. The Agency also discussed EPCRA in terms of emergency planning and notification requirements, as related to preparedness, prevention and emergency procedures established by hazardous waste management regulations. This included the roles and responsibilities of Local Emergency Planning Committees (LEPCs) under EPCRA. EPA explained that facilities covered under EPCRA are required to report chemical information to LEPCs, as well as other entities, and that LEPCs are required to prepare a comprehensive emergency response plan. Facilities covered by EPCRA planning provisions are required to cooperate in emergency plan preparation and designate a facility emergency coordinator to participate in this process.

For this reason, EPA proposed revisions to require that SQGs and LQGs must first attempt to enter into arrangements with their LEPCs. EPA also proposed 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. The Agency requested comment on its proposal to require an SQG or 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

[101] Memorandum from Matt Hale, Director of EPA's Office of Solid Waste, to RCRA Division Directors, November 7, 2006, RCRA Online 14758.

[102] On March 24, 1986, EPA finalized regulations applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month (51 FR 10146) in which the Agency indicated that these generators could treat such waste in accumulation tanks or containers without a permit provided that treatment conformed to established management standards for tanks and containers. An example of subsequent guidance regarding allowable treatment at both SQGs and LQGs is a memorandum from Elizabeth Cotsworth, Director of EPA's Office of Solid Waste, to RCRA Senior Policy Advisors, August 16, 2002, RCRA Online 14618.

would enter into an arrangement with its local emergency responders.

Due to the fact that some SQGs and LQGs may already coordinate with their LEPCs annually as part of their EPCRA requirements, EPA opined that it would be unnecessary to include time frames for updating in this rule. The Agency, nevertheless, requested 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.

EPA also proposed to modify existing regulations to state that the generator shall maintain records documenting the arrangements with the LEPC or, if appropriate, with the local fire department, as well as any other organization necessary to respond to an emergency. The Agency asked for 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.

Finally, the Agency asked for 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, and particularly under what circumstances a waiver would be granted.

The majority of commenters indicated that local emergency responders, as opposed to LEPCs, should serve as the initial point-of-contact for LQGs, citing concerns about an emphasis on LEPCs, which usually are not involved in actual responses to emergencies. Regarding the extent to which SQGs and LQGs should document efforts to enter into arrangements with local authorities/first responders, some commenters stated the generator cannot be held responsible for making arrangements with a party over which it has no control and noted that a mandated arrangement differs greatly from being required only to make an ''attempt.'' There were also questions on what would constitute appropriate documentation. Although there was some opinion to the contrary, the majority of commenters believed that large facilities with internal emergency response capability should be given a waiver or allowed to seek a waiver from entering into arrangements with local authorities.

Based on the comments received, EPA is not finalizing the proposed references to LEPCs as the primary contact identified at § 262.16(b)(8)(vi) and § 262.256 for SQGs and LQGs, respectively. EPA is also not finalizing proposed language indicating that generators must make arrangements with local responders and is clarifying that generators must simply attempt to make arrangements with local responders and document either the attempts or, if successful, the final arrangements. Some commenters provided feedback in terms of what constitutes sufficient ''documentation'' that best efforts were made to enter into arrangements. In considering these comments, EPA is revising the proposed language at §§ 262.16(b)(8)(vi)(B) and 262.256(b) to remove the term ''certified letter'' in recognition of the fact that there are various means of confirming that arrangements actively exist, or were sought but not obtained, including, but by no means limited to, a certified letter, fax and electronic mail. Additionally, based on these comments, EPA is revising proposed language to insert the phrase ''in the operating record,'' which would include the contingency plan, to provide additional flexibility regarding where such documentation can be retained. Finally, during implementation of the final rule, as part of coordinating with stakeholders and conducting associated outreach activities, EPA intends to address the issue of what constitutes reasonable efforts or sufficient attempts by SQGs and LQGs to make and document arrangements with local authorities.

With respect to large facilities possessing internal emergency response capability, EPA is adding language at §§ 262.16(b)(8)(vi)(C) and § 262.256(c) that allows these facilities to obtain a waiver from the authority having jurisdiction (AHJ) over the fire code within the facility's state or locality in terms of entering into arrangements with local authorities provided the waiver is documented in the operating record. As previously stated in the final rule preamble, an AHJ may or may not be the fire marshal, fire chief, building official, or another official as designated by the state or local government. EPA believes that, practically speaking, the AHJ would be in the best position to evaluate whether a particular facility, in fact, possesses 24-hour response capabilities. This is consistent with the Agency's rationale when discussing waivers from the 15 meter property line condition in the case of ignitable or reactive hazardous waste accumulation. The Agency is similarly allowing flexibility regarding how the generator documents that a waiver has been obtained.

3. Changes to Contingency Plan Regulations for Large Quantity Generators: Submitting a Contingency Plan Executive Summary to Emergency Management Authorities

In the preamble to the proposed rule, EPA noted that RCRA regulations on contingency planning and emergency procedures 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. The Agency also noted 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 associated with contingency planning, which were specifically identified in the proposed rule preamble. In doing this, the Agency recommended that generators base their contingency plan on the National Response Team's Integrated Contingency Plan Guidance One Plan (June 5, 1996: 61 FR 28642).

EPA's discussions with emergency management professionals indicated that the length of the facility contingency plans may prevent first responders from being able to fully review these documents when responding to an emergency and what first responders really need is readily available information describing what they will immediately confront upon arrival at the scene. EPA recognized that, once the incident is under control, first responders will be able to review the contingency plan to determine whether longer-term responses are necessary. However, the Agency also indicated that a shorter document, such as an executive summary of the contingency plan, would allow a more effective initial response to an incident at a facility.

Based on a review of information required as part of a RCRA contingency plan, as well as information required by the local fire department, EPA identified certain components that would be useful in an executive summary. In particular, EPA proposed 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, 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.

Because of the usefulness of a shorter document for emergency responders, EPA proposed to require that a new LQG, as of the effective date of the rule, submit an executive summary of its contingency plan, in addition to the full contingency plan, to the emergency management authorities; in particular, LEPCs. Although EPA believed the eight elements previously discussed should be included as part of an executive summary, the Agency asked for comment on the appropriateness of this information.

Roughly twice as many commenters supported the requirement for an executive summary for LQGs than opposed it, arguing that EPA's proposal to require a contingency plan executive summary would improve the ability of emergency response teams to respond to an incident at an LQG's facility. These commenters generally favored including at least some of the eight elements as part of contingency plan executive summary, although some commenters stated a preference for excluding certain elements or suggested others for inclusion. Other commenters suggested a document format, such as a table of contents or index that allows the reader to quickly access needed information. Some commenters disagreed with making submission of the executive summary a mandatory requirement, while others advocated flexibility in terms of content and submission. One commenter requested clarification as to the meaning of ''new LQG.'' Commenters who objected to this proposal believed that it was unnecessarily prescriptive and duplicative.

The Agency subsequently decided to modify language at § 262.262(b)(8) to account for situations where an emergency coordinator is continuously on duty in order to ensure consistency with final regulatory text at § 262.261(d). Otherwise, the Agency believes these elements provide key information for use in the event of an emergency, which will be beneficial to workers and the public in general. EPA is also requiring new LQGs (*i.e.,* facilities that become LQGs after the effective date of this regulation) to develop and submit an executive summary of their contingency plan to emergency authorities in addition to a full contingency plan. As EPA expressed in the proposal and states again in this final rule, developing the executive summary during the initial writing of the contingency plan will not be a significant extra step. As discussed subsequently, EPA is finalizing changes regarding the name of this document (*i.e.,* changing from ''executive summary'' to ''quick reference guide'') and clarifying how existing LQGs are covered by this requirement. Additionally, as noted elsewhere in this preamble, EPA is not finalizing proposed references to LEPCs in terms of making arrangements with local authorities at § 262.16(b)(8)(vi) and § 262.256 for SQGs and LQGs, respectively, or submitting a quick reference guide to local emergency responders at § 262.262(a) for LQGs.

4. Technical Changes on Personnel Training Applicable to Large Quantity Generators

EPA has acknowledged that, since promulgation of personnel training regulations in the 1980s, use of computerized training has become a common practice for generators to teach their workers about the management of hazardous waste. Due to the fact that many generators already use this method for training workers, a modification that reflects use of online computer training would simply bring the hazardous waste personnel training regulations up to date with existing industry practices. Therefore, EPA proposed to also allow a generator to use online computer training, in addition to classroom instruction and on-the-job training, to complete the personnel training requirements. EPA requested comment on this proposed modification.

The vast majority of commenters supported EPA's proposal to clarify that online training is acceptable to meet hazardous waste generator training requirements. However, some commenters suggested replacing the word ''online'' with ''computer-based'' or ''electronic training'' or identifying additional training options. EPA has considered these comments and is modifying proposed § 262.17(a)(7)(i)(A) by inserting language that takes into account computer-based and/or electronic training options.

5. Executive Summary Submission for Existing Large Quantity Generators

As previously stated, EPA believes that a shorter document, such as an executive summary of the contingency plan, which will be referred to as a quick reference guide, will allow more effective response to an incident at a facility. EPA is requiring new LQGs, in addition to a full contingency plan, to develop and submit an executive summary of their contingency plan to local emergency responders identified at § 262.262(a). With respect to existing LQGs, which have already developed and submitted a contingency plan to local emergency responders, EPA proposed not to require these facilities to develop an executive summary because of the additional burden. However, the Agency recommend that existing LQGs may want to submit an executive summary when conducting a periodic update on their contingency plans to ensure that the emergency responders have the appropriate information on hand in the event of an emergency. EPA took comment on whether existing LQGs that have already provided a 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.

Comments received indicated a very strong preference for requiring an existing LQGs to submit an executive summary. However, certain commenters suggested that submission should occur when existing LQGs update their contingency plans to reflect, for example, personnel changes, facility updates, waste relocations, emergency equipment upgrades, and other operational or physical alterations. Other commenters suggested that submission occur after a specified period of time has elapsed.

In the final rule, EPA is clarifying in new language at § 262.262(b) regarding existing and new LQGs with respect to preparation and submission of a quick reference guide. EPA is also adding new language at § 262.262(c) to require that all LQGs update their quick reference guides, if necessary, whenever the contingency plan is amended. EPA does not consider that the changes to the final regulations in this rule would automatically require amendments to an existing LQG's contingency plan under the requirements in § 262.263(a).

In response to certain comments, EPA is also replacing the term ''executive summary'' with the term ''quick reference guide'' in order to more closely mirror the intended purpose of this document. The Agency believes this

wording better conveys the fact that this document should be prepared in a format enabling first responders to quickly access key information in the event of an emergency. Lastly, as previously stated, EPA is not finalizing references to LEPCs as the primary contact identified at § 262.16(b)(8)(vi) and § 262.256 for SQGs and LQGs, respectively. Instead, LQGs are directed to submit the quick reference guide to local emergency responders identified at § 262.262(a).

6. Other Changes

EPA proposed to replace the word ''facility'' in these regulations regarding emergency preparedness and prevention with the word ''site'' because ''facility'' is defined in § 260.10 as specific to TSDFs. Certain commenters discussed EPA's proposal. One commenter noted that ''site'' is too general and could be misinterpreted, while another commenter noted that, although the term ''facility'' has a defined meaning in RCRA, ''site'' does not. As a result of these comments, EPA has reconsidered its proposal and decided not to change existing regulations; consequently, the Agency is replacing the word ''site'' where it appeared in this context in the proposal with the word ''facility'' throughout final rule language. EPA has concluded that use of the word ''facility'' in these regulations would also be more consistent with the word ''facility,'' which is used and defined in EPCRA emergency planning and notification regulations at 40 CFR part 355, as well as in Spill Prevention, Control and Countermeasures (SPCC) plan regulations at 40 CFR part 112.

EPA also proposed incorporating a minor revision associated with a ''comment'' in existing regulatory text into the final rule at § 262.264 because the **Federal Register** style no longer permits this kind of comment in new regulations. One commenter noted that certain text in the comment in question, ''Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of waste(s) handled by the facility, and type and complexity of the facility'' was not incorporated and suggested that this regulatory text be retained to give some flexibility to those who must perform certain emergency response duties. EPA will incorporate the suggested text into § 262.264.

D. What is EPA not including in the final rule?

EPA asked for comment on certain potential revisions to existing regulations that the Agency has subsequently decided not to address as part of this final rule. Each is discussed in turn as follows.

1. Changes to Contingency Plan Regulations for LQGs: Including Alternative Evacuation Routes in the Contingency Plan

EPA identified a potential issue regarding 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. This issue resulted from stakeholder discussions regarding the Agency's November 2004 Hazardous Waste Generator Regulatory Program Evaluation (Docket ID No. RCRA–2003–0014). EPA received a comment stating that it does not make sense to include in the contingency plan hundreds of possible evacuation routes that may be present at a facility, depending on its configuration, along with a suggestion that, although regulations should be modified to require that evacuation routes be posted and drills be conducted, regulations should not require the routes to be in the contingency plan.

EPA indicated that, although the Agency did not believe regulations require all potential evacuation routes be identified, emergency responders may need this type of information in order to determine the most efficient and timely approach to reach the facility. Therefore, EPA requested comment on the necessity of modifying the condition on alternative evacuation routes in a contingency plan. EPA also asked for comment on whether requirements to post evacuation routes and hold annual evacuation training/drills would be an effective substitute to maintaining alternative evacuation routes in the contingency plan and whether regulations should discuss shelter-in-place as part of the contingency plan.

Slightly more commenters disagreed than agreed with requiring alternate evacuation routes in contingency plans. Some commenters noted that, while alternative evacuation routes should be considered, they may not exist or may not be practical in certain instances. Another commenter believed that the decision to require alternative evacuation routes should rest with the LEPC. Commenters also offered suggestions such as requiring identification of employee muster locations or including a map with possible exists marked, with another commenter stating that including evacuation routes only in the contingency plan is not useful. EPA did not receive many comments regarding either posting evacuation routes and holding annual evacuation training/drills or discussing shelter-in-place, although the comments received indicated support for these approaches.

EPA understands that it may not always be possible to identify alternate evaluation routes and likewise realizes that immediate evacuation may not always be advisable due to the nature of the emergency. Nevertheless, the Agency believes that, in the majority of instances, evacuation will be the selected course of action and that it will be possible to identify an alternate evacuation route. EPA also believes comments on the proposed rule regarding this issue should be considered by facilities when developing or amending contingency plans. This would include posting evacuation routes, as well as muster and shelter-in-place locations, within the facility (and/or making such information available on cell phones) and conducting periodic training/drills. These efforts would be undertaken, as necessary, in consultation with local emergency responders. Due to the varying types/varieties of wastes handled by facilities and differing physical settings in which facilities are located, however, the regulations should allow flexibility on the part of the LQG. Therefore, EPA is not making any changes to § 262.261(f), as proposed.

2. Changes to Contingency Plan Regulations for LQGs: A Potential Electronic RCRA Contingency Planning Application

EPA requested 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, including what EPA's role should be in electronic submittals. In making this request, EPA noted that the Agency currently makes numerous electronic databases and tools available for helping first responders with emergency management. A specific example cited was a suite of software applications (Computer-Aided Management of Emergency Operations), which is used to assist with data management requirements under EPCRA. EPA asked 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, thereby making the information available to the first responders in the most usable way. EPA also inquired as to the feasibility/effectiveness of private sector parties or

non-profit or governmental entities in developing software that LQGs could use to provide important information to emergency responders during an emergency.

The majority of comments received supported electronic submission of contingency plans to emergency responders, including five commenters who suggested incorporating submissions of contingency plan information into existing software applications—two of who preferred this to direct submission of the plan—consistent with EPCRA requirements. Some commenters cautioned against making electronic submission mandatory and a few others indicated that electronic submission of a contingency plan would preclude the need for submission of an executive summary. Commenters opposed to this approach cited reasons such as unnecessary burden and potential lack of availability during a power outage. Few comments directly addressed the question of software development, beyond mentioning existing software applications, although limited feedback did not indicate support for this additional effort.

Proposed regulations did not specify the format in which the contingency plan must be provided nor did they discuss software applications. EPA strongly encourages LQGs to work with first responders to determine whether electronic submission of contingency plans, including incorporating contingency plan information into existing software applications, is an acceptable approach either in lieu of or in addition to a hard copy submission. However, EPA believes regulations must be sufficiently flexible to allow these decisions to be made on a facility-by-facility basis; therefore, the Agency is not making any changes to proposed regulations at § 262.262(a) regarding transmission of the contingency plan.

3. Additional Information for Contingency Plan Executive Summary

EPA took comment on certain aspects of the contingency plan executive summary, which the Agency is renaming as a quick reference guide, related to element #1. This element discusses the types/names of hazardous wastes in layman's terms and the associated hazard associated with each waste present at any one time. EPA asked whether providing information regarding identification of hazardous waste is sufficient for ensuring that first responders will be able to identify the appropriate actions to take during emergency responses. EPA also asked whether referencing material in the North American Emergency Response Guide, where appropriate, would be useful (*i.e.,* likely reduce the time it takes to get the necessary information for managing the situation) to first responders and whether generators can easily access this information to add to their contingency plans. EPA received few comments related to element #1, although limited comments received seemed to indicate support for including additional information. Given the relative lack of comments received and to avoid being overly prescriptive, EPA will not make it a requirement to include this additional information. The Agency is not making any changes to what was proposed at § 262.262(b)(1).

EPA also took comment regarding whether element #3 of the contingency plan executive summary, which discusses identification of any hazardous wastes where exposure would require a unique or special treatment by medical or hospital staff, should also include a requirement that the generator provide medical-related information for exposure to hazardous wastes requiring special treatment; specifically, whether this information is readily available to the generator for inclusion in the executive summary of the contingency plan and whether first responders would find this additional information useful for responses. EPA received few comments related to element #3; as such, there was no meaningful basis for justifying any additional regulatory changes. Although EPA would encourage the generator, in consultation with first responders, to include medical-related information associated with exposure to certain hazardous wastes, the Agency is not making any changes to what was proposed at § 262.262(b)(3).

4. Contingency Plan Executive Summary for SQGs

Another aspect of the contingency plan executive summary on which EPA took comment involved whether an SQG should be required to develop an executive summary of a contingency plan. In posing this question, EPA noted that 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.

Although SQGs are not required to develop contingency plans under RCRA, EPA noted that many SQGs may already have developed contingency plans to comply with other statutory and regulatory requirements and that many of the elements of an executive summary may already be available. For these reasons, EPA thought that the requirement for 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 being expended by the SQGs.

Although a few commenters supported creation of an executive summary for SQGs, the majority did not. Reasons provided included the fact that a contingency plan is not required under RCRA and the belief that this decision should be made by individual states, as well as the potential for unnecessary burden and possibly duplication of effort. Other commenters, while seeming not to support creation of an executive summary, nonetheless suggested that EPA specify information that would be included in the case of SQGs.

As previously noted, SQGs may have already developed emergency plans to comply with other statutory and regulatory requirements, such as SPCC or EPCRA. Moreover, under existing RCRA regulations, SQGs are required to attempt to make arrangements, as appropriate, with local authorities regarding the types of wastes handled at their facilities. Therefore, it is possible that these facilities have incorporated information regarding hazardous waste management into these emergency plans. EPA also recognizes that there exist a large number of SQGs operating under RCRA, as compared to LQGs. For instance, as noted elsewhere in this rulemaking, EPA estimates the number of SQGs to range from approximately 49,900 to 64,300 while the number of LQGs is estimated to be approximately 20,800.[103] EPA is not making any changes to existing regulations. However, given the prevalence of SQGs and the associated potential for adverse impacts to human health and the environment, the Agency strongly encourages these facilities, as a best management practice, to develop a quick reference guide (*i.e.,* new term for the document referred to as an ''executive summary'' in the proposed rule) and share this information with local emergency responders.

5. Revisions to Applicability of Personnel Training

EPA asked for comment on whether the regulations should specifically identify positions at LQGs for which

[103] See ''Regulatory Impact Assessment of the Potential Costs, Benefits, and Other Impacts of the Final Hazardous Waste Generator Improvements Rule.'' A copy of the analysis is available in the docket for this action.

hazardous waste training would be required and for which a written job description is necessary, as well as what those job duties should be. Although current EPA guidance excludes staff working in SAAs from the training requirements, the Agency expressed a belief that such personnel have a similar need to know the risks associated with hazardous wastes as personnel working in central accumulation areas. Therefore, EPA also asked for comment on whether personnel involved in handling or managing hazardous wastes in SAAs should be required to undergo hazardous waste training.

EPA noted that, besides the statement indicating that personnel must be able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, existing regulations are not specific about which personnel at an LQG must complete the hazardous waste training. At issue is the scope of these training standards, the applicability of the training provision to employees who are not assigned to work in the CAAs (*e.g.,* personnel working at SAAs), and whether to require training and a written job description for specific types of employees working in areas of hazardous waste management related to central accumulation areas.

With the assistance of staff from certain states (*e.g.,* Connecticut, New York and Vermont), EPA previously identified the following areas of hazardous waste management for which personnel training and a written job description should be required: (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. EPA believed this clarification would have the benefit of assisting LQGs in determining more readily the scope of their hazardous waste training program. Nevertheless, in the proposal, the Agency requested feedback on this issue and others before making a final decision.

Commenters were generally evenly divided on whether or not the regulations should specifically identify positions at LQGs where hazardous waste training and a written job description is necessary. Supporters who agreed with the areas of hazardous waste management identified by EPA also identified additional job functions, including those not directly involved in handling hazardous waste that effectively expanded the areas of waste management, while others believed training should apply to employees who are handling hazardous waste on a daily basis. Commenters who did not support specifying positions and including written job descriptions expressed concern that proposed revisions could, in practice, have the opposite of the intended beneficial effect envisioned by the Agency. Certain commenters also stated that LQGs would be in the best position to identify employee training needs, while others recommended removing the requirement for written job descriptions as they believe such information does not benefit the facility or inspectors.

Comments were roughly split on whether EPA should require hazardous waste training for personnel who work at SAAs. Taking into account the differing opinions of commenters, the existence of EPA guidance on this point and the desire to maintain flexibility, the Agency has decided not to revise § 262.17(a)(7) to identify areas of hazardous waste management for which personnel training and a written job description are required or to specifically require training for staff at SAAs. However, EPA would encourage all generators to take appropriate steps to ensure that all employees who work at areas where hazardous waste is accumulated, including at SAAs, or are otherwise involved in hazardous waste management receive sufficient training to ensure that they are familiar with proper handling and emergency procedures.

6. Revising Frequency of Communication With Emergency Response Agencies

During discussions related to making and documenting arrangements with the LEPCs, EPA noted that existing regulations do not specify how frequently hazardous waste generators must make arrangements with local authorities. Considering that some SQGs and LQGs may already coordinate with their LEPCs annually as part of their EPCRA requirements, EPA opined that it would not be necessary to include time frames as part of this rule. The Agency, nevertheless, requested 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.

With the exception of one commenter who suggested that arrangements should be updated annually, at a minimum, and more frequently if modification is needed based on changes such as the type/amount of waste generated, comments received did not indicate support for revising existing regulations to specify time frames. These commenters felt that the provisions necessary for LQGs to communicate with local emergency response personnel are already in place or that communication should only occur in the event that the facility has a major change in its operations. Another commenter indicated that mandating how frequently a generator must communicate with its LEPC or local fire department would only work if corresponding changes were also made to EPCRA requirements. EPA agrees with the majority of commenters and continues to believe that it is unnecessary to mandate how frequently a generator should communicate with its emergency response agency. Therefore, the Agency is not making any changes to what was proposed at § 262.16(b)(8)(vi) for SQGs or to § 262.256 for LQGs.

7. Applying Emergency Planning and Procedures Revisions to Parts 264 and 265

Although revisions to emergency planning and procedure regulations pertain only to generators (language in an expanded 40 CFR part 262), many of these provisions were taken from part 265 with only slight revisions. Therefore, EPA asked whether it would be appropriate/helpful if proposed revisions to part 262 were also be made in the applicable paragraphs of parts 264 (permitted facilities) and/or 265 (facilities operating under interim status) to ensure consistency 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.

Although the majority of those who commented supported making changes to TSDF regulations, EPA is not making changes as part of this rulemaking because the Agency believes that emergency planning and procedure requirements at TSDFs can best be addressed on a facility-specific basis through the permitting process.

XII. Technical Corrections and Conforming Changes to 40 CFR Parts 257, 258, 260 Through 265, 270, 273, and 279

The proposed rule included 23 technical corrections and conforming changes to various paragraphs in parts of 257, 258, 260 through 265, 270, 273, and 279 discussed at 80 FR 57984. These changes eliminate the regulatory text for discontinued programs, identify areas where conforming changes are

necessary, update existing regulatory text to account for new programs, improve the readability of certain paragraphs, and correct typographical errors. As an example, we proposed to revise § 260.3, which currently reads, ''As used in parts 260 through 265 and 268 of this chapter.'' However, 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. Therefore, the Agency proposed to revise this paragraph to correct this oversight to read, ''As used in parts 260 through 273 of this chapter.''

A. What is EPA finalizing?

The Agency is finalizing 20 of the 23 proposed technical corrections. The three proposed technical corrections not being finalized in this action are also discussed. In addition, EPA is finalizing conforming changes throughout the text to account for the reorganization and the changes in defined terms. Also note that EPA is making a conforming change to § 266.80(a) in this action to take into account the revisions being made as a part of the ''Hazardous Waste Export-Import Revisions'' Final Rule (Docket ID EPA–HQ–RCRA–2015–0147; FRL–9947–74–OLEM).

The technical corrections the Agency is finalizing are:

(1) Revise § 260.3, which previously read, ''As used in parts 260 through 265 and 268 of this chapter'' to currently read ''As used in parts 260 through 273 of this chapter'' to account for additional parts of the regulations that were promulgated after 1986, such as parts 266, 267, and 270 through 273.

(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 previously read, ''Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in § 261.1(c) of this chapter'' to currently 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 the reorganization of these regulations. The citations where references to § 261.5 are 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 removing 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 definitions for very small quantity generator, small quantity generator, and large quantity generator. (Note: The comments at the end of § 261.33(e) and (f) remain.)

(6) Replace the word ''waste'' with ''water'' in previous § 261.5(e)(2), which read, ''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 was not able to determine why this change occurred so we are reverting back to the original regulatory language. (In the 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 previously stated 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 previously stated 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 because the Agency replaced § 262.34 with a new reorganization of the regulations that address Note 1 and in § 262.10 that address Note 2.

(9) Remove the extra period in the last line of the paragraph at § 262.10(l).

(10) Made conforming changes to sections that reference § 262.34 to reflect EPA's move of these regulations. The citations where references to § 262.34 are 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) Correct the statutory citation at § 262.43 that referred 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'' was removed in order to be gender neutral.

(12) Make two conforming changes to the definition of ''central accumulation area'' previously found in § 262.200 in subpart K. We moved 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 changed 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, the reference to § 262.34(a) has been changed to § 262.17 and for SQGs, the reference to § 262.34(d) through (f) has been changed to § 262.16.

Second, we removed the reference to Performance Track in the definition of ''central accumulation area'' in § 262.200 of subpart K because the Performance Track program was terminated (74 FR 22741; May 14, 2009). Both of these conforming changes are reflected in the definition of ''central accumulation area'' that has been added in § 260.10.

(13) Make conforming changes to citations that previously used the term ''conditionally exempt small quantity generator'' to reflect EPA's change to the term ''very small quantity generator.'' The citations where ''conditionally exempt small quantity generator'' was 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), and 279.10(b)(3). EPA also made this conforming change in 40 CFR parts 257 and 258 as well. Although EPA had not explicitly specified these parts as affected citations in the proposal, EPA had explained clearly in the preamble to the proposal that we would need to replace the term ''CESQG'' with the new term ''VSQG'' throughout the entire EPA regulations.

(14) Improve the readability of § 264.170, which previously read, ''The regulations in this subpart apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste . . . .'' The Agency revised this language to currently read, ''The regulations in this subpart apply to owners and operators of all hazardous waste facilities that store hazardous waste in containers . . . .''

(15) Improve the readability of the first sentence in § 264.191(a), which previously read, ''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 revised this language to currently read, ''For each existing tank system . . . the owner or operator must determine that the tank system is not leaking or is fit for use.''

(16) Make conforming changes to and improve the readability of § 265.1(c)(7), which previously read, ''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 revised this sentence to currently read, ''A generator accumulating waste on site in compliance with applicable conditions for exemption in § 262.14 though § 262.17 and subparts K and L of part 262, except to the extent the requirements of this part are included in those section and subparts.'' The new references to the conditions for exemption in 262.14 and 262.15, and subparts K and L provide the locations of the existing conditions for exemption from part 265 for VSQGs, satellite accumulation, and academic entities; and the new conditions for exemption for episodic generation.

(17) 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, was missing from § 265.54.

(18) Make a conforming change that removed and reserved § 265.201 (Special requirements for generators of between 100 and 1,000 kg/mo that accumulate hazardous waste in tanks). EPA moved this section to § 262.16.

(19) Add a missing reference to 40 CFR part 268 in § 270.1(a)(3), which previously read, ''The RCRA permit program . . . in 40 CFR parts 264, 266, and 267'' to read, ''The RCRA permit program . . . in 40 CFR parts 264, 266, 267, and 268. ''

B. What changed since proposal?

The Agency is not finalizing three technical corrections. First, we are not finalizing the conforming change to remove and reserve § 262.40(c) that was proposed to be moved to § 262.11. One commenter pointed out that other parts of the regulations reference § 262.40(c). In addition, the title of § 262.40 is Recordkeeping and it is located in subpart D, titled ''Recordkeeping and Reporting.'' EPA has determined that it is appropriate to retain a reference to this recordkeeping requirement for generators in this section. Therefore, we are including a reference from § 262.40(c) to the recordkeeping requirement in § 262.11(f) as part of this final rule.

Second, the Agency is not finalizing the two proposed technical corrections that would have added § 265.445, applicable to drip pads, to § 265.111(c) and § 265.114, respectively. As pointed out by one commenter, this change is not necessary because and § 262.17 already references § 265.445 as part of LQGs having to comply with part 265 subpart W drip pad regulations.

C. Major Comments

Except for the comments associated with the proposed changes to § 262.40(c), § 265.111(c) and § 265.114, as well as two commenters pointing out the inadvertent mistakes at § 261.33(e) and (f), commenters were either in support of the proposed technical corrections or had no comments associated with these changes.

XIII. Electronic Tools To Streamline Hazardous Waste Reporting and Recordkeeping Requirements

This section summarizes the comments the Agency received regarding the feasibility of using electronic tools to support increases in RCRA program efficiency and effectiveness. More specifically, in the proposed rule, the Agency requested comment on the use of electronic tools in three program areas. In section VIII.B.9 of the proposed rule (80 FR 57946), the Agency requested comment on the feasibility of developing an electronic decision tool to assist generators in making accurate hazardous waste determinations. As part of that discussion, the Agency requested comment on the feasibility of the private sector developing electronic application software (apps) and whether there is a market for such an app and what EPA could do to facilitate software development. In section VIII.H.3 of the proposed rule (80 FR 57961), the Agency requested comment on the feasibility of developing an electronic application containing information from the executive summaries (now referred to as a ''quick reference guide'') of contingency plans that emergency responders could use in responding to an emergency. Also, in section XV (80 FR 57985), the Agency explored with stakeholders the feasibility of using electronic tools to streamline hazardous waste reporting and recordkeeping requirements.

In broad terms, and as discussed in preamble to the proposed rule, the use of electronic tools may be able to help hazardous waste generators improve and maintain compliance with the RCRA regulations, thereby reducing violations and increasing environmental benefits. Similarly, the use of electronic tools may reduce the costs to EPA, the states and regulated community for records required to be kept on file, or documents required to be reported that currently are submitted on paper.

From an efficiency standpoint, when information is submitted to EPA or the states on paper, this requires government staff or contractors to manually enter the data into federal and state data systems. These processes can be time-consuming, leading sometimes to important information going unnoticed, potential errors introduced through manual data entry requiring time-consuming correction processes by both regulated entities and the government. As an example, when the Toxics Release inventory switched from paper reporting to e-reporting, costs of managing the data went down by 99 percent and accuracy of submissions also was increased. Better use of information technology may be an important step to improving program efficiency, and as a result, program effectiveness as well. However, at this time, the Agency is not finalizing any electronic tools, but will continue to evaluate the comments received and explore the feasibility in the future.

A. Waste Determination Tools

Many commenters expressed concerns about the feasibility of developing a waste determination decision tool. Three related areas of concern frequently stood out in their comments. First, developing a decision tool with some measure of reliability would involve a complex undertaking. To be effective and helpful, the decision tool would need to account of all of the different factors associated with generating a waste, including industrial sectors, materials of production, chemical processes, and more. Incorporating these many factors into a reliable decision tool may not be feasible. Second, because of the complexity and time involved, development costs would be expensive, and, as several commenters mentioned, costs to maintain the decision tool would be expensive as well. As expressed by at least one commenter, if there were a viable market for such a tool, the private sector would have stepped in by now and developed it. Hence, the viability of such a tool being developed by the private sector seems remote. Third, if a tool was developed, and if a generator used the tool as the basis of its waste determination and it

was found to be wrong, a difficult question over liability may arise. More than one commenter stated that developing a decision tool with 100 percent accuracy was impossible.

However, others did see merit in such a tool, if carefully scoped out and developed. More than one commenter suggested that EPA consider developing a decision tool that focused on common or ''simple'' waste streams that could help VSQGs and SQGs in making waste determinations.

In line with this thought, one commenter recommended that the decision tool include 'filtering' questions such as ''Does the waste vary per batch? Is the waste associated with a particular type of manufacturing? Do you know what is in the waste?'' Depending on the answers, the generator could proceed or stop since the decision tool would not be useful. One commenter went even further by describing an analytical approach by having the tool first determine if the waste is listed or characteristically hazardous, and then determine if it is eligible for one of the exemptions identified in the regulations. By performing the determination this way, the generator would be aware that the waste could potentially be hazardous if it is managed in a way that does not qualify it for an exemption. This commenter also suggested that the tool should provide the user with some sort of output that documents the characterization process, including the generator's answers to the key questions that produced the end result. That way inspectors and others attempting to verify the determination would be able to clearly see the basis for it. Finally, more than one commenter suggested EPA focus on the generic process of making a hazardous waste determination rather than a waste-specific approach.

B. Emergency Response Executive Summary App

Interestingly, most commenters did not respond directly to the request for comment concerning the viability of developing an emergency response executive summary app. For those commenters that did respond, comments received were mixed with some favoring development and others opposed either because such tools already exist or are under development, or because they do not see the need. For example, one commenter mentioned that their fire departments were already using CAMEO (Computer-Aided Management of Emergency Operations) in such a way that some form of integration between the existing CAMEO interface and the RCRA contingency planning information would make the most practical sense.

However, several commenters did see the need for electronic submittal of contingency plans to make them more accessible and useful, although one commenter pointed out that electronic submittal could prove problematic during an emergency when power and communications may be lost or disrupted.

C. Recordkeeping and Reporting Tools

Commenters were generally supportive of EPA pursuing the development of electronic recordkeeping and reporting tools to improve compliance, but in some cases, not mandating their use. One commenter, a state, supports the use of electronic tools for managing and reporting environmental data, an example being the submittal of groundwater monitoring data by municipal solid waste landfill facilities. Conversely, another state commenter did not support the development of electronic tools that require additional submittals by the regulated community, such as submittal of training or inspection records. Another state commenter encouraged the use of any electronic tools (''e-tools'') for notices or reporting required by regulations that would result in a reduction of manual data entry by states.

D. Analysis of Comments

A review and analysis of comments regarding the feasibility of using electronic tools to support increases in RCRA program efficiency and effectiveness suggest commenters generally support use of electronic tools that reduce costs, have wide applicability, and improve program effectiveness. Where those criteria cannot be met, support usually was not forthcoming. Hence, many of the commenters did not see the cost-effectiveness of developing a waste determination decision tool unless properly scoped out to address common or simple wastes where the costs of development could be manageable—also realizing that using any potential tool developed would be a guide to assist generators in making a waste determination and not a definitive decision tool that guaranteed an accurate answer.

As many know, the Agency has already developed an electronic tool to enter site identification information on EPA Form 8700–12 as well as biennial report information on EPA Form 8700–13 A/B. Similarly, the Agency is in the process of developing e-Manifest to increase the efficiency and effectiveness of hazardous waste shipments. Based on comments, the Agency will continue to review existing RCRA reporting and recordkeeping regulatory requirements to identify cost-effective areas of opportunity to either use electronic tools or allow for submittal of information, such as RCRA contingency plans.

XIV. 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, or by § 262.15, 262.16, or 262.17, or by § 262.70. Each generator category's independent requirements are listed in § 262.10 of this final rule. If a person violates independent requirements, 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 requirements for hazardous waste storage facilities 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 numerous enforcement mechanisms available that range in severity. These include notices of violation, orders for compliance, orders for operations to cease, or assessment of penalties as appropriate. In addition, EPA and authorized states have flexibility in applying these mechanisms to the various responsible parties as appropriate to the specific circumstances. This rule does not affect the availability of any of these mechanisms, or EPA's or states' choice as to which type of enforcement approach to pursue against violators. The rule does distinguish between independent requirements and conditions from exemption in the generator regulations: It makes clear that a generator's violation of a condition of exemption results in the generator losing that exemption, resulting in a violation of the hazardous waste storage requirement from which the generator was seeking an exemption.

XV. 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 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 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. 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.[104] 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.

[104] 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 a state program for a particular rule.

B. Effect on State Authorization of Final Rule

This document finalizes 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). These changes are promulgated under non-HSWA authority.

Thus, the standards will 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.

Several of the revisions to the hazardous waste generator regulations are more stringent than those promulgated earlier. These include the following: (1) Requiring SQGs, LQGs and transfer facilities to better define the 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 (section IX.E. of this preamble); (2) requiring LQGs to notify EPA or their authorized state when they plan to close their facilities (section IX.I of this preamble); (3) requiring SQGs to re-notify every four years (section IX.L of this preamble); (4) 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 IX.N of this preamble); (5) requiring LQGs updating their contingency plans to prepare a quick reference guide for their contingency plans to assist responders in an emergency (section XI of this preamble); and (6) requiring facilities that recycle hazardous waste without storing the waste to prepare and submit a Biennial Report. Therefore, states that have adopted the base RCRA program will be required to modify their hazardous waste programs to incorporate equivalent provisions if these standards are finalized.

On the other hand, three of the final revisions are less stringent than the current hazardous waste regulations. These revisions include the following: (1) Allowing VSQGs to voluntarily send hazardous waste to LQGs under the control of the same person (section IX.K of this preamble); (2) allowing LQGs to apply for a waiver from their local fire department to accumulate ignitable and reactive wastes within the 50 foot facility boundary (section IX.H of this preamble); and (3) allowing VSQGs 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 X of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

This final rule also includes several revisions that are neither more nor less stringent, such as (1) reorganizing the hazardous waste generator regulations to make them more user-friendly (section VI of this preamble); (2) defining central accumulation area and the generator categories (section VII of this preamble); (3) mixing a non-hazardous waste with a hazardous waste (section IX.C of this preamble); (4) repeating the prohibition for generators from sending hazardous liquids to landfills (section IX.M of this preamble); (5) replacing the list of specific data elements with a requirement to complete and submit all data elements required in the Biennial Report form (section IX.N of this preamble); (6) deleting the performance track and laboratories XL regulations (section IX.P of this preamble); and (7) technical corrections and conforming changes to various parts of the RCRA regulations (section XII of this preamble). Thus, authorized states may, but are not required to, adopt these changes.

XVI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders*.

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. 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. Any changes made in response to OMB recommendations have been documented in the docket.

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 ''Regulatory Impact Assessment of the Potential Costs, Benefits, and Other Impacts of the Final Hazardous Waste Generator Improvements Rule.'' A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here.

EPA estimates the future annualized cost to industry to comply with the requirements of this action at between $5.9 and $13.3 million at 7% discount rate. Similarly, the annualized cost savings or benefits for facilities opting to take advantage of two voluntary programs in the rule (*e.g.,* consolidation of VSQG 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) in combination with the less stringent requirements for SQGs accumulating waste on drip pads or in containment buildings is between $8.3 and $14.4 million at 7% discount rate. This results in a net annualized benefit for the whole rule of $2.4 million for the low-end estimate and $1.1 million for the high-end estimate at a 7% discount rate.

B. Paperwork Reduction Act (PRA)

The information collection activities in this 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 2513.02. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

This rule is necessary for EPA and authorized states to oversee the generation and management of hazardous waste. EPA is promulgating the establishment of these information collection requirements under the authority of RCRA Subtitle C. Several provisions in this rule will require respondents to either submit information to EPA or their 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 they hazardous waste (*i.e.,* VSQG consolidation of their hazardous waste by a LQG under control of 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 four years that they have not changed their regulatory category to support effective inspections and program management activities. New LQGs and LQGs that have to update their emergency response plan will be required to develop and submit a quick reference guide of their emergency response plan to their local emergency responders or, as appropriate, the Local Emergency Planning Committee to effectively assist these parties in 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 required by the rule. The statutory authority to collect this information is found at RCRA 3002 (42 U.S.C. 6922) and RCRA 3003 (42 U.S.C. 6923).

Respondents/affected entities: Private sector and state and local authorities.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 167,346.

Frequency of response: On occasion, annually, and biennially depending on the requirement.

Total estimated burden: 260,366 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $14,184,000 (per year), includes $2,526,000 in 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. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule.

The small entities directly regulated by this final rule include entities that generate hazardous waste across various industries, including, but not limited to, pesticide end-users and application services; industrial chemical manufacturers; wood preservation; pharmaceutical and other chemical and chemical product manufacturers; dry cleaners and industrial launderers; funeral services and crematories; photography; textile manufacturing; vehicle maintenance; metal manufacturing; construction; printing; professional cleaning services; hospitals; and wholesale paints and chemicals. The RIA estimated that the compliance costs of the final rule represent less than 1 percent of average annual revenues for small entities in the affected universe. The RIA used the Economic Census and Census of Agriculture data to calculate the average annual revenues of small entities in the affected universe. The average annualized costs of the rule are estimated to be between $112 and $209 on a per facility basis for small entities in the affected universe (using a 7 percent discount rate). At most, the RIA estimates the costs of the final rule represent between 0.08 and 0.15 percent of annual revenues for small entities in the affected universe. Therefore, we have concluded that this action is not expected to have a significant impact to a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action 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, local, and tribal government share of future average annualized direct costs for the final rule requirements to range between $0.2 million and $0.4 million per year (using a 7 percent discount rate). Thus, this final rule is not subject to the requirements of sections 202 or 205 of UMRA.

This final 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 finalizes 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 final 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.

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 final 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 final rule that modify the existing hazardous waste generator regulations to enhance environmental protection in the local community, which includes protection of children. Examples include (1) requiring LQGs and SQGs to provide more detailed marking and labeling information for containers, tanks, drip pads, and containment buildings accumulating hazardous wastes; (2) requiring LQGs to notify EPA or an authorized state when they plan to close either a hazardous waste accumulation unit or their site; (3) requiring LQGs and SQGs to re-notify EPA or the authorized state on a periodic basis of their hazardous waste generator activities; and (4) 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'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This final 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

The EPA believes that this action does not have disproportionately high and adverse human health or environment effects on minority, low-income and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The final rule aims to improve human health and environmental protection in a variety of ways. For example, there are several components to this final 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 clarifying regulations regarding the mixing of non-hazardous waste with a hazardous waste by a generator, and better explaining the process by which generators determine under what level of regulation that they must manage their hazardous waste (*i.e.,* determining if they are VSQG, SQG, or LQG). Additionally, EPA is reorganizing 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.

Still other components of this final rule enhance protection of the local community, and therefore foster improved human health and environmental protection, including for minority and low-income populations. These components include, for example, (1) requiring LQGs and SQGs to provide more comprehensive marking and labeling information for containers, tanks, drip pads, and containment buildings accumulating hazardous wastes; (2) requiring LQGs to notify EPA or an authorized state when they plan to close either a hazardous waste unit or their site; (3) requiring LQGs and SQGs to re-notify EPA or the authorized state on a periodic basis of their hazardous waste generator activities; and (4) improving emergency preparedness and response regulations on the part of SQGs and LQGs.

Furthermore, EPA is allowing VSQGs to ship their hazardous waste to an LQG under the control of the same person. As described in section IX.K of the preamble, this may increase environmental protection in the local community because hazardous waste generated by VSQGs 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 change could result in an increase in traffic for certain communities, EPA believes the increase would not be significant given that VSQGs currently may send their hazardous waste to a number of destinations, including municipal and non-municipal solid waste management facilities.

Last, EPA is finalizing alternative standards for VSQGs and SQGs that would allow these entities to maintain their generator category if they generate hazardous waste during an episodic event. Although these generators will be allowed to temporarily manage a greater amount of hazardous waste than their current generator category allows, EPA is finalizing 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 alternative standards.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United

States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 257

Environmental protection, Waste treatment and disposal.

40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference, 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, Incorporation by reference, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 267

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

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 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, 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: October 28, 2016.

Gina McCarthy,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

■ 1. The authority citation for part 257 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a), and 6949a(c); 33 U.S.C. 1345(d) and (e).

■ 2. Section 257.1 is amended by revising paragraph (a) introductory text to read as follows:

§ 257.1 Scope and purpose.

(a) Unless otherwise provided, the criteria in §§ 257.1 through 257.4 are adopted for determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act (The Act). Unless otherwise provided, the criteria in §§ 257.5 through 257.30 are adopted for purposes of ensuring that non-municipal non-hazardous waste disposal units that receive very small quantity generator (VSQG) waste do not present risks to human health and the environment taking into account the practicable capability of such units in accordance with section 4010(c) of the Act. Unless otherwise provided, the criteria in §§ 257.50 through 257.107 are adopted for determining which CCR landfills and CCR surface impoundments pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of the Act.

* * * * *

■ 3. Section 257.2 is amended by revising the definition for *Construction and demolition (C&D) landfill* to read as follows:

§ 257.2 Definitions.

* * * * *

Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements of subparts A or B of this part that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) or industrial solid waste (defined in § 258.2 of this chapter). Only a C&D landfill that meets the requirements of subpart B of this part may receive very small quantity generator waste (defined in § 260.10 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: Roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.

* * * * *

■ 4. Part 257 is amended by revising the heading for Subpart B to read as follows:

Subpart B—Disposal Standards for the Receipt of Very Small Quantity Generator (VSQG) Wastes at Non-Municipal Non-Hazardous Waste Disposal Units

■ 5. Section 257.5 is amended by revising its section heading; paragraph (a); and the paragraph (b) definitions of ''Existing unit'' and ''New unit'' to read as follows:

§ 257.5 Disposal standards for owners/operators of non-municipal non-hazardous waste disposal units that receive Very Small Quantity Generator (VSQG) waste.

(a) *Applicability.* (1) The requirements in this section apply to owners/operators of any non-municipal non-hazardous waste disposal unit that receives VSQG hazardous waste, as defined in 40 CFR 260.10. Non-

municipal non-hazardous waste disposal units that meet the requirements of this section may receive VSQG wastes. Any owner/operator of a non-municipal non-hazardous waste disposal unit that receives VSQG hazardous waste continues to be subject to the requirements in §§ 257.3–2, 257.3–3, 257.3–5, 257.3–6, 257.3–7, and 257.3–8(a), (b), and (d).

(2) Any non-municipal non-hazardous waste disposal unit that is receiving VSQG hazardous waste as of January 1, 1998, must be in compliance with the requirements in §§ 257.7 through 257.13 and § 257.30 by January 1, 1998, and the requirements in §§ 257.21 through 257.28 by July 1, 1998.

(3) Any non-municipal non-hazardous waste disposal unit that does not meet the requirements in this section may not receive VSQG wastes.

(4) Any non-municipal non-hazardous waste disposal unit that is not receiving VSQG Hazardous waste as of January 1, 1998, continues to be subject to the requirements in §§ 257.1 through 257.4.

(5) Any non-municipal non-hazardous waste disposal unit that first receives VSQG hazardous waste after January 1, 1998, must be in compliance with §§ 257.7 through 257.30 prior to the receipt of VSQG hazardous waste.

(b) * * *

Existing unit means any non-municipal non-hazardous waste disposal unit that is receiving VSQG hazardous waste as of January 1, 1998.

* * * * *

New unit means any non-municipal non-hazardous waste disposal unit that has not received VSQG hazardous waste prior to January 1, 1998.

* * * * *

§ 257.13 [Amended]

■ 6. Amend § 257.13 by removing the text ''CESQG'' and adding the text ''VSQG'' in its place.

■ 7. Section 257.21 is amended by revising paragraph (h) introductory text to read as follows:

§ 257.21 Applicability.

* * * * *

(h) Directors of approved States can use the flexibility in paragraph (i) of this section for any non-municipal non-hazardous waste disposal unit that receives VSQG waste, if the non-municipal non-hazardous waste disposal unit:

* * * * *

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

■ 8. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c), 6981(a).

■ 9. Section 258.2 is amended by revising the definitions for ''Construction and demolition (C&D) landfill'' and ''Municipal solid waste landfill (MSWLF)'' to read as follows:

§ 258.2 Definitions.

* * * * *

Construction and demolition (C&D) landfill means a solid waste disposal facility subject to the requirements in part 257, subparts A or B of this chapter that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) or industrial solid waste (defined in this section). Only a C&D landfill that meets the requirements of 40 CFR part 257, subpart B may receive very small quantity generator waste (defined in § 260.10 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: Roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.

* * * * *

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under § 257.2 of this chapter. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, very small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

* * * * *

■ 10. Section 258.20 is amended by revising paragraph (b) to read as follows:

§ 258.20 Procedures for excluding the receipt of hazardous waste.

* * * * *

(b) For purposes of this section, *regulated hazardous waste* means a solid waste that is a hazardous waste, as defined in 40 CFR 261.3, that is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) or was not generated by a very small quantity generator as defined in § 260.10 of this chapter.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 11. 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.

■ 12. Section 260.3 is amended by revising the introductory text to read as follows:

§ 260.3 Use of number and gender.

As used in parts 260 through 273 of this chapter:

* * * * *

■ 13. Amend § 260.10 by:

■ a. Adding in alphabetical order the definitions of ''Acute hazardous waste'', ''Central accumulation area'', ''Large quantity generator'', and ''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'';

■ 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 of this chapter (for large quantity generators). A central accumulation area at an eligible academic entity that chooses to operate under 40 CFR part 262 subpart K is also subject to § 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 1,000 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) 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 1,000 kilograms (2200 lbs) of non-acute hazardous waste; and

(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.

* * * * *

■ 14. 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'' (NFPA 30), 1977 or 1981, IBR approved for §§ 262.16(b), 264.198(b), 265.198(b), 267.202(b).

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 15. 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.

■ 16. Section 261.1 is amended by revising paragraphs (a)(1) and (c)(6) to read as follows:

§ 261.1 Purpose and scope.

(a) * * *

(1) Subpart A defines the terms ''solid waste'' and ''hazardous waste'', identifies those wastes which are excluded from regulation under parts 262 through 266, 268 and 270 of this chapter and establishes special management requirements for hazardous waste produced by very small quantity generators and hazardous waste which is recycled.

* * * * *

(c) * * *

(6) ''Scrap metal'' 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 (*e.g.,* radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

* * * * *

■ 17. 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]

■ 18. Remove and reserve § 261.5.

■ 19. 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).

* * * * *

■ 20. 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) unless otherwise designated.

* * * * *

■ 21. 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

■ 22. 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

■ 23. Section 262.1 is added to subpart A to read as follows:

§ 262.1 Terms used in this part.

As used in this part:

Condition for exemption means any requirement in §§ 262.14, 262.15, 262.16, 262.17, 262.70, or subpart K or subpart L of this part that states an event, action, or standard that must occur or be met in order to obtain an exemption from any applicable requirement in parts 124, 264 through 268, and 270 of this chapter, or from any requirement for notification under section 3010 of RCRA.

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 storage facility permit, interim status, and operating requirements under §§ 262.14, 262.15, 262.16, 262.17, or subpart K or subpart L of this part.

■ 24. Section 262.10 is amended by:

■ a. Revising paragraphs (a) and (b);

■ b. Removing and reserving paragraph (c);

■ c. Revising paragraph (d);

■ d. Revising paragraph (g);

■ e. Removing and reserving paragraph (j); and

■ f. Revising paragraph (l).

The revisions 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:

(i) *Independent requirements of a very small quantity generator.* (A) Section 262.11(a) through (d) Hazardous waste determination and recordkeeping; and

(B) Section 262.13 Generator category determination.

(ii) *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 small quantity generators and large quantity generators;

(D) Part 262 subpart B—Manifest requirements applicable to small and large quantity generators;

(E) Part 262 subpart C—Pre-transport requirements applicable to small and large quantity generators;

(F) Section 262.40 Recordkeeping;

(G) Section 262.44 Recordkeeping for small quantity generators; and

(H) Part 262 subpart H—Transboundary movements of hazardous waste for recovery or disposal.

(iii) *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 small quantity generators and large quantity generators;

(D) Part 262 subpart B—Manifest requirements applicable to small and large quantity generators;

(E) Part 262 subpart C—Pre-transport requirements applicable to small and large quantity generators;

(F) Part 262 subpart D—Recordkeeping and reporting applicable to small and large quantity generators, except § 262.44; and

(G) Part 262 subpart H—Transboundary movements of hazardous waste for recovery or disposal.

(2) A generator that accumulates hazardous waste on site is a person that stores hazardous waste; such generator is subject to the applicable requirements of parts 124, 264 through 267, and 270 of this chapter 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 hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in § 260.10 of this chapter, or not otherwise authorized to receive the generator's hazardous waste.

(b) *Determining generator category.* A generator must use § 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.

* * * * *

(d) Any person who exports or imports hazardous wastes must comply with § 262.18 and subpart H of this part.

* * * * *

(g)(1) A generator's violation of an independent requirement 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 by any generator with an applicable condition for exemption from storage permit and operations requirements means that the facility is a storage facility operating without an exemption from the permit, interim status, and operations requirements in 40 CFR parts 124, 264 through 267, and 270 of this chapter, and the notification requirements of section 3010 of RCRA. Without an exemption, any violations of such storage requirements are 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):

(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.

* * * * *

■ 25. Revise § 262.11 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 as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable RCRA regulations. A hazardous waste determination is made using the following steps:

(a) The 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 such that the RCRA classification of the waste may change.

(b) A person must determine whether 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 whether 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 may include waste origin, composition, the process producing the waste, feedstock, and other reliable and 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) 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 paragraph (d)(1) or (2) of this section, or a combination of both.

(1) The person must apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to generate the waste. 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 process 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 test 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. Persons testing their waste must obtain a representative sample of the waste for the testing, as defined at 40 CFR 260.10.

(2) When available knowledge is inadequate to make an accurate determination, the person must test the waste according to the applicable 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 subpart C of 40 CFR part 261, the results of the regulatory test, when properly performed, are definitive for determining the regulatory status of the waste.

(e) 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.

(f) *Recordkeeping for small and large quantity generators.* A small or large quantity generator must maintain records supporting its hazardous waste determinations, including records that identify whether a solid waste is a hazardous waste, as defined by 40 CFR 261.3. Records must be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. These records must comprise the generator's knowledge of the waste and support the generator's determination, as described at paragraphs (c) and (d) of this section. The records must include, but are not limited to, the following types of information: The results of any tests, sampling, waste analyses, or other determinations made in accordance with this section; records documenting the tests, sampling, and analytical methods used to demonstrate 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 paragraph (d)(1) of this section. 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.

(g) *Identifying hazardous waste numbers for small and large quantity generators.* If the waste is determined to be hazardous, small quantity generators and large quantity generators must identify all applicable EPA hazardous waste numbers (EPA hazardous waste codes) in subparts C and D of part 261 of this chapter. Prior to shipping the waste off site, the generator also must mark its containers with all applicable EPA hazardous waste numbers (EPA hazardous waste codes) according to § 262.32.

§ 262.12 [Removed and reserved]

■ 26. Remove and reserve § 262.12.

■ 27. Subpart A of part 262 is amended by adding §§ 262.13 through 262.18 to read as follows:

Subpart A—General

* * * * *

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 generator must determine its generator category. A generator's category is based on the amount of hazardous waste generated each month 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.

(a) *Generators of either acute hazardous waste or non-acute hazardous waste.* A generator who either generates acute hazardous waste or non-acute hazardous waste in a calendar month shall determine its generator category for that month by doing the following:

(1) Counting the total amount of hazardous waste generated in the calendar month;

(2) Subtracting from the total any amounts of waste exempt from counting as described in paragraphs (c) and (d) of this section; and

(3) Determining the resulting generator category for the hazardous waste generated using Table 1 of this section.

(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 using Table 1 of this section; 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 clean-up of acute hazardous waste generated in a calendar month	Generator category
> 1 kg	Any amount	Any amount	Large quantity generator.
Any amount	≥ 1,000 kg	Any amount	Large quantity generator.
Any amount	Any amount	> 100 kg	Large quantity generator.
≤ 1 kg	> 100 kg and < 1,000 kg	≤ 100 kg	Small quantity generator.
≤ 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 as part of 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, so long as the hazardous waste was previously counted once;

(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; and

(3) Hazardous waste spent materials that are generated, reclaimed, and subsequently reused on site, so long as such spent materials have been previously counted once.

(e) Based on the generator category as determined under this section, the generator must meet the applicable independent requirements listed in § 262.10. A generator's category also determines which of the provisions of §§ 262.14, 262.15, 262.16 or 262.17 must be met to obtain an exemption from the storage facility permit, interim status, and operating requirements when accumulating hazardous waste.

(f) *Mixing hazardous wastes with solid wastes*—(1) *Very small quantity generator wastes.* (i) Hazardous wastes generated by a very small quantity generator may be mixed with solid wastes. Very small quantity generators may mix a portion or all of its hazardous waste with solid waste and remain subject to § 262.14 even though the resultant mixture exceeds the quantity limits identified in the definition of very small quantity generator at § 260.10 of this chapter, unless the mixture exhibits one or more of the characteristics of hazardous waste identified in part 261 subpart C of this chapter.

(ii) If the resulting mixture exhibits a characteristic of hazardous waste, this resultant mixture is a newly-generated hazardous waste. The very small quantity generator must count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the very small quantity generator calendar month quantity limits identified in the definition of generator categories found in § 260.10 of this chapter. If so, to remain exempt from the permitting, interim status, and operating standards, the very small quantity generator must meet the conditions for exemption applicable to either a small quantity generator or a large quantity generator. The very small quantity generator must also comply with the applicable independent requirements for either a small quantity generator or a large quantity generator.

(iii) 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.

(2) *Small quantity generator and large quantity generator wastes.* (i) Hazardous wastes generated by a small quantity generator or large quantity generator may be mixed with solid waste. These mixtures are subject to the following: the mixture rule in §§ 261.3(a)(2)(iv), (b)(2) and (3), and (g)(2)(i); the prohibition of dilution rule at § 268.3(a); the land disposal restriction requirements of § 268.40 if a characteristic hazardous waste is mixed with a solid waste so that it no longer exhibits the hazardous characteristic; and the hazardous waste determination requirement at § 262.11.

(ii) If the resulting mixture is found to be a hazardous waste, this resultant mixture is a newly-generated hazardous waste. A small quantity generator must count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the small quantity generator calendar monthly quantity limits identified in the definition of generator categories found in § 260.10 of this chapter. If so, to remain exempt from the permitting, interim status, and operating standards, the small quantity generator must meet the conditions for exemption applicable to a large quantity generator. The small quantity generator must also comply with the applicable independent requirements for a large quantity generator.

§ 262.14 Conditions for exemption for a very small quantity generator.

(a) Provided that the very small quantity generator meets all the conditions for exemption listed in this section, hazardous waste generated by the very small quantity generator is not subject to the requirements of parts 124, 262 (except §§ 262.10–262.14) through 268, and 270 of this chapter, and the notification requirements of section 3010 of RCRA and the very small quantity generator may accumulate hazardous waste on site without

complying with such requirements. The conditions for exemption are as follows:

(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);

(3) 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 the following additional conditions for exemption:

(i) Such waste is held on site for no more than 90 days beginning on the date when the accumulated wastes exceed the amounts provided above; and

(ii) The conditions for exemption in § 262.17(a) through (g).

(4) 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 the following additional conditions for exemption:

(i) Such waste is held on site for no more than 180 days, or 270 days, if applicable, beginning on the date when the accumulated waste exceed the amounts provided above;

(ii) The quantity of waste accumulated on site never exceeds 6,000 kilograms (13,200 lbs); and

(iii) The conditions for exemption in § 262.16(b)(2) through (f).

(5) A very small quantity generator that accumulates hazardous waste in amounts less than or equal to the limits in paragraphs (a)(3) and (4) 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 265 and 270 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, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person as defined in § 260.10 of this chapter shall not be deemed to ''control'' such generators.

(B) The very small quantity generator marks its container(s) of hazardous waste with:

(*1*) The words ''Hazardous Waste'' and

(*2*) 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); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).

(b) 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.

(c) A very small quantity generator experiencing an episodic event may generate and 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 either one quart of liquid acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter or 1 kg (2.2 lbs) of solid 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 the requirements of parts 124, 264 through 267, and 270 of this chapter, provided that all of the conditions for exemption in this section are met. A generator may comply with the conditions for exemption in this section instead of complying with the conditions for exemption in § 262.16(b) or § 262.17(a), except as required in § 262.15(a)(7) and (8). The conditions for exemption for satellite accumulation are:

(1) If a container holding hazardous waste is not in good condition, or if it begins to leak, the generator must immediately transfer the hazardous waste from this container to a container that is in good condition and does not leak, or immediately transfer and manage the waste in a central accumulation area operated in compliance with § 262.16(b) or § 262.17(a).

(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 must be separated from the other materials or protected from them by any practical means.

(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 temporary 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 or label its container with the following:

(i) The words ''Hazardous Waste'' and

(ii) 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); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).

(6) A generator who accumulates either acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter or non-acute hazardous waste in excess of the amounts listed in paragraph (a) of this section at or near any point of generation must do the following:

(i) Comply within three consecutive calendar days with the applicable central accumulation area regulations in § 262.16(b) or § 262.17(a), or

(ii) Remove the excess from the satellite accumulation area within three consecutive calendar days to either:

(A) A central accumulation area operated in accordance with the applicable regulations in § 262.16(b) or § 262.17(a);

(B) An on-site interim status or permitted treatment, storage, or disposal facility, or

(C) An off-site designated facility; and

(iii) During the three-consecutive-calendar-day period the generator must continue to comply with paragraphs (a)(1) through (5) of this section. The generator must mark or label the container(s) holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(7) All satellite accumulation areas operated by a small quantity generator must meet the preparedness and prevention regulations of § 262.16(b)(8) and emergency procedures at § 262.16(b)(9).

(8) All satellite accumulation areas operated by a large quantity generator must meet the Preparedness, Prevention and Emergency Procedures in subpart M of this part.

(b) [Reserved]

§ 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 requirements of parts 124, 264 through 267, and 270 of this chapter, or the notification requirements of section 3010 of RCRA, 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 (d) and (e) 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 of hazardous waste 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 immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately 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 (b)(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 of hazardous waste 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 (b)(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 (b)(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). The generator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

(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 (b)(3)(iii)(A) through (E) of this section. Use of the alternate inspection schedule must be documented in the generator's operating record. This documentation must include a description of the established workplace practices at the generator.

(v) [Reserved]

(vi) A small quantity generator accumulating hazardous waste in tanks must, upon closure of the facility, 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, 265 and 268 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.* If the waste is placed on drip pads, the small quantity generator must comply with the following:

(i) Subpart W of 40 CFR part 265 (except § 265.445 (c));

(ii) The small quantity generator must remove all wastes from the drip pad at least once every 90 days. Any hazardous wastes that are removed from the drip pad at least once every 90 days are then subject to the 180-day accumulation limit in paragraph (b) of this section and § 262.15 if hazardous wastes are being managed in satellite accumulation areas prior to being moved to the central accumulation area; and

(iii) The small quantity generator must maintain on site at the facility the following records readily available for inspection:

(A) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) 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.* If the waste is placed in containment buildings, the small quantity generator must comply with of 40 CFR part 265 subpart DD. The generator must label its containment buildings with the words ''Hazardous Waste'' in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site and also in a conspicuous place provide 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); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).The generator must also maintain:

(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 generator's files prior to operation of the unit; and

(ii) The following records by use of inventory logs, monitoring equipment, 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 facility showing that the generator is consistent with maintaining 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.

(C) Inventory logs or records with the above information must be maintained on site and readily available for inspection.

(6) *Labeling and marking of containers and tanks—.* (i) *Containers.* A small quantity generator must mark or label its containers with the following:

(A) The words ''Hazardous Waste'';

(B) 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); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard

Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704); and

(C) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) *Tanks.* A small quantity generator accumulating hazardous waste in tanks must do the following:

(A) Mark or label its tanks with the words ''Hazardous Waste'';

(B) Mark or label its tanks with 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); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704);

(C) Use inventory logs, monitoring equipment, or other records to demonstrate that hazardous waste has been emptied within 180 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 180 days of first entering; and

(D) Keep inventory logs or records with the above information on site and readily available for inspection.

(7) *Land disposal restrictions.* A small quantity generator must comply with all the applicable requirements under 40 CFR part 268.

(8) *Preparedness and prevention*—(i) *Maintenance and operation of facility.* A small quantity generator must maintain and operate its facility 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 facility 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 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 facility 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 facility 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 facility 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 attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

(*1*) A small quantity generator attempting to 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 attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of 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 as well as the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(*3*) Where more than one police or fire department might respond to an emergency, the small quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements 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 fire department as well as any other organization necessary to respond to an emergency. This documentation must include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

(C) A facility possessing 24-hour response capabilities may seek a waiver from the authority having jurisdiction (AHJ) over the fire code within the facility's state or locality as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the operating record.

(9) *Emergency procedures.* The small quantity generator complies with the following conditions for those areas of the generator facility 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 facility 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 facility 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 facility 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 facility 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) *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 (b) of this section.

(d) *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 subject to the requirements of 40 CFR parts 264, 265, 267, 268, and 270 of this chapter 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.

(e) *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)–(d) 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.

(f) 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 requirements of parts 124, 264 through 267, and 270 of this chapter, or the notification requirements of section 3010 of RCRA, provided that all of the following conditions for exemption 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 paragraphs (b) through (e) of this section. The following accumulation conditions also apply:

(1) *Accumulation of hazardous waste 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 immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately 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 facility's property line unless a written approval is obtained from the authority having jurisdiction over the local fire code allowing hazardous waste accumulation to occur within this

restricted area. A record of the written 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 of hazardous waste in tanks.* If the waste is placed in tanks, the large quantity generator must comply with the applicable requirements of subparts J, except § 265.197(c) of Closure and post-closure care and § 265.200—Waste analysis and trial tests, as well as the applicable requirements of AA, BB, and CC of 40 CFR part 265.

(3) *Accumulation of hazardous waste on drip pads.* If the hazardous waste is placed on drip pads, the large quantity generator must comply with the following:

(i) Subpart W of 40 CFR part 265;

(ii) The large quantity generator must remove all wastes from the drip pad at least once every 90 days. Any hazardous wastes that are removed from the drip pad are then subject to the 90-day accumulation limit in paragraph (a) of this section and § 262.15, if the hazardous wastes are being managed in satellite accumulation areas prior to being moved to a central accumulation area; and

(iii) The large quantity generator must maintain on site at the facility the following records readily available for inspection:

(A) A written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) 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 of hazardous waste in containment buildings.* If the waste is placed in containment buildings, the large quantity generator must comply with of 40 CFR part 265 subpart DD. The generator must label its containment building with the words ''Hazardous Waste'' in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site, and also in a conspicuous place provide 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); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704). The generator must also maintain:

(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 generator's files prior to operation of the unit; and

(ii) The following records by use of inventory logs, monitoring equipment, 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 facility showing that the generator is 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.

(C) Inventory logs or records with the above information must be maintained on site and readily available for inspection.

(5) *Labeling and marking of containers and tanks*—(i) *Containers.* A large quantity generator must mark or label its containers with the following:

(A) The words ''Hazardous Waste'';

(B) 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); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704); and

(C) The date upon which each period of accumulation begins clearly visible for inspection on each container.

(ii) *Tanks.* A large quantity generator accumulating hazardous waste in tanks must do the following:

(A) Mark or label its tanks with the words ''Hazardous Waste'';

(B) Mark or label its tanks with 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); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704);

(C) Use inventory logs, monitoring equipment or other records to demonstrate that hazardous waste has been emptied within 90 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 90 days of first entering; and

(D) Keep inventory logs or records with the above information on site and readily available for inspection.

(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*)* Facility personnel must successfully complete a program of classroom instruction, online training (*e.g.,* computer-based or electronic), 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 facility 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 facility 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 facility 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 facility 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 facility training meets all the conditions of exemption in this section.

(ii) Facility personnel must successfully complete the program required in paragraph (a)(7)(i) of this section within six months after the date of their employment or assignment to the facility, or to a new position at the facility, whichever is later. Employees must not work in unsupervised positions until they have completed the training standards of paragraph (a)(7)(i) of this section.

(iii) Facility 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 facility:

(A) The job title for each position at the facility 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 facility 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, facility personnel.

(v) Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. 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 at the facility, or prior to closing the facility, must meet the following conditions:

(i) *Notification for closure of a waste accumulation unit.* A large quantity generator must perform one of the following when closing a waste accumulation unit:

(A) Place a notice in the operating record within 30 days after closure identifying the location of the unit within the facility; or

(B) Meet the closure performance standards of paragraph (a)(8)(iii) of this section for container, tank, and containment building waste accumulation units or paragraph (a)(8)(iv) of this section for drip pads and notify EPA following the procedures in paragraph (a)(8)(ii)(B) of this section for the waste accumulation unit. If the waste accumulation unit is subsequently reopened, the generator may remove the notice from the operating record.

(ii) *Notification for closure of the facility.* (A) Notify EPA using form 8700–12 no later than 30 days prior to closing the facility.

(B) Notify EPA using form 8700–12 within 90 days after closing the facility that it has complied with the closure performance standards of paragraph (a)(8)(iii) or (iv) of this section. If the facility cannot meet the closure performance standards of paragraph (a)(8)(iii) or (iv) of this section, notify EPA using form 8700–12 that it will close as a landfill under § 265.310 of this chapter in the case of a container, tank or containment building unit(s), or for a facility with drip pads, notify using form 8700–12 that it will close under the standards of § 265.445(b).

(C) A large quantity generator may request additional time to clean close, but it must notify EPA using form 8700–12 within 75 days after the date provided in paragraph (a)(8)(ii)(A) of this section to request an extension and provide an explanation as to why the additional time is required.

(iii) *Closure performance standards for container, tank systems, and containment building waste accumulation units.* (A) At closure, the generator must close the waste accumulation unit or facility 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) Removes 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, unless § 261.3(d) of this chapter applies.

(3) Any hazardous waste generated in the process of closing either the generator's facility or unit(s) accumulating hazardous waste must be managed in accordance with all applicable standards of parts 262, 263, 265 and 268 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.

(iv) *Closure performance standards for drip pad waste accumulation units.* At closure, the generator must comply with the closure requirements of paragraphs (a)(8)(ii) and (a)(8)(iii)(A)(*1*) and (*3*) of this section, and § 265.445(a) and (b) of this chapter.

(v) The closure requirements of paragraph (a)(8) of this section do not apply to satellite accumulation areas.

(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 subject to the requirements of 40 CFR parts 124, 264 through 268, and part 270 of this chapter, and the notification requirements of section 3010 of RCRA, 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 being subject to parts 124, 264 through 267 and 270 of this chapter, and the notification requirements of section 3010 of RCRA, provided that it complies with all of the following additional conditions for exemption:

(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 paragraph (a)(1) of this section; and/or

(B) If the F006 is placed in tanks, the large quantity generator must comply with the applicable conditions for exemption of paragraph (a)(2) of this section; 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 facility'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 facility 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 paragraph (a)(8) of this section.

(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''; and

(B) 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); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).

(v) The large quantity generator complies with the requirements in paragraphs(a)(6) and (7) of this section.

(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 being subject to parts 124, 264 through 267, 270, and the notification requirements of section 3010 of RCRA, 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 124, 264, 265, 267, and 270 of this chapter, and the notification requirements of section 3010 of RCRA, 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) *Consolidation of hazardous waste received from very small quantity generators.* Large quantity generators may accumulate on site hazardous waste received from very small quantity generators under control of the same person (as defined in § 260.10 of this chapter), without a storage permit or interim status and without complying with the requirements of parts 124, 264 through 268, and 270 of this chapter, and the notification requirements of

section 3010 of RCRA, 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, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person shall not be deemed to ''control'' such generators.

(1) The large quantity generator notifies EPA at least 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 or site address 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 and the date the waste was received.

(3) The large quantity generator complies with the independent requirements identified in § 262.10(a)(1)(iii) and the conditions for exemption in this section for all hazardous waste received from a very small quantity generator. For purposes of the labeling and marking regulations in paragraph (a)(5) of this section, 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.

(g) *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 must 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.* (1) A small quantity generator must re-notify EPA starting in 2021 and every four years thereafter using EPA Form 8700–12. This re-notification must be submitted by September 1st of each year in which re-notifications are required.

(2) A large quantity generator must re-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.

(e) A recognized trader must not arrange for import or export of hazardous waste without having received an EPA identification number from the Administrator.

■ 28. Revise the heading for subpart B to read as follows:

Subpart B—Manifest Requirements Applicable to Small and Large Quantity Generators

■ 29. Revise the heading for subpart C to read as follows:

Subpart C—Pre-Transport Requirements Applicable to Small and Large Quantity Generators

■ 30. Section 262.32 is amended by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 262.32 Marking.

* * * * *

(b) Before transporting hazardous waste or offering hazardous waste for transportation off site, a generator must 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:

(1) HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

(2) Generator's Name and Address _____.

(3) Generator's EPA Identification Number _____.

(4) Manifest Tracking Number _____.

(5) EPA Hazardous Waste Number(s) _____.

(c) A generator may use a nationally recognized electronic system, such as bar coding, to identify the EPA Hazardous Waste Number(s), as required by paragraph (b)(5) or paragraph (d).

(d) Lab packs that will be incinerated in compliance with § 268.42(c) are not required to be marked with EPA Hazardous Waste Number(s), except D004, D005, D006, D007, D008, D010, and D011, where applicable.

§ 262.34 [Removed and reserved]

■ 31. Remove and reserve § 262.34.

■ 32. 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. Prior to disposal in a hazardous waste landfill, liquids must meet additional requirements as specified in §§ 264.314 and 265.314.

■ 33. Revise the heading for subpart D to read as follows:

Subpart D—Recordkeeping and Reporting Applicable to Small and Large Quantity Generators

■ 34. Section 262.40 is amended by revising paragraph (c) to read as follows:

§ 262.40 Recordkeeping.

* * * * *

(c) See § 262.11(f) for recordkeeping requirements for documenting hazardous waste determinations.

* * * * *

■ 35. Section 262.41 is 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 an odd-numbered year (reporting year) who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must complete and submit EPA Form 8700–13 A/B to the Regional Administrator by March 1 of the following even-numbered year and must cover generator activities during the previous year.

(b) Any generator who is a large quantity generator for at least one month of an odd-numbered year (reporting year) who treats, stores, or disposes of hazardous waste on site must complete and submit EPA Form 8700–13 A/B to the Regional Administrator by March 1 of the following even-numbered year covering those wastes in accordance with the provisions of 40 CFR parts 264, 265, 266, 267 and 270. This requirement also applies to large quantity generators that receive hazardous waste from very small quantity generators pursuant to § 262.17(f).

(c) 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 § 262.83(g) for hazardous waste exporters.

■ 36. 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.

■ 37. Section 262.44 is amended by revising the section heading and the introductory text 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]

■ 38. 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

■ 39. 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.

* * * * *

■ 40. 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.

■ 41. 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.

■ 42. 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 of this chapter. 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).

* * * * *

■ 43. 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]

■ 44. Amend § 262.206 in paragraph (b)(3)(iii) by removing the period at the end of the sentence and adding a colon in its place.

■ 45. 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.

■ 46. Section 262.208 is amended by revising paragraphs (a)(1) and (2), and (d)(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.

* * * * *

(d) * * *

(2) If a laboratory accumulates more than 1 quart of liquid reactive acutely hazardous unwanted material or more than 1 kg (2.2 pounds) of solid reactive acutely hazardous unwanted material before the regularly scheduled removal, then the eligible academic entity must ensure that all containers of reactive acutely hazardous unwanted material:

(i) Are marked on the label that is associated with the container (or on the label that is affixed or attached to the container, if that is preferred) with the date that 1 quart or 1 kg is exceeded; and

(ii) Are removed from the laboratory within 10 calendar days of the date that 1 quart or 1 kg was exceeded, or at the next regularly scheduled removal, whichever comes first.

■ 47. 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.

■ 48. 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.

* * * * *

■ 49. 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

* * * * *

■ 50. 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.

* * * * *

■ 51. Section 262.213 is amended by revising paragraphs (a)(1), (2) and (3) and (b)(2) to read as follows:

§ 262.213 Laboratory clean-outs.

(a) * * *

(1) If the volume of unwanted material in the laboratory exceeds 55 gallons (or 1 quart of liquid reactive acutely hazardous unwanted material or 1 kg of solid reactive acutely hazardous unwanted material), the eligible academic entity is not required to remove all unwanted materials from the laboratory within 10 calendar days of exceeding 55 gallons (or 1 quart of liquid reactive acutely hazardous unwanted material or 1 kg or solid reactive acutely hazardous unwanted material), as required by § 262.208. Instead, the eligible academic entity must remove all unwanted materials from the laboratory within 30 calendar days from the start of the laboratory clean-out; and

(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 of this

chapter), 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.

■ 52. 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).

* * * * *

■ 53. 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.

■ 54. Subpart L is added to read as follows:

Subpart L— Alternative Standards for Episodic Generation

Sec.
262.230 Applicability.
262.231 Definitions for this subpart.
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.

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 of this chapter.

§ 262.231 Definitions for this subpart.

Episodic event means 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.

Planned episodic event means an episodic event that the generator planned and prepared for, including regular maintenance, tank cleanouts, short-term projects, and removal of excess chemical inventory

Unplanned episodic event means an episodic event that the generator did not plan or reasonably did not expect to occur, including production process upsets, product recalls, accidental spills, or ''acts of nature,'' such as tornado, hurricane, or flood.

§ 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 for hazardous waste generated 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) *Notification.* 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 72 hours of the unplanned event via phone, email, or fax and subsequently submit EPA Form 8700–12. The generator shall include the start date and end 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 in compliance with § 262.16(b)(9)(i);

(3) *EPA ID Number.* 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 or label its containers with the following:

(A) The words ''Episodic Hazardous Waste'';

(B) 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); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704); and

(C) 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) Mark or label its tanks with 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); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704);

(C) Use inventory logs, monitoring equipment or other records to identify the date upon which each episodic event begins; and

(D) Keep inventory logs or records with the above information on site and readily available for inspection.

(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; and.

(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 subpart B of this part when it sends its episodic event hazardous waste off site to a designated facility, as defined in § 260.10 of this chapter.

(6) The very small quantity generator has up to sixty (60) calendar days from the start of the episodic event to manifest and send its hazardous waste generated from the episodic event to a designated facility, as defined in § 260.10 of this chapter.

(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; and

(vi) An approval letter from EPA if the generator petitioned to conduct one additional episodic event per calendar year.

(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 quantity generator is limited to one episodic event per calendar year unless a petition is granted under § 262.233;

(2) *Notification.* 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 72 hours of the unplanned event via phone, email, or fax, and subsequently submit EPA Form 8700–12. The small quantity generator shall include the start date and end 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) *EPA ID Number.* The small quantity generator must have an EPA identification number or obtain an EPA identification number using EPA Form 8700–12; and

(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 must meet the standards at § 262.16(b)(2) of this chapter and must mark or label its containers with the following:

(A) The words ''Episodic Hazardous Waste'';

(B) 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); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704); and

(C) 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 must meet the standards at § 262.16(b)(3) and must do the following:

(A) Mark or label its tank with the words ''Episodic Hazardous Waste'';

(B) Mark or label its tanks with 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); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704);

(C) Use inventory logs, monitoring equipment or other 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 on site and available for inspection.

(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 designated facility (as defined by § 260.10 of this chapter) within sixty (60) calendar days from the start of the episodic event.

(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 designated facility (as defined by § 260.10 of this chapter) that received the hazardous waste;

(v) Name(s) of hazardous waste transporters; and

(vi) An approval letter from EPA if the generator petitioned to conduct one additional episodic event per calendar year.

§ 262.233 Petition to manage one additional episodic event per calendar year.

(a) A generator may petition the Regional Administrator for a second episodic event in a calendar year without impacting its generator category under the following conditions:

(1) If a very small quantity generator or small quantity generator has already held a planned episodic event in a calendar year, the generator may petition EPA for an additional unplanned episodic event in that calendar year within 72 hours of the unplanned event.

(2) If a very small quantity generator or small quantity generator has already

held an unplanned episodic event in a calendar year, the generator may petition EPA for an additional planned episodic event in that calendar year.

(b) 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 sixty (60) days; and

(5) Information regarding the previous episodic event managed by the generator, including the nature of the event, whether it was a planned or unplanned event, and how the generator complied with the conditions.

(c) The petition must be made to the Regional Administrator in writing, either on paper or electronically.

(d) The generator must retain written approval in its records for three (3) years from the date the episodic event ended.

■ 55. 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.

§ 262.251 Maintenance and operation of facility.

A large quantity generator must maintain and operate its facility 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 deemed applicable by § 262.250 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 facility could require a particular kind of equipment specified below or the actual hazardous 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 facility 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 facility 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 § 262.252.

(b) In the event there is just one employee on the premises while the facility 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 § 262.252.

§ 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 facility 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 attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

(1) A large quantity generator attempting to 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 attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of the hazardous waste handled at the facility and associated hazards, places where personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(3) Where more than one police or fire department might respond to an emergency, the large quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements 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 fire department as well as any other organization necessary to respond to an emergency. This documentation must include documentation in the operating record that either confirms such arrangements actively exist or, in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

(c) A facility possessing 24-hour response capabilities may seek a waiver from the authority having jurisdiction (AHJ) over the fire code within the facility's state or locality as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the operating record.

§ 262.260 Purpose and implementation of contingency plan.

(a) A large quantity generator must have a contingency plan for the facility. 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 facility 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 facility.

(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 police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, local hospitals or, if applicable, the Local Emergency Planning Committee, 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 facility 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 facility (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 and—

(a) The large quantity generator must submit a copy of the contingency plan and all revisions to all local emergency responders (*i.e.,* police departments, fire departments, hospitals and State and local emergency response teams that may be called upon to provide emergency services). This document may also be submitted to the Local Emergency Planning Committee, as appropriate.

(b) A large quantity generator that first becomes subject to these provisions after May 30, 2017 or a large quantity generator that is otherwise amending its contingency plan must at that time submit a quick reference guide of the contingency plan to the local emergency responders identified at paragraph (a) of this section or, as appropriate, the Local Emergency Planning Committee. The quick reference guide must include the following elements:

(1) The types/names of hazardous wastes in layman's terms and the associated hazard associated with each hazardous 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 facility showing where hazardous wastes are generated, accumulated and treated 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);

(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(s) and 7/24-hour emergency telephone number(s) or, in the case of a facility where an emergency coordinator is continuously on duty, the emergency telephone number for the emergency coordinator.

(c) Generators must update, if necessary, their quick reference guides, whenever the contingency plan is amended and submit these documents to the local emergency responders identified at paragraph (a) of this section or, as appropriate, the Local Emergency Planning Committee.

§ 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 facility 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 facility 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. Although responsibilities may vary depending on factors such as type and variety of hazardous waste(s) handled by the facility, as well as type and complexity of the facility, this emergency coordinator must be thoroughly familiar with all aspects of the generator's contingency plan, all operations and activities at the facility, the location and characteristics of hazardous waste handled, the location of all records within the facility, and the facility'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 facility alarms or communication systems, where applicable, to notify all facility 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 facility 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 facility 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 facility.

(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 facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released hazardous waste, and removing or isolating containers.

(f) If the generator 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 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 facility:

(1) No hazardous 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

■ 56. The authority citation for part 263 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

■ 57. 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 (10) 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) When consolidating the contents of two or more containers with the same hazardous waste into a new container, or when combining and consolidating two different hazardous wastes that are compatible with each other, the transporter must mark its containers of 119 gallons or less with the following information:

(1) The words ''Hazardous Waste'' and

(2) The applicable EPA hazardous waste number(s) (EPA hazardous waste

codes) in subparts C and D of part 261 of this chapter, or in compliance with § 262.32(c).

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 58. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

■ 59. 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.

* * * * *

■ 60. Section 264.15 is amended by revising paragraph (b)(4) and removing the comment to paragraph (b)(4) to read 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.

* * * * *

■ 61. Section 264.71 is amended by revising paragraph (c) and removing the comment to paragraph (c) to read 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 or operating as a large quantity generator consolidating hazardous waste from very small quantity generators under § 262.17(f).

* * * * *

■ 62. 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 A/B to the Regional Administrator by March 1 of the following even numbered year and must cover activities during the previous year.

■ 63. 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.

[*Comment:* Under § 261.7 and § 261.33(c) of this chapter, if a hazardous waste is emptied from a container the residue remaining in the container is not considered a hazardous waste if the container is ''empty'' as defined in § 261.7. In that event, management of the container is exempt from the requirements of this subpart.]

■ 64. 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.

■ 65. 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]

■ 66. Section 264.195 is amended by removing and reserving paragraph (e).

■ 67. 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

* * * * *

■ 68. 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.

* * * * *

■ 69. 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

■ 70. 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.

■ 71. 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 applicable conditions for exemption in §§ 262.14 through 262.17 and subparts K and L of part 262 of this chapter, except to the extent the requirements of this part are included in those sections and subparts;

* * * * *

■ 72. 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.

* * * * *

■ 73. 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 or operating as a large quantity generator consolidating hazardous waste from very small quantity generators under § 262.17(f).

* * * * *

■ 74. 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 A/B to the Regional Administrator by March 1 of the following even numbered year and must cover activities during the previous year.

■ 75. 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]

■ 76. Section 265.195 is amended by removing and reserving paragraph (d).

§ 265.201 [Removed and reserved]

■ 77. Remove and reserve § 265.201.

■ 78. Section 265.1030 is amended by revising paragraphs (b)(2) and (3) to 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.

* * * * *

§ 265.1050 [Amended]

■ 79. Amend § 265.1050 by removing the text ''40 CFR 262.34(a)'' wherever it appears and adding in its place the text ''40 CFR 262.17''.

■ 80. 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 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILTIES

■ 81. 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.

§ 266.80 [Amended]

■ 82. Amend § 266.80(a) by removing the text ''§ 262.12'' and adding the text ''§ 262.18'' in its place, seven times.

§ 266.255 [Amended]

■ 83. Amend § 266.255(a) by removing the text ''40 CFR 262.34'' and adding the text ''40 CFR 262.16 or 262.17'' in its place.

PART 267—STANDARDS FOR OWNERS AND OPERATORS OF FACILITIES OPERATING UNDER A STANDARDIZED PERMIT

■ 84. The authority citation for part 267 continues to read as follows:

Authority: 42 U.S.C. 6902, 6912(a), 6924–6926, and 6930.

§ 267.71 [Amended]

■ 85. Amend § 267.71(c) by removing the text ''§ 262.34'' wherever it appears and adding in its place the text ''§ 262.16 or 262.17''.

PART 268—LAND DISPOSAL RESTRICTIONS

■ 86. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

■ 87. 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;

* * * * *

■ 88. 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:

* * * * *

■ 89. Section 268.50 is amended by revising paragraph (a)(1) and (a)(2)(i) to read as follows:

§ 268.50 Prohibitions on storage of restricted wastes.

(a) * * *

(1) A generator stores such wastes in tanks, containers, or containment buildings on-site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in §§ 262.16 and 262.17 and parts 264 and 265 of this chapter.

(2) * * *

(i) Each container is clearly marked to identify its contents and 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; or use a nationally recognized electronic system, such as bar coding, to identify the EPA hazardous waste number(s);

(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); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704); and

(D) The date each period of accumulation begins.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

■ 90. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

■ 91. 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 or 262.14 (very small quantity generator exemption).

* * * * *

§ 270.42 [Amended]

■ 92. 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 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 93. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

§ 271.10 [Amended]

■ 94. Amend § 271.10(c) by removing the text '' 262.34'' and adding in its place the text ''262.16 or 262.17''.

PART 273—STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

■ 95. The authority citation for part 273 continues to read as follows:

Authority: 42 U.S.C. 6922, 6923, 6924, 6925, 6930, and 6937.

■ 96. 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.

* * * * *

■ 97. 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 THE MANAGEMENT OF USED OIL

■ 98. 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)).

■ 99. 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.

* * * * *

[FR Doc. 2016–27429 Filed 11–25–16; 8:45 am]

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Part IV

The President

Presidential Determination No. 2017–01 of November 14, 2016—Presidential Determination Pursuant to Section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012

Presidential Determination No. 2017–02 of November 16, 2016—Eligibility of the Multinational Force and Observers To Receive Defense Articles and Defense Services Under the Foreign Assistance Act of 1961 and the Arms Export Control Act

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2017–01 of November 14, 2016

Presidential Determination Pursuant to Section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012

Memorandum for the Secretary of State[,] the Secretary of the Treasury[, and] the Secretary of Energy

By the authority vested in me as President by the Constitution and the laws of the United States, after carefully considering the reports submitted to the Congress by the Energy Information Administration including the report of September 7, 2016, and other relevant factors, including global economic conditions, increased oil production by certain countries, the level of spare capacity, and the availability of strategic reserves, I determine, pursuant to section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81, and consistent with my prior determinations, that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions. However, consistent with U.S. commitments specified in the Joint Comprehensive Plan of Action (JCPOA), the United States is no longer pursuing efforts to reduce Iran's sales of crude oil. The United States action to fulfill these commitments became effective upon reaching Implementation Day under the JCPOA, which occurred once the International Atomic Energy Agency verified that Iran had implemented key nuclear-related steps specified in the JCPOA to ensure that its nuclear program is and will remain exclusively peaceful.

I will continue to monitor this situation closely.

The Secretary of State is hereby authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
Washington, November 14, 2016

[FR Doc. 2016–28795
Filed 11–25–16; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2017–02 of November 16, 2016

Eligibility of the Multinational Force and Observers To Receive Defense Articles and Defense Services Under the Foreign Assistance Act of 1961 and the Arms Export Control Act

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, including section 503(a) of the Foreign Assistance Act of 1961 and section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and defense services to the Multinational Force and Observers will strengthen the security of the United States and promote world peace.

You are authorized and directed to transmit this determination and the accompanying memorandum of justification to the Congress and publish this determination in the *Federal Register.*

THE WHITE HOUSE,
Washington, November 16, 2016

[FR Doc. 2016–28796
Filed 11–25–16; 11:15 am]
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